

Implementing a capital gains tax charge on non-residents: Minutes of consultation
working groups (May – June 2014)

Please note that this document summarises points raised in discussions between officials and stakeholders arising in consultation meetings. It does not represent any developments in policy thinking.

The government has published an update to the consultation explaining the intention to focus the extension of capital gains tax (CGT) to non-resident individuals and close companies. A full response to the consultation document on introducing a CGT charge on non-residents will be published in early Autumn.

Private Residence Relief (PRR)

Officials ran two workshops discussing PRR. These focused on options to ensure broadly comparable treatment for non-residents and UK residents disposing of property used as their residence, recognising that current PRR rules could allow non-residents to simply elect a UK property to qualify for relief. Officials sought views on how best to ensure that the extension of CGT to non-residents would not be undermined by this, while seeking to minimise disruption to UK residents as far as possible.

Participants in the working groups commented that amending PRR in a way that achieves this balance will be difficult.

Attendees discussed the following specific points:

1. The case for using a qualitative test for determining a main residence for PRR purposes compared to using quantitative criteria
2. Interaction with the Statutory Residence Test (SRT)
3. Other options and transitional issues

Key themes and points of consensus among attendees were:

- Most participants felt that the ability to make an election for PRR is very helpful and that it should therefore be retained in some, albeit restricted, form.
- At both meetings, participants suggest that some kind of minimum occupation threshold below which an election for PRR could not be made could be an effective approach.
 - There was some discussion as to what kind of threshold would be appropriate, which also depended on whether the test came before or after any qualitative test. Some argued for 121 days on grounds that this might align with the SRT residency rules. Others felt that 30-45 days would be preferable as it could give UK residents maximum flexibility
 - When considering tests that used a day count, participants generally preferred an annual test as opposed to a rolling test.
 - Options on how a day test would apply in the case of married couples / civil partnerships were also discussed.
- Some participants argued for retaining existing rules when determining the question of main residence between two or more properties in the UK.

- Others suggested it may be preferable to modify the SRT, although generally participants seemed reluctant to amend it given that it is relatively new and took time to introduce.
- Attendees raised some issues in relation to transition, although recognised that it may not be possible to explore these issues yet.

Withholding tax (payment on account)

There was one working group on withholding tax at which HMRC explained that officials were now considering a 'payment on account' system for taxpayers who were not already within the self-assessment system, rather than a system whereby tax is withheld by a person other than the disponent. The meeting focused on how best to design a system that is effective, proportionate and does not cause unnecessary administrative burdens.

Participants in this working group discussed the following points:

1. Options as to how the collection process would work in practice
2. Options on how to compute the tax due

Key themes and points of consensus among attendees were:

- Most participants felt that a 'payment on account' process was sensible, as it would mean that normal conveyancing process would not be disturbed and the solicitors would not be obliged to withhold monies on HMRC's behalf.
- There was a call for detailed guidance from HMRC once the tax comes into force, so that those involved in property transactions could advise clients appropriately. Some advisers noted that they may offer a service to fill in the relevant forms for their clients, but felt that agents should not be compelled to do so.
- There was some discussion about the proposal for a 30 day window to make an initial estimate of gains and payment on account. Some concerns raised about complex situations and time allowed for amendments where non-residents were not within self-assessment.
- There was some discussion about the default rate of tax that would apply if a computation was not put forward.
- Some participants argued for some form of indexation based on historic property rates based on information from a body such as the land registry, some were in favour of a flat % (rising year on year).

Corporates/funds

There was one working group on corporates/funds, and the British Property Federation also organised a separate event with institutional investors.

The working group focused on options on how to define those corporates/funds that would be within the scope of the CGT charge on non-residents.

Participants in this working group discussed the approach to:

1. Corporates: with the starting point being that corporates making disposals of UK residential property would be in scope of the charge (some might already be within the UK tax system)
2. Funds: with the starting point being that funds would not be subject to the CGT charge where they could demonstrate that they were widely held. Officials acknowledged that a form of close company test may be necessary for closed-ended funds.

Key themes and points of consensus among attendees were:

General:

- Attendees emphasised that the government should fully consider the typical structures used by corporates/funds investing in UK residential property when defining the scope of the CGT charge.
- There was a lot of discussion about the potential impact on institutional investors currently investing or intending to invest into the UK private rental sector (PRS).

Funds

- Most participants felt that not taxing non-residents on disposals of units in a fund was sensible approach.
- Most participants felt that there need to be two distinct tests for closed and open-ended funds, that the existing GDO test is adequate for open ended fund structures, and that the close company test (with perhaps some modifications) is likely to be adequate for close-ended investment structures.
- The consultation document outlines the intention that partnerships will be treated as transparent for UK tax purposes, so any charge will lie with the investors. Participants were broadly happy with this approach, but made the point that a partnership structure is not generally used by institutional investors investing in UK residential property, and therefore raised concerns over how other structures (i.e. JV's, SPVs) will be treated. Some argued that exempt investors at the top of a structure should 'bless' that structure downwards.

Corporates

- Some participants argued that some large and publicly listed companies e.g. insurance companies are effectively like funds and should therefore benefit from an exemption, with the focus of the regime purely on close companies.
- In terms of the design of the charge, some participants felt that groups of non-resident companies need to be able to offset gains and losses within the group, in order to align treatment with UK resident companies.
- Several participants suggested that some form of indexation should be available for non-resident companies. There was also some discussion of the rate of tax charged on disposals.

International rules (off shore companies and trusts; temporary non-residents, etc.)

There was one working group on international rules etc. It focused on the interaction the new capital gains tax charge would have with existing legislation.

Overall, attendees felt that in order to avoid double taxation, and for simplicity, the new CGT charge should take precedent over other potential charges (e.g. under section 10A, 13, 86 or 87 of, or Sch. 4B/4C to, TCGA) with the other charge being relieved through an exemption, rather than a credit, mechanism.

Defining residential property

There was one working group on defining residential property. It focused on boundary issues for exempting communal/institutional property.

Participants in this working group discussed the approach to:

1. Student accommodation
2. Other issues, e.g. conversions, temporary non-residential use of property.

Key themes and points of consensus among attendees were:

- Some participants argued that purpose built student accommodation should not be within scope of the extension to CGT, as such accommodation ‘frees up’ other accommodation for the rest of the public.
- There was some discussion on whether it might be possible to design an exemption around “use” of a property, or particular design features, although many participants felt that this could be very difficult in practice.
- Several participants raised concerns around: disposals of undeveloped building land, ground rents, mixed use buildings (e.g. a building with flats and shops); and buildings under construction or alteration (the point at which a building is or is not a residential building).

ATED-related CGT

Officials did not run a working group on ATED–related CGT. However in all of the working groups participants repeatedly raised concerns over interaction with ATED-related CGT, arguing that there will be a proliferation of CGT regimes, leading to large administrative burdens.

Many participants felt strongly that, for the sake of simplification, ATED-related CGT should be withdrawn in favour of the extended CGT regime (leaving the rest of the ATED regime intact).

Rebasing

Officials did not run a working group on the start date for the extension of CGT and how this would apply in practice. However this issue again came up repeatedly.

Most participants felt that it should be possible for non-residents to rebase by valuing the property at April 2015, although time-apportionment might be simpler. There was mixed opinion as to which approach might be preferable, with several attendees suggesting that a taxpayer should be given the option as to which method to use.