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Implementing a capital gains tax charge on non-residents, March 2014

Consultation on non-residents

Dear Sir,

Thank you for the opportunity to comment on the above consultation paper. Please find below responses to the questions by an individual.

Yours sincerely

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

Q1 Response: No response.

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

Q2 Response: No response.

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

Q3 Response: No response.

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

Q4 Response: No response.

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?

Q5 Response: Yes.

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

Q6 Response: No response.

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?

Q7 Response: No response.

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?

Q8 Response: In allowing losses as well as gains, there is a risk that artificial losses may be crystallized to offset genuine gains. There is a second risk that UK property may be left empty where a potential tax charge would be crystallized by sale of a property. Thirdly, there is a risk that the whole proceeds, including any CGT due, will be removed from the UK without recourse to levy the CGT due. The CGT due should be a withholding tax for non-residents.

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?

Q9 Response: All non-resident disposals should be subject a withholding tax until the CGT and other taxes due are settled.

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

Q10 Response: To allow a non-resident to nominate a UK property as their PRR goes against the natural test for the location of principal residency.

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?

Q11 Response: The approach in 1 is the more suitable. This will force the issue to a determination of their PRR. The approach therefore becomes no different to where a second property is owned but lived in by a relative, and CGT would be applicable when sold.

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

Q12 Response: The preferred approach would be to limit PRR relief to UK residents. That would ensure that where minimal contributions are made to UK society and the exchequer by non-residents, the UK is not financially compromised by CGT relief for a non-resident.

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.

Response: a) Yes. b) Other government agencies engaged in registration of landowners and companies, and organisations holding and transferring assets should also be responsible for identification of non-resident sellers. There should be a requirement for anyone transferring assets from the proceeds of a property sale by a non-resident to apply a withholding tax unless a clearance certificate from HMRC is obtained or provided.

The potential list includes:

- Land Registry
- Companies House
- Charity Commission
- Banks and other financial institutions
- Solicitors
- Accountants
- Registered property transfer agents

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

Response: There should be a requirement for anyone transferring assets from the proceeds of a property sale by a non-resident to apply a withholding tax unless a clearance certificate from HMRC is obtained or provided.

The Land Registry TR forms currently states the price paid. These could be amended to show non-resident status and include the withholding has been applied or clearance certificate obtained.

