



HM TREASURY

Ensuring the fair taxation of residential property transactions:

summary of responses

December 2012



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1

The Consultation

1.1 The Government announced a package of measures at Budget 2012 to ensure that individuals and companies pay a fair share of tax on high value residential property and to tackle avoidance, include the wrapping of property in corporate and other “envelopes”. The Treasury consultation paper, *Ensuring the fair taxation of residential property transactions*, was published on 31 May 2012.

1.2 The consultation focused on two specific parts of the package:

- An annual charge on residential properties valued over £2million owned by certain “non-natural” persons; and
- The extension of Capital Gains Tax (CGT) to the disposal by certain non-resident non-natural persons of high value residential property, interests in such property, or the envelopes in which they are held.

1.3 The consultation also addressed the need to align the two measures (and the 15 per cent SDLT rate) as far as is possible.

1.4 The consultation closed on 23 August 2012. The Government received nearly one hundred and fifty responses from a range of organisations and individuals. Respondents included industry bodies, property professionals, property investors, tax specialists, lawyers and individuals. Treasury and Her Majesty’s Revenue and Customs (HMRC) officials also held two stakeholder events and met with a range of stakeholders on an individual basis.

1.5 In addition, officials set up, and then met regularly, with members of the Annual Charge Technical Working Group and the Capital Gains Tax Technical Working Group. Members of the working groups represented a cross section of those potentially affected by the proposed changes through representative bodies including: the British Property Federation (BPF); Stamp Taxes Practitioner’s Group (STPG); Society of Trust and Estate Practitioners (STEP); the Law Society of England and Wales; Royal Institution of Chartered Surveyors (RICS); the Chartered Institution of Taxation (CIOT); the Institute of Chartered Accountants England & Wales (ICAEW); the Association of Independent Expatriate Tax Practitioners (AIETP) and the Alternative Investment Management Association (AIMA).

1.6 The Government is grateful to everyone who responded to, or participated in, the consultation process and has carefully considered the responses in deciding how to proceed. Respondents’ answers to the questions posed, and other issues raised, are summarised in the following chapters.

Background to the consultation

1.7 The Government’s aim is to ensure that everyone pays their fair share of tax on residential property. While the majority of people do pay their property taxes (and without them the Government would be less able to afford the public services on which the country depends) there are some who avoid paying their share. The Government is determined to address this.

1.8 One of the sources of property tax avoidance which the Chancellor highlighted in his Budget speech "... is the way some people avoid the stamp duty the rest of the population pays including by using companies to buy expensive residential property ["enveloping"]."

1.9 To address this form of avoidance, and to ensure the owners of high value residential property pay their fair share of tax, the Chancellor announced a threefold approach:

- First, the introduction from 21 March 2012 of a 15 per cent rate of SDLT on acquisitions of residential dwellings costing more than £2million by certain non-natural persons (companies, partnerships including a company and collective investment vehicles);
- Second, from 1 April 2013, an annual charge on residential property valued over £2million owned by certain non-natural persons; and
- Third, from 6 April 2013, the extension of Capital Gains Tax (CGT) to gains on the disposal of residential property valued over £2million by non-resident companies and others (but not individuals).

1.10 The consultation document noted that "as far as possible, the three measures will be aligned to minimise the administration and compliance burden and to ensure they are targeting similar activities."

1.11 The changes were part of a wider package of measures to tackle SDLT avoidance announced at the Budget, including: an extension of the General Anti-Abuse Rule (GAAR) to SDLT; new legislation to make clear that the grant or assignment of an option cannot satisfy sub-sales rules and a wider consultation on the SDLT sub-sales rules. In addition, the Government also announced it will take action to close down future SDLT avoidance schemes with effect from 21 March 2012, where appropriate.

Purpose of the consultation

1.12 The consultation covered the new annual charge, to be known as the Annual Residential Property Tax (ARPT), and the proposed changes to CGT for non-resident non-natural persons, and the need to align the two measures (and the 15 per cent SDLT rate) as far as is possible.

1.13 The purpose of the consultation was firstly to explore the proposed details of the new ARPT. The consultation asked, in particular, who should and should not be included, and what the impact on those affected would be. The consultation also looked at logistical issues regarding the valuation of properties for the purpose of the new measures.

1.14 Separately, the consultation also set out the proposed extension of the CGT regime to the disposal of high value residential property by non-resident non-natural persons. The consultation asked whether the proposal is the most effective way of achieving the policy objective of creating more equal treatment between UK residents and non-residents in the CGT regime. Responses were sought on whether the proposals set out in the consultation would *in practice* create more equal treatment, and whether there is potential for unintended consequences of the proposals that would be inconsistent with this aim.

Structure of the consultation response

1.15 The remainder of this consultation response is divided into four sections:

- Chapter 2 provides an overview of the responses received and addresses cross-cutting issues affecting both ARPT and CGT.
- Chapter 3 focuses on the Annual Residential Property Tax and summarises the key stakeholder messages as well as the Government's response.

- Chapter 4 focuses on Capital Gains Tax and again summarises the key points raised by stakeholders and the Government's response.
- Finally, Chapter 5 sets out the next steps.

2

Responses to the Consultation

2.1 The consultation received nearly one hundred and fifty responses from a range of respondents including industry bodies, property professionals, property investors, tax specialists, lawyers and individuals. The following chapters will look at the responses received to the individual questions posed by the consultation and the Government's response to them. This chapter will look at the overriding themes and key concerns brought out in responses, individual meetings, stakeholder forums and the working groups, and the Government's high level response to them.

Summary of Key Stakeholder Responses

- Stakeholders were supportive of the Government's aim to tackle tax avoidance.
- There was some concern that the scope of the annual charge and CGT measures, and the 15 per cent SDLT rate, would capture a lot of business activity that should not be included within the focus of the measures.
- There was some confusion surrounding the perceived conflicting aims of the annual charge and CGT measures.
- General concern about the impact of the package of measures and related uncertainty on the wider property market emerged.

Summary of the Government's Response

- A series of reliefs will be included within the legislation for the Annual Residential Property Tax (ARPT) to exclude genuine businesses carrying out genuine commercial activity. These will include reliefs for:
 - Property Development Businesses: dwellings held for the purpose of the property development trade of the company and not occupied at any time by a connected person;
 - Property Rental Businesses: dwellings held for the purpose of letting to third parties for rent on a commercial basis and not occupied at any time by a connected person;
 - Property Trading Businesses: dwellings held for the purpose of a trade of buying and selling property and not occupied at any time by a connected person;
 - Properties which are run as a businesses: properties open to the public with access to the interior for at least 28 days per year on a commercial basis, as a venue, location or to provide accommodation or other services;
 - Dwellings held to provide employee accommodation: property held for the use of employees (with less than 5 per cent interest in the company) of the non-natural person, for the company's commercial purposes;
 - Charities: dwellings owned by charities and held for charitable purposes, unless occupied by a substantial donor to the charity;
 - Farmhouses: for situations where a working farmer occupies a farmhouse connected to the farm land for the purposes of farming the land;
 - Certain other diplomatic, publically owned properties, or property conditionally exempt from inheritance tax.
- The 15 per cent SDLT rate legislation will be amended to include a series of reliefs to mirror those in the ARPT legislation. Like the ARPT legislation, this will come into effect from Royal Assent of Finance Bill 2013.
- These reliefs will also apply for the extended CGT regime, which will apply to disposals of high value UK residential property by non resident natural persons (NNPs) from April 2013. The rate of the CGT charge on these disposals will be 28 per cent, with a tapering relief for gains where the property is worth just over £2million.
- As non-resident NNPs are not currently subject to the CGT regime, this charge will apply only to that part of the gain that is accrued on or after 6 April 2013.
- For consistency, the Government is considering extending the CGT regime to also apply to disposals of high value residential property by UK NNPs (which are currently subject to corporation tax, including on gains they realise on residential property). This would mean that all NNPs – both UK and non-resident – within the scope of ARPT, would be subject to CGT. The Government would welcome views on the impact and implementation of this potential change.
- Early indications suggest that the long term trend in high value property transactions is unchanged and any future impacts are likely to be offset by the reliefs from ARPT and the 15 per cent SDLT rate and the continued growth of property prices in prime residential London.

Key themes of responses

Annual Residential Property Tax and 15 per cent SDLT Rate

2.2 Stakeholders generally supported the Government's policy objective of tackling tax avoidance. However, the key concerns raised by stakeholders focused on the scope of the measures in the package. The main issue highlighted was the impact on genuine businesses that would result from the introduction of ARPT. Significant concerns were voiced regarding the impacts on property development businesses not covered by the current 15 per cent SDLT rate exclusion; property investment businesses; property rental businesses; historic houses and rural estates. Of particular concern were the significant additional costs on businesses that ARPT and the 15 per cent SDLT rate would impose. It was felt that all three measures should be aligned in scope without having a detrimental impact on genuine businesses.

2.3 Further comments were made questioning the proportionality of the proposed measures in relation to the tax avoidance they were designed to tackle. A number of responses suggested that the prevailing practice was for SDLT to have been paid when the property was purchased by a company and the company had not and would not be sold on so that the new 'owner' could avoid paying SDLT. Concerns were also raised that ARPT would fall on those who had enveloped their properties for inheritance tax planning, to protect ownership, to comply with laws in foreign jurisdictions, for privacy, security or for family reasons, but who had paid the SDLT due on purchase.

2.4 These concerns were further complicated by the fear that those caught in the charge would not be able to remove their property from the envelope without incurring substantial costs and potentially tax charges.

Capital Gains Tax

2.5 As with ARPT, many stakeholders raised concerns about the scope of the policy and the potential impact on genuine business. It was also suggested that the policy aim of the CGT charge was not clear as a number of different reasons had been given for its introduction. If it was to create wider fairness of treatment between residents and non-residents, then stakeholders felt a specific, wider consultation would have been more appropriate. If it was to support ARPT, some respondents commented that the charge on disposal would work against the policy aims of ARPT and the 15 per cent SDLT rate. The concern was that by imposing an additional fiscal penalty it discouraged de-enveloping of those with properties already in envelopes, as it was felt that there was not sufficient time to reorganise property ownership before the charge came in on 6 April 2013.

Wider Concerns

2.6 Wider concerns were raised about the impact of the package of measures on the London and UK property markets as well as the macroeconomy. In particular a number of respondents highlighted that owners of high value properties bring more income to the UK than just through their ownership of a property; including additionally through their business and leisure activities. It was suggested that the package of measures would deter international visitors and investors from purchasing in London and the UK, preferring to purchase elsewhere instead. It was also stated that property developers frequently use the proceeds from the sale of high value residential properties to cross-subsidise the building of lower value properties. So the measures could have a knock-on impact on the wider property market.

Government's response to key themes

Annual Residential Property Tax and 15 per cent SDLT Rate

2.7 In the original consultation document, the Government stated its primary concern with enveloping was when an individual establishes a company to envelope a property for the personal use of that individual or their family. The Government's aim was to target ARPT at those circumstances where tax avoidance may be a significant factor whilst minimising the wider impact on genuine businesses. It was recognised that for genuine businesses holding residential property in an envelope is likely to be the default (and indeed only) option, supporting good business practice and limiting liability.

2.8 In light of this, the Government has considered all representations carefully and sought to balance the views expressed with the need to maintain the core aim of the policy: to ensure the owners of high value residential property, kept for their own occupation and enjoyment, pay their fair share of tax, and to tackle avoidance.

2.9 A series of reliefs will therefore be implemented to exclude genuine businesses carrying out genuine commercial activity from ARPT and the 15 per cent SDLT rate, as summarised on page 8.

2.10 These reliefs aim to ensure that, as far as possible, genuine businesses are able to claim a relief from ARPT whilst retaining the core aim of the policy. The reliefs have been designed to focus on the purpose for which a dwelling is used and whether that use is a genuine commercial activity. The reliefs aim to exclude, as far as possible, genuine businesses, including historic houses, where the dwelling is used in that commercial business. More information on the proposed reliefs is provided in the following chapter and further details are published in the draft legislation for Finance Bill 2013.

2.11 The ARPT reliefs will be replicated in amendments to the 15 per cent SDLT rate legislation that will be introduced through Finance Bill 2013 (and draft legislation has also been published). The proposed reliefs are designed to address, as far as possible, the concerns from genuine businesses regarding the effect on their individual circumstances and associated effects on the wider London and UK economy.

2.12 The reliefs should ensure that ARPT is proportionate in approach and targeted at individuals who hold property in an envelope for personal use – for whatever reasons – whilst minimising as far as possible any impact on genuine businesses.

Capital Gains Tax

2.13 The reliefs for the ARPT will also be reflected in the CGT regime, which will apply to disposals of high value UK residential property by non-resident NNPs. The new CGT charge will therefore apply to companies, NNPs which are members of partnerships which include companies, and collective investment vehicles that own and dispose of UK residential property. The computation of gains will take into account those periods where the NNPs qualify for reliefs against ARPT as outlined in paragraph 3.9 below.

2.14 The rate of the CGT charge on these disposals will be 28 per cent, with a tapering relief for gains where the property is worth just over £2million.

2.15 As non-resident NNPs are not currently subject to the CGT regime, this charge will apply only to that part of the gain that is accrued on or after 6 April 2013. These changes will come into effect from Royal Assent of Finance Bill 2013.

2.16 For consistency, the Government is considering extending the CGT regime to also apply to disposals of high value residential property by UK NNPs (which are currently subject to corporation tax, including on gains they realise on residential property). This would mean that all

NNPs – both UK and non-resident – within the scope of ARPT, would be subject to CGT. The Government would welcome views on the impact and implementation of this potential change by 18th January.

3

Annual Residential Property Tax

3.1 This chapter will focus on the Annual Residential Property Tax (ARPT), looking in greater detail at the key messages from stakeholders and setting out the Government's response.

3.2 The aim of the new ARPT is both to ensure the owners of high value residential property pay their fair share of tax and to tackle avoidance. ARPT will lead to individuals who have put such high value properties into envelopes, for reasons including tax avoidance, either to take them out, thereby ensuring that the onward sale of the property is subject to SDLT and a fair share of tax is paid or, if the owners wish to continue to hold them within an envelope, to pay a charge to do so.

Who will the charge apply to?

3.3 At Budget, the Government announced the introduction of the 15 per cent SDLT rate for properties purchased by non-natural persons with immediate effect, to be legislated in the Finance Act 2012. At the same time the Government also announced an annual charge (now ARPT) for properties held by non-natural persons with the implication that the two measures would have the same coverage.

3.4 The package of measures was intended to focus on individuals using properties owned by non-natural persons for their own enjoyment while minimising the impact on genuine businesses. The Government therefore included a relief from the 15 per cent SDLT rate for property developers with a two year history.

3.5 The consultation asked a series of questions seeking views on the coverage of both ARPT and the 15 per cent SDLT rate, in particular on the exclusions of genuine businesses.

Question 2.1

Do you think that the current criteria for the 15 per cent rate should also apply to the annual charge? If not, what exclusions or additions would you make to the coverage of the annual charge? Why would you recommend such changes?

Summary of Stakeholder Responses

3.6 The consensus amongst respondents was that the criteria for the 15 per cent SDLT rate should be amended to exclude genuine businesses such as property trading businesses, property rental businesses, property development businesses (not covered by the current exclusion) and historic houses open to the public or otherwise engaging in business activities through the exploitation of the interior of the dwelling. Most agreed, that should these alterations to the 15 per cent SDLT rate take place then the criteria should also be applied to ARPT.

Government Response

3.7 The Government understands the concerns raised by stakeholders regarding the coverage of the 15 per cent SDLT rate. To minimise the impact of the 15 per cent SDLT rate on genuine

businesses, without undermining the anti-avoidance purpose of the measure, the Government will introduce a series of new reliefs. **These reliefs will also be mirrored in ARPT.**

3.8 These reliefs are described below. They should enable genuine property businesses including rental, trading and development businesses, to exclude the dwellings over £2million they purchase for their trade from the higher rate of SDLT and instead pay the 7 per cent SDLT rate applicable to all residential property transactions over £2million.

3.9 In outline, the reliefs against the 15 per cent SDLT rate will be as follows, and will be introduced from Royal Assent of Finance Bill 2013:

- Dwellings acquired and held for the purpose of a property development trade. The current requirement that a trade of developing residential property must have a two year track record will be withdrawn. And trades that develop commercial property from residential property will be included within this relief.
- Dwellings acquired and held for the purpose of rental to third parties on a commercial basis.
- Properties which are acquired and held to run as a trade in which the property is open to the general public with access to the interior for at least 28 days per year on a commercial basis, either for the public to visit and view the interior or for the provision of services to the general public in the property¹.
- Dwellings acquired and held to provide employee accommodation: property held for the use of employees or partners (with less than 5 per cent interest in the ownership) to carry on the trade of the company or another company in the group.
- Farmhouses where a working farmer occupies the farmhouse connected to the farmland.
- Dwellings held for charitable purposes of a charity and certain other diplomatic, publically owned properties.

3.10 In order to qualify for the SDLT relief, the non-natural person must make a claim in the SDLT return on acquisition that the dwelling is acquired to be held for the relievable purpose.

3.11 Relief may be withdrawn if:

- The dwellings cease to be used for a relievable purpose, or;
- except for farmhouses and houses exploited for public access, the dwellings are occupied, or kept for occupation, by any person connected² with the owner of the dwelling at any time in the three years following the effective date of acquisition.

3.12 If either of these are the case, the non-natural person that acquired the property interest will be liable for the additional 8 per cent SDLT charge from the effective date of acquisition of the property and the non-natural person must submit an amended SDLT return.

3.13 Relief from ARPT will mirror these reliefs, and in addition properties that have been granted conditional exemption from inheritance tax (IHT) under Section 31 Inheritance Act 1984 will also

¹ A temporary period where the property is not available to the public due to safety or other reasons, but the trade continues through the rectification of these reasons, will not disqualify the property. Similarly a reasonable period after purchase in which restoration or other works take place will be acceptable, so long as it is clear that the trade is intended to commence at the earliest possible date that is commercially sensible and all reasonable steps commensurate with a commercial approach are taken to secure this in practice.

² "Connection" is defined broadly in the same way as it is for UK corporation tax (section 1122 & 1123 CTA 2010).

qualify for relief³. This relief is not suitable for SDLT as IHT conditional exemption is not given to a new owner immediately.

3.14 To claim relief from ARPT the owner of the dwelling will need to submit a “nil-charge” ARPT return annually based on the use made of the dwelling at the time of the return. If, for example, the property is held for the purposes of providing access to the public as a trade and it is intended to be open for more than 28 days in the year, the relief can be claimed in the return. If later the intention changes, and the property comes within the charge, a return and payment will be required within 90 days.

Question 2.2

Is the exclusion for property development businesses sufficient both to address the risk of avoidance and to ensure bona fide businesses are excluded from the charge? If not, what changes to the exclusion for property development businesses would you recommend and why? How could such changes be policed?

Summary of Stakeholder Responses

3.15 Responses firstly indicated that the relief did not sufficiently exclude property developers from the 15 per cent SDLT rate as many property developments are carried out through special purpose vehicles (SPVs) which do not have a two year history, or lack the group relationship, with a developer who does. Stakeholders also raised issues around the exclusion of other genuine property businesses from the relief such as property rental businesses, landlords, collective investment vehicles and property traders which are currently included within the 15 per cent SDLT rate. Thirdly, the current relief excludes start up property developers and acts as a disincentive to enter the high value market.

3.16 Suggested changes to the property developer exclusion included expanding the relief to include other property based businesses, distinguishing instead between those who envelope property for the occupation and enjoyment of individuals connected to the owner and those who envelope property for genuine commercial reasons. Suggestions for achieving this distinction included self-certification; the number of properties held by the company and their use; restricting the value of each single asset in the company so that no single asset represents a disproportionate percentage of the total assets; restricting use of the property by connected parties and an exclusion based on the intended use of the property.

Government Response

3.17 As noted in response to question 2.1 the Government will be extending the current exclusion for property development businesses for both the 15 per cent SDLT rate and ARPT (with claw back provisions for SDLT where applicable).

3.18 Relief for property development leading to commercial exploitation as a rental business will also qualify for relief. However, it will need to be carried out on a commercial basis, and to qualify for relief it must be started as soon as reasonably practicable. If it is commercially sensible to defer undertaking some of the development work due to economic conditions and the lack of marketing opportunities, for example, the relief can still be claimed. But the relief will not be due if there is no real intention to develop the property for resale or commercial letting in the foreseeable future.

³ Conditional exemption is given to buildings or land designated by HMRC as of national interest, and an appropriate person gives undertakings to preserve the property; allow reasonable public access; and keep any works of art (or other items) in the UK.

Question 2.3

How might it be possible to develop an exclusion from the annual charge for collective investment vehicles which distinguishes between widely-held funds and quite narrowly held ones (that might potentially be used for avoidance)?

Summary of Stakeholder Responses

3.19 We received a number of suggestions for developing an exclusion for collective investment vehicles including: the use of the property; a genuine diversity of ownership rule; an exclusion for all commercial uses regardless of whether they are widely or narrowly held; using the non-resident's landlord scheme to ensure single rental properties are also excluded; a test of beneficial ownership and a test of whether there is a legitimate commercial reason to hold the property in an envelope.

3.20 Other comments received on this question included a suggestion that investment vehicles should be included within the charge as investors drive up demand and therefore prices of residential property in prime locations.

Government Response

3.21 As noted in the response to question 2.1, the Government has introduced a series of reliefs for genuine property businesses. The reliefs will ensure that the impact of these measures on investment funds are minimised.

3.22 The Government did not feel it necessary to introduce additional reliefs for collective investment vehicles that are widely-held, instead considering it more appropriate to introduce reliefs based on the purpose for which the property is held by the vehicle. These reliefs should allow genuine investment and trading funds to be relieved from both the 15 per cent SDLT rate and ARPT.

3.23 Rental income will not be required to be returned to HMRC (whether through Corporation Tax returns or Income Tax returns within the non-resident's landlord scheme) as part of the relief, but taxpayers should ensure that they comply with all their tax obligations: ARPT will instead focus on the nature of the income and the business from which it is derived.

What will the charge apply to?

3.24 The definition of residential property included within the legislation for the 15 per cent SDLT rate had been the subject of some concerns with stakeholders. The consultation intended to draw out whether there were any special factors that could merit use of a different definition for ARPT purposes.

3.25 As ARPT will run from 1 April – 31 March each year, it is likely that properties will enter and leave the charge throughout the charge period. The consultation sought stakeholders' opinion on how to include properties entering or leaving the charge and how to administer these.

Question 2.4

Should the definition of 'residential property' be the same as that used for Stamp Duty Land Tax? If not, what amendments or exclusions (in addition to those set out above) could be made and why?

Summary of Stakeholder Responses

3.26 It was unanimously agreed that there should be consistency across both SDLT and ARPT regarding the definition of residential property. However, there was concern raised about the inclusion of "suitable for residential use" within the 15 per cent SDLT rate definition. There was also concern raised about the removal of the six or more dwellings rule (where by the purchase of six or more residential transactions counts as a commercial transaction, rather than a residential transaction) from dwellings costing more than £2million.

Government Response

3.27 At this stage, the Government has not proposed any change to the definition of residential property in general terms, as the definitions in the 15 per cent SDLT rate bed in. However:

3.28 Unlike the current 15 per cent SDLT rate rules, ARPT provides for the amalgamation of property interests in some circumstances so that a 'dwelling' for the purposes of ARPT may encompass a number of single dwellings in a building or which stand in the same grounds, if there is private access between them. This is unlikely to be significant in practice, but this prevents property being artificially divided to avoid ARPT.

3.29 The Government believes it is correct to remove the "six or more" rule in relation to dwellings costing more than £2million as by doing so it removes a potential avoidance opportunity.

Question 2.5

What, if any, policy issues do you see with the proposed application of the annual charge to properties which either move into or out of liability or to multiple property ownership interests? What rules for valuation and submission of returns of annual charges in these circumstances do you think will be most appropriate?

Summary of Stakeholder Responses

3.30 Responses sought clarification regarding the distinction between the leasehold and freehold owners of a property within the charge. There was also some concern raised about developments that move between thresholds.

Government Response

3.31 The Government has drawn up the following rules regarding properties entering and leaving the charge:

- **Acquisition/Disposal of Interest** –properties will be valued/re-valued when they enter the charge. Properties will enter the charge on the date of acquisition (completion or substantial performance of the acquisition). Properties will leave the charge on the date of disposal (completion or substantial performance of the disposal).

- **New Dwelling** – new dwellings will become liable for the charge on the date properties come into existence (for England and Wales and Scotland) for council tax purposes, or on the date of occupation if earlier.
- **Conversion to New Dwelling or Dwellings** – the dwelling will be re-valued on the date it comes into existence for council tax purposes, or on the occupation of the last new dwelling to be occupied if earlier.
- **Conversion from Several Dwellings** – the dwelling will be re-valued on the date it comes into existence for council tax purposes, or on the occupation of the last new dwelling to be occupied if earlier.
- **Demolition** – if the property is demolished with no intention to replace the dwelling, the dwelling will cease being liable to ARPT when demolition commences; if the property is demolished with the intention to replace with a new dwelling the property will remain within the charge and be re-valued when the new dwelling is completed.
- **Conversion to Non-residential Use** – the property will exit the charge on the date the change of use is approved or the last date of occupation if later.
- **Conversion to Residential Use** – the dwelling will become liable for the charge on the date it comes into existence as a residential dwelling for council tax purposes, or on the date of occupation if earlier.

3.32 Where a person within ARPT, or persons connected to such a person, hold different interests in the same dwelling, these interests will be aggregated and considered together in determining the appropriate ARPT rate. Additionally, if an individual connected with the company holds an interest, the individual's interest will be aggregated with the company's interest subject to some de-minimis limits. These limits are intended to apply aggregation only when there is comparatively significant value in the company's interest and not when all the value is essentially in the individual's interest.

3.33 In cases where a company owns a leasehold interest in a dwelling and another company owns the freehold or a superior leasehold interest, then if the first company owns part of the share capital of the second, the superior interest will be apportioned and a just and reasonable part aggregated with the inferior interest.

How will the charge be calculated?

3.34 When creating a new tax, the Government includes within its considerations the potential burden on taxpayers. Whilst the consultation document indicated that valuations would only be required every five years, the document sought opinion on whether a prior agreement service would be of benefit for those valuations to help reduce the burdens on taxpayers and any other valuation concerns.

Question 2.6

Do you think a prior agreement service along the lines described will be helpful to property owners? If so what would be the best way for it to operate from a stakeholder point of view?

Summary of Stakeholder Responses

3.35 All responses to this question suggested this would be a helpful service. Some asked for reassurance that penalties would be suspended if the return was late while awaiting the valuation agreement from HMRC.

Government Response

3.36 The Government is introducing a free-of-charge pre-return banding check service. Further details will be published in the early spring, and currently it is envisaged that the service will commence in June 2013. However this service will only be available to those non-natural persons whose own assessment of the value of their property puts it within 10 per cent of one of the thresholds (£2million, £5million, £10million and £20million).

3.37 The taxpayers will be able to ask for their self appraisal to be reviewed by the Valuation Office Agency (VoA) prior to submission of the ARPT return.

3.38 HMRC will decide, on VoA advice, whether to accept the taxpayer's self appraisal. It will not, generally, require a professional valuation. However if the two parties cannot agree, this is an option for the customer.

3.39 The advantage of getting an ARPT pre-return banding check is that it gives the taxpayer earlier certainty of whether HMRC considers it within the charge, beneath the threshold or below one of the higher thresholds.

3.40 If HMRC considers that the property is within ARPT, but the taxpayer does not, HMRC will make a determination. It will do so within the time limits provided by legislation. HMRC will aim to do this as early as possible, within 12 months of the start of the chargeable period, provided it has access to the relevant information about the property. If the taxpayer objects to the determination, it can submit a nil-charge return and HMRC can open an enquiry for the discussions to continue.

Question 2.7

Are there any other aspects of the valuation proposals that will cause difficulties or require further clarification?

Summary of Stakeholder Responses

3.41 Many stakeholders suggested that to maintain consistency, where a property enters the charge as a result of a land transaction, the valuation given for the SDLT return should be suitable for ARPT.

3.42 There were many concerns about the five yearly valuations particularly with the potential to lead to unfairness in areas where properties increase in value substantially or properties are developed considerably within the five year period. There was also concern that properties which fall below the £2million threshold during the five year period will have to continue paying the charge.

3.43 It was also suggested that the bands should be re-valued as well as the charge, as within time the £2million threshold is likely to include relatively modest properties.

3.44 The difficulties of valuing some high value properties included valuing the businesses run from or as part of the property, the impact of listed status and the associated maintenance costs, and properties currently let at below market rent which reduces the value of the asset.

3.45 Responses sought clarification on who would be qualified to provide a valuation for ARPT. Some also suggested that the date of valuation should be the beginning of the accounting period for property businesses.

Government Response

3.46 The Government does appreciate that property values will change over five years as a result of market changes. However, a requirement for tax payers to provide an annual valuation would be unnecessarily burdensome and increase the costs of administering the tax for HMRC.

3.47 The disparities caused by substantial development will be addressed by the following:

- **Conversion to New Dwelling or Dwellings** – the dwelling will be re-valued on the date the properties come into existence (for England, Wales and Scotland) for council tax purposes, or on the date of occupation if earlier.
- **Conversion to Several Dwellings** – on the date it comes into existence for council tax purposes, or on the occupation of the last new dwelling to be occupied if earlier.
- **Demolition** – if the property is demolished with no intention to replace the dwelling, the dwelling will cease being liable to ARPT when demolition commences; if the property is demolished with the intention to replace with a new dwelling the property will remain within the charge and be re-valued when the new dwelling is completed.

3.48 The Government will not be revaluing the bands. However, as with all taxes ARPT will be reviewed annually as part of the Budget processes.

3.49 HMRC will not routinely expect taxpayers to commission a professional valuation of their property, which may be expensive. It will seek to use information it already possesses or can readily access to check a customer's declaration.

3.50 Just like for any other tax, the taxpayer must make an honest self appraisal of its liability, or lack of liability, and provide a reasonable valuation of the dwelling.

3.51 HMRC is not specifying any particular requirements for this: it is up to the taxpayer to decide what is appropriate in particular circumstances, taking into account when the property was bought and what comparisons can be made from local sales and purchases.

Question 2.8

What length of time do you think is reasonable for submitting the annual charge return and why? Would monthly payment instalments be a more preferable option?

Summary of Stakeholder Responses

3.52 Most responses indicated that ARPT returns should match the requirements for an SDLT return, which is 30 days. Other suggestions included a return date alongside the income tax date for partnerships and non-resident landlords, and the corporation tax date for businesses.

3.53 Most thought a monthly or quarterly payment would be useful but an annual payment should also still be available.

Government Response

3.54 The standard requirement for ARPT self assessment return will be that it must be made by 30 April each year. A separate return will be needed for each property for which ARPT is to be paid.

3.55 In 2013 the position is different. The ARPT return (whether chargeable or nil) must be submitted by 1 October 2013. However there is then a further period before the tax must be paid on 31 October.

3.56 If the property comes within the charge during the year then returns will be required either 30 or 90 days after this time, depending on the circumstances, or in 2013/14 on the 1 October 2013 if it is later.

3.57 No return will be required if the self assessment is that the value of the dwelling is less than £2million on the relevant valuation date.

3.58 However a return will be required if a relief from ARPT is to be claimed for the dwelling. To minimise the compliance burden, a single return may include multiple dwellings for which reliefs are claimed.

3.59 If a dwelling comes within ARPT part way through the year, then a return will be required within 30 days if this is because the non-natural person has acquired a chargeable interest in a dwelling, or within 90 days if because of another reason, for example the completion of conversion work. The longer period is in response to discussions with the ARPT working group which indicated that in some circumstances it may be difficult to meet the 30 day requirement.

3.60 It is necessary for claims for relief on the return to establish the purpose for which the property is held on the first day of the chargeable period. If the purpose changes through the year so that for instance the property becomes occupied by a connected party, then a return will be required within 90 days together with an appropriate payment. The return should include the tax payable for the remainder of the year, even if it is anticipated that the property may later again fall outside the charge.

3.61 If ARPT has been paid, and the property is later sold or otherwise ceases to be within the charge to the tax, then an amended return can be made together with a claim for repayment of part of the tax paid, as appropriate. The amended return can be made in the year but must be made before the end of the following chargeable period.

Impacts

3.62 The 15 per cent SDLT rate and ARPT target the £2million and over residential property market; the latter affects all properties held by non-natural persons while the former affects just non-natural persons purchasing properties. The Government sought views on, not only the impact of the measures on the high value property market, but also the individual impacts of each measure and whether both were required to achieve the Government's aim of targeting tax avoidance.

3.63 The Government is keen to ensure that the tax system is fair and therefore sought opinion on whether ARPT would create any equality issues with its proposed coverage.

Question 2.9

What will the impact of the annual charge be on (i) the high value residential property market as a whole, and (ii) landlords and tenants? What evidence do you have to support your view?

Summary of Stakeholder Responses

3.64 Responses suggested that ARPT could reduce investment in the high value property market in central London. This would reduce the availability of high value property for rent, which

would have an effect on the availability of accommodation of executives of multi-national companies. Some suggested that this would potentially affect other economic benefits of property investment in London such as tax revenues from associated service and retail activities. Stakeholders have also raised their concerns regarding the uncertainty for investors in London property since the package of measures was announced.

3.65 It was also stated that property developers frequently use the proceeds from the sale of high value residential properties to cross-subsidise the building of lower value properties. So the measures could have a knock-on impact on the wider property market.

Government Response

3.66 The responses received have provided us with some useful insights into the high value residential property market.

3.67 The Government's original assessment of the impact of ARPT and 15 per cent SDLT rate were that they were not expected to have any significant economic impacts. The Government still believes this is the case but does nonetheless recognise that for individual property businesses ARPT and the 15 per cent SDLT rate would have added additional costs. The range of reliefs set out in paragraph 2.9 will address concerns raised by stakeholders in this area and minimise the impact on genuine property businesses whose only option is to hold properties in envelopes.

3.68 Whilst it is too soon to make a full assessment of the impacts of the measures on the high value property market, early indications suggest that the long term trend in high value property transactions is unchanged and any future impacts are likely to be offset by the reliefs from ARPT and the 15 per cent SDLT rate (see page 8) and the continued growth of property prices in prime residential London.

Question 2.10

To what extent do you think the impact of the 15 per cent SDLT charge will differ from the annual charge? Should the Government continue with both measures once the annual charge is in place? If not, why not?

Summary of Stakeholder Responses

3.69 It was suggested that the measures would affect different property owners in different ways. For example, historic houses do not change hands very often so are unlikely to be affected by the 15 per cent SDLT rate. Property developers, not excluded by the 2 year rule, will not necessarily have the income to pay ARPT during the course of the development. With the caveat that neither measure should hit genuine businesses, it was suggested by most that both measures should be kept in place.

Government Response

3.70 The Government agrees with stakeholders views and will be continuing with both ARPT and the 15 per cent SDLT rate as this approach will reduce both current and future enveloping and send a strong message of how seriously the Government takes this form of avoidance. However, reliefs have been introduced across both measures to ensure that genuine businesses are excluded from the charge as far as possible.

Question 2.11

Do you think there are any equality issues that arise for people with protected characteristics as a result of the proposed annual charge?

Summary of Stakeholder Responses

3.71 The majority of responses suggested that there were no equality issues arising from ARPT. However, it was suggested that heritage properties should be protected. It was also raised that the charge is likely to be passed onto tenants by landlords and it is likely that vulnerable tenants such as charities and community groups will be affected. The likelihood that the measures would impact on non-domiciled individuals more than UK citizens was also raised as a concern.

Government Response

3.72 The Government has taken on board comments raised through this question. ARPT is not anticipated to impact on groups with protected characteristics any more than on those without such characteristics. Properties held for charitable purposes will be excluded from ARPT.

4

Capital Gains Tax

Introduction

4.1 The Government is introducing an extension to the scope of CGT so that it will apply to the disposal of high value residential property by certain non-natural persons (NNPs). Alongside the Annual Residential Property Tax (ARPT) and 15 per cent SDLT rate, this will deter people from holding high value residential property in 'envelopes' to prevent avoidance of SDLT and ensure that a fair share of tax is paid on these properties. It will also create more equal treatment between UK and non-resident NNPs, and bring UK policy into line with other countries.

4.2 This chapter covers who and what the tax will apply to and how it will be calculated. It also discusses interactions with existing charges and obligations.

Who will the charge apply to?

4.3 As set out in the consultation document *Ensuring the fair taxation of residential property transactions*, the Government intends to apply CGT to gains on disposal of high value residential property by certain non-natural persons, such as companies. As the aim is to support ARPT, the NNPs to whom the CGT regime applies will largely correspond to those that are subject to ARPT.

4.4 The consultation document discussed the definitions and scope of the regime, asking what entities should be included to ensure the fair payment of residential property tax. It also asked whether there were any specific entities that should be relieved from the charge.

Question 3.1

Are there entities or forms of ownership whose status as an individual or non-natural person requires clarification?

Question 3.2

Are there entities or forms of ownership, other than charities, which should either be relieved from or included within the charge?

Summary of Stakeholder Responses

4.5 Many respondents argued that CGT should only be applied to NNPs subject to ARPT and the 15 per cent SDLT rate. Several respondents also suggested that a narrower group of entities should be covered, with some specific comments that genuine businesses, personal representatives and trustees needed to be excluded. On the other hand, a minority of respondents suggested that the CGT charge should be applied more widely, to align treatment more closely between residents and non-residents disposing of high value residential property.

4.6 Several respondents asked for clarification about how the charge would apply to partnerships, trustees, clubs and societies, charities and investment trusts. Others asked for examples of NNPs which would be included or excluded from the CGT regime, or a process to check with HMRC in advance.

Government Response

4.7 The Government has decided to apply CGT to the same non-resident NNPs as those subject to ARPT. The new CGT charge will therefore apply to companies, NNPs which are members of partnerships, and collective investment vehicles that own and dispose of high value residential property. However, as with ARPT, CGT will not apply to disposals by trustees, genuine property business, charities and business disposing of employee accommodation (as described in more detail in paragraph 3.9). There will be some exceptions in the treatment of certain entities between the two taxes, to reflect differences in nature between CGT and ARPT and SDLT, for example in relation to partnerships. HMRC will publish guidance explaining how the charge will apply in different circumstances in early 2013.

4.8 On partnerships specifically, some respondents asked whether partnerships would be transparent for CGT purposes, in line with the normal CGT rules. As originally set out in the consultation document, the Government has decided to continue to treat partnerships as transparent for the purpose of computing chargeable gains. In line with the existing approach under CGT, each partner will be treated as independently disposing of their own capital share in the partnership asset, resulting in a separate gain for each partner. Partners who are trustees or individuals will not be chargeable. The Government will monitor the use of partnership arrangements in case of any manipulation. However, the £2million threshold will apply to the whole property, not to each partner's share. This should ensure that the scope of the regime will remain robust.

UK NNPs

4.9 The Government has considered the extension of CGT as part of the package of changes intended to ensure the fair taxation of residential property. For consistency, the Government is also considering an extension of the CGT regime to disposals of high value residential property by both UK and non-resident NNPs that are within the scope of ARPT, again at a rate of 28 per cent with a tapering relief. These NNPs would otherwise be subject to corporation tax on chargeable gains.

4.10 The Government recognises that the extension of CGT to UK NNPs disposing of properties subject to ARPT would be a new feature of the regime, but believes that it could ensure consistency of treatment across the package of measures. The Government believes that in practice a very small number of UK NNPs would be subject to the CGT charge each year if the extension of CGT applied also to disposals of high value residential property by UK NNPs, given that the ARPT exemptions described in paragraph 3.9 should ensure that genuine commercial businesses are excluded from the regime as a whole. However, the Government would welcome views on the impact and implementation of extending the CGT regime to disposals of high value residential property by UK NNPs that are within scope of ARPT.

The Government will consider stakeholder views on this subject before making a decision in January 2013, alongside the publication of draft legislation.

What will the charge apply to?

Value of the residential property

4.11 As explained in the consultation document, the charge will be applied to transactions of high value residential property, that is where the amount or value of the consideration for the disposal exceeds £2million. The consultation document acknowledged that the £2million threshold would create a cliff-edge between those properties that do or do not come into charge, and recognised that there was a risk that it could also create complexity in certain circumstances. The Government sought views on the impact of the threshold in practice.

Question 3.3

Would the introduction of a £2million threshold create any particular difficulties or adverse behavioural effects? If so, what are these likely to be?

Question 3.4

Would a limit to properties valued at over £2million create any particular complexities? If so, what are these likely to be?

Summary of Stakeholder Responses

4.12 A number of issues were raised in response to these questions. Many responses stated that the cliff-edge created would lead to distortive behaviour and incentives to reduce prices below the £2million threshold. Some respondents suggested introducing a tapering relief to manage this effect. Several respondents asked whether there would be indexation of the threshold to account for inflation.

4.13 A large number of respondents proposed that the consideration in the transaction should be taken as the value for purposes of CGT, rather than revaluing properties.

Government Response

4.14 The Government agrees that an unadjusted £2million threshold could create distortions to behaviour. Specifically, it could introduce a perverse incentive to sell at just below £2million in cases where the gain is large and the market price is not far above £2million. **The Government has therefore decided to introduce a marginal relief** that reduces CGT in these cases so as to remove the perverse incentive. Paragraph 4.30 gives further details.

4.15 In line with ARPT bands, which will not be indexed, **the Government has decided not to index the £2million threshold, and instead will leave it constant in nominal terms.**

4.16 The Government has also considered the need to prevent avoidance through selling properties in parts valued at less than £2million. The Government believes that existing CGT rules prevent some forms of avoidance through this form of manipulation. To prevent particular risks relating to selling a property in a number of separate transactions to avoid tax (or to suppress the total consideration received), **the Government has decided to broaden existing anti-fragmentation rules.**

4.17 Consistent with respondent views, to keep the rules simple and consistent with the rest of the CGT regime, **the Government has decided to use the consideration in the transaction as the**

value of the property, rather than HMRC re-valuing the asset in each case. However, **in certain cases where there may be manipulation of value, the Government will use the market value of the property, rather than the sum of the considerations received**, to assess whether the property value is over the £2million threshold. The Government would use this approach taking the market value of the property where, for example, disposals are between connected persons.

Interest in the property

4.18 The consultation document proposed taxing gains on both direct and indirect disposals of high value residential property, including the grant of an option over such property. The document stated that the extended CGT regime could apply to disposals of shares, interests or securities in a property-owning company where more than 50 per cent of the value of the asset was derived from high value residential property. The intention was to close off the possibility of avoiding CGT through creation of a more complex structure.

4.19 The Government asked specifically about the practical implications of this approach for collective investment arrangements and where share ownership is heavily diluted.

Question 3.5

Would this cause any compliance difficulties for collective investment arrangements or where share ownership is heavily diluted? If so, please explain what these would be.

Summary of Stakeholder Responses

4.20 A number of respondents to this question were concerned that applying CGT to gains on disposals of shares of collective investments containing relevant UK property would be complex, difficult to administer and enforce, and burdensome for the taxpayer. Respondents stated that where ownership was heavily diluted, investors would have no way of knowing whether they were liable for the tax, and indirect disposals would be impossible to police. Some respondents suggested that widely held investment vehicles should be excluded. It was also argued that there would be difficulties for vehicles whose high value UK residential property assets might fluctuate around the proposed 50 per cent threshold level. Respondents suggested that determining whether the rule was applicable would require valuation of all the assets in the vehicle.

4.21 More generally, respondents raised concerns about the application of CGT to indirect disposals, particularly around UK taxing rights under Tax Treaties and the tax treatment where prospective buyers subscribed for new shares rather than purchasing already issued shares.

Government Response

4.22 The Government has considered all of these comments carefully and acknowledges that there would be practical information constraints regarding tax on indirect disposals. The Government also recognises that ARPT will apply to the holding of the high value property in any case. **The Government has therefore decided to apply the extended CGT regime only to disposals of residential property, and interests in residential property, directly held by non-resident NNPs.**

Definition of residential property

4.23 In the consultation document, the Government proposed to use the same definition of residential property as is used for SDLT and ARPT, with slight modifications.

Question 3.6

Does the adoption of the SDLT definition of 'residential property' create any problems? If so, what [additional] amendments or exclusions...need to be made and why?

Summary of Stakeholder Responses

4.24 Most respondents agreed that it was sensible to use the SDLT and ARPT definition of residential property. A few respondents proposed that CGT should apply only where properties were actually in use as a dwelling, or where the property was the dwelling of an owner.

Government Response

4.25 The Government has decided to apply the ARPT definition of dwelling for CGT purposes.

How will the tax be calculated?

Calculating the gain

Baseline property value

4.26 As non-resident NNPs are not currently subject to the regime, the Government has decided that the new CGT charge will apply only to that part of the gain that is accrued on or after 6 April 2013. This effective rebasing should remove the need to research purchase costs or other relevant information that could be difficult to access.

Rate of tax

4.27 To maximise certainty, the Government is announcing the new rate with the publication of this document.

4.28 The Government has decided to apply CGT at 28 per cent, the rate applicable to higher rate taxpayers, to all gains on disposals of high value residential property over £2million by affected NNPs.

Taper relief

4.29 As set out above, the Government has decided to introduce a marginal relief for gains on sales where the consideration is close to the £2million threshold and the gain is relatively large. The relief will work in a similar way to marginal relief on chattels. In these situations, the taper relief will reduce liability to CGT to ensure that sellers will be in a better financial position than if they had sold for just under £2million. See Box 4.A for further details.

Box 4.A: Examples of marginal relief

The marginal relief taxes either the actual gain, or the amount of the disposal value that exceeds £2million multiplied by 5/3, whichever is lower. Where the original acquisition value exceeds £2million, it is the actual gain that is lower and therefore the actual gain that is taxed.

Example A – taper relief removes perverse incentive

A property is acquired at £1.1million and disposed of for £2.3million (the gain being £1.2million)

Without marginal relief the CGT due would be $£1.2m \times 28\% = £336,000$. The net proceeds would be £1.964million. The taxpayer would, therefore, be better off selling the property for £1.999million and not incurring a CGT charge.

However, the marginal amount (the difference between the disposal price and £2million) is £0.3million. $£0.3m \times 5/3 = £0.5m$, which is less than the gain of £1.2million. So the marginal CGT charge is $£0.3m \times 5/3 \times 28\% = £140,000$. This removes the incentive for the taxpayer to sell the property for below the market price, and sell at £2.3million. The net proceeds are then £2.160million, more than if the property had been sold for £1.999million.

Example B – taper relief applies

A property is acquired at £1.4million and disposed of for £2.6million (the gain also being £1.2million)

Without marginal relief, the CGT due would be $£1.2m \times 28\% = £336,000$. However, the marginal amount is £0.6million. $£0.6m \times 5/3 = £1m$, less than the gain of £1.2million; and so the marginal CGT charge is $£1m \times 28\% = £280,000$. In this case there would be no perverse incentive without taper relief, but the taper still applies.

Example C – taper relief does not apply

A property is acquired at £1.6million and disposed of for £2.8million (the gain also being £1.2million)

The marginal amount is £0.8m and $£0.8m \times 5/3 = £1.333m$; however, the actual gain is lower than this, at £1.2million. Therefore CGT is due on £1.2million and the taper does not apply.

Losses

4.30 As set out in the consultation document, losses on disposal of high value residential property will be ring fenced so that they are available to offset against gains on disposals of high value residential property only. As the CGT regime is only being extended to non-resident NNPs for these disposals it would not be appropriate to allow the losses to be set against other profits or gains.

4.31 The Government has considered situations in which a property is bought for more than £2million but sold for less than £2million, by an NNP. In the absence of specific rules the transaction would fall outside the scope of CGT. This creates an asymmetry between the treatment of gains and the treatment of losses. To address this, **the Government has decided to only allow loss relief for losses down to the £2million threshold**, in the same way as for chattel relief. For example, a property bought for £2.2million but sold for £1.7million will create an allowable loss of £200,000 that can be deducted against other gains on high value residential property for CGT purposes.

Other issues

4.32 A number of other issues were raised relating to calculation of the gain. In particular, there was some concern that owners might not have retained records either of change of use during the period of ownership, or where enhancement costs had been incurred.

4.33 The Government recognises that stakeholders may face difficulties with historical record-keeping, particularly in terms of expenditure on property improvements. The decision that the regime will apply only to gains accrued on or after 6 April 2013 should ensure that stakeholders affected are able to keep any necessary records in place for the rules regarding qualifying expenditure and change of use to apply as they do currently.

Interaction with existing charges and obligations

4.34 The consultation document referred to existing CGT rules,¹ under which gains accruing to non-UK NNPs can be taxed. To avoid double-taxation, it set out the objective of establishing a sensible prioritisation between charging provisions while avoiding unnecessary complexity.

4.35 The Government will give precedence to the new CGT charge, and will make further announcements in early 2013.

Other Issues

4.36 Finally, the consultation document asked about other issues, including equality issues.

Question 3.7

Are there any other issues concerning the design or delivery of the policy that need to be considered?

Summary of Stakeholder Responses

4.37 Respondents raised a number of concerns, the majority of which have been discussed already in this chapter. For example many respondents raised questions relating to rebasing, the treatment of losses, collective investments, and disposal of shares in NNPs.

4.38 However, respondents also raised some other issues. A number of respondents suggested that ARPT should be deductible from the gain for CGT purposes. Others asked whether Private Residence Relief would be available to NNPs. Some respondents queried whether the purchase price for property would be indexed for inflation. Finally, some respondents asked whether dwellings provided as employee accommodation would be within the CGT charge.

Government Response

4.39 The Government believes that it is necessary to have both ARPT and CGT charges in place to ensure the fair taxation of residential property and to discourage the holding of property in envelopes. Private Residence Relief will not be available to NNPs subject to the extension of CGT.

4.40 The previous indexation system, uprating purchase prices for property for CGT purposes, caused significant administrative burdens and was therefore removed. The Government does not intend to recreate the previous indexation system for property purchases.

4.41 Dwellings provided as employee accommodation are relieved from ARPT (as described in paragraph 3.9 above) and will therefore not be subject to CGT.

¹ Sections 13, 86 and 87 of TCGA 1992.

Question 3.8

Do you think there are any equality issues that arise for people with protected characteristics as a result of the proposed extension of the CGT regime?

Summary of Stakeholder Responses

4.42 A number of respondents argued that the legislation would particularly adversely affect non-residents, while others thought UK residents would be particularly adversely affected. Among groups protected under discrimination legislation, disabled people were mentioned as potentially being disadvantaged, because disabled interest trusts managing their estates would count as NNPs and therefore fall within the scope of the charge.

Government Response

4.43 The Government has considered these views. The revised scope of the legislation means that disabled interest trusts managing their estates will now fall outside the scope of the charge. Further details about the impacts of the new charge will be set out in the Tax Information and Impact Note (TIIN), which will be published in January 2013.

5

Next Steps

5.1 Draft legislation will be prepared to introduce the Annual Residential Property Tax (ARPT) on 1 April 2013. This is included as part of the draft legislation for Finance Bill 2013 published on 11 December 2012. There are eight weeks for interested parties to comment on the draft legislation, the closing date for comments will be Wednesday 6 February 2013. Contact details for submitting comments are provided in the Tax Information and Impact Note, alongside the draft legislation. We would encourage comments to be made as early in this eight week period as possible.

5.2 Draft legislation for certain less central or relieving aspects of the ARPT charge will be published shortly after 11 December. These include:

- Rules to give effect to the reliefs for charities, public bodies and others mentioned in the last bullet of paragraph 2.9 above.
- Relief for financial institutions carrying on a financial trade where dwellings are acquired as a result of enforcing a security interest.
- Rules to cover dwellings that are the subject of alternative finance arrangements, to ensure that the financial institutions providing the finance arrangement will not be subject to the ARPT but that companies receiving that finance will be, subject to any of the other reliefs.
- Rules to provide a reduction in the taxable value of leases as they come towards the end of their life.
- Rules to prevent aggregation of a connected individual's interest in a dwelling with a non-natural person's (NNP's) interest, if the value of the NNP's interest is relatively small (less than both £500k and 5 per cent of the value of the individual's interest, or less than £100k). This will be to prevent, for example, aggregation of the leasehold and freehold values where a dwelling is leased to a family member for 99 years for a premium and peppercorn rent by a family company that holds the freehold interest in the dwelling but which has essentially divested itself of all value in relation to that dwelling.
- Rules to attribute a reasonable part of the value of a superior interest in a dwelling, if held by a non-natural person, to an inferior interest held by a non-natural person who holds a non-controlling stake in the owner of the superior interest.
- Rules governing some of the mechanics of the regime, including those for appeals against assessments and other matters; and record keeping requirements.
- Rules governing certain aspects of connection with partnerships and collective investment schemes.

5.3 Amendments to the 15 per cent SDLT rate will introduce a series of reliefs to reflect the ARPT reliefs. These amendments will be introduced through primary legislation¹ in the Finance Bill 2013 and adopted at Royal Assent. Draft legislation is included as part of the draft legislation for Finance Bill 2013 published on 11 December 2012. As with ARPT, interested parties will have eight weeks to comment on the draft legislation and contact details for submitting comments are provided in the Tax Information and Impact Note.

5.4 Draft legislation for certain less central aspects of the SDLT legislation will be published shortly after 11 December. These include:

- Rules governing certain aspects of connection with partnerships and collective investment schemes.
- Rules for the calculation of SDLT on withdrawal of a relief from the 15% rate, including multiple dwellings relief and 116(7) FA 2003.

5.5 HMRC hope also to publish further explanatory material for the draft legislation as soon as possible. HMRC will welcome suggestions for particular aspects that interested parties would like to be covered in that material.

5.6 The CGT changes will be implemented in Finance Bill 2013. Draft legislation will be published in early 2013. Details of how NNPs will be able to report their gains will be available on the HMRC website on the CGT pages from early 2013.

5.7 The Government would welcome views on the impact and implementation of extending the CGT regime to disposals of high value residential property by UK NNPs that are within scope of ARPT. If you are interested in commenting on this subject, please contact annualchargeandcgt.consultation@hmtreasury.gsi.gov.uk before 18th January 2013.

5.8 The *Ensuring the fair taxation of residential property transactions* consultation is now formally closed.

¹ The changes required to the 15 per cent SDLT rate legislation to introduce the reliefs and other changes are wider than the powers taken in the Finance Act 2012 would allow through secondary legislation.

A

List of Respondents

A.1 There were 180 responses to the consultation. The following businesses and representative bodies submitted responses. Please note, where submissions covered both the annual charge and capital gains tax, we have counted this as one response to avoid duplication. Responses from individuals were also considered, but not listed below.

Allen & Overy LLP
Association of Real Estate Funds
Ashurst LLP
Baker Tilly
BDO
Bentley Reid & Co Ltd
Berkeley Group
Berwin Leighton Paisner LLP
Bircham Dyson Bell
Black Graf LLP
Boodle Hatfield
BPF
British Land Company PLC
Buccleuch Group
Cadogen
CBW
Central Association of Agricultural Valuers
Chartered Institute of Taxation
Country Land and Business Association
Cripps Harries Hall
Clifford Chance LLP
Deloitte LLP
D&G Asset Management
DWF LLP
Ernst & Young
Estates Business Group

Fairweather
Forsters LLP
FPRA
Frank Hirth Plc
Garsington International
Grant Thornton
Grosvenor
Hillierhopkins LLP
Historic Houses Association
Holiday Property Board
House Builders Federation
Howard de Walden Estates Ltd
HPB
ICAEW
ICAS
Investment Property Forum
J Leon & Company Ltd
Keystone Law
KPMG LLC
Labour Land Campaign
Land Securities
Law Society of England & Wales
Lawrence Graham LLP
Lawrence Hurst & Co
London Central Portfolio
Lennox
Liberal Democrat Representations
Linklaters
Norman Linton
London First
London Society of Chartered Accountants
Manglis
Mark Davies & Associates Ltd
Maurice Turnor Gardner LLP
Mazars

Mills & Reeve
Mischon de Reya
M J Consultants
Moore Stephens LLP
Mortgage-Investments.com
NAEA
Namahold
Native Land Ltd
New Quadrant Partners Ltd
Pemberton Greenish LLP
PRUPIM
PWC
Rawlinson & Hunter
RBC Wealth Management
Sabretooth Investments
Saffery Champness
Savills
Schechter & Co. Limited
Scottish Land & Estates
Shaftesbury PLC
Shelter
Shuter
Simmons & Simmons LLP
Smith & Williamson
Snyder
Speechly Bircham LLP
STEP
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