Private & Confidential for the attention of:-

Alan McGuinness
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Sarah Adams
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20 June 2014

Dear Sirs

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

We refer to the document *"Implementing a capital gains tax charge on non-residents: consultation"* issued in March 2014.

We have submitted a series of responses which have dealt with the practical and technical mechanics of implementing the Government's declared policy objectives for charging tax in respect of capital gains realised by non-UK tax resident owners of residential property based on our experience with a wide range of UK and international property investors:-

17 June – companies and funds
19 June - meaning of residential property
20 June – principal private residence - appended
20 June – mechanics of calculation and collection – appended

As well as the practicality of the new measures we would emphasise the need to consider wider EU and International law and treaty obligations so it is clear that the proposals as enacted are not discriminatory or distortive of the Single Market.

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As you yourselves have indicated, however, policy objectives are inter-related with a number of significant and wider issues for taxpayers and the economy. We would be delighted to discuss these broader issues with you.

Yours faithfully

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17 June 2014

Dear Sirs

Consultation on non-residents – March 2014
Non-resident companies and funds which own UK residential property

We refer to the document *"Implementing a capital gains tax charge on non-residents: consultation"* issued in March 2014.

Following the request made by officials at a meeting on 29 May we attach a response to questions in relation to non-resident companies and funds. Further correspondence will follow on other issues raised in the consultation document.

If you have any points which you wish to clarify then please do not hesitate to contact me.

Yours faithfully

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Current investment vehicles and tests used to determine whether widely held

	Entity(for definitions see next page)	***(note 2)***	***Current Widely Held Test(note 3)***	***Legislative reference***
UK Open Ended (note 1)	OEIC	UCITS/NURS	Investment whitelist only ***(note 4)***	SI2006/964 reg 14E
		QIS	GDO	SI2006/964 reg 14B
		PAIF	GDO	SI2006/964 reg 69D
		TEF	GDO	SI2006/964 reg 69Z45
	ACS/TTF		None	
	Partnership – CIS and non CIS		None	
	EUT		None	
	JPUT		None	S99 CGTA 1992 (note 5)
UK Close Ended	Investment Trust Company		Close company (***note 5)***	SI2011/2999 reg 18
	Companies including joint ventures		Close company	CTA 2010 s 439 ***(note 5)***
	Real Estate Investment Trust ("REITs")		Close company - modified to include "open" companies and exclude institutional investors	CTA 2010 s528 ***(note 5)***

Notes
(For definitions of vehicles see next page)

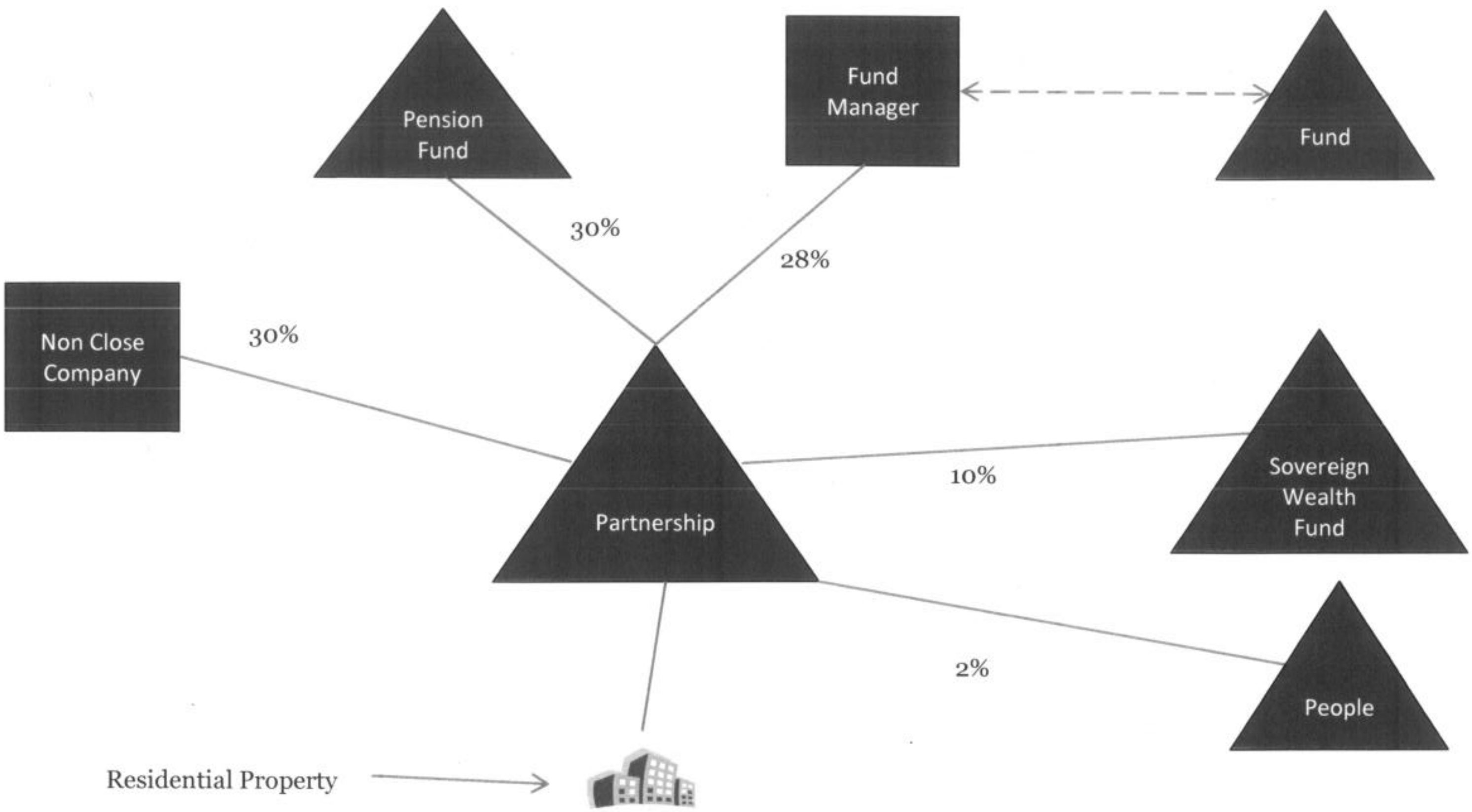
1 GDO test is contained in SI 2006/964 reg 9A and requires fund to be widely available for investment (see Appendix 1 for legislation)
2 Definitions – see Table in Appendix 2
3 Legislation requiring GDO or non-close for companies
4 Investment whitelist only – no widely held test is applied for normal tax treatment, but to obtain certainty that transactions have investment status the GDO test must met, otherwise normal investment versus trading rules apply.
5 Close company test is in CTA 2010 Part 10 (s439) and requires that the company is not under the control of 5 or fewer people, excluding open companies; this test is r lified for REITS

Definitions

ACS / TTF	Authorised Contractual Scheme/Tax Transparent Fund
JPUT	Jersey Property Unit Trust
NURS	Non-UCITs Retail Scheme
OEIC	Open Ended Investment Company
PAIF	Property Authorised Investment Fund
QIS	Qualified Investor Scheme
TEF	Tax Exempt Fund
UCITS	Undertakings for Collective Investment in Transferable Securities

Appendix 1B

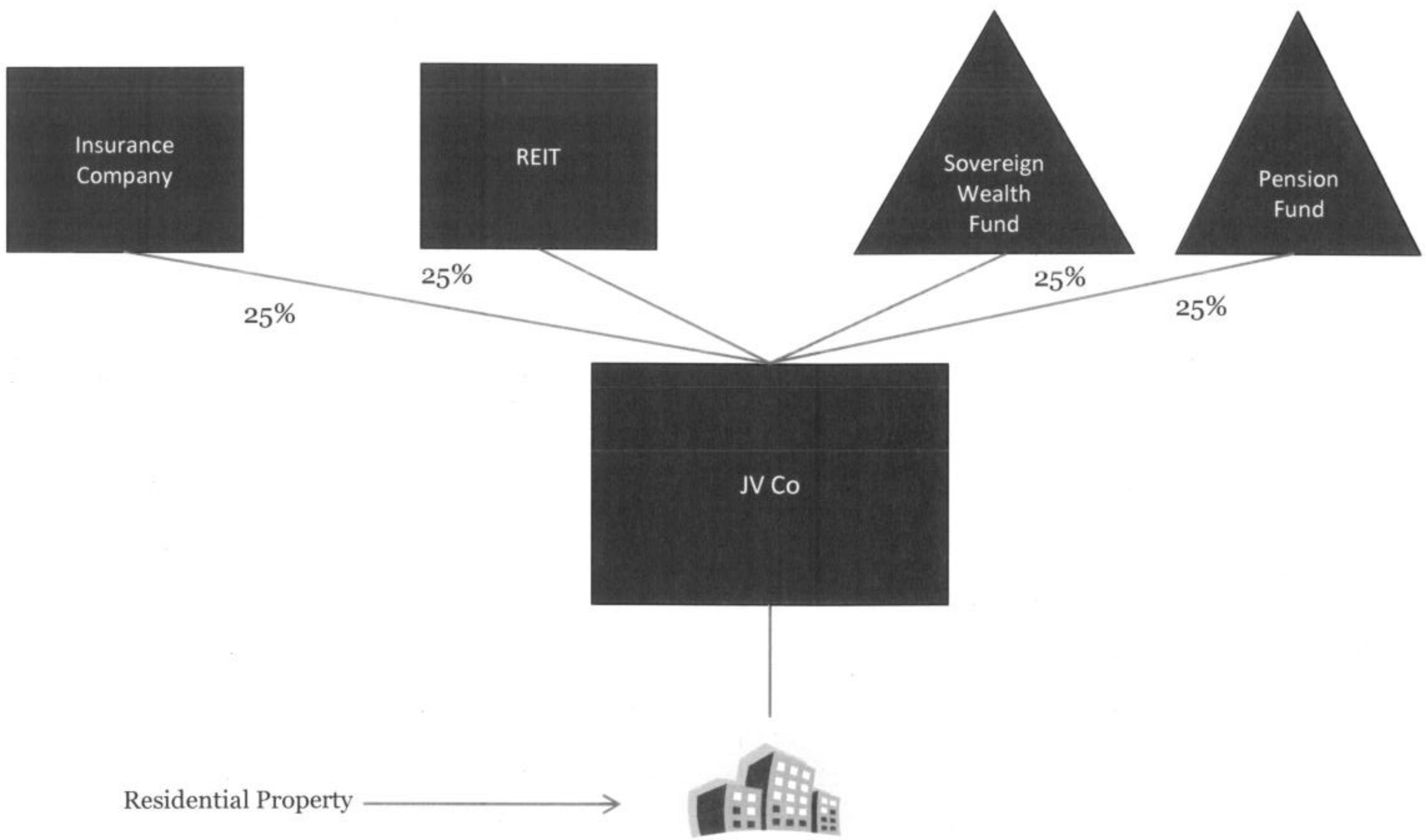
Partnership



Note: Each partner would be subject to tax on its share of the capital gains.

Appendix 1C

Joint venture company



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19 June 2014

Dear Sirs

Consultation on non-residents – March 2014
What is meant by residential property

We refer to the document *"Implementing a capital gains tax charge on non-residents: consultation"* issued in March 2014.

Following the request made by officials at a meeting on 29 May we attach a response to questions in relation to the meaning of "residential property". Further correspondence will follow on other issues raised in the consultation document.

If you have any points which you wish to clarify then please do not hesitate to contact me.

Yours faithfully

pwc

Appendix 1

Implementing a capital gains tax charge on non-residents: consultation PwC's representations

Different forms of residential property ownership

1 We refer to paragraphs 2.8 to 2.32 of the consultation document. We have also attended the relevant workshop with HMRC officials. Our understanding is that the Government wishes to ensure that individual investors who are based offshore are taxed on the same basis as UK tax resident individuals.

2 We understand that the Government has identified a number of ways in which UK funds invest in UK property without suffering tax on gains, and wishes to replicate the same relief for offshore investment. However, while we understand that the Government does not want to deter large scale investment in residential property, we note that it does want to ensure that individuals do not act together to circumvent the new rules.

3 In preparing our response we have reviewed the variety of UK entities/structures used for collective investment in real estate and looked at which tests would be appropriate. See Appendix 1A attached. We suggest that existing tests be used where possible in order to maintain simplicity with the benefit of using tried and tested rules.

4 It had been proposed that the Alternative Investment Fund definition in SI2013/1773 may be appropriate since this definition refers to a collective investment undertaking which raises capital, can be open or close ended and take any legal form. However, the definition excludes major investment types including pension schemes, holding companies, joint ventures, insurance companies and certain employee schemes. Indeed, there are also other investors in residential property which need to be considered.

5 We believe that more than one definition of a fund entity is required in order to ensure that those other entities, which are used to hold property for the benefit of a diverse ultimate ownership, are identified in the legislation as exempt from the charge to capital gains tax. Therefore, we propose that there be two tests applied - one for open ended and another for close ended vehicles, which focus on diverse ownership. We set out a proposed framework below and then provide answers to the questions tabled in the consultation document.

Open ended vehicles

6 We note that the Government wishes to prevent small groups of people investing together to avoid capital gains tax. We suggest that the existing genuine diversity of ownership ("GDO") test as set out in reg 9A(3) to (6) SI2006/964 be used for open ended funds. There are three parts to the tests. First, the memorandum must provide for marketing to a wide group of investors. Secondly, there should be no deterrent aimed at limiting investors to a select group. Thirdly, the fund has to act in line with the statements made in the marketing material. Such a test would be appropriate for different types of investor including OEICs (including PAIFs, TEFs etc), ACS/TTF, EUT and JPUTs (which may be marketed widely). See Appendix 1A for an explanation of the abbreviations and the nature of these investors plus the current GDO test used. Given that the test is in current use and is understood, we do not think that further amendment to this test is needed.

7 Where the open ended vehicle owns companies and the parent vehicle meets the GDO, its subsidiaries should also be treated as meeting the GDO and should therefore be exempt from tax on disposals of UK residential property.

Close ended vehicles

8 A different test is required for companies. The consultative document identifies Real Estate Investment Trusts ("REITs") and REIT-like equivalents as investors which would continue to benefit from an exemption from tax on capital gains. A UK REIT is a close ended vehicle where two key requirements are that it is not close and it is listed. We understand that the Government is currently considering extending the exemption from tax on capital gains to investors with REIT- like equivalent structures. Guidance is expected as to what is a "REIT-like vehicle" but has not yet been published. The key difficulty is that non-UK REIT-like vehicles, which currently exist to invest in residential property, have been formed under a multiplicity of different tax regimes and may be called REITs but not match directly all the attributes of a UK REIT. Therefore, we propose that the following approach be adopted in relation to REIT-like equivalents :-

a. Non-UK REIT-like equivalent vehicles which do not have to be listed under local law should have similar benefits as UK REITs;
b. Where the REIT-like equivalent takes the form of an open ended vehicle, then the GDO may be a more appropriate test;
c. Where the REIT-like equivalent is a company then a similar test would apply in as that for determining whether or not a UK REIT is close. That is, if the REIT is under the control of institutional investors when taken together then it would not be close. Institutional investors would be those defined in s 528 CTA 2010 (e.g. pension funds, insurance company, charity, housing provider etc). It is likely to be necessary to include shareholders which are companies (which would not be close if UK tax resident) as good investors given that, as set out above, non-UK REIT-like equivalents may be REITs in their local territories if held by "open" companies.

9 Where the REIT-like equivalent owns companies then, like a REIT, its 75% subsidiaries would benefit from REIT-like equivalent status and would not be subject to UK capital gains tax on disposal of UK residential property.

10 If the investor is not a REIT but is a widely held listed company and would not be close if UK resident (applying the tests in s439 CTA 2010) then such a company and its 75% subsidiaries should not be subject to UK capital gains tax on the disposal of UK residential property. This is a different type of investor from the one identified in para 2.25 of the consultation document, given the shares would be widely held and we see no reason to deter such investment.

11 If the investor is a JPUT then there are some complications. It is treated as a company (s99 TCGA 1992) but it may be open ended where it is marketed to a wide group of investors, hence the GDO test may also be relevant. Where the JPUT has a limited number of investors then if its investors are institutional investors (as defined above) or non-close companies it should also be treated as exempt from capital gains tax on disposals of residential property.

Joint ventures (see Appendix 1C for structure)

12 There are cases where investors may have an interest in a non-resident company which is not wholly owned; for example it may be a deadlocked 50/50 company owned by a

pension fund and a sovereign wealth fund. . It will be necessary for the Government to introduce legislation to protect investors who would be tax exempt if they owned the property directly but wish to invest together to share risk because of the portfolio size. Where there are non-resident companies owned by institutional investors as set out in s 528 CTA 2010 then there should be a look through to the ultimate investors and no tax should be levied on the joint venture company

Partnerships (see Appendix 1B for structure)

13 Where there are partnerships then the partnership will be transparent with income and gains being allocated in line with the partners' profit sharing ratio. The tax liability for each partner will be determined by its tax status. Given the current proposals in the consultative document, if an investor is an open ended investor which meets a GDO or is a REIT etc, it should not be subject to tax on gains. Other partners would be assessed to tax on their share of the allocated gain. A partnership return has to be provided for income purposes and the gain on residential can be captured in the partnership return. This would be relatively administratively light given partnerships already allocate income to partners and the obligation would remain with partners to pay capital gains tax due.

Trusts

14 We have dealt with JPUTs in paras 5 and 10 above. We now turn to trusts more generally which are commented on in paras 2.10 and 2.11 of the consultative document. It is important to note that a clear distinction needs to be made between trusts generally and JPUTs which can be used for collective investment.

15 The trust legislation requiring a charge to tax is to apply to gains accruing from 6 April 2015. In 'transitional' cases where a property was purchased pre 6 April 2015 we refer to discussions at the recent workshops on how the gains chargeable under different taxes (i.e. s86/87, ATED CGT and the new CGT for non-residents) may be calculated. Our preference is for a re-basing to market value at 6 April 2015, rather than an apportionment of the gains to the different periods. Whilst a valuation will require trustees to incur additional costs we still see this as preferable and indeed consistent with existing provisions for the extension of s87 to "non-doms" and the introduction of ATED CGT. In order to deal with potential anomalies in property values and where trustees do not want to incur the additional costs, it would be helpful to provide an option to calculate the gain subject to the new CGT on an apportionment basis.

16 When looking at the interaction between the different taxes which could apply to a relevant gain realised within a trust structure we understand that it is proposed that the new CGT charge will take precedence. We would prefer to see an exemption applied in relation to other tax charges (as is currently the case in relation to the interaction between ATED CGT and S13/S86/S87) rather than seeking to eliminate double charges by way of tax credit.

Temporary Non Resident Individuals

17 As discussed at the international working group there are potentially similar issues arising in relation to the interaction of different potential tax charges for temporarily non-resident individuals who dispose of UK residential property whilst they are non-resident. An individual could leave in year 1, sell a residential property in year 2

which would be taxed under the new charge, return to the UK in year 4 and suffer tax again under s10A TCGA 1992. 'Transitional' provisions will also be required for periods of ownership prior to 6 April 2015.

18 As for trusts we propose, in order to prevent a double charge to tax, that the individual who has suffered capital gains tax as a non-resident should then be exempt from any charge under s 10A TCGA 1992 in respect of the same property. We would also suggest that the allocation of gains between pre and post 6 April 2015 periods should be done by reference to a revaluation rather than apportionment.

Interaction with Annual Tax on Enveloped Dwellings ("ATED").

19 We note the Government's reference to simplicity; there are significant difficulties with the complex interaction of ATED and the proposed tax on the disposal of residential properties by non-residents. The ATED regime applies an annual charge, a higher rate of Stamp Duty Land Tax ("SDLT") and tax on capital gains on disposal of residential properties (up to 28%) with a value exceeding £2m at 6 April 2012 where the property does not qualify under any of the ATED exemptions. These charges do not apply to residential property let or being developed for sale.

20 The tax rate for non-resident CGT will be different from ATED (rate not yet disclosed) and the entry point for ATED moves from over £2m to over £1m at 6 April 2015 and £0.5m from 6 April 2016. Properties with a value of less than £0.5m are unlikely be within the ATED provisions but only capital gains; properties between £0.5m could be in both regimes. The question is then which takes precedent and how is this to be understood by an individual who is a non-resident investor and holds his property via a company. Where a trust holds property through a company there is a further complication with three different charges to tax (see para 15). To prevent multiple charges, while the annual charge and higher SDLT rate are retained, the capital gains tax charge should be applied on a consistent basis with one rate and one basis for calculation with rebasing to 1/5 April 2015.

S13 TCGA 1992 and capital gains tax on non-resident companies

21 There is an exemption from a charge to tax under s 13 TCGA 1992 where the company suffers a tax on gains under ATED to prevent a double charge to tax. We propose that a similar exemption apply where an individual has a substantial interest in a close company which suffers a capital gains tax charge under the proposed provisions.

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

If the current partnership return is adapted to include capital gains then this should limit complications with reporting – see para [illegible] above

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

We have set out above potential problems for trustees. We have a concern regarding the effect the new rules and their interaction with existing rules will have on the overall complexity of the position for non-resident trustees and therefore the risk of error for trustees and their beneficiaries in relation to their UK tax reporting requirements.

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?

There is a tried and tested route for open ended funds. We advocate that this test be used without modification to maintain simplification and avoid confusion. However, there are other corporate investors which also need to be catered for – see the rationale for our comments in para 5 above.

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

See answer to question 5

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?

See answer to question 5

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20 June 2014

Consultation: Implementing a capital gains tax charge on non-residents PwC's representations

Mechanics

1 We refer to paras 2.29 to 2.32 and note that the Government is minded to levy a tailored capital gains tax charge on companies which are to become subject to the tax charge. In our paper of 17 June we identified companies that would need to be outside the regime eg joint venture companies where the investors are large scale institutional investors. We now turn to companies that our smaller in size.

2 We note that there is little detail about the basis on which such companies would be taxed particularly if they were members of a group. At 2.31 there is a reference to non-resident companies which made a loss on the disposal of UK residential property being able to use those losses to shelter realised gains. Where there are groups these provisions would need to be applied on a group wide basis to ensure a level playing field – particularly given the comments in Box 1.A that the *"tax treatment of non-residents that own and make gains on UK residential property is comparable to that of UK residents"*.

3 We will comment further once more detail is made available in the form of guidance or draft legislation.

Collection of tax

4 We are concerned about the difficulties of a number of the proposals below, particularly in relation to the administrative burden that could be placed on advisers and purchasers.

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.

We prefer a self-assessment regime where a vendor may already be registered under the non-resident landlords' ("NRL") regime. This is a tried and tested route which is understood by taxpayers and their advisers. The return could be adapted to record the capital gain and tax could be collected in accordance with that regime.

There are circumstances where the NRL may not apply – for example for an owner occupier. We have suggested that non-UK residents could make an election to identify which, if any, of their properties could qualify for Private Residence Relief ("PRR"). Such a registration could also require them to account and pay over the tax on any gain on disposal.

Question 14: Are there ways that the withholding tax can be introduced so that it fits

One of the key issues in applying such a regime is choosing who should withhold tax and at what rate. It would be a complex calculation where it may require researching past expenditure, including improvements to quantify the gain. Where a vendor has previously made losses (and what if it is a company within a group which has also made disposals?) there are further complications as there may be one than one calculation. There is a parallel with the Construction Industry Scheme regime where there is a withholding tax but this is levied at a fixed rate based on proceeds. However, further complications may arise where a bank has security over the property and can require repayment of debt first. Given the above we have concluded that it would be difficult to implement a withholding tax in respect of the gain.

Question 15: Do you think that the government should offer the option of paying a withholding tax alongside an option to calculate the actual tax due on any gain made from disposal, within the same time scales as SDLT?

As with our comments in response to Question 14 this will be complex to apply. When reference is made to SDLT it is not clear if the intention is to tax at ATED or normal rates for residential property. Given the ATED rules are being extended to houses over £0.5m by 2016 would it be 15% or 4%?

Question 16: Is it reasonable to ask non-residents to use self-assessment or a variant form to submit final computations within 30 days? If not, what processes would be preferable?

The requirement to submit a return in 30 days is too onerous and does not take account of potential multiple sales with profits and losses which would need to be offset. Therefore the deadlines under usual self-assessment would be more appropriate.

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20 June 2014

Consultation: Implementing a capital gains tax charge on non-residents PwC's representations

Private residence relief

1 We are concerned that a consequence of the proposed changes to the taxation of non-UK residents will be significant implications for UK residents who own more than one home.

2 The legislation, allowing individuals, married couples and, latterly, civil partners to elect which of their homes should be regarded as their main residence, was included when capital gains tax was introduced in 1965 and has remained virtually unchanged since then. It is a practical and pragmatic provision that has worked well and avoids the necessity particularly for married couples and civil partners ("couples") to keep detailed records.

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

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?

When considering the proposed change it is important to appreciate that, subject to some minor relaxations, couples may only have one main residence at a time for tax purposes. Couples may own two properties, for example a flat in London and a house elsewhere. One spouse might spend the week staying in London and working there. The other spouse spends most of their time at the house, working locally and/or looking after children. Prima facie the flat would be the main residence of one and the house of the other. Using an objective test, what criteria would be used to determine which of the properties their joint main residence is? It is quite possible that spouses would have mail sent to both addresses and be on separate electoral rolls, be registered at different GP practices, dentists etc.

We consider that the suggestion that UK resident taxpayers will have to keep records detailing their whereabouts, perhaps for decades, to be intrusive and unreasonable where the proposed changes are intended to introduce a tax on non-UK residents. As it is unlikely that all taxpayers will keep comprehensive records, we could envisage large numbers of cases in dispute clogging the system.

For these reasons we do not consider that either of the approaches set out in paragraph 3.5 are practical.

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

We are aware that legislation introduced last year, the annual tax on enveloped dwellings (ATED) and related rules affecting capital gains tax and stamp duty land tax charges, has raised significantly more revenue than was originally forecast. This suggests, and it accords with our experience, that most non-UK resident and domiciled individuals continue to prefer to hold UK residential property through [illegible] proposed measure is targeted at is held within companies it will already be subject to capital gains tax, with no possibility of main residence relief. We would therefore encourage that thorough testing is carried out of the assumptions made in the calculation of the expected yield weighted against the administrative burden for the taxpayer and HMRC.

Notwithstanding this concern over the benefits of the measure, we nonetheless appreciate the Government's wish that charges under these proposed provisions, to be effective, require a limitation on the use of the PRR election. We also note the need for any change to not be discriminatory.

A possible alternative would be to make the election a feature of the capital gains system that applies where an individual has two or more properties on which a gain subject to UK capital gains tax might be made. Thus a UK resident with two or more properties (wherever situated) could make an election in respect of each of them as both are potentially charged while an overseas resident (wherever resident) would be able to make an election between any two properties that are residences and are within the charge to UK capital gains tax (that is those within the new regime). This approach focuses on the role of the PRR election in allowing administrative simplicity within the capital gains regime and would seem to meet the Government's policy objective while treating all taxpayers (UK and overseas) who have a need to make a choice between their properties within the charge equally.