From:
Sent: 20 June 2014 19:44
To: zzHMRC_TaxTeam, CapitalGains
Subject: Consultation on non-residents

I am a sole practitioner dealing with about 100 clients, predominantly individuals but also trusts and companies. Very few of my clients live abroad permanently but many do go abroad from time to time, usually as a result of a work placement or for family reasons.

1. As a general principle, I agree that it does seem appropriate to charge UK tax on the disposal of UK property. I therefore welcome the opportunity to comment on the proposed approach to the new charge.

2. A question: Have all the Foreign Tax Treaties been reviewed to see whether any changes will be required or whether the charge cannot be made in certain cases?

3. The document does not explain why commercial property will be excluded from the charge although let residential property will be included. It is my view that differentiating between different types of properties being used for slightly different purposes **adds enormously to the complexity** of the proposed legislation. Given that one of the aims is to make the charge as simple as possible and UK residents pay tax on gains on all UK property disposals (subject to any reliefs available), I believe the government should be encouraged to reconsider the scope of the charge in the interests of simplicity (to which it seems to pay only lip service). It appears to me that the charge would be considerably simpler to understand and administer if it applied to gains on all property disposals in the UK by non-UK residents, rather than simply residential property.

4. It can be seen from the questions being asked about disposals of several residential dwellings just how complicated the proposed differentiation is likely to make the legislation, and this is likely in due course to feed through to the inevitable associated guidance and tribunal cases.

5. The consultation notes that the use of Private Residence Relief (PRR) could result in non-residents avoiding a charge on the disposal of the UK property by nominating their UK residence as their main residence. I think the premise underlying this statement needs to be challenged. In order for the property to be nominated as a main residence, it needs to be occupied as such, as discussed at length in many legal cases and tribunal decisions. Many residences which non-UK residents own in the UK could not meet the criteria to enable a main residence nomination to be made.

6. **It seems very wrong, underhand even, to introduce consultation on changes to PRR that will affect UK taxpayers within a document consulting on 'Implementing a capital gains tax charge on non-residents'.** The proposals are far wider reaching than the document title suggests and will mean that many UK individuals affected will not have realised and will therefore not have had an opportunity to comment on something that affects them. The wording of Question 11 makes no mention of non UK residence at all thus making it clear that the consultation goes wider than the title suggests.

7. Question 10: **given the complexity of the PRR rules I do not believe that any changes should be made to accommodate the new charge on non UK residents without a full review of the relief and its purpose and how individuals would be affected by any changes**. The two approaches suggested are only two of many possible approaches.

8. Question 11: Of the two options in paragraph 3.5, I believe option 1 is the only one which would ensure that PRR is available only on a main residence. However, as now, it can prove very difficult to apply in practice in a variety of different situations (which are increasingly common) where couples have two residences both of which are used frequently. A typical example that I come across is where there is a

property which is occupied by a couple close to the workplace of one person (or both) which is occupied for three or four days a week and another property in another location occupied the rest of the time (with the couple working from home some days). Both these properties would be considered by the couple to be their main residences possibly with neither one taking priority over the other.

In such situations I believe the couple should be allowed to apportion the main residence relief between the two properties based on time spent in each if they so wish (and are prepared to keep appropriate records) or alternatively that they should be able to nominate one property to be treated as their main residence. Not being able to do this could put them at a considerable financial disadvantage given the way the apportionment of gains rules work, especially if one property has been held for a long time. Not allowing this flexible approach might well also lead to a loss of mobility in the job market as a result in situations where a moved is forced rather than voluntary..

9. If option 1 is chosen, I'm not happy that the criteria suggested to determine the main residence fairly reflect the realities of modern day life. For example, mail sent to some blocks of flats and certain properties may more easily get lost or stolen and therefore, although someone may live for the greater part of their time in one property, their personal choice may be to have mail sent to the other property so that they can be surer that it will be received safely. However, they may still consider the property to which their mail is not sent to be their main home. Similarly, being on the electoral roll can be a matter of personal choice (for example related to where a person might usually be on Thursday) rather than what they consider to be their main residence.

10. **I therefore believe that tax payers should still be able to nominate their main residence. I do not think this is inconsistent with the government's proposals** if my suggestion in the next paragraph is adopted.

11. **It should be possible to draft legislation so that any nomination made applies only to the period of time during which the individual is resident in the UK. For any period when the individual is not UK resident, the PRR available will depend on the facts and not a nomination.**

12. Continuing on from the previous point, it is not uncommon any longer for one spouse to work abroad and the other to remain at home with the family. Currently a married couple may nominate only one property as their main residence. This situation could continue. Where a spouse qualifies as a UK resident to make a nomination, that nomination will override, for the non UK resident spouse, the rule about a non-resident individual not being able to nominate a property. This would mean that the UK property will be the one to which PRR applies.

13. **I believe it would be inappropriate to have a fixed rule by reference to greater presence in the tax year.** This would be far too long period of time to cover many situations and is likely to result in unfairness. It would also involve a considerable amount of detailed record keeping (to enable the number of days at each property to be calculated), especially for those with many properties who work and/or live in a number of different countries. Furthermore, it will be very difficult to deal with married couples because how would the rule apply when they each spend different amounts of time in each property?

14. Furthermore if such PRR change was introduced, it would also affect those who have lived in the UK all their lives by, on occasions, treating a property which they did not consider to be their main residence, as the main residence. This is most like to affect those who spend the week living near their workplace but have a 'family home' elsewhere.

15. Many individuals who sell property while not resident in the UK may have gone abroad unexpectedly as a result of their employment or for other reasons of which they would have been unaware at the time they purchased property. In such circumstances they are unlikely to have kept all the necessary information to supporting documents which might be needed in the future. This is an existing problem but at least in these circumstances the individual would have had a chance to make a nomination to give certainty and reduce record-keeping rather than it being a requirement to keep such records.

16. Questions 13 and 14: I would have thought that solicitors would be best placed to deal with the collection of the withholding tax in the same way as they do with Stamp Duty Land Tax. However regard will need to be had to the situations where there is a capital gain but the property has been disposed of by way of gift and no SDLT is payable. A solicitor may not necessarily be involved in such a transaction, or the transaction may be undertaken from abroad.

17. It should also be borne in mind that accountants, rather than solicitors specialising in conveyancing, may be better placed to advise whether an individual is non-resident or not .

18. Question 15: I support the idea of an option being given to pay the actual tax due on any gain rather than suffer a withholding tax. However, the 30 day timescale seems too short evening in the age of electronic communication. I would suggest that timescale of 90 days is more reasonable and practical and there should be an absolute minimum of 60 days.

19. I am however concerned how the charge will be dealt with in practice in situations where an individual's residence position is in any doubt or in any way uncertain. For example, a person may appear to be clearly resident in the UK at the date of sale of a property so there should be no withholding but, as a result of later events, become non-resident for the whole tax year. How is this situation going to be addressed? If there is always a withholding, the UK property market would be severely limited due to lack of funds for the next property and such an option seems unthinkable. The sort of people whose residence position is uncertain in any tax year are often the sort of people who might have properties in different countries and who will be affected by the new rules.

20. I believe that there might be considerable practical issues where UK property is held in non-UK resident trusts but I am sure that the trust experts will have covered those issues.

21. I am also very concerned that it will be difficult to ensure that those who may be subject to the charge are aware of their obligations on a timely basis, especially where the rules were different where they went abroad. Solicitors seem best placed to explain the position when dealing with the property transfer but this puts a considerable compliance burden on them.

Please get in touch is you would like me to clarify any of the points made.

Yours sincerely