

Background

My wife and I became non-resident in 2001. We own a house, purchased in 1987, which was the family home until our departure and has been let for the majority of the time since.

We retained the property as a hedge against uncertainties in UK property values, on the basis that at some time we would return to the UK and would need to downsize and provide capital for our remaining life. We had every expectation of achieving a sale while non-resident and thereby, not being subject to CGT, preserving the value of the property.

We do not own any other property anywhere in the world and have never owned more than one property at any one time, nor have we rented property other than short-term holiday lets of less than 3 weeks.

Although non-resident, we are taxed in the UK under self-assessment on 99% of our total worldwide income – UK occupational pensions, State Pension, rental income and investment income.

Responses to questions

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

No comment on this question.

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

No comment on this question.

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

No comment on this question.

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

No comment on this question.

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

No comment on this question.

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

No comment on this question.

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

No comment on this question.

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

No comment on this question.

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

No comment on this question.

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

My understanding is that under the PRR rules a property is considered as the principal residence for the time that it can be shown to be so and for an additional 3 years. On this basis in our case we would receive relief on the period from 1987-2001, when we lived in the property and for the next 3 years 2001-2004, after which, if we were resident CGT would be payable pro-rata i.e. if sold in 2014 we would be subject to CGT on 10/27 of the any gain.

Any change to the PRR rules is clearly likely to have unintended consequences in particular circumstances, as is indeed spelled out in the consultation text.

It is not clear whether the proposed applicability of the tax to "gains accruing after 1 April 2015" means that a rebasing of the value of an already owned property to its value on 1 April 2015 is required and that only gains above that rebased value would be taxed or if a property sold after 1 April 2015 would be subject to CGT on the any gain realized over its entire period of ownership. If the former there clearly needs to be a procedure for establishing the 1 April 2015 value. If the latter the owner would need to set against the gain any capital expenditure on the property, for which records may be incomplete.

If the base for CGT purposes is the value at 1 April 2015 and the non-resident owner later becomes resident and returns to the property as principal private residence it is not clear how gains accruing over the entire period of ownership would be taxed.

Residents are able to set losses against other capital gains. Since non-residents are not subject to CGT on other gains how would they be compensated? Would a non-resident who becomes resident be able to set a loss on a property while non-resident against future gains made as a resident?

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

The fact of residence is the most reliable test. However, this requires detailed records

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

Revert to the rule that existed in the past that, where no other property is owned, a property that has been the principal residence before a period of absence and becomes the principal residence for a period of one year after that absence, it is considered to be the principal residence for the entire period of ownership.

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

I am not aware that it is a requirement to engage a solicitor or accountant in order to buy or sell a property. UK taxpayers have a UTR and/or NI number. The Land Registry could identify property owners as non-resident, non-taxpayers and advise HMRC.

How would it be possible to identify the actual transaction value if the financial aspects of the transaction were wholly or partially conducted between non-residents outside the UK?

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

As Q13.

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

Many non-residents are already UK taxpayers, completing self-assessment forms. They should not be required to pay any tax due on the property on a different timescale to that applying to resident taxpayers.

The charge should apply to non-domiciled rather than non-resident.

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

As Q15.

General

If the actual rules applying to the tax are not published until the end of 2014, it leaves a very small window of opportunity to make appropriate arrangements to ensure that property owners are not unreasonably disadvantaged by the changed rules. Clearly this would be more of an issue if tax is assessed over the entire period of ownership rather than a 1 April 2015 re-base.

