KPMG

cutting through complexity™

April 7, 2015
2015-049

flash Alert

A Publication for Global Mobility and Tax Professionals by KPMG's Global Mobility Services Practice

United Kingdom – Legislation Revised on Sale of Residential Property by Nonresidents

by Marc Burrows, Steve Wade, and Rachel Beecroft, KPMG LLP, London (KPMG LLP in the United Kingdom is a KPMG International member firm)

Updated legislation has now been published[1] on 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. There have been some significant clarifications made to the original draft legislation, including further details on the mechanism for reporting a chargeable gain to Her Majesty's Revenue & Customs (HMRC).

Why This Matters

Non-U.K. resident individuals who dispose of U.K. residential property have to report the disposal within 30 days and may have to pay any U.K. capital gains tax due within that time frame.

The changes introduced by the legislation will mean that any gain arising from the sale of residential property and relating to the period after April 2015 will potentially be subject to tax. New conditions of residence and presence in the property are being introduced which, if not met, will 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 is ultimately responsible for any tax due under a company's international assignment or tax equalization policy should be made clear to all individuals currently on or about to commence an assignment, so that demands for payment or assistance with payment are not made unnecessarily.

Background

We reported in *Flash international Executive Alert* 2014-113 (3 December 2014), that the U.K. government had published its responses to the consultation document 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. At that time, the government confirmed its intention to implement the changes and released draft legislation.

As detailed in our previous newsletter, 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. The scope of U.K. CGT has been extended from 6 April 2015 to cover the sale of U.K residential property by a non-U.K. resident and to restrict relief on disposal of residences in a territory other than that in which an individual is resident. The disposal of non-U.K. residential property by nonresidents remains unchanged provided they are not viewed as temporarily non-U.K. resident.

New Rules in Detail

As reported in a publication issued by us (the KPMG International member firm in the United Kingdom) – our Finance Act 2015 Commentary[2] – from 6 April 2015, CGT will be charged on future gains made by nonresident owners of U.K. residential property interests. The fundamental principles of the legislation, as previously reported, have not changed (and we have not repeated that information in this newsletter). We consider here the mechanics of reporting disposals, claiming relevant exemptions, and paying any tax due. We have also outlined the changes that have been made to the draft legislation.

We have not considered here the requirements placed on nonresident companies or trusts or anyone who is affected by the annual tax on enveloped dwellings because these provisions do not apply to the majority of assignees.

NRCGT Return

Any non-U.K. resident owner who makes a disposal of a U.K. residential property interest will be required to deliver a tax return, known as a "NRCGT return," to HMRC within 30 days of completion of the disposal. The NRCGT return will need to contain the information prescribed by HMRC, the details of which were not available at the time of publication (these will be the subject of a separate GMS *Flash Alert*).

Unless a non-U.K. resident owner has been given notice to file a self-assessment return for the year or the previous tax year, the NRCGT return will need to include an assessment of any tax due and the tax will need to be paid within the 30-day period following completion of the sale. Otherwise, assessment of the tax due and payment of any tax will be required by the normal due date for the tax year in which the disposal is made (i.e., for individuals, by 31 January following the end of the tax year of the disposal).

The NRCGT return has to be filed whether a gain or a loss has been made, and whether any tax is due at that time. Any applicable exemptions must be claimed in the return including any claims for Principal Private Residence (PPR) relief.

Tax Assessment

Tax is payable on chargeable gains in the U.K. at differing rates depending on the level of an individual's other taxable U.K. income. To the extent that a taxpayer is a basic rate taxpayer, gains are charged at 18 percent. If an individual is a higher or additional rate taxpayer, gains are chargeable at 28 percent. When the tax is due, individuals filing the NRCGT return will need to make a reasonable estimate of the amount of taxable income they will receive in the tax year to determine the applicable rate of CGT. Provided that such estimates are fair and reasonable in all the circumstances, no penalties will arise in the event the return turns out to have been inaccurate.

Uncertainty About Residence Status

There may be situations where, at the time of disposal of a U.K. residential property, it is not clear whether or not the property owner will be resident in the U.K. in the tax year of the disposal. This is most likely to be an issue for individuals whose residence status cannot be determined until close to or after the end of the tax year.

If an individual files a NRCGT return and makes a payment of CGT on the reasonable assumption that the individual will be nonresident and it subsequently transpires that the individual was U.K. resident, the disposal will ultimately be treated as having been made by a resident taxpayer. Any tax paid will be refunded by HMRC. However, the deadlines for payment of the CGT must be adhered to and cannot be delayed because of uncertainty over an individual's residence status.

Alternatively, if individuals cannot reasonably assume that they are non-U.K. resident at the time of a disposal, but later the conditions for non-residence are met, the filing deadline for the NRCGT return is 30 days from the earliest date at which the individual's residence status can be determined.

HMRC Powers

A range of HMRC powers will be introduced in respect of NRCGT returns that will broadly replicate HMRC's powers to enquire into self-assessment tax returns and apply penalties for non-compliance. At the same time, similar protections for the taxpayer will be introduced to limit the period in which HMRC can make enquiries.

Changes/Clarification to the Legislation

There have been several changes to the legislation, and answers to a number of outstanding queries have been provided. The main points of note are detailed below.

Residence

From 6 April 2015, any residence owned by a U.K. or non-U.K. resident will only be capable of qualifying for PPR if it is located in a territory in which the individual is resident or, where it is located in a different territory, the individual meets the "day count test" in relation to the residence.

When determining the residence status of the individual, the Statutory Residence Test (SRT) will apply in the United Kingdom. For other territories, an individual will be treated as resident in that territory in a U.K. tax year if he or she is liable to tax in that territory for more than half the U.K. tax year either by virtue of his or her residence or domicile or by applying the same tests of the U.K. SRT, but by substituting the other territory for references to the U.K., albeit with some changes to the definition of work.

KPMG Note

The legislation refers to "territory" rather than "country". This appears to be so that it covers jurisdictions such as the Channel Islands which do not have full independent status as countries. In its application to federal states such as the USA and Switzerland, we understand from HMRC that "territory" is intended to mean the country and not an individual state or canton.

KPMG Note (cont'd)

This clarification on how residents are to be determined and treated for tax purposes is welcome clarification from HMRC, since it means that the familiar SRT tests can be used to determine residence in the overseas territory. The option to use the U.K. tests may be helpful for assignees where they do not know if they will be resident under domestic legislation in the overseas territory.

Presence in the Property – the Day Count Test

As discussed in our earlier *Flash Alert*, when a property is located in a territory in which the individual is not resident, the property can now only qualify for PPR relief for periods when a day count test has been met. Consequently if the day count test is not met, a tax liability may arise.

This day count test has been modified and will now be met if the individual or his/her spouse/civil partner spend at least 90 nights in the property in the tax year (although no one night can be counted twice by virtue of both the individual and the individual's spouse/civil partner being there at the same time). This test will be met if the individual or spouse/civil partner is present in the property at the end of a day, or if some time is spent in the property during the day and the individual stays in the property overnight.

Where the individual has an interest in more than one dwelling in the territory in which the property is located, nights spent in those other dwellings can be aggregated with nights spent in the property in question to determine whether the 90-night threshold is met.

Where the individual owns the property for a part of a tax year, the 90-night threshold in the day count test will be reduced pro-rata.

KPMG Note

KPMG LLP (U.K.) understands that this clarification is so that the "night" counts as having been in the property when individuals arrive home after midnight having worked or socialized until late.

PPR Elections

Where an individual has an interest in more than one dwelling, the individual may need to make a PPR election to nominate the property to be considered the PPR for the purposes of any capital gains tax relief. Generally an individual has two years from acquisition of the interest in the second property to make the election. With the introduction of the new rules, it appears that if the election is not made within the normal time limits, a second opportunity to make the election is afforded when the NRCGT return is filed – the return can either be counted as a first election, or it can supersede a previous election provided the property in respect of which the previous election was made has not been sold.

Claiming PPR Relief in Respect of NRCGT Gains – Spouses and Civil Partners

Spouses and civil partners are only entitled to claim PPR in respect of one property as under the ordinary rules. Either both spouses or civil partners must make the same PPR claim in their own NRCGT tax returns, or if only one individual is required to complete such a return, the other spouse or civil partner must give written agreement to the election made.

KPMG Note: General Observations and Next Steps

The amended legislation provided some welcome changes and clarification to the original legislation, especially with regard to the reporting of the gain. It is now clear that non-U.K. residents who dispose of U.K. residential property on or after 6 April 2015, have 30 days from the date of disposal to report the transaction by filing a NRCGT return – this is whether tax is due or not. A NRCGT return is also required whether the person is in self-assessment and filing U.K. tax returns or not.

There are still some unanswered questions over the practicalities of the new legislation that need to be resolved. KPMG LLP (U.K.) will continue to discuss these points with HMRC and provide updates as they become available. However, HMRC is unlikely to be able to discuss policy with advisers until after a new government is formed following the general election on 7 May 2015. In the meantime, any comments that clients may have on this legislation should be posed to your usual tax advisers or your regular KPMG contact.

Footnotes:

1 See the Web page for Finance (No.2) Act 2015 at: http://services.parliament.uk/bills/2014-15/financeno2.html .

2 See "UK Residential Property – Capital Gains Tax for Non-UK Residents," a publication of the KPMG International member firm in the United Kingdom.

* * * *

6 – 8 October 2015: Save The Date! KPMG's Global Mobility Forum in Rome!

Deploying Talent in the Borderless Economy

If you think it has become easier to deploy talent in the global economy, it is time to reconsider. The trend toward stricter immigration regulation defies the borderless economy. Taxes present significant hurdles to the free movement of employees across geographies. The diversity of labor laws complicates decisions with respect to benefit plan offerings and participation in the cross-border environment. The cost of compliance has never been higher..

Please 'Save the Date' in your calendar today and join us in Rome at KPMG's Global Mobility Forum to discuss and better understand the challenges of deploying talent in the borderless economy.

Venue: Rome Cavalieri Hotel, Rome Italy

For further information please contact your local KPMG People Services or Global Mobility Services representative.

The information contained in this newsletter was submitted by the KPMG International member firm in the United Kingdom. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click **here**. To learn more about our GMS practice, please visit us on the Internet: click **here** or go to http://www.kpmg.com .