HM Revenue & Customs

Capital Gains Tax: Payment window for residential property gains (payment on account)

Summary of Responses

6 July 2018

Contents

1	Executive Summary	3
2	Introduction	4
3	Responses	5
4	Next steps	10
	Annex A: List of stakeholders consulted	11

On request this document can be produced in Welsh and alternative formats including large print, audio and Braille formats

1. Executive Summary

1.1 In April 2018 the government published a consultation on a proposed scheme for making payments on account of Capital Gains Tax (CGT) on gains arising from residential property sales and disposals. It proposed that from April 2020 payments are made within 30 days of the sale or disposal being completed.

1.2 Respondents were mainly concerned about the practicability of making accurate calculations within the proposed 30-day window and the treatment of allowable losses.

1.3 The government is grateful to respondents for taking the time to consider its proposals and putting forward solutions to the concerns that they raised.

1.4 The government is committed to creating a predictable, stable and simple tax system. It confirms its intention to introduce a payment on account scheme and will continue to consider ways to minimise administrative burdens and complexity as appropriate.

1.5 The changes will mainly affect those disposing of a second home or rental property. They will not apply where the gains are not chargeable to CGT (for example where the gains are covered by private residence relief).

1.6 An existing CGT payment on account system for non-residents disposing of UK residential property will be extended from April 2020 so that a payment will be due where a person also makes self-assessment returns to HMRC.

1.7 Draft legislation for technical consultation is published alongside this document with the aim of legislating the change in Finance Bill 2018-19.

2. Introduction

2.1 UK residents currently pay any Capital Gains Tax (CGT) due on gains realised on the sale or disposal of assets between 10 and 22 months after the disposal is made as part of the standard self-assessment process.

2.2 In 2015 the government announced that it would introduce from April 2019 a requirement that CGT on gains from selling or disposing of residential property shall be paid within 30 days of the disposal being completed.[1] This would be a 'payment on account' towards the person's tax liability for the tax year in which the disposal is made.

2.3 In 2017 the government announced that the introduction would be deferred to April 2020.[2]

2.4 A consultation *Capital Gains Tax: Payment window for residential property gains* was conducted between 11 April 2018 and 6 June 2018. This sought views on the details of a proposed payment on account scheme for UK residents and changes to an existing CGT payment on account scheme that applies to non-UK residents.

2.5 Twenty six responses were received. Nine were made by representative bodies; seventeen were made by individuals, accountancy firms or other interested parties. A list of those who responded is provided at Annexe A.

[1] Spending Review and Autumn Statement 2015: paragraphs 1.290 and 3.76.
[2] Autumn Budget 2017: paragraph 3.19.

3. Responses

The proposed scheme for UK residents

3.1 The consultation set out a proposed payment on account scheme for UK residents.

3.2 It set out that a payment on account would only be required in relation to residential property gains. Gains realised on the disposal of property that has been both residential and non-residential are to be apportioned.

3.3 It also set out that the amount payable on account would be determined by calculating the amount of CGT payable if, under existing CGT rules, the tax year ended at the time the disposal is completed. In calculating the amount, only residential property gains would be taken into account, but any form of unused allowable loss could be used along with normal allowances (the annual exempt amount) and reliefs (such as private residence relief). Because an individual’s overall level of taxable income can affect the rate of CGT, an estimate is to be made of the person’s income for the tax year. The amount payable on account is then due to be paid to HMRC within 30 days of the completion of the property disposal.

3.4 Where further residential property gains arise in the same tax year, a similar calculation is performed with the amount payable on account at that time being the difference between the new calculation and the amount previously paid.

3.5 Where a loss arises on a residential property disposal, any reduction in an amount previously calculated as payable on account for the same year results in a repayment to the taxpayer. Losses that arise on the disposal of other assets are only taken into account when a computation is made after a residential property disposal.

3.6 The consultation also said that the government was considering how best to avoid requiring a person to register for self-assessment where their only interaction with HMRC is in relation to the gain accruing on the disposal for which a payment on account is made.

3.7 The consultation asked:

1. **Are there areas where the proposed scheme for UK residents could be improved to make it easier for taxpayers to comply?**

2. **Does the proposed treatment of losses on disposals of residential property and disposals of other assets strike the right balance between simplicity and fairness? If not, what alternative approach would you propose?**

Respondents’ comments

3.8 In general, the concerns raised by respondents regarded the proposal’s practicability, fairness and simplicity.

3.9 The main concerns raised by respondents regarding the practicability of the proposals were that:

- the measure introduces an additional layer of complexity within the tax system which may lead to additional costs and mistakes;
- the 30-day period may be too short to collate necessary information and do the necessary calculations, for example where gains need to be apportioned or the disposal is unanticipated;
- the taxpayer may not have the available funds to make the payment within 30 days, such as in the case of gifts or where the sale proceeds cannot be immediately accessed, and;
- taxpayers may not be aware of the new rules until after the end of the tax year when they tell their accountants about their disposals, resulting in late filing penalties.

3.10 The main aspect raised on the fairness of the proposals was on the treatment of losses. Several respondents argued that restricting when losses can be claimed was wrong in principle and may result in distortions as to when disposals are made, cash-flow problems compared to the normal self-assessment payment timetable or missed opportunities to reinvest.

3.11 The difference in interest rates for underpayments compared with amounts repayable was also considered unfair (repayment interest is currently 0.5%, whilst interest charged on amounts payable is 3%[3]).

3.12 Several respondents put forward changes to the proposals that they considered would address the concerns raised and work to simplify the measure for taxpayers. These included:

- increasing the payment window, for example to 60 or 90 days from the date of completion, or 6 months from the date of disposal;
- using a proxy for the amount payable, for example basing the tax liability on a fixed percentage of the sale proceeds; or simplifying the calculation by ignoring the individual’s estimated income and applying a single rate of tax for all disposals;
- limiting the scope that the new system will apply to, for example by reference to the value of the property or the amount of gains or tax involved;
- permitting allowable losses to be used where the reduction in the tax liability exceeded a set amount, for example 10%; and,

[3] The late payment interest rate is calculated by adding 2.5 to the Bank of England base rate; the repayment interest rate is calculated by subtracting 1 from the Bank of England base rate with a ‘floor’ of 0.5%. The base rate is currently 0.5% (and has been since 2 November 2017).

- allowing individuals to make a reconciliation ahead of the end of the tax year, regardless of whether a subsequent disposal of residential property has taken place.

3.13 Respondents also sought confirmation of how reliefs that defer CGT payments would apply; and whether it was appropriate to apply late filing penalties in the same way as for late self-assessment returns.

The government's response

3.14 As set out in *Tax policy making: a new approach*, published in 2010, and *The new Budget timetable and the tax policy making process*, published in 2017, the government is committed to creating a predictable, stable and simple tax system. The government confirms its intention to introduce a payment on account scheme and will continue to consider ways to minimise administrative burdens and complexity as far as possible.

3.15 The government will reflect further on the representations that have been made, including those regarding the length of the proposed payment window, as appropriate. It observes, however, that:

- taxpayers and/or their agents will normally have maintained sufficient records to calculate the gain on a residential property disposal within the proposed 30-day timeframe;

- where information needs to be obtained from third parties, the process of marketing and conveying property provides additional time for taxpayers to obtain this information; and

- estimated declarations will be able to be corrected (with repayments being given when an overpayment is made).

3.16 The calculation features proposed in the consultation document were intended to help taxpayers pay the right amount of tax first time, reducing the need to make subsequent adjustments as far as is possible. The government wishes to minimise any additional costs and burdens on taxpayers resulting from the changes and so will proceed with these design features.

3.17 It is confirmed that reliefs can be applied where the relevant conditions of the relief are met[4] but not on the anticipation of being eligible for a relief. However, an adjustment can be made when the conditions for relief are subsequently met.

3.18 The measure does not change the amount of tax that people have to pay; just when they need to make the payment. Any taxpayer who is concerned about their ability to pay should contact HMRC who will explore whether an alternative payment arrangement is appropriate.

[4] This includes where a feature of the relief is that it can be claimed on a provisional basis.

3.19 If someone has sold a residential property at a gain and losses subsequently arise, the difference between the amount already paid on account and the amount due were those losses taken into account may become repayable with repayment interest. This may be either immediately (following a residential property disposal for a loss) or as part of the self-assessment reconciliation process after the end of the tax year.

3.20 Residential property gains reported through the new process will be ignored when considering whether there is a need to register for self-assessment. In this way those disposing of residential property will be kept out of self-assessment as far as possible.

3.21 Changes to the current rules for applying late filing penalties and charging and paying interest, which apply to a wide range of returns, taxes and duties administered by HMRC, are outside the scope of this consultation.

3.22 The interest rules were introduced following extensive consultation in 2008 and 2009 when it was concluded that having a single rate for interest charged and paid would make it difficult to set an effective rate. Most replies to those consultations agreed or accepted this. It is also the practice found in most other comparable tax authorities. The current 0.5% rate for repayment interest matches the current Bank of England base rate and the repayment interest 'floor' of 0.5% means that interest is payable regardless of how low the Bank of England rate is set.

3.23 HMRC will be liaising with representative bodies on how best to increase taxpayers' awareness of the changes.

The proposed scheme for non-residents

3.24 The consultation set out the revised payment on account scheme for non-UK residents. It proposed maintaining the existing regime of requiring a notification of the disposal irrespective of whether a payment on account is due. It also proposed extending the requirement to make a payment on account to all cases from April 2020 (a payment on account is not currently made when the person makes self-assessment returns or ATED payments).

3.25 The consultation asked:

3. **Are there areas where the scheme for non-residents could be improved to make it easier for taxpayers to comply?**

Respondents' comments

3.26 Some respondents suggested that the current requirement for non-residents to make nil returns should be removed, mirroring the proposals for UK residents.

3.27 Respondents also sought confirmation as to how the payment on account proposals interact with separate proposals that extend the scope of chargeable gains for non-residents from 2019.

3.28 Where other comments were made, they were similar to those for the scheme for UK residents.

The government's response

3.29 The current requirement for non-residents to report all disposals of UK residential property (apart from some limited exceptions), even when no gains arise or payment on account is due, was explained in the November 2014 summary of responses to the consultation *Implementing a Capital Gains Tax charge on non-residents*. The government does not believe that those grounds have changed.

3.30 Separately, the government's response to the consultation *Taxing gains made by non-residents on UK immovable property*, published alongside this document, confirms the extension of the scheme for non-residents from April 2019 to the reporting of disposals of residential property by all companies and the reporting of non-residential property and indirect disposals by all persons. For those liable to CGT, payments on account will also be required, subject to the existing exclusions for those that are within self-assessment or make ATED returns. In line with disposals of residential property, these exclusions will cease from April 2020.

3.31 For the government's response on other comments, see paragraphs 3.14 to 3.23 above.

Table of impacts

3.32 The consultation set out a provisional table of impacts and asked:

4. Do you have comments on the provisional table of impacts?

Respondents' comments

3.33 Respondents said that the additional costs on individuals to report residential property disposals and make payments on account outside of self-assessment returns should be recognised; and that the impacts will be greater for those that make more than one property disposal in a tax year or make disposals of other assets.

The government's response

3.34 The government notes the comments made and believes any additional costs will be minimal. A revised impact assessment is included in the Tax Information and Impact Note published with draft legislation alongside this document.

4. Next steps

Legislation

4.1 The government publishes draft legislation for technical consultation alongside this document with the aim of legislating the change in Finance Bill 2018-19.

Implementation

4.2 Following legislation being enacted, HMRC will work with key stakeholders on ways to implement the changes as effectively as possible.

Annexe A: List of stakeholders consulted

Responses were received from four individuals and the following companies and bodies:

Abbey Tax and Consultancy Services Ltd (trading as Gabelle)
The Association of Accounting Technicians
The Association of Taxation Technicians
BDO LLP
Boodle Hatfield LLP
The British Property Federation
Campbell Dallas Limited (trading as Springfords)
The Certified Public Accountants Association
The Chartered Institute of Taxation
Chorus Law Ltd (trading as Simplify Probate)
Deloitte LLP
Ensors Accountants LLP
Grant Thornton UK LLP
The Institute of Chartered Accountants in England and Wales
The Institute of Chartered Accountants of Scotland
The London Society of Chartered Accountants
PricewaterhouseCoopers LLP
Saffery Champness LLP
The Society of Trust and Estate Practitioners
Thatcher and Hallam LLP
UHY WKH Ltd (trading as UHY Hacker Young)
Wilson Wright LLP