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United Kingdom – Plans Set to Tax Sales of Residential Properties by Nonresidents

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The U.K. government has published the responses to the consultation on its plans to make gains made by non-U.K. residents on the sale of U.K. residential property subject to capital gains tax (CGT) from 6 April 2015.[1] We reported in *Flash international Executive Alert* 2014-039 (4 April 2014) that the U.K. government had published a consultation document, which invited comments and input from various parties. The government has now confirmed its intention to implement the changes from next April. The changes would also apply to U.K. residents who are disposing of residential property located outside the United Kingdom.

Why This Matters

Many assignees to and from the U.K. keep residential property in their home location and may sell the property while on assignment. Typically these assignees, particularly those from the U.K., would expect such a sale to be free of U.K. CGT. However, the government has confirmed that it is extending the scope of U.K. CGT, so that the sale of residential property in a country other than that in which an individual is resident would be within the scope of tax from 6 April 2015.

The changes would mean that any gain arising from the sale of residential property and relating to the period after April 2015 is potentially subject to tax. New conditions of residence and presence in the property are being introduced which, if not met, would mean that the property is not eligible for relief. New reporting and payment regimes are to be introduced with the onus on the taxpayer to report and pay tax within the new deadlines.

Individuals should be made aware of the changes so that they are not presented with an unexpected tax bill which they then expect their employer to meet. The position of who would be ultimately responsible for any tax due under assignment or tax equalization policies should be made clear to all individuals currently on or about to commence an assignment so that proper arrangements can be made regarding payment or assistance with payment.

Current Rules

Currently, an individual is entitled to relief from CGT on the sale of his only or main residence. This is known as Principal Private Residence (PPR) relief. Where individuals have lived in the property from the date of purchase to the date of sale, then any gain arising on the sale is covered by PPR relief. Where an individual leaves the property at some point, the last 18 months of ownership of the property are covered by the relief, even where the individual is not actually living in the property.

Other periods of absence from the property (such as a period whereby the individual cannot occupy the property because he is required by his employer to work outside the country) can also be covered by the relief provided the property is occupied as the main residence both before and after the period of absence. Periods during which the property is let/rented may also qualify for some relief from U.K. taxation.

An individual can only have one main residence at a time, and if more than one property is a residence, it is possible to elect which property should be considered to be the main residence, providing it has been occupied as such at some point in the period of ownership.

New Rules

Under the new rules (which have not yet been legislated), from 6 April 2015, PPR relief would not be available unless one of the following conditions is met:

- The individual was tax resident in the same country as the property for the tax year; or
- The individual spent at least 90 midnights in the property in the tax year (or over all the individual's properties in one country if he had multiple properties in that country).

Once the rules take effect, where a property is jointly owned, occupation by one spouse will be regarded as occupation by the other spouse.

Where neither condition is met, then the individual will be regarded as absent from the property for that year and relief will not be available. Periods prior to 6 April 2015, will still be considered under the old rules and so some form of absence or letting relief may apply if the conditions are met (including that of reoccupation of the property) and the last 18 months of ownership may still be regarded as a period of occupation.

The new rules will be implemented primarily by re-basing the property to its market value at 6 April 2015, so that only the gain arising after this date will be subject to the new charge. There will also be an option to apportion the gain over the whole period of ownership of the property, unless the disposal is also subject to the annual tax on enveloped dwellings. (This is a tax payable by companies that own "high value" residential property and is unlikely to affect the majority of international assignees. This means that the option to apportion the gain should be available to most assignees.)

Losses

Where a loss is made on the disposal of residential property, these losses will be allowed as relief against gains made on the sale of residential property made in the same year. If they cannot be offset in this way, the losses will be carried forward. If there are unused losses carried forward and an individual becomes U.K. resident, the losses will become general losses to be offset against any future gains arising. Losses arising on the sale of residential property by a U.K. resident who subsequently becomes non-U.K. resident can be carried forward but only offset against gains on the sale of residential property.

Reporting Deadlines and Payment of Taxes

All sales must be reported to Her Majesty's Revenue & Customs (HMRC) within 30 days of completion of sale. For individuals within the self-assessment tax return system, any tax will be payable with their tax returns. This is by 31 January following the end of the tax year (e.g., for the year ended 5 April 2016, the payment is due by 31 January 2017). For individuals not within the self-assessment system, tax will be payable when the sale is reported to HMRC with amendments to the calculation being allowed within 12 months after the self-assessment filing deadline for the tax year concerned (for the tax year ended 5 April 2016, this will be 31 January 2018).

KPMG Note

The details of how any tax due is to be paid are still to be released, although the document published by the government states that tax would be payable through a payment on account system rather than through the implementation of a withholding tax, which was one of the original proposals. There will be differences in the payment deadline and mechanism for payment depending on whether there is a pre-existing self-assessment relationship between the individual and HMRC. The agents involved in the sale would not be required to collect the taxes due, although it is envisaged that some of these (e.g., estate agents or solicitors) may offer their services in return for an additional fee.

KPMG Note: Practical Implications

In practice, under the new rules, U.K. tax residents will continue to obtain PPR relief for their U.K. homes, as with the current rules. For individuals who retire abroad but keep their homes in the U.K., they will be treated as entitled to PPR for the years they were in the U.K. but will be subject to the 90-day rule thereafter for each tax year (apart from the last 18 months of ownership which are exempt for anyone who has had PPR). The same will apply to international assignees who become nonresident but keep their U.K. property, which was their main residence before departure.

A U.K. tax resident with an overseas second home (which he might have elected as his PPR under the old rules) must satisfy the new proposed 90-day rule, even if the U.K. tax resident has already elected for the second home overseas to be his PPR.

Once they take effect, the new rules will prevent nonresident investors in U.K. residential property from claiming PPR unless they also satisfy the new 90-day rule. There is relief available for individuals working temporarily in London and who purchase property there. If the individual spends 90 days in that property in one year and then returns to his home location in the next tax year, the individual will qualify for the PPR exemption for the tax year in which he used the property for 90 days plus the last 18 months of ownership (because of the existing 18 months rule).

The new 90-day rule for PPR – in certain circumstances – will have an impact on an individual's residence status under the Statutory Residence Test ('SRT'). If an individual has been non-U.K. resident in the previous three tax years, has not been working in the U.K., and his family is resident with him overseas, the individual has only one statutory 'tie' with the United Kingdom. As such, he can spend up to 183 days in the U.K. without becoming U.K. tax resident. This might enable the individual to spend 90 nights visiting the U.K. and benefit from the PPR without becoming U.K. tax resident; although for individuals working outside the U.K., their work obligations may make this impossible in any event.

After one tax year, that individual will acquire one more 'tie', because he will have spent 90 days in the U.K. in the previous year. That means in the second year, the individual would have to reduce the time spent in the U.K. to 120 days, if he does not want to become U.K. tax resident.

As stated above, under the current rules, in order to benefit from PPR relief when returning to the U.K.

KPMG Note: Practical Implications (*cont'd*)

following an international assignment, a property needs to be reoccupied as a main residence. A common question asked when this is discussed is how long the property needs to be reoccupied for before it can be sold. There is no statutory minimum, but the occupation period does need to be long enough to prove that the property is indeed the individual's main residence (for example, the individual is registered for and paying council tax, utility bills have been issued, etc.). Three months is often given as a potentially suitable period, although this is no guarantee of relief. It is possible that with the introduction of the 90-day rule, it will be more difficult to claim a property has been a PPR on reoccupation if it has not been occupied for the 90 midnights. This is not specifically stated in the consultation response, but there is a possibility that this could be HMRC's approach in future.

Next Steps

The legislation to enact the proposed changes has not yet been published. The legislation is expected to be published as part of the draft Finance Bill 2015 on 10 December 2014. The latest document published by the government states that "further information and guidance will be published in due course," although no indication is given of when this might be.

KPMG Note

Until the publication of this document on 28 November 2014, it was not clear that the government would pursue this following the publication of the consultation document in April. The consultation response has clarified that "absence relief" will still be available for employees who have had a PPR in the U.K. before they are assigned abroad for a number of years, provided the property is reoccupied on return. Certain assignees who sell their property whilst resident abroad will now be hit with a CGT charge.

With the measure taking effect from 6 April 2015, and the draft legislation still to be published, there is limited time for feedback to be given to HMRC. KPMG LLP (U.K.) will be examining the precise wording of the legislation and will provide feedback on this and on the other measures expected to be included in the Finance Bill. Any comments that you have once the draft legislation is published should be given to your regular KPMG contact.

Footnote:

1 See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/380397/Implementing_a_capital_gains_tax_charge_on_non_residents_disposing_of_UK_residential_property-_summary_of_responses_FINAL.pdf .

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