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Private & confidential
HM Treasury
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Dear Sirs

Consultation on non-residents

We welcome the opportunity to provide comments on the proposals set out in the consultation document '*Implementing a capital gains tax charge on non-residents*' published in March 2014.

We have provided our comments in line with the structure of the consultation document and have included specific responses to questions posed throughout the body of our commentary.

Responses to the consultation

1 *Would an exclusion of communal property from the scope of the new regime result in any unintended tax consequences?*

In general we do not consider that an exclusion of communal property from the regime will have unintended consequences although it will be necessary to clarify the boundary of the exemption so as to provide certainty to taxpayers.

More generally, we are concerned by the extent to which the meaning of "residential property" and "dwelling" differ within and across SDLT, ATED, Capital Allowances, Corporation Tax, Income Tax and CGT, the lack of clear guidance on the meanings and inconsistencies in guidance. For example,

a. At what point is a building in the process of being constructed or adapted for use as a dwelling, as referred to at 2.3.Where more than one dwelling is being developed, do walls need to be constructed on one dwelling for all the dwellings to be 'in the process of being constructed'?

b. Is a building used as a dwelling where part of it is used for business purposes? Is it an all or nothing test?

c. Where a building is not in use at the effective date of the transaction but was last used for residential purposes or non-residential purposes, is that last use determinative? To what extent are the motive of the purchaser, the potential for use and planning permission relevant?

d. At what point do serviced apartments become commercial property rather than residential? This type of business is more akin to operating a hotel so clarification that serviced apartments are commercial property and hence outside the scope of CGT would be helpful.

e. It is unclear to us why the Government's policy appears to treat Purpose Built Student Accommodation ("PBSA") differently from other forms of "communal" property such as halls of residence, boarding schools and nursing homes. We are concerned that exclusion for "halls of residence attached to an institution" will create unfairness and uncertainty for providers of PBSA. Investment into PBSA will be less attractive than investment into halls of residence as it will be subject to UK tax on disposal.

   Our view is that all large scale student accommodation should be excluded from the scope of the new charge and not just halls of residence attached to an institution. If the policy intention is to tax houses occupied by students, this should be clear from the definition of excluded property.

   We would prefer to see the definition for excluding student accommodation to distinguish between halls of residence and similar buildings (such as PBSA) from houses let to students.

   If the Government feels it is not able to adequately distinguish between halls of residence and similar buildings (such as PBSA) from houses let to students, it may be possible to exclude the sale of multiple student accommodation residences which is unlikely to apply to the buy to let market. We note that the Government does not believe that the disposal of multiple dwellings in a single transaction should be excluded; however, the test could be restricted to student accommodation. FA 2003 s116 (2) (b) and (7) together capture large blocks of student accommodation in existing legislation. Transactions satisfying these two subsections between the same two parties could be treated as non-residential for the purposes of the proposed charge.

f. The purchase of six or more dwellings in a single transaction is treated as a non-residential property transaction for SDLT where at least one of the dwellings is worth £500,000 or less or where the purchaser satisfies one of the exemptions from the 15% rate; but section 2.7 states that it will be treated as a residential transaction for the purposes of the extended CGT regime. If the aim of the policy is to ensure that, largely, individual non resident investors (and those that invest through companies), are subject to CGT then the reason for this distinction is not clear. Owners of 6 or more properties are likely to be more akin to professional landlords rather than owner occupiers. The policy reason for the distinct tax treatment is therefore not clear.

2 *Are there any other types of communal residential property that should be excluded from the scope?*

We do not know of any other types of communal property that need to be excluded from the new rules, however, excluding certain types of residential property from the charge, as identified in Box 2.A, may significantly influence the investment policies of offshore investors; distorting it away from residential and PBSA (as the definition of halls of residence currently appears to stand).

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

We agree that following prevailing practice, capital gains arising on the disposal of residential property owned by a partnership accrue to the partners not the partnership.

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

We are surprised that the consultation document was produced without any indication as to how existing anti-avoidance legislation will be affected. It is essential that the interaction with the extended scope of CGT does not create double taxation. For example:

a. Section 13 TCGA 1992 was amended such that ATED-related chargeable gains were taken outside the scope of s13. Will the same happen again with the extended CGT charge post April 2015? If not how will s13 TCGA 1992 as a whole operate alongside the extended CGT charge?

b. Section 86 TCGA 1992 only applies to non-UK resident trusts with UK domiciled settlors. Therefore in most cases, capital gains tax will already be being paid on the sale of residential property by virtue of the capital gain being attributed to the UK domiciled settlor. There should be no double taxation in these circumstances post April 2015.

c. Section 87 TCGA 1992 applies to non-resident trusts and taxes trust capital gains when matched to capital payments to UK resident beneficiaries. Non-domiciled beneficiaries are not charged to CGT to the extent capital gains matched to capital payments to them represent capital gains accruing before 6 April 2008. Changes to CGT post April 2015 should continue this treatment and ensure the trustees and beneficiaries are not taxed on the same capital gain. The operation of any rebasing exercise will be important for non-resident trustees (as it will be for all non residents affected by these proposals). For example, will there be a "real" rebasing (which is our preference) such that residential property is deemed to be sold and reacquired for CGT purposes on 5 April 2015 for its market value on that date. Or will there be a somewhat "notional" rebasing as was the case in April 2013 when the ATED CGT rules became law, i.e. only an element of a capital gain that arose post 5 April 2013 is subject to ATED CGT, but the remaining pre 6 April 2013 element of any capital gain is taxable under anti-avoidance legislation as it was before the ATED CGT rules came into existence.

Finally, assuming s13 TCGA 1992 does not apply, section 99 TCGA 1992 classifies unit trusts as companies for the purposes of CGT but the capital gains of a unit trust are not chargeable capital gains. Therefore, a non-resident unit trust is currently outside the scope of CGT on the disposal of residential property. If non-resident trustees of unit trusts are brought within the proposed charge, this could have a significant and detrimental impact on the UK real estate investment market, albeit some may be excluded by the GDO test.

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?*

We consider this to be a good method of excluding any property ownership vehicle (i.e. trusts, companies etc,) that is widely held. We would prefer to see existing tests employed rather than a new GDO test specifically for this purpose. For example:

- Exclude non-UK resident closed ended entities from CGT which are not close companies based on a test combining the "close company" rules at CTA 2010 s439 and the "institutional investor" definition in the REIT rules at CTA 2010 s528(4),
- Exclude non-UK resident open ended entities from CGT using the existing GDO tests as set out in SI2006/964 which should adequately identify structures that are widely held.

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

In our experience it can be difficult in some cases for an investment vehicle to demonstrate beyond doubt that it is not closely held. Will funds be able to request clearance (as funds can do with the existing GDO test for Authorised Investment Funds from HMRC that the diversity of ownership test for CGT purposes (in whatever form it may take) applies and hence CGT will not apply to capital gains realised by the fund? How will a fund disclose to HMRC that the diversity of ownership test is met? For the existing GDO test for funds, aside from the existing advance clearance procedure, HMRC can check compliance with the existing conditions when a fund makes an application for a particular regime in which the GDO has to be met. Will a fund have to self assess they satisfy the diversity of ownership test when a disposal of residential property occurs? i.e. will a nil return have to be filed?

It is also not clear when a GDO type test would need to be assessed, i.e. – on an asset disposal or share/unit disposal or both?

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?*

It is difficult to answer this question when HM Treasury do not set out the circumstances in which it considers a second-stage test might be necessary.

We agree with the suggestion that there should be a de minimis test in relation to the holding of residential property within a fund. For example, this could apply such that no CGT is chargeable on disposal of residential property where the aggregate value of residential property in the fund is not greater than 25% of total fund value at the start of the accounting period. We would also consider that a test requiring aggregation of property values across associated entities should be included here.

8 *What are the likely impacts of charging gains (and allowing losses) incurred on disposals of residential property by non-resident property companies that are not already operating a trade in the UK?*

Considering the impact of a measure is difficult as the policy objective in relation to ownership of residential properties by non-UK resident companies as set out in sections 2.24-2.32 is ambiguous.

Our interpretation of the proposals is that:

i. HM Treasury perceives there to be very little difference between an individual buy-to-let property owner and an individual who happens to rent out their property through a company. If non-resident individuals come into the scope of CGT, HM Treasury's view is that those individual owners will be incentivised to set up non-UK resident companies to hold residential property to avoid the new CGT charge. So HM Treasury intend to extend CGT to all UK residential property sold by non-resident corporate "envelopes".

ii. Non-UK resident companies that trade through a UK permanent establishment are already charged to corporation tax on profits arising from that trade. Non-UK resident property investment companies that do not have a UK permanent establishment are not within the scope of UK CGT or CT, albeit they are subject to UK income tax on their rental profits. HM Treasury are considering bringing these companies within the scope of CGT.

Our recommendation is that HM Treasury sets out more clearly their reasoning behind extending CGT to all UK residential property sold by non-resident corporate "envelopes". Objections to HM Treasury's view that "enveloping" residential property was being done to avoid SDLT were raised during the consultation process leading up to the April 2013 changes affecting non-natural person owners. It was difficult to comment when HM Treasury published little quantative data to assess the amount of SDLT lost to the Exchequer but our view was, and remains, that HM Treasury are mistaken as to the perceived mischief of widespread avoidance of SDLT by non-natural persons owning high value residential property. Similarly it is difficult for us to comment on the impact (be it the impact on the property market and the tax impact) without HM Treasury providing a clear policy statement in this regard.

In terms of possible likely impacts of these measures:

a. Perversely they could reduce the tax yield overall, as non-UK residents could buy and sell shares in non-resident corporate "envelopes" which would be outside the scope of CGT and SDLT. This could provide an incentive to use an "envelope". The recent figures about the higher than expected tax yield for the ATED might be an indication that property owners are not "de-enveloping" but choosing to pay the ATED instead. In our experience, the lack of clear guidance regarding your view of the application of section 75A of the Finance Act 2003 (anti-avoidance) has deterred individuals from de-enveloping. In the absence of clear guidance, many of those affected fear incurring dry SDLT charges on such restructuring.

b. Non-UK resident trusts and companies are often used as investment vehicles for UK property (including residential portfolios). These funds attract investment from (amongst others) UK pension funds. If these vehicles were to become tax-paying in their own right (i.e. if they didn't meet the GDO type test), they would become immediately unattractive to UK exempt bodies. A withdrawal of this amount of capital overnight would be extremely damaging to the UK residential property which we understand is a sector in which the Government is proactively trying to encourage investment.

c. There is confusion about the tax treatment of property investment businesses which will create uncertainty in the property market. The April 2013 changes affecting non-natural person property owners provide for relief from the ATED and ATED CGT for property investment businesses. Business activities should not be treated differently for the purposes of different taxes and, in particular, different parts of the CGT legislation. What is HM Treasury's overall intention of excluding property rental businesses from the ATED rules, yet including them under the extension of the CGT rules?

9 *Are there other approaches that you believe would be more appropriate to ensure non-resident property investment companies and rental companies are subject to UK tax on gains that they make on disposals of UK residential property*

In terms of alternative approaches:

I. We appreciate the need to maintain consistency between the taxation of UK and non-UK companies in light of EU action in relation to other anti-avoidance provisions. Similarly, we understand and support the desire to ensure fair taxation.

Our view is that the rate of tax applied to disposals by non-UK resident companies should be aligned with UK corporate tax rates rather than UK personal capital gains tax rates. It would seem more consistent to apply the corporate tax regime to the disposal of UK realty by UK and non-UK companies. Rental profits of non-UK companies are subject to IT rather than CT and this is a reasonably well understood rule. It seems more straightforward to charge capital gains to corporation tax for all companies and remain with the existing treatment for income, rather than tax capital gains on residential property differently.

We would also welcome consistency in respect of other relevant parts of the capital gains legislation between UK and non UK resident companies. For example, the ability to claim indexation allowance and the application of s171 and s171A TCGA 1992 to non resident companies to enable UK residential property to be transferred across a group on a no gain/no loss basis and to reallocate gains and losses across a group.

In addition, extending this approach to the April 2013 rules affecting non-natural persons would eliminate the need to extend CGT rules to UK resident companies and ease administrative burdens for these companies.

II. Instead of having a combination of ATED CGT and HM Treasury's "tailored approach" charging CGT on companies, the ATED CGT regime should be abolished. The new CGT regime post April 2015 should be designed to include persons which are currently subject to the ATED CGT charge.

III. HM Treasury could adopt a procedure akin to the US "tick the box" election such that a taxpayer could elect for the property ownership entity (i.e. trust or company) to be treated as transparent for UK tax purposes. This could simplify the process such that the non-resident individual owner is assessed to CGT rather than the ownership vehicle but could allow the structure to fulfil its non-tax requirements for being in existence.

IV. The scope of s13 TCGA could be extended to non-UK resident individuals but only impose a tax charge on those individuals on UK residential property.

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

The proposed changes could make the tax position for UK resident individuals worse and as such the effect of the proposals on UK residents should be part of a separate consultation.

One example of where changing the assessment of PPR to a factual basis (i.e. no longer allowing an election) might cause problems is where the husband and wife own the family home but they also own an apartment in London that the husband occupies during the week. Applying a factual basis might mean that the family home is the main residence but the UK resident might want to elect for the London residence instead as that property might yield a higher capital gain on sale. If the second test were to be used, it may be appropriate to introduce a quantitative test of number of days spent at a property with the subsequent ability to make an election, with particular consideration made to the position of spouses/married couples.

Any new rules should contain provisions that mirror existing rules that deem periods of non-occupation as periods of occupation qualifying for PPR. Employers who assign employees to dangerous locations may require their employees to maintain a residence in the UK in case of emergencies. (See Turberville V HMRC [2010] UKFTT 69 (TC) where it was stated that the employer "advised its international employees to do so in case they needed to leave the country in which they were working suddenly". If such employees will become liable to capital gains tax on their homes it is likely to make it more difficult to assign employees to such locations without the employer having to pay the capital gains tax. In fact this is likely to be the case even for assignments to less dangerous locations as the assignee will view the capital gains tax charge as an extra cost of being assigned overseas and will expect the employer to pay this charge. In fact this is particularly the case where the employer operates a tax equalisation policy whereby the employee pays the tax they would have paid if they remained at home.

Under existing legislation, a husband and wife can only have one principal private residence. The consultation document does not explain how the new test would operate if this rule remained the same, given that under the qualitive or quantative test the two individuals may not have the same main residence. It may be advisable to allow spouses and civil partners to make a separate election in the same way that co-habitees can.

There is no mention in the document of whether or not existing PPR elections will be grandfathered. We recommend that they are, at least until a new property is acquired post 6 April 2015. In the absence of any grandfathering provisions, ideally there should be a rebasing exercise done at 5 April 2015 so that UK residents can be given the opportunity to 'bank' any PPR to date, i.e., elect whether their base cost on a future disposal would be the date of acquisition or April 2015.

11 Which approach out of those set out in paragraph 3.5 do you believe is most suitable to ensure that PPR effectively provides tax relief on a person's main residence only?

Both options are not straightforward as how to define a taxpayer's main residence for tax purposes is problematic. This was evident when the Statutory Residence Test legislation (which contains a definition of a home) was written. High net worth individuals will often own multiple residences.

Of the two tests set out in section 3.5, the first one is preferred, i.e. remove the ability for a person to elect which residence is their main residence and hence limit PPR to that property which is demonstrably the taxpayer's main residence.

If test one is used, where qualitative tests are used to determine an individual's main residence, a pre-sale clearance process would be needed to give taxpayers certainty of what their main residence is.

The reasons for this choice are:

- in most cases, it seems in the main implausible that a property owner who is not UK resident would have their main home in the UK, Careful consideration should be given as to which factors should be used to demonstrate main residence such as:

-The location of a taxpayer's spouse and children could be a determining factor, as one spouse may work abroad whilst the other spouse and children could reside in the UK.

-Certain factors such as utility bills being addressed to the owners at that property, moving furniture and pictures etc into the property or entertaining family and friends at the property, might not be determining factors as this evidence could be available for multiple properties.

- If married couples/civil partners living together will continue to have one residence for the purposes of PPR, the second test is not practical, i.e. if the second test is akin to a factual day count test, to whom would the day count test apply?
- The second test in section 3.5 seems to impose unreasonably draconian record keeping requirements. If a taxpayer needs to keep records to show that they were present in an overseas residence for longer than their UK residence in order to exempt a disposal of a UK residence from CGT, for the entire ownership period of the UK residence, record keeping requirements could need to be in place for decades. Also how would such a test interact with existing rules that deem periods of non-occupation as periods of occupation qualifying for PPR?
- The second test in section 3.5 says a taxpayer's main residence will be the property in which they have been present the most for any given tax year. The consultation does not specify which year, for example the year of disposal, every year during the ownership period, the year in which the taxpayer has spent the most time occupying the property?

Either test makes record keeping more onerous but the first test overall less so. With either option, a high profile campaign would be required to alert UK residents to the need to keep records where previously they may not have needed to.

12 Are there any other approaches that you would recommend?

Our view is that any test to define a main residence must be legislative to avoid continuing to rely on case law. If this does not happen, this seems to be a move away from embedding as much as possible in the legislation (e.g. The Government moved away from case law to the SRT in the case of residence). Under option 1 or 2 there will be a larger record keeping burden on the taxpayer and a lot of currently unrepresented taxpayers will need tax advice going forward, of which they may not be aware. This could be complicated and costly for the taxpayer. One of the policy objectives is simplicity but this could make things more complex.

Suggestions for different approaches:

- Our preferred choice is to allow the option to make a PPR election based on the existing rules subject to a requirement to spend a minimum number of days at that property before an election can be made in its favour. For example, 90 days (on a 3 year rolling basis) may be an appropriate number because it has synergy with the Statutory Residence Test. However, this would also impose a record keeping burden on taxpayers.

- Consideration should be given to how the proposed changes might interact with the Statutory Residence Test. For example, :

  i. making a PPR election in favour of UK residence might count as an additional tie for SRT purposes. Consideration needs to be made as to whether the tie-breaker clause (under Double Taxation Agreements) would cause a taxpayer to be treated as treaty non-resident for the purposes of income tax/CGT on other assets, even where they were domestically UK resident under the SRT. However in our view, even if they were regarded as treaty non resident, becoming domestically resident under the SRT would be a real deterrent to otherwise non-resident individuals.

  ii. precluding any individual who is not UK resident under the SRT legislation from being able to make a PPR election

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.

Due to the complexities of the statutory residence test and the difficulties in determining the date the year is split in to an overseas and UK parts particularly given that the split year date can change retrospectively, an appropriately qualified advisor would need to be appointed to ascertain whether a seller of a property is not UK resident. Our view is that we cannot see how this responsibility could be imposed by statute so we do not agree that solicitors, accountants and others should or could bear this responsibility. Our recommendation is that the residence status of the seller is established as part of the existing self assessment regime.

Our understanding following attendance at HM Treasury's working group, however, is that a "strict withholding tax" is not being proposed but that the tax liability has to be paid within a set timeframe. The tax can, therefore be, paid from any funds that the non resident seller has available and be paid after the sale has been completed. We believe this to be a better approach when compared to a "strict withholding tax" but it is still not our preferred choice.

We have considered whether a taxpayer could:

1 Pay a set percentage of the proceeds within 30 days; or

2 Make an estimate of the liability, and pay that amount rather within 30 days, and

3 regardless of whether 1 or 2 above is chosen, then make a final determination of the liability within a specified period, as part of the existing self assessment regime.

Under option 1 if the capital gains accrued prior to 6 April 2015 are to be removed from charge by straight line apportionment the set percentage should be applied to the proportion of the gain arising from 6 April 2015. At the time of payment the individual should be able to state whether he or she views the calculation as final.

If a non resident is to pay capital gains tax on the sale of residential property, they will need a tax reference number as it is unlikely the non resident will already have one. Whilst we understand that obtaining reference numbers for the purposes of the ATED regime has been possible and in most cases in a timely fashion, the same cannot always be said for PAYE and Self assessment. It is essential that any references for any new tax can be obtained swiftly.

The consultation document states that "The charge will come into effect in April 2015 and apply only to gains arising from that date" . It is not, however, clear how this will be achieved? Will it be by a straight-line apportionment or by rebasing at 5 April 2015? It is, however, clear especially in the early years of any new regime that there will be cases where the majority of the disposal proceeds fall outside the regime. There will also be cases where the individual has made a loss.

As the rate of CGT to be applied is intended to be calculated based on the taxpayer's UK source income and capital gains our view is that the non-resident taxpayer should fall within the existing self assessment regime. If this recommendation is adopted, we would seek clarification that there would be no change to the calculation of the maximum income tax liability of a non- resident under s811 ITA 2007.

However, any sort of withholding tax is at odds with the existing self assessment regime, i.e. it is attempting to apply SDLT type collection of tax procedures to a capital gain. Hence we prefer collecting the capital gains tax due using the existing self assessment regime only. For example it might not be known until later in the tax year what the actual liability is because a taxpayer may incur allowable losses on the disposal of another residential property later in the same tax year. Also the capital gain calculation may be complex, e.g. if there have been allowable costs of enhancement.

14 Are there ways that the withholding tax can be introduced so that it fits easily with other property transaction processes?

If HM Treasury does decide to introduce a withholding tax, consideration will need to be given as to how the assessment and collection of tax might interact with the non resident landlord regime and indeed other cases where the non- resident individual already completes self assessment tax returns. For example, will the individual have to make a separate payment and return for the disposal of the property or might they be exempt from the "withholding" (as income tax on rental income does not have to be withheld at source under the non resident landlord regime) and only be required to pay or file the one Self Assessment tax return?

If the creation of a new return to assess the CGT post April 2015 is envisaged for individuals outside self assessment, will this requirement be overridden by individuals within the self assessment regime at the time of disposal so that 2 returns are not required?

As stated in section 3.10 of the consultation document, "the rate of CGT charged on non-residents will then mirror the higher and lower rates of tax for UK residents, i.e. non-residents will be charged at a rate of 18% or 28% on the gains they make, depending on their total UK income and gains". This presents a number of practical issues. Non-residents with taxable UK source income already have an obligation to file a self assessment return, but no such requirement exists in relation to capital gains as currently non-residents are outside the scope. How will the 30 day return followed by a final return/calculation interact with Self Assessment, as it seems implicit that the non-resident will need to submit a self assessment in order to determine the tax rate that applies to the residential property disposal. The above discussion of withholding assumes the seller is an individual.

The collection of the tax if it is withheld at source could present difficulties for partners. For example one partner may suffer all of the tax at source but all partners could have different capital profit sharing ratios in the asset. For example, if a non-UK resident partnership has the same characteristics for UK tax purposes as an English limited partnership, the non-UK resident owner would not have a separate legal personality, in this case would it be the General Partner that suffers the withholding tax? If the seller is a non resident partnership, will the partnership have to make an estimate of the liability and will it be the general partner who makes the payment? Will the other UK income of all the other partners have to be considered? Will they each have to make a return?

Our preference is that;

- only one return is required in respect of any non-resident taxpayer who is already within the self assessment or non-resident landlord scheme so both regimes should be extended to disclose the CGT liability on a disposal of residential property post April 2015. For non-resident employees in particular, such individuals will be employees assigned abroad by UK companies and whose tax returns are paid for by their employer under equalisation policies. Having an extra tax return costs is an added unnecessary burden on such businesses. This concern may not arise if the deemed occupation rules of the current regime will continue to apply to non residents.
- All other non-resident taxpayers currently not within self assessment will have to register for self assessment and pay over the final CGT liability within the self assessment timescales as per the current self assessment regime, with a credit for the estimated amount of tax already paid over.

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 the disposal, within the same time scales as SDLT?

We agree that the approach has merit but not the timescale. It will not always be practically possible to calculate the capital gains tax liability due within 30 days of the disposal. The rate of SDLT can be applied to a known number, i.e. the market value of the property interest changing hands, but the same analogy cannot be made with CGT for the reasons set out above in question 14. Most UK residents do not know the details of the capital gains regime. Many people only know that they do not pay tax on disposals of their home. Non residents are likely to be less familiar. It would be preferable if the taxpayer was required to pay tax on an estimate and had a period in which to file a final return/calculation. This would, for example, allow for April 2014 valuations (if required), details of enhancement expenditure to be obtained.

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?

We believe that it is essential to allow the taxpayer to reduce the withholding to an amount that is either the exact amount of tax that will be due or a reasonable estimate. It is reasonable that this is supported by a computation. Where the property is sold at a loss it should be sufficient to report disposal proceeds and purchase price (or if introduced April 2014 value).

We, however, do not believe that it is reasonable to expect "final" computations within 30 days, particularly when considering the comments above about it seems implicit that the non-resident taxpayer needs to submit a self –assessment of UK source income and gains in order to determine the tax rate that will apply to the disposal.

Questions not covered in the consultation document

A. The Foreword states "the charge will apply from April 2015 and only to gains arising from that date". It would be useful if HM Treasury could clarify that this means there will be a rebasing exercise, i.e. the extended CGT charge will only apply to the element of a capital gain accruing post 6 April 2015 rather than the total gain accrued over the ownership period for disposals that occur after 6 April 2015.

B. If there is to be a rebasing exercise, please can HM Treasury confirm how it will operate? Our preference would be by reference to a valuation commissioned of the property value as at 5 April 2015, such that the residential property is deemed to be sold and reacquired for CGT purposes on 5 April 2015 for its market value on that date.

C. How will the anti-avoidance rules that impose tax on capital gains arising in a period of non-residence when a taxpayer returns to the UK interact with the extension of CGT to non-residents?

D. If the new charge only applies to capital gains arising post April 2015, will allowable costs of acquisition and disposal incurred post April 2015 only be allowed as deductions in the CGT computation? What about enhancement expenditure, for example enhancement expenditure incurred before April 2015 could be reflected in the asset value post April 2015? The answer to this question perhaps depends on the operation of any rebasing exercise.

E. In section 3.9 the Treasury notes that the annual exempt amount of £10,900 is available to all individual UK taxpayers so it is considering extending this allowance to non-resident individuals. If this happens, will UK resident taxpayers who claim the remittance basis also be entitled to the annual exempt amount?

F. "Garden or grounds" are defined by reference to the concept of a permitted area for CGT (and some aspects of SDLT, e.g., relief for certain acquisitions of residential property) but not for most purposes of SDLT and ATED. Instead, they are defined by reference to the concept of "reasonable enjoyment". Confirmation in HMRC's SDLT guidance that "permitted area" will be applied to interpret "reasonable enjoyment" is not supported by statute. This area is not discussed in the consultation but is set as an example of an existing inconsistency in the CGT and SDLT legislation and any further changes to the taxation of residential property should resolve this apparent inconsistency.

G. In order to make the tax collection process for non-residents fair and comparable to UK residents, section 3.10 says all UK income will need to be declared to ensure the appropriate level of tax is levied. Non-UK residents with UK source income should already be declaring their UK source income via self assessment. Is HM Treasury suggesting a change to prevailing practice?

H. In addition at section 3.10, the document states that the rate of CGT charged on non-residents will then mirror the higher and lower rates of tax for UK residents, i.e. non-residents will be charged at a rate of 18% or 28% on the gains they make, depending on their total UK income and gains. Is HM Treasury suggesting that non-residents will have to declare disposals of UK situs assets that aren't residential property even though there is no tax liability due, for example if a non-UK resident individual sells shares in a UK company?

I. The consultation document is not clear on how the CGT charge would extend to a fund that does not meet the GDO test – in particular at what level the charge would apply. The consultation document is drafted at 2.13 on the presumption that all fund structures are transparent for all taxes. This is not always the case, for example unit trusts are opaque for CGT but transparent for income tax purposes. It is also essential that no element of double taxation should arise as a result of extending the scope of CGT, i.e. by introducing a charge at fund level which is not relieved should a subsequent charge arise on the disposal of shares or units in a fund.

J. How will the extension of CGT to non-residents interact with the temporary non-residence rules for CGT? At present, if an individual leaves the UK to become non-UK resident following a period of residency for at least 4 of the last 7 years and then sells a UK asset during the period of non-residence, as long as they remain non-resident for more than 5 years, the gain will not be charged to UK CGT.

We would be pleased to answer any questions you might have in relation to this letter and otherwise look forward to participating in meetings in respect of this consultation.

Yours faithfully