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IMPLEMENTING A CAPITAL GAINS TAX CHARGE ON NON-RESIDENTS- CONSULTATION MARCH 2014

HMRC and HM Treasury have issued a Consultation Paper on the proposed CGT charge to be imposed on gains made by non-resident persons.

This Bulletin summarises the main proposals which are only at the early consultation stage.

When the new provisions will apply

The new charge will only apply to disposals made from April 2015 and to gains accruing from that date.

Restricted to residential property

It will not cover offices and industrial properties and is restricted to a disposal of property which is “used or suitable for use as a dwelling i.e. a place that currently is, or has the potential to be, used a residence.” This includes property that is in the process of being constructed or adapted for such. See para 2.3.

The charge is likely to apply to residential property even though it is let on commercial terms to an unconnected person. See para 2.4.

Non-residents

The charge will apply to gains realised by non-resident bodies of all kinds and is not restricted to disposals by individuals. See para 2.8.

Non-resident trusts will be within the new charge and interaction provisions with the present non-resident settlement code in TCGA 1992 s87 will be needed. See para 2.10.

Example

> X overseas settlement makes a gain on the disposal of let residential UK property after April 2015. The ATED is not relevant (as it does not apply to settlements even if there is a corporate trustee) but a trust gain (strictly “a s2(2) amount”) is realised under TCGA 1992 s87 and this can be matched with benefits (strictly “capital payments”) received by beneficiaries of the settlement. However, if the gain is chargeable under the new CGT regime it is likely to not be within the s87 regime at all (and the trustees will simply be liable to pay CGT on the gain they make). Note part of the gain may fall outside of the new regime because of the rebasing as at April 2015: such gain is likely to be taxed under the TCGA 1992 s87 code as such rebasing will only apply to gains made under the new regime.

Share disposals not caught

The Government does not propose to tax the disposals of shares by non-residents in companies which hold the residential properties. See para 2.13.

The Annual Tax on Enveloped Dwellings (the ATED) and the new regime

It is proposed to keep the ATED code intact. If a gain made by a company avoids the ATED-related gains charge found in TCGA 1992 Sch 4ZZA (for example, the dwelling is let to a stranger) it may nevertheless be assessed under this new CGT regime. See para 2.26.

Principal Private Residence Exemption

The principal private residence exemption will be made available to non-residents but the Government is concerned that they may elect - under TCGA 1992 s 222(5) - to treat the UK house as their principal residence.

The Government is considering removing the election provisions entirely and reducing the matter to a factual question of whether the house was the taxpayer's principal residence or not. See para 3.5.

Rate of Tax

The rate of tax will be the same as for UK residents-the highest rate will be 28%. See para 3.10.

Withholding Tax

The Government is considering introducing a form of withholding tax to ensure the levy is effective.

A new population of taxpayers

The Government realise the new levy "will bring in a new population to the UK tax system." See para 3.13.

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FIELD COURT TAX CHAMBERS

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