From:
Sent: 25 June 2014 10:04
To:

Subject: FW: Consultation on proposals to charge capital gains tax on residential properties owned by non-UK residents - response from

From:
Sent: 11 April 2014 15:32
To: TaxTeam, CapitalGains (CAR Capital Gains)
Subject: Consultation on proposals to charge capital gains tax on residential properties owned by non-UK residents

One matter that does not appear to be raised in the consultation document is how any capital gain is to be calculated.

Is it proposed that the property should be valued at open market value on 6 April 2015 (in the same way that there was a re-basing at 31 March 1982) or is the intention to calculate the gain over the entire period of ownership and then use time-apportionment to establish the amount of gain arising after 5 April 2015? These two variations could, of course, generate very different amounts of capital gain. What would be the position if a loss arose on disposal? Would the allowable loss be calculated as the lower of the figures calculated by reference to original cost and 6 April 2015 valuation (with a no gain/no loss position applying where one produced a profit and the other a loss)? How could any loss on disposal be utilised? Would this simply be available to carry forward and set off against a subsequent gain on a similar disposal? Would the loss be available to set off against general gains if the individual subsequently became UK resident?

If the revaluation approach is used, and the property happens to be let at 6 April 2015, the letting could affect the open market value. Would there be a requirement to take the letting into account when arriving at the valuation or would it be permitted to adopt an unencumbered freehold valuation? If the property was let on a shorthold tenancy presumably the valuation could be prepared on the basis that the property would be assumed to become vacant at the end of the tenancy?

From:
Sent: 11 April 2014 16:22
To: TaxTeam, CapitalGains (CAR Capital Gains)
Subject: Consultation on non-residents

Questions 10 and 11:
Option 2 could cause problems where one or more of the properties is in joint ownership. If both properties are jointly owned by a couple who are married or in a civil partnership, one spouse could mainly occupy one property and the other could mainly occupy the other property. As only one property can be the main residence of a couple, which one would it be? If HMRC could decide this it could be unfair but if the couple decide it there would be no real change from the existing rules.

Option 1 might work better in the above situation but there could still be two separate mailing addresses and, in the circumstances set out above there could be real difficulty in deciding objectively which was the main residence.

Question 12:
Either leave the existing rules in place or set a threshold of selling price above which new rules would apply. A longer period of ownership/occupation could be introduced before PRR became available, perhaps with a sliding scale of charge for shorter periods. This would help to stop "switching". Another possibility would be to insist on a minimum number of days of actual occupation before a property could become a PRR.

Question 13:
There are clearly practical difficulties here. Non-UK vendors have hitherto been pleased to declare a non-UK address in order to demonstrate that they are non-resident and hence exempt from UK CGT. What if the potential vendor comes to the UK and occupies the property for a short time prior to the sale? They would then be able to provide a UK address to the solicitor dealing with the sale and would probably be able to arrange for appropriate ID to

circumvent money-laundering checks. How would the solicitor know that they were dealing with a non-resident? Would they then need to verify the history of EVERY property vendor in order to detect those who had only recently come to the UK?

HMRC are prepared to allow non-residents to receive UK property rentals gross if they complete form NRL1 satisfactorily. Maybe some variant of this procedure would work, although the amounts involved are likely to be much larger and the risk of defection probably much greater. Perhaps part of the pre-contract enquiries could include checks to determine the residence status of the vendor. Possession of a UK NI number or UTR number (to be checked with HMRC) would be good evidence, or in the absence of these, the vendor would need to provide a certificate of residence in the UK.

In the absence of evidence of UK residence the solicitor should be required to deduct and retain (say) 20% of the sale proceeds as withholding tax.

Question 16:

A downloadable form should be made available to enable the vendor to produce a tax calculation. The vendor would want to do this quickly in order to get any tax repayment due to them. There would need to be a prompt response by HMRC within a strict time limit so swift referrals would be needed to the District Valuer to establish the reasonableness of the valuation at 6 April 2015 or the accuracy of the original cost if appropriate.