
From:
Sent: 20 June 2014 17:27
To: zzHMRC_TaxTeam, CapitalGains
Subject: Implementing a capital gains tax charge on non-residents

Dear Sir/Madam,

Thank you for the opportunity to respond to the Government's consultation on implementing a capital gains tax charge on non-residents. We have had the opportunity to review the response of the British Property Federation and would endorse the comments they have made on the consultation.

In addition, or by way of emphasis, we would urge the Government not to continue with the ATED related CGT charge but abolish it from the date the new charge takes effect. The ATED related charge was intended to equalise the position between UK envelopes and non-UK envelopes seeking to de-envelope and transfer the property out of the company. Following, the introduction of the new charge, which is intended to equalise the position between residents and non-residents owning residential property there can be no need for a separate ATED related CGT charge. In addition if that charge remained then the position for properties that moved from one regime to another as they qualify or cease to qualify for ATED relief would make the tax position on a disposal of the property in future too complicated once you take into account the fact that gains accruing prior to the introduction of the new charge may be subject to CGT anti-avoidance provisions if the company is closely held or part of a trust structure. This would clearly not achieve the objective of simplicity.

In relation to some of the specific questions raised we would comment as follows.

Q4. Gains taxable under the new charge should be exempted from the anti-avoidance provisions in the capital gains tax code as, by definition, there will no longer be any avoidance to the extent the gain is chargeable. As a result that part of the gains should not be apportioned under section 13 TCGA and not subject to the rules in sections 86/87.

Q13. If solicitors have to verify the residence of the seller of a residential property then this will affect all residential sales and the way they are conducted as enquiries would need to be made on all sales. We understand the withholding tax option has been dropped and we would support that decision. In our view a self assessment mechanism may be the most appropriate way to collect the tax.

Yours sincerely,

Linklaters LLP, London

One Silk Street, London EC2Y 8HQ