HM Treasury

HM Revenue & Customs

Implementing a capital gains tax charge on non-residents:

summary of responses

November 2014

HM Treasury

HM Revenue & Customs

Implementing a capital gains tax charge on non-residents:

summary of responses

November 2014

© Crown copyright 2014

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or email psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gsi.gov.uk.

You can download this publication from www.gov.uk

ISBN 978-1-910337-52-3
PU1730

Contents

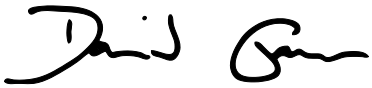
Foreword

At the Autumn Statement 2013, the government announced that it would extend capital gains tax to disposals of UK residential property by non-residents from April 2015. This change addresses a significant unfairness within our capital gains tax and property tax regime. Currently, UK residents are charged CGT when disposing of a property that is not their main residence but non-residents are not. By extending CGT to non-residents disposing of UK residential property we are bringing the UK into line with many other countries around the world that charge CGT on the basis of where a property is located.

The government published a consultation document on 28 March 2014 outlining the proposed design of the extended CGT charge. The consultation ran from March to June of this year. During the consultation period, officials held a number of working groups with and received a large number of responses from a wide range of stakeholders.

The government has sought to implement this change in a way that avoids placing undue burdens on taxpayers and minimises disruption in large scale property investment. The government has therefore designed a charge that exempts institutional investors, limits the impact on UK taxpayers and uses a collection mechanism that minimises burdens.

We believe the design of the extended CGT regime achieves the overarching aim of fairness and continues to encourage important investment into the UK property market, while being as pragmatic and flexible as possible. The government is grateful to everyone who participated in and responded to the consultation, and would like to take this opportunity to thank them.



David Gauke
Financial Secretary to the Treasury

1 The consultation

1.1. The government announced at Autumn Statement 2013 that capital gains tax (CGT) will be extended to gains made by non-residents disposing of UK residential property from April 2015. This policy is being introduced to improve the fairness of the tax system by addressing the current imbalance between the treatment of UK residents and non-residents disposing of UK residential property.

The consultation

1.2. The consultation document *"Implementing a capital gains tax charge on non-residents"* was published on 28 March 2014. It provided context on the government's decision to extend CGT to non-residents disposing of UK residential property and set out the overarching objectives for the change. The document also sought views on the proposed design of the charge.

1.3. The proposals in the consultation were at stage 2 (determining the best option and developing a framework for implementation including detailed policy design) of the government's tax consultation framework.

1.4. The consultation closed on 20 June 2014. The government received almost 100 responses from a range of organisations and individuals. Respondents included industry bodies, property professionals, fund managers, property investors, tax specialists, lawyers and individuals. Officials from Her Majesty's Treasury (HMT) and Her Majesty's Revenue and Customs (HMRC) also held several working groups with a range of stakeholders to discuss particular aspects of the extended CGT charge including specifics of the policy design and practicalities of implementing the changes. The minutes, along with an update as to the scope of the charge, were published on 31 July and can be found here:

https://www.gov.uk/government/consultations/implementing-a-capital-gains-tax-charge-on-non-residents

1.5. The government is grateful to everyone who responded to, or participated in, the consultation process and has carefully considered all responses received when deciding how to proceed. When taking decisions on the design of the extended CGT charge the government has been mindful of the overarching objectives of this reform: fairness, sustainability and simplicity.

1.6. Respondents' answers to the questions posed, and other issues raised (either in formal responses or by the working groups), are summarised in the following chapters. The full text of all of the answers provided, with individual personal information removed, is set out as a separate document.

Structure of the consultation response

The remainder of this consultation response is divided into five sections

- Chapter 2 sets out an executive summary of decisions taken and how the extended CGT charge will operate;

- Chapter 3 sets out key design features as regards what is in scope of the charge;
- Chapter 4 sets out key design features as regards who is in scope of the charge;
- Chapter 5 explains the rate of tax and reliefs for companies in scope of the charge;
- Chapter 6 explains the rate of tax and reliefs for individuals in scope of the charge;
- Chapter 7 sets out the administration of the charge;
- Annex A sets out the list of respondents; and
- A separate publication provides a list of respondents and their responses.

Next steps

1.7. Draft legislation will be published for consultation as part of the draft Finance Bill 2015. The government recognises that the extension of CGT to non-residents is a significant reform that will affect a range of people, and intends to continue to engage with stakeholders on the draft legislation and the details of how the policy will apply.

2 Executive summary

2.1 The government believes that extending capital gains (CGT) tax to non-residents disposing of UK residential property is an important change that will improve the integrity of the tax system. This change will remove the current differences in treatment of UK and non-UK residents disposing of residential property, and will bring the UK into line with many other countries that charge CGT on the basis of the location of the property.

2.2 The consultation sought views on the proposed features for the extended charge. This chapter provides a summary of the decisions that the government has taken about how the charge will be designed and delivered.

The scope of the charge

2.3 Chapters 3 and 4 discuss the scope of the extended CGT charge.

2.4 The charge will apply to disposals of UK residential property. There will be no change to the tax treatment of disposals of trading stock, which will be subject to tax on profits as currently. Residential property will be defined as property suitable for use as a dwelling, and communal residential property will generally be excluded from the charge.

2.5 The charge will apply mainly to non-resident individuals, non-resident trustees, personal representatives of a non-resident deceased person and some non-resident companies disposing of UK residential property. As set out in the published update to the consultation (31 July 2014), the government has recognised the concerns raised by many stakeholders about the impact of the extended CGT charge on large scale institutional investment, which is supporting much needed development and supply of housing in the UK. The government has decided to ensure that all disposals of UK residential property made by diversely held institutional investors will not be subject to the charge. The government will achieve this through the introduction of a "narrowly controlled company test" which will work alongside a genuine diversity of ownership test. This will ensure that non-resident individuals and closely connected parties who make disposals of UK residential property will be subject to CGT, but that most institutional investors will not.

The availability of reliefs, the calculation of the charge, and the collection of the tax due

2.6 Chapters 5, 6 and 7 set out the key issues to allow those in scope of the charge to comply and calculate the charge that is due.

2.7 The rate for companies will mirror the UK corporate tax rate, currently 20%. Non-resident companies will have access to a limited indexation allowance and group companies will have the ability to enter into "pooling" arrangements. The government appreciates the concerns that have been expressed about the administration and record-keeping for those non-resident companies that may be subject to the annual tax on enveloped dwellings (ATED). However, the government believes that the ATED-related

CGT charge is an important part of the package of measures to deter enveloping of property. This charge will remain at 28% on disposals of property subject to ATED. To prevent potential double taxation, where part of the gain could be subject to both ATED-related CGT and the new CGT charge the ATED-related CGT charge will take precedence.

2.8 The rate of tax for non-resident individuals will be the same as the CGT rates for UK individuals, currently 18% or 28% depending on the person's total UK income and chargeable gains for the tax year. Non-resident individuals will have access to the annual exempt amount of taxable gains, in line with UK residents.

2.9 Non-resident individuals in scope of the charge may be eligible for private residence relief (PRR). The consultation document discussed possible changes to PRR and the ability to elect a person's residence for relief as an only or main residence. The government has decided to introduce a new rule to restrict access to PRR for properties located in a jurisdiction in which the individual is not tax resident.

2.10 This rule will apply to both non-residents disposing of UK residential properties and UK residents disposing of residential properties located outside the UK. The rule will require that in either of those circumstances, a person's residence will not be capable of being treated as their only or main residence for a tax year unless they have resided in the property for at least 90 midnights in the property in that year (the "90-day rule"). Consequential access to PRR will then follow normal rules. Non-residents will be able to nominate that a UK property meeting the 90-day rule is their only or main residence for a tax year at the time of disposal. Access to PRR will also be available for trusts if the beneficiary is non-UK resident on the same basis.

2.11 The extended CGT charge for a non-resident disposing of UK residential property will not apply to the amount of gain relating to periods prior to April 2015.The government will allow either rebasing to 5 April 2015 or a time-apportionment of the whole gain, in most cases. Individuals and companies will need to report to HMRC within 30 days of the date of completion that a disposal has been made and make a payment of the tax that is due. Where a person has an existing relationship with HMRC, they will be able to make a payment as part of their self-assessment return instead.

3 Responses to key design features: what is in scope of the charge

3.1 This chapter summarises the responses received to the questions in the consultation relating to what is in scope of the charge.

Residential Property

3.2 As set out in the consultation document the government proposed that the extended CGT charge should apply to property used or suitable for use as a dwelling, including property that is in the process of being constructed or adapted for such use. This aligns with the approach taken for stamp duty land tax (SDLT) and the annual tax on enveloped dwellings (ATED).

3.3 The government also proposed that property used primarily for communal use, such as boarding schools and nursing homes, would not be affected by the extended CGT charge. There were some suggested differences from other property tax legislation. One proposed difference was that residential accommodation for students would be within the scope of the charge unless the accommodation was a hall of residence attached to higher or further educational institution (unlike the ATED regime). Another was that disposals of multiple dwellings in a single transaction should be in scope of the CGT charge (rather than being treated as non-residential transactions, as in SDLT).

Question 1: Would an exclusion of communal residential property from the scope of the new regime result in any unintended consequences?

Question 2: Are there any other types of communal residential property that should be excluded from scope?

Summary of stakeholder responses

3.4 Most respondents agreed with the rationale of exempting certain communal or social accommodation from the scope of the charge.

3.5 However, a number of responses noted that the nature of the exclusions would inevitably lead to a small number of difficult cases. Some responses pointed to the complexity that could arise from having different definitions of residential use in different parts of the tax code, and suggested a wider review of definitions across legislation.

3.6 Some stakeholders felt that looking at the planning permission attached to a property could be a way to determine those types of communal accommodation that should be excluded from the scope of the charge. However, others felt that such an approach would be problematic and that tax legislation should not rely on these definitions. Some suggested that a test could focus on the nature of the occupier or the purpose of the accommodation. Others suggested that the government should consider introducing a

single overarching test to identify accommodation built for a communal or social purpose.

3.7 A number of stakeholders suggested that the exemption for care homes should be expanded to include sheltered accommodation, retirement homes and similar accommodation. Some respondents suggested that monasteries, accommodation for nurses and other forms of communal accommodation need specific exclusions. However, the type of property use that prompted the most commentary was student accommodation. Many respondents argued that the provision of student accommodation has changed to such an extent that the exclusion for halls of residence needs to also cover commercially provided purpose built student accommodation (PBSA) that is not reserved for students attending a particular university or college.

3.8 In contrast, some respondents argued that rather than define different types of residential property, it would be preferable to extend CGT to all types of property, including non-residential property. These stakeholders commented that exclusions lead to complexity, particularly with regard to conversions and changes in use, and should be avoided; or that limiting the charge to residential property was not equitable and could lead to distortions in terms of investment into the UK property market as a whole.

Government response

Overall approach

3.9 The government believes that it is right that CGT should apply to disposals of interests in UK residential property. **The government does not intend to broaden the scope of the charge and apply CGT to disposals of interests in non-residential property.** This change is focussed on rectifying the unfairness in the system that currently allows non-residents to escape UK CGT on disposals of UK property that are or could be used as a dwelling-house.

3.10 The government believes that disposals of certain types of communal accommodation should be excluded from the scope of the charge, and has decided to build on existing property tax definitions to do this.

3.11 **The government will not make additional exemptions or changes to the definition for accommodation used to provide care**. This definition will ensure that care homes and nursing homes will not be within scope of the charge.

3.12 Accommodation used for independent living outside of a care home or nursing home environment will fall within the scope of the charge. Private residence relief (described in more detail in Chapter 5) will be available, if applicable, in such cases. The government believes that this approach will ensure that non-residents disposing of UK residential property will be subject to the extended CGT charge in a fair way.

3.13 The government appreciates the comments raised on the potential difficulties around excluding certain types of communal accommodation from the scope of the charge, and **will consider further the case for harmonising definitions across various pieces of tax legislation.**

Student accommodation

3.14 The SDLT code distinguishes between "halls of residence for students in further or higher education" on the one hand and "residential accommodation for students, other than halls of residence for students in further or higher education" on the other. A third category exists for "residential accommodation for school pupils".

3.15 **The government considered representations carefully and has decided to create a new definition to ensure that purpose built student accommodation (PBSA) is not subject to the charge,** bringing the first two categories together. Residential accommodation for school pupils will also remain, as a separate category outside the charge.

3.16 PBSA will be defined as property that is either:

- a building that is purpose built (or converted) for use by students, consists of at least 15 bedrooms (which can be either standalone units or within 'cluster flats' or a mixture) and is occupied for more than 50 per cent of a tax year by students for the purpose of attending a course of study; or
- accommodation that is excluded from registration under the Housing Act 2004 as a house in multiple occupation by virtue of being controlled or managed by a higher or further education establishment with the management being in conformity with an approved Code of Practice for the purpose of that exclusion.

3.17 Smaller establishments used as student accommodation, for example family houses that may have been converted or have rooms let out, will be within the scope of the extended CGT charge. The government does not believe that it is possible or fair to differentiate these properties from other homes or rental properties owned by non-residents.

Further information on the definition of dwelling: construction, changes in use, off-plan purchases, grounds

3.18 As described in the consultation document, property that is in the process of being constructed or adapted for use as a dwelling will be in scope of the charge. Disposals of building land will be outside the scope of the extended CGT charge until such time as a residential building is under construction.

3.19 Where a building is demolished, the resultant land will be regarded as building land irrespective of what structure may subsequently be constructed. The period of carrying out works to demolish a dwelling or convert it to a non-residential use will be regarded as a period of non-residential use, provided that any necessary planning consent for the works has been given and the taxpayer completes the works prior to the effective completion of the disposal. Further, where, for reasons connected with a conversion or demolition, a dwelling is unoccupied immediately prior to the works being performed, that period will also be regarded as a non-residential period. Where the works are not completed, the building will be regarded as residential during the period that the works are performed (and for the period it is unoccupied immediately prior to then).

3.20 Where a change of use occurs over the period of ownership, the gain accruing on disposal will be time apportioned to reflect the time that the building was not used for a residential purpose.

3.21 The government has also decided that disposals of rights to acquire a UK residential property 'off plan' (before it has been constructed) will be treated in the same way as if it were a disposal of an interest in a completed property.

3.22 In the same way as for SDLT and ATED, residential property will also include land that is or forms part of the garden or grounds of a residential building.

4 Responses to key design features: who is in scope of the charge

4.1 This chapter summarises the responses received to the questions in the consultation relating to who is in scope of the charge.

4.2 The consultation document discussed the implications for various owners of property, including partnerships, trusts, investment funds, and non-resident companies.

Partnerships and trusts

4.3 The consultation document explained that the government intends that the current approach taken to UK resident partnerships will be extended to non-resident partnerships, with the outcome that partnerships will be transparent for tax purposes. The consultation document also explained that the extended CGT regime would seek to mirror the current UK tax treatment of trusts, with the outcome that all types of non-resident trust will be in scope of the charge.

Question 3: Are there any particular circumstances where including non-resident partners in scope of the charge might lead to unintended consequences?

Question 4: Are there any particular circumstances where including non-resident trustees in the scope of the charge might lead to unintended consequences?

Stakeholder responses

4.4 Overall, most respondents felt that including non-resident partners and trustees within the scope of the charge would not lead to unintended consequences. However, many stakeholders highlighted the need to ensure that the extended CGT charge interacted appropriately with existing anti-avoidance provisions for trusts.

Government response

4.5 The government will follow the approach outlined in the consultation document, treating partnerships, including foreign partnerships that are characterised as partnerships for English tax law purposes (taking into account the actual characteristics under the relevant foreign law) as transparent and apportioning partnership chargeable gains. The extension of CGT to non-residents disposing of UK residential property will therefore apply to non-resident persons who are partners. In practice this means that any chargeable gain on the disposal of property by the partnership will result in a CGT charge on each partner individually, reflecting the extent that they are entitled to those gains.

4.6 The government will also follow the approach outlined in the consultation document so that non-resident trusts will be included. In practice this means that trustees will be

collectively subject to CGT on gains realised on the disposal of trust assets. Non-resident trustees will have access to private residence relief, provided that the requirements outlined in chapter 5 are met.

4.7 The government intends that the extended CGT charge will take precedence over existing anti-avoidance provisions that attribute gains to settlors or beneficiaries of non-resident trusts.

Funds and companies

Funds

4.8 The use of funds such as collective investment schemes (CIS) or property authorised investment funds (PAIFs) is a relatively common way to own UK residential property. As discussed in the consultation document, these entities are generally not taxed at fund level, but the investor is treated as though they own and dispose of the asset directly. The consultation document explained that the government does not intend to tax non-residents on disposals of shares or units in a fund due to the complexities of doing so and the difficulties in identifying disposals of units of investment in residential property in funds that hold multiple investments. However, a blanket exclusion for non-resident investment funds could leave the extended CGT charge susceptible to avoidance. The government therefore proposed the use of a form of "genuine diversity of ownership" test to introduce a charge at fund level, building on existing approaches within funds legislation.

4.9 It was further explained that foreign REITs will not be subject to the extended CGT charge where they are equivalent to UK REITs, and that non-residents investing into UK residential property through UK REITs will also not be affected by the extended regime.

Companies

4.10 The consultation document set out the government's intention to bring some non-resident companies that dispose of UK property within scope of the extended CGT charge. This is necessary as individuals may otherwise be incentivised to avoid the charge by setting up companies to hold residential property.

Question 5: Is a genuine diversity of ownership (GDO) test an appropriate way to identify funds that should be excluded from the extended CGT regime, and to ensure that small groups of connected people cannot use offshore fund structures to avoid the charge?

Question 6: Are there any practical difficulties in implementing a GDO test?

Question 7: Is there a need for a further test in addition to GDO? If so, what would this look like and how would it be policed.

Stakeholder responses

Funds

4.11 Many respondents agreed that the genuine diversity of ownership (GDO) test that exists as part of the UK Authorised Investment Fund regime (and also used in the Offshore Fund regime) would form the basis of a sensible approach to limit the scope of the regime so that funds would not be subject to the CGT charge where they could demonstrate that they were widely held. However a number of stakeholders commented that close ended funds should be treated differently and a further test would be required.

4.12 A number of stakeholders combined their responses to these questions with the questions on the design of the charge for other non-resident companies, and argued that required a different approach.

4.13 A number of respondents felt that the existing close company rules would form a useful starting point. Overall respondents were keen that any rules created for the purpose of the extended CGT charge tie into existing legislation as far as is possible, and the REITs, Property Authorised Investment Funds (PAIFs) and offshore funds rules were all suggested as a basis upon which a test could be designed.

Companies

4.14 The consultation document explained that pension funds and other diversely owned investment funds were not intended to be brought in scope of the extension of CGT to non-residents. Many representations argued that widely-held companies have aspects in common with diversely owned investment funds and should therefore also benefit from an exemption from the extended CGT charge. They further argued that including widely-held companies within the scope of the charge would disincentivise investment into the UK property market.

4.15 Many respondents argued that as properties are usually held in corporate structures with several layers, it would be important to design a test that looks through them to the ultimate investor, with the intention that if the ultimate investor is exempt from the charge the property owning company would also benefit from the exemption. Many respondents suggested that the government should give careful consideration to the types of investment vehicles UK in which property is typically held, such as joint ventures and special purpose vehicles.

Government response

4.16 The government published an update on the scope of the charge on 31 July 2014, which can be found here: https://www.gov.uk/government/consultations/implementing-a-capital-gains-tax-charge-on-non-residents

The update acknowledged many of the concerns raised by stakeholders and explained that the government wants to continue to encourage large-scale institutional investment into much needed development and supply of housing in the UK. The update explained that the government would introduce a form of "close company test" in order to limit the scope of the extension of CGT to non-residents, to operate alongside a GDO test for open-ended investment vehicles.

Narrowly controlled company test

4.17 Building on the principles and approaches within the close company rules and other legislation, **the government has now decided to introduce a "narrowly controlled company" test**. This test will limit the scope of the extended charge to companies that are the private investment vehicles of individuals, families or small groups of individuals or families. This will deter individuals that would otherwise be within scope of this measure from transferring their interest in UK residential property to a non-resident company in order to escape the CGT charge.

4.18 The starting point for the test will be the existing close company test, with certain modifications. In particular modifications will be made to ensure that members of a partnership are not treated as connected with each other purely because of their common investment through the partnership. This will ensure that partnerships do not automatically fall within scope of the charge, as they would if subject to the existing close company test. It will also allow for layers of investment structures to be "looked through" in order that any diversely owned investment structure should fall outside the charge.

4.19 The test will ensure that the extended CGT charge will not apply to

- Any "qualified institutional investor", e.g. pension funds investing on behalf of large numbers of individuals, sovereign wealth funds and most financial institutions.
- Any other non-resident company that is not itself controlled by 5 or fewer persons (including connected parties).
- Any non-resident company which can only be controlled by 5 or fewer persons if at least one of those persons is a "qualified institutional investor".

4.20 Partnership structures will be looked through, so no special rules will be needed for LLPs.

4.21 For the purpose of the extended CGT charge, a "qualified institutional investor" will include

- A company (other than a collective investment scheme (CIS)) that is itself a qualifying institutional investor
- A CIS that would itself be exempt from the charge (see paragraph 4.23/4.24).
- A foreign pension scheme established for the benefit of a diverse range of individuals.
- Any fund that benefits from a general exemption from tax in the UK by reason of sovereign immunity.

4.22 To ensure that the charge is targeted appropriately and to limit opportunities for tax avoidance, the following rules will be introduced

- The interests of closely related family members will be aggregated when considering whether a company is controlled by five or fewer persons.
- As regards "protected cell" companies, each cell will be treated as a separate company.
- Arrangements intended to otherwise sidestep the control test will be disregarded.

The "genuine diversity of ownership" (GDO) test

4.23 A CIS (including an open ended company) will be exempt provided it can show that it satisfies the GDO test. **The government has decided that the existing GDO test will be replicated, subject to minor amendments**, for the purposes of the extended CGT charge.

4.24 The amendments will be as follows

- The CIS must meet the GDO test for the shorter of i) the period for which the asset has been held or ii) at least five years prior to the disposal.
- Any CIS that satisfies the GDO test should be treated as a "qualified institutional investor" in any non-resident company (as well as being exempt from the charge for its own purposes).

4.25 The illustration below shows how the regime will apply. Further guidance on the application of these tests will be provided in due course.

4.26 A similar anti-avoidance rule proposed in relation to other companies claiming not to fail the close company test will apply.

Box 1: within scope of the charge	**Box 2: not within scope of the charge**
- Non-resident individual. - Non-resident company controlled by 5 or fewer individuals or companies which are themselves narrowly controlled (unless one of those individuals is a "qualified institutional investor").	- Non-resident company which cannot be controlled by 5 or fewer individuals or companies that are not themselves narrowly controlled. - A CIS that meets the GDO test, a company that is not narrowly controlled, or other institutional investor will not count as part of a controlling group of person for this purpose.

5 Rate of tax and reliefs: companies

This chapter discusses the charge on non-resident companies in scope of the extended CGT charge and interactions with the annual tax on enveloped dwellings (ATED).

Rate of tax, access to allowances, and other interactions

5.1 The consultation document explained that the government intended to introduce a tailored approach within CGT or corporation tax to charge gains made on disposals of UK residential property by non-resident companies. Disposals of trading stock will continue to be subject to tax on profits as normal. Non-resident property companies will already be within the UK tax system paying corporation tax on their UK profits and gains, where they are operating a trade in the UK through a permanent establishment in the UK.

5.2 The government proposed that this charge would operate alongside ATED so that corporate "envelopes" that are not carrying on a genuine business will be subject to the ATED-related CGT charge at 28%, and other companies disposing of UK residential property will be subject to the extended CGT charge.

Question 8: What are the likely impacts of charging gains (and allowing losses) incurred on disposals of residential property by non-resident property companies that are not already operating a trade in the UK?

Question 9: Are there other approaches that you believe would be more appropriate to ensure that non-resident property investment and rental companies are subject to UK tax on the gains that they make on disposals of UK residential property?

Stakeholder responses

5.3 A number of respondents felt that the rate of tax should be set at 20% (with indexation allowance) in order to align with the corporation tax rate (as of 2015).

Impact of charging gains and allowing losses, other approaches

5.4 Although there was some debate and different views about the potential impact of the charge on institutional investors, overall, respondents understood the policy rationale behind taxing the gains made on disposals of UK residential property by non-residents companies. A number of respondents felt that it was necessary for non-residents to have the ability to offset losses and claim group relief, mirroring the treatment of UK resident companies in the interest of fairness and in order to not contravene EU law.

5.5 A number of respondents noted that careful consideration needed to be given to anti-avoidance provisions in order to reduce the level of complexity the extended CGT charge may create.

Interactions with the annual tax on enveloped dwellings (ATED)

5.6 In both written representations and in the working groups many stakeholders voiced significant concerns about the interaction of ATED-related CGT and the extended CGT charge. Of particular concern was the level of complexity that would arise from a taxpayer having potentially three different charges applying to gains accruing from a single disposal (CGT, ATED-related CGT and corporation tax on chargeable gains).

5.7 It was argued that ATED-related CGT should be removed and the extended CGT charge should take its place. Stakeholders felt that this would simplify the tax regime, and result in a marginal difference in tax revenue. Stakeholders further argued that any loss in tax revenue could be recouped by amendments to the ATED regime.

Government response

5.8 The government has decided that non-resident companies in scope of the charge, i.e. those companies that that do not qualify for the exemptions outlined in the previous sections, should be **subject to the same rate of tax as UK corporation tax**. In addition, the government has decided that they will benefit from a **form of indexation allowance and an option for groups of companies to operate a limited form of pooling** (to offset gains and losses made on disposals of UK residential properties by different members of the same group).

5.9 The indexation allowance will allow for the effect of inflation on the costs of acquisition when calculating any chargeable gain, in line with the approach for ATED.

Charging gains and losses – pooling arrangements for group companies

5.10 Where companies do not belong to a group, or where no election for pooling by group companies is in place, then gains and losses will be treated in the same way for companies as they are for individuals. Losses on disposals of UK residential property will be ring-fenced, and will be able to be used to offset gains on such properties arising to the same person in the same period, or carried forward to later periods.

5.11 Where several different companies within the group own UK residential property, they will be able to operate a pooling arrangement. As HMRC does not have the same powers to seek and verify information concerning company ownership that are available for resident companies, **any pooling arrangement will be available only to companies that can provide clear information regarding the ownership of the companies holding UK property sufficient to establish that they are part of the same group.** A group will be defined on the basis of companies that are or would be required under generally accepted accounting practices to consolidate their accounting results in group accounts.

5.12 Where a pooling arrangement is in place, a nominated company will be responsible for making a consolidated return of all relevant disposals during the relevant period. Relevant chargeable gains and losses arising on UK residential properties will be aggregated across the group. A 'de-pooling charge' will be levied on companies that leave the pooling arrangement, for example where the relevant company leaves the group. This will be calculated on the basis that there is a deemed disposal of UK residential property that is held by a company when it leaves the pooling arrangement.

ATED-related CGT

5.13 The government considered the arguments around ATED-related CGT carefully, and has sought to balance the views expressed with the overarching policy aims of both ATED and ATED-related CGT as well as the extended CGT charge.

5.14 ATED-related CGT addresses tax avoidance that occurs when companies are used to buy residential property ("enveloping") in order to avoid paying the tax due. The extension of CGT to non-residents disposing of UK residential property is not about addressing avoidance but rather rectifying an unfair system in which non-residents can make use of tax breaks that are not available to UK residents.

5.15 The government believes that ATED-related CGT and the extension of CGT to non-residents address separate issues, and have separate policy rationale. Therefore, **the government is clear that to the extent a gain is ATED-related then ATED-related CGT should continue to apply at 28%.** The remaining part of the gain post 6 April 2015 will be subject to the extended CGT charge on non-residents.

Other interactions

5.16 The extended CGT charge will take precedence over existing anti-avoidance provisions that attribute gains to UK resident members of non-resident companies. Instead, in a similar way as for ATED-related CGT, the non-resident company will be responsible for accounting for and paying the CGT that is due.

5.17 Further information and guidance will provided as part of guidance in due course.

6 Rate of tax and reliefs: individuals and trustees

6.1 This chapter discusses the charge on non-resident individuals and trustees in scope of the extension of CGT and access to private residence relief (PRR).

Rate of tax and relief – individuals and trustees

6.2 The rate of CGT for UK resident individuals is either 18% or 28% depending on the person's total UK source income and chargeable gains for a tax year.

6.3 As was set out in the consultation document, non-resident individuals will be taxed at 18% or 28%, dependent on their UK income and the amount of gain accruing when disposing of a UK residential property. Non-residents will have access to the annual exempt amount, and they will be able to offset losses made on UK residential property against gains made on UK residential property.

6.4 In line with the treatment of UK resident trustees, the rate of tax for non-resident trustees will be 28%, with the annual exempt amount being half that available to individuals.

Losses

6.5 Losses on disposals of UK residential property will be ring-fenced for use against gains on such properties that arise to the same non-resident in the same tax year. Unused losses will be available for carry forward to later years. Chapter 7 discusses losses in more detail.

Private residence relief

6.6 Under current rules, individuals are entitled to PRR on their only or main residence. If an individual has more than one residence in any given period they can elect which of them is their main residence, and therefore qualify for PRR, for that period. That residence can be either a UK residence or an overseas residence. Where a property is the person's only or main residence at any time in their ownership, the final 18 months of ownership always qualifies for PRR. Periods of absence or letting can also qualify for PRR when certain conditions are met.

6.7 The consultation document set out that without some changes to PRR, the extension of CGT to non-residents would be undermined. If the PRR rules were not amended, a non-resident with a dwelling in the UK that is used as their residence could nominate it as their main residence, obtain PRR on that residence and have no UK tax liability in respect of other dwellings around the world. The consultation document explained that the government was therefore considering options to amend the current rules.

6.8 The consultation document set out two possible approaches and asked that respondents indicate which of them would be their preferred choice. Recognising the limitations of the approaches the government also asked respondents to identify any other approaches they would recommend, as well as to identify any unintended consequences of changing the PRR rules.

6.9 The approaches set out were as follows:

(i) Remove the ability for a person to elect which residence is their main residence for PRR. This would mean that PRR would be limited to that property which is demonstrably the person's main residence. The government envisaged that this would build on the existing process where an individual with two or more residences has not made an election i.e. that the balance of evidence would be considered

(ii) Replace the ability to elect with a fixed rule that identifies a person's main residence, e.g. that in which the person has been present the most for any given tax year. Depending on the test this may mean that taxpayers have to keep different or additional records.

Question 10: Are there any particular circumstances where changing the PRR election rules would lead to unintended consequences?

Question 11: Which approach out of those set out in paragraph 3.5 do you believe is most suitable to ensure that PRR effectively provides tax relief on a person's main residence only?

Question 12: Are there any other approaches that you would recommend?

Stakeholder responses

6.10 Most respondents appreciated that with no change to the election rules, the extension of CGT to non-residents would be undermined. However, many felt very strongly that, as any change to PRR could have extensive consequences for UK taxpayers, a separate consultation should be carried out. A small number of respondents suggested that a broader review of the PRR rules should take place.

6.11 Of the options presented, option (i) was, very marginally, the preferred option although most respondents were not attracted to either option. A qualitative test was, overall, felt to be too complex whereas a quantitative test was felt to be arbitrary and potentially restrictive. Both options were felt to be administratively burdensome. Many respondents stressed that the facility to elect is an important administrative simplification providing certainty for many taxpayers, and as such should be maintained.

6.12 Many respondents felt that limiting PRR elections to those who are UK tax resident would effectively remove revenue risks around non-residents electing their UK properties as qualifying for PRR.

6.13 A large number of respondents suggested linking PRR with the Statutory Residence Test (SRT), e.g. that a PRR election would automatically mean that the claimant was regarded as tax resident in the UK or count as an additional 'tie' for SRT purposes. Others were against this on the grounds that the SRT had taken a long time to devise and was still relatively new.

6.14 There were also suggestions that only individuals resident in the European Union (EU) or European Economic Area (EEA) should be eligible to claim PRR.

6.15 A number of respondents suggested that introducing a form of day count test would be an appropriate manner in which to amend PRR.

6.16 Many raised concerns over how amendments to PRR would interact with absence rules, and a number felt that removing the ability to elect would have a negative impact on UK expats. A number of respondents highlighted the need for any changes to PRR to be widely publicised.

Government response

6.17 **The government has decided that some changes are required to the rules determining the circumstances when a property can be benefit from PRR.** The government recognises concerns raised about the potential impact of changes on UK taxpayers. Therefore the government has designed a new rule that will restrict the circumstances when an overseas residence (that is, a residence in a jurisdiction where the person is not tax resident) can benefit from PRR. The changes will apply to both a UK tax resident disposing of a residence in another country and a non-UK tax resident disposing of a UK residence.

6.18 The government has sought legal advice and considers it would not be possible to restrict claims for PRR to EU or EEA residents. The government further considers that as the SRT was only introduced in 2013/14 it needs time to bed in before major changes could be made to it.

The new rule

6.19 From April 2015 a person's residence will not be eligible for PRR for a tax year unless:

- either the person making the disposal was tax resident in the same country as the property for that tax year; or
- the person spent at least 90 midnights in that property (or across all of the persons' properties where they have multiple properties in a country in which they are not tax resident) in that tax year - the "90-day rule".

6.20 In practice, this will mean that individuals who are UK resident for tax purposes will continue to be able to obtain PRR in relation to a residence in the UK. But for properties overseas the new 90-day rule will need to be met in all cases including where there is an existing nomination (paragraph 6.24/6.25 discusses absence reliefs). A nomination by an individual who is not UK resident for tax purposes will not be effective in respect of a UK property for a tax year unless they meet the 90-day rule for that year.

6.21 For married couples and civil partnerships, occupation of a residence by one spouse or partner will be regarded as occupation by the other.

6.22 **Where a person has more than one property in an overseas jurisdiction, the 90-day rule will apply across all of those properties.** Where an individual is tax resident in more than one jurisdiction, they will be able to nominate which of their properties in those jurisdictions benefits from PRR without considering the 90-day rule. However the 90-day rule will apply in respect of a residence in jurisdiction in which they are not tax resident.

6.23 Where the 90-day rule is not met, the person will be regarded as being absent from the property for that tax year.

Other aspects of PRR

6.24 The government is not minded to amend the subsidiary features of PRR, such as absence relief, lettings relief and final period relief, in consequence of extending CGT to non-residents, beyond that necessary to give general effect to the changes outlined above. Where applicable, a non-UK tax resident may need to ensure that they reoccupy a property in accordance with the day count after a period of absence in order to qualify for absence relief.

6.25 Periods prior to April 2015 will also be able to be taken into consideration. For example:

- Mr X has a house in the UK that was his only home from 2005 to 2012 when he retired and moved to Australia.
- The property has been let by him until 2018 when the property is sold. The gain from April 2015 is potentially chargeable to CGT.
- However, as the property was at some time in the person's ownership his only or main residence (in this case from 2005 to 2012) then PRR final period exemption for the last 18 months of ownership applies.
- A degree of lettings relief may also be available. Absence relief is not available as the property has not been reoccupied as a residence.

- Mrs Y of the US bought a UK property in 2005 for her own use when in the UK, which she sells in 2018. It is not let between stays.
- In 2006-7 she stayed in the property for more than 90 days.
- A nomination may be therefore be made to treat the property as her only or main residence for that year.
- PRR would apply for the last 18 months of ownership.
- Absence, for the purpose of any absence relief that may be available, will be attributed first to periods prior to April 2015.

6.26 For non-residents, nominations to treat a residence as their only or main residence are to be made at the time of disposal.

6.27 Suitable amendments will be made to the rules for trustees disposing of property used as a main residence by a beneficiary so that a non-UK resident beneficiary has to meet the 90-day rule outlined above in relation to a UK property in order to qualify for PRR (and conversely a UK resident beneficiary in relation to an overseas property). This will apply to both UK resident and non-resident trusts.

6.28 Further information and guidance will be provided in due course.

7 Computations and administering the charge

7.1 This chapter discusses the computation of gains subject to the extended CGT charge and administration.

Implementation date and calculation of post-6 April 2015 gains

7.2 The extended charge will only apply to gains realised on or after 6 April 2015. It will not apply to gains arising before this date. The consultation document said that the charge will not apply to gains arising before 6 April 2015, but did not discuss how this would be achieved.

Stakeholder responses

7.3 Some respondents sought greater clarity as to how the post-6 April 2015 gain will be calculated.

7.4 Many respondents that addressed this issue felt that the post-6 April 2015 gain should be determined by rebasing the value of the property to that date, rather than time-apportioning the gain accruing over the whole period of ownership. They argued that this gives a truer representation of the taxable gain and avoids what under time apportionment could amount to either a retrospective tax charge or an arbitrarily generous relief.

7.5 A number of respondents highlighted concerns on how to attribute enhancements and apportion gains where there is a change in use of the property.

Government response

7.6 The government intends that any gain arising before 6 April 2015 will not normally be subject to the extended charge.

7.7 The default position will be to 'rebase' the property to its market value at 6 April 2015 so that only the gain realised over that value (after deduction of any allowable costs incurred after then) is subject to the charge.

7.8 Should the taxpayer not wish to rebase they will have the option to 'time apportion' the whole gain over the period of ownership. This option will not be available if the disposal is also subject to ATED-related CGT.

7.9 Taxpayers will also have the option to neither rebase nor time apportion the gain and instead to compute the gain (or loss) over the whole period of ownership. This approach is consistent with the approach used for the ATED-related CGT charges.

7.10 Losses on disposals of UK residential property will be ring-fenced for use against gains on such properties arising to the same non-UK resident person in the same tax year, or carried forward to later years. Where a person's residence status changes from non-UK resident to UK resident, unused UK residential property losses will be transferable and be able to be used as general losses against other chargeable gains; and a UK resident who becomes non-UK resident will be able to transfer unused UK residential property losses so they become available against future UK residential property gains.

7.11 As regards changes in use, where there are consecutive changes in use straight line time apportionment will apply. For concurrent mixed use of property, a fair and reasonable apportionment can be made, which will be dependent on the facts of each individual case. This is covered in more detail in chapter 3.

Reporting and payment

7.12 The consultation document set out that charging CGT on non-residents will bring in a new population to the UK tax system, about whom HMRC currently holds limited or no information. As such, in order to ensure that the CGT charge is introduced in a way that is effective and sustainable, the government believed that it will have to introduce a new reporting and payment mechanism.

7.13 As such, the government considered that a form of withholding tax would apply alongside an option for the taxpayer to self-report the tax due. There would then be some transfer of monies and reporting of the tax paid, to allow for any differences to be settled with HMRC. The consultation document suggested that it may be possible to do this in a similar way to the existing SDLT process, with agents transferring monies due within 30 days.

Question 13: Do you believe that solicitors, accountants or others should be responsible for the identification of the seller as non-resident, and the collection of the withholding tax? If not, please set out alternative mechanisms for collection.

Question 14: Are there ways that the withholding tax can be introduced so that it fits easily with other property transactions processes?

Question 15: Do you think that the government should offer the option of paying a withholding tax alongside an option to calculate the actual tax due on any gain made from disposal, within the same time scales as SDLT?

Question 16: Is it reasonable to ask non-residents to use self-assessment or a variant form to submit final computations within 30 days? If not, what processes would be preferable?

Stakeholder responses

7.14 Most respondents recognised the need to introduce an appropriate mechanism to ensure that the tax is collected, given the potential compliance issues that would arise otherwise. However, many respondents had concerns about the proposed design of this mechanism in the consultation document, and voiced these concerns prior to the working groups. As such, thinking developed in the period between the publication of the consultation document and the working groups with the result that in the working

groups a 'payment on account system' (POA), rather than a "true" withholding tax, was discussed.

7.15 Overall, respondents did not think that solicitors, accountants or other UK advisers involved in the process of buying and selling property should be responsible for either the identification of the seller as non-resident or collecting tax. A number highlighted a range of practical issues, such as that in some cases it is only possible to accurately determine whether or not an individual is UK resident at the end of a tax year. A number also noted that UK advisers can ask clients whether or not they are resident, but beyond this it is not clear what powers they have to determine the truthfulness of the clients' response. As such a number of respondents argued that should such an obligation be imposed HMRC should be obliged to verify the individual's response.

7.16 A number of respondents proposed extending the non-resident landlord scheme as an alternative to a withholding tax. A number also proposed that payment of the tax due within the self-assessment (SA) system would be a sensible option for those that are already within the SA system. Most of those respondents who had attended the working groups during the consultation process noted that they strongly preferred the POA system discussed in the working groups during the consultation process as an alternative to a 'true' withholding tax.

7.17 Most respondents felt that a withholding tax is rather distinct from other forms of property taxation in the UK, and that careful consideration would need to be given to ensure that it will fit easily with other property transaction processes.

7.18 Most respondents felt it would be crucial that any withholding tax is calculated on the basis of the actual tax liability. Many noted that as the charge will apply only to gains arising from April 2015 onwards, the actual tax due will likely be relatively low in initial years, and as such as withholding tax based on a flat percentage of the sale is likely to be punitively high. Many respondents also felt that having 30 days in which to submit a calculation would be unworkable, and a number thought the self-assessment time frame would be more reasonable. A number also felt that the time limit in which to calculate tax due should run from the date of completion, rather than from the exchange of contracts.

Government response

7.19 The government's view is that a new reporting and collection mechanism is necessary but needs to be proportionate in ensuring that the regime is both robust and sustainable. The government understands that introducing a new withholding tax is a significant change, and wants to minimise burdens where possible.

7.20 As such, the new mechanism will take the form of a 'payment on account' process, rather than a 'true' withholding tax.

Outline of the process

7.21 Although the design of the process is yet to be finalised HMRC are working on the following outline.

7.22 A different process will apply to non-residents with an established relationship with HMRC via a live self-assessment record to those that do not. However, in both cases the non-resident disposing of UK residential property will need to notify HMRC within 30 days of the property being conveyed that the disposal has occurred. There will be no

obligation on those involved in the transaction to collect the tax due, but the government expects that it is likely that they will facilitate the process and could charge a fee for their service.

7.23 HMRC will need to be notified where there is a loss, or no gains on the disposal of the property, or if any gains made are covered by an individual's annual exempt amount. The notification will also be the method by which a private residence relief (PRR) nomination is made.

7.24 Where there is an existing relationship and the disposal is not exempt by virtue of PRR, the person will also have to deliver their self-assessment return after the end of the tax year and make any payment that is due within the usual self-assessment timescales in the normal way. A person may choose to make a payment on account in respect of the disposal and, if so made, this will be shown as a credit on their self-assessment statement.

7.25 For these purposes, a live self-assessment record will not include the declaration of the disposal or delivery of an ATED-related CGT return.

7.26 A person who does not have an established relationship with HMRC, as detailed above, will be required to deliver a return for the disposal within 30 days and make payment at the same time. The return will be treated as if it were the self-assessment return for the tax year in question, with amendments being permitted within 12 months following the normal self-assessment filing date for the tax year in which the disposal is made.

7.27 Further information and guidance will be published in due course will be provided in due course.

A Annex A: List of respondents

This annex sets out a list of respondents. Individuals have not been listed. A separate document sets out a full list of responses, with names and personal or commercially sensitive information redacted.

- 90 North
- Appleby Windsor Limited
- Ashurst LLP
- Association of Accounting Technicians
- Association of Independent Expat Tax Practitioners and Charter Tax Consulting
- Association of Taxation Technicians
- Avenue Capital Student Real Estate
- Baker Tilly
- BDO LLP
- Bircham Dyson Bell
- Boodle Hatfield
- British Property Federation
- CBW Tax
- Central Association of Agricultural Valuers
- Chartered Institute of Taxation
- CLA
- CLS Holdings
- Crowe Clarke Whitehill
- Deloitte
- Duncan Sheard Glass
- Ernst & Young LLP
- Evergreen Real Estate Partners
- Frank Hirth
- Gabelle
- Grainger PLC
- Grant Thornton
- Great Portland Estates
- Hillier Hopkins

- ICAEW
- ICAS
- Institute of Financial Accountants
- Intergenerational Foundation
- Investment Property Forum
- King & Wood Mallesons
- KPMG
- Lawrence Hurst & Co
- Lennox Management LLP
- Linklaters LLP
- London Society of Chartered Accountants
- Maclay Murray & Spens on behalf of Gatehouse Bank plc
- Maurice Turnor Gardner
- Mishcon de Reya
- Moore Stephens
- Patricia J Arnold & Co Ltd
- PWC
- Rawlinson & Hunter
- Saffery Champness
- Sayers Butterworth LLP
- Scottish Land & Estates
- Simmons & Simmons LLP
- Smith & Williamson
- STEP
- The Fry Group
- The Law Society
- Trowers & Hamlin
- UHY Hacker Young
- Unite Students
- Wellcome Trust
- Wragge Lawrence Graham & Co LLP

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

E-mail: public.enquiries@hmtreasury.gsi.gov.uk