From:
Sent: 20 June 2014 16:33
To: zzHMRC_TaxTeam, CapitalGains
Subject: IMPLEMENTING A CAPITAL GAINS TAX CHARGE ON NON-RESIDENTS

Dear Sir

I am setting out below our response to the above consultation document. The numbering below is to the consultation questions.

1. We note that the government does not propose to exclude residential accommodation for students except as part of a hall of residence attached to an institution. However it is not clear what is meant by a hall of residence attached to an institution. We assume that "attached" does not mean physically attached, as most University halls of residence are free-standing buildings, albeit that they may be constructed on the campus. In London, in particular, a University may well erect student accommodation some distance from the University itself, but readily accessible to it by public transport, so as to reduce the cost of such accommodation. It is unclear why the location of the accommodation should change the tax treatment if the accommodation is owned by the University. But does ownership matter? Much student accommodation is owned by a third party and leased en bloc to the University. That logically ought to qualify for the exclusion. But if so, it is unclear why a single apartment rented to a University and sublet to students by the University should not also qualify. The accommodation in halls of residence is often insufficient to meet a University's need, so the University has to rent overspill accommodation to supplement this.

   We can understand that the government would not want to exempt a property merely because it is occupied by a student. It is not clear however why it should want to distinguish between different types of University-provided accommodation. It would seem more logical to exempt all residences of which a University is either the owner or the head tenant.

   Our concern is that if artificial divisions are to be created, it is important that such divisions are clearly delineated and the policy reason for them understood. A person who believes his building falls outside the scope of the regime is entitled to know when he acquires the building what his tax position will be.

2. There are a number of other types of residential property (albeit not all communal) that ought to be excluded, such as

   a) a caretaker's flat in a commercial building,
   b) a proprietor's rooms in a hotel or boarding house,
   c) staff accommodation in a boarding school where it is necessary for someone to be on-site to deal with emergencies,
   d) nurses' accommodation linked to a hospital,
   e) accommodation that is in practice inseparable from a commercial operation, such as the family's accommodation in a stately home that is open to the public.

   We also think that it will be difficult to explain to foreign businesses looking to establish themselves in the UK that "open for business" means that we will not seek to tax overseas ownership of their business premises, but we feel entitled to tax the accommodation that the business provides here for occupation by its executives. We think that this undermines the government's objective of attracting businesses to the UK.

3. We do not wish to comment.

4. We do not wish to comment.

5. We do not wish to comment.

6. There is an obvious issue of definition. At what stage is there GDO? If this is set too high, it will create huge administrative difficulties. For example, if there are five participants in a collective investment, each is likely to be aware of the identity. If the cut-off is 50, and there are 51,, investors may well be unaware of that fact and assume that there is GDO. We think it important that an investor (and his advisors) can readily know whether or not his investment is within the scope of tax.

7. We do not wish to comment.

8. As the dividing line between property dealing and property investment is very fact dependent, there is a significant risk that many non-resident companies will take the stance that they are dealing companies and leave it to HMRC to challenge that. This would create substantial extra work for HMRC.

   It is also likely that non-resident companies will, to some extent, be deterred from investing in the UK. While that is not necessarily a bad thing conceptually, if a foreign businessman who wishes to live temporarily in the UK in order to establish a business here is deterred from living here, he is also likely to be deterred from creating the business here.

   Unless the dividing line between "genuine business" and others is clearly drawn and readily understood, this is likely to create a perception of unfairness which would be damaging to the government's desire to attract foreign investment. If "genuine business" includes a single property company that is let at arm's length, that is not a problem, but if a single-property company is not treated as a genuine business, it would be.

9. No.

10. We are not aware of any.

11. It depends on what the rule at 3.5.2 is. If a person owns a property for 20 years, it would be unreasonable to expect him to keep records for that period. Both tests are burdensome to apply, both to taxpayers and to HMRC. If the fixed rule test is not too burdensome, it would be preferable as it gives certainty, which we imagine is what the PPR election was intended to create. A possible test would be to say that a property is capable of being a taxpayer's principal residence for a tax year if he is resident here in that year (or would be resident here but for the operation of a double tax agreement), and occupies the residence for more than 60 days in that year, and that if a taxpayer wishes to treat such a qualifying residence as his principal residence for that year, HMRC would have to accept that. This would not require a great deal of record-keeping and would require a reasonable degree of actual occupation.

12. No.

13. It is reasonable to require a professional who receives the sale proceeds to determine whether the seller is non-resident provided that the test of residence for this purpose is easy to apply. The statutory residence test does not meet that criteria because it cannot be applied until after the end of the tax year. The non-resident landlords' scheme test of habitually residence would be a reasonable one.

    A much bigger issue is the definition of what is a residential property. This is a very difficult concept. Indeed different definitions have been introduced for different taxes. A degree of uncertainty may well be acceptable where both the taxpayer and HMRC have the ability to ask the independent FTT to adjudicate between them. However the position is very different in the context of a withholding tax. The professional needs to know clearly whether not to deduct tax. If he deducts wrongly, he lays himself open to legal action by his client. It is not reasonable to subject a person to that risk unless the meaning of residential property is so tightly defined that there can be no dispute as to whether or not the obligation to deduct arises. It may be that there could be a compromise, i.e. that the professional is obliged to deduct if a property falls within a tightly defined definition, but that the taxpayer is nevertheless taxable on the gain if it does not do so, but the property is ultimately held to be residential. It particularly needs to be borne in mind that the professional in receipt of the funds is likely to be a conveyancing solicitor with little or no tax knowledge.

14. We do not wish to comment.

15. Yes, but the time scale is unrealistic. For SDLT, all that the taxpayer needs to know is details of the property and the sale proceeds. For CGT, the cost and often the date of purchase also needs to be known Most people do not know the cost of their properties, particularly where they have carried out improvements, or the property was bought in a foreign currency so that the cost depends on the exchange rate at the time of acquisition.

16. No. 90 days would be a more realistic time scale. A sensible variant would be to require a non-resident to submit a provisional computation and pay the tax based on that within 30 days, with any excess tax being automatically repaid on submission of a final computation.

    We also question whether it is compatible with EU law to require, say, a French resident to submit a final computation for a disposal on 6 April, by 6 May while allowing a UK resident an extra 22 months to submit the same computation.

Yours sincerely

CBW Tax