Capital Gains Tax for Non-UK Residents

On 27 November 2014, the UK government published its summary of responses regarding the implementation of the capital gains tax charge on non-UK residents. Within that document, the government confirmed its thinking as regards how such a tax would be implemented. Although we have yet to see specific legislation, there is now much greater certainty as to how this tax will operate.

Detailed draft legislation will be published on 10 December 2014.

Who is affected?

Non-UK resident individuals have hitherto been exempt, in most cases, from UK capital gains tax on disposals of UK residential property. From April 2015, this will no longer be the case, although non-UK resident individuals disposing of commercial property will still be exempt from UK capital gains tax.

The definition of what constitutes residential property has yet to be absolutely clarified but it will not include certain types of communal accommodation, such as care homes and nursing homes as well as purpose-built student accommodation.

The proposed charge will apply to non-UK resident individuals, non-UK resident trustees, Personal Representatives of a non-UK resident deceased person and most non-UK resident companies disposing of UK residential property.

The UK government does not intend that such a charge will apply to large-scale institutional investment and so disposals of UK residential property made by diversely held institutional investors will not be subject to this charge.

The charge will apply to disposals of UK residential property which had been held as investment but there will be no change to the tax treatment where such residential properties are held as the trading stock of the business.

The introduction of these new rules is a significant extension over and above the existing anti-avoidance covering UK residential property worth in excess of £500,000 owned by non-UK resident companies (the “Annual Tax on Enveloped Dwellings”- ATED rules). A reminder of ATED rules is covered later on.

Impact of new CGT rules

The new capital gains tax rules go a step further than the previous ATED rules by taxing all non-UK residents on chargeable gains made on disposals of UK residential property. These new rules will run concurrently with the ATED rules covered below, but the ATED rules will take precedence.

Furthermore, the government has confirmed that the disposal of rights to acquire the UK residential property “off plan” (i.e. before it has been constructed) will be treated in the same way as if it were disposal of an interest in the completed property and thus subject to the capital gains tax rules.

The rate of tax that will be applied for individuals will be the same as the capital gains tax rates for UK resident individuals, which is currently at 18% or 28% depending on that person’s total UK
income or chargeable gains for that tax year. Non-UK resident individuals will also have access to the annual exempt amount (currently £11,000 per person) of chargeable gains.

For UK residential properties that are owned by non-UK resident companies and are not subject to the ATED regime, the rate of capital gains tax payable will be 20%, but such companies will qualify for an inflationary increase to the allowable costs of acquisition in computing the amount of gain liable to capital gains tax. As stated above, where chargeable gains are made within the ATED regime, the rate of tax will remain 28%.

The UK government has confirmed that the extended capital gains tax charge for non-UK resident disposing of UK residential property will not apply to the amount of gain relating to the period prior to April 2015. To this end the government has confirmed that property values will be “rebased” to 5 April 2015 but the taxpayer has the ability to elect for the alternate basis of calculation, whereby the whole gain is time apportioned and split between the pre-and post-April 2015 periods for the purposes of calculating the gains and tax due thereon. The latter “time apportioned” treatment is not available where the tax payable has arisen due to an “ATED” tax charge, rather than these new capital gains tax rules.

Availability of Private Residence Relief (“PRR”)
Under existing UK tax legislation, individuals are entitled to PRR on their only or main residence. PRR operates by exempting a charge to tax on the disposal of an individual’s primary residence. Hitherto, this is not been something considered by non-UK resident individuals on the basis that any disposals of UK residential property have not be liable to UK capital gains tax.

There is a significant amount of case law governing what constitutes a primary residence, key to which is that the residential property must actually be used as a residence and occupied as such during its ownership.

The PRR rules provide further relief over and above the period of occupation of the property by allowing for periods of absence, letting and the last 18 months of ownership.

For non-UK resident individuals who wish to claim PRR in respect of a UK situated residential property, assuming the conditions are met as regards occupation of the property, the UK government has introduced a new rule from April 2015 requiring that, for a property to qualify as a person’s PRR for a tax year:

- The person making the disposal is tax resident in the same country as the property for that tax year; or
- The person spent at least 90 midnights in that property (or across all of their properties where they have several properties in a single country) in that tax year,

These revisions to the PRR rule will only apply to individuals who have lived in the properties that they have purchased and will not apply to properties purchased as outright investments or those properties owned by offshore companies.

ATED – a reminder
The ATED rules catch situations where UK situated residential property is owned by a “non-UK resident non-natural person” - usually a limited company. The use of the term ATED has become synonymous with 3 tax charges:
• 15% Stamp Duty Land Tax on all purchases of residential property over £500,000 by a non-natural person.

• An annual charge based on the valuation of the property at 1 April 2012 or when purchased (whichever later) and then revalued every 5 years. At present this only applies to properties worth over £2m but will catch properties worth over £1m from April 2015 and those above £500,000 from April 2016, which will align it with the Stamp Duty Land Tax threshold.

• Capital Gains Tax is already payable on any disposal of residential property caught under the ATED rules at a rate of 28%. As with the annual charge above, the value of properties affected will reduce to £1m in April 2015 and to £500,000 in April 2016.

However, there are exemptions available that can prevent the ATED rules from applying. These exemptions include a situation where the residential property is let to a third party on a commercial basis or the residential property is purchased with the intention of developing it for resale.

The most common situation where the ATED rules apply is where the residential property is purchased in excess of the valuation thresholds via a corporate entity with the intention that the property would be retained for personal use or for that of a family member.

**Reporting and Collection of Tax**

For those non-UK resident individuals who are currently within the UK self-assessment reporting regime, any capital gains tax payable under the new rules will be dealt with via their Self-Assessment Tax Return. Any tax payable will therefore be due by 31 January following the tax year in which a disposal is made.

Nonetheless, there is still a requirement on all non-UK resident individuals (whether or not in the UK Self-Assessment reporting regime) to notify HMRC 30 days after having made a disposal of the property, giving details of the transaction.

For those individuals who are not part of the UK Self-Assessment reporting regime, the capital gains tax must also be paid 30 days after the property is sold, in line with the reporting regime detailed above.

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**Disclaimer**

The above information is based on information provided by HM Treasury and HM Revenue & Customs in their document “Implementing a capital gains tax charge on residence: summary of responses” published in November 2014. The information above has been produced based on the information contained in the document, which does not represent final legislation and merely provides an indicative view on the UK government’s current thinking.

No liability as accepted for any act, error or omission thereof based on the information contained in this document. Expert advice should be sought prior to any action being taken based on the information herein.