



TAXREP 12/13

(ICAEW REP 16/13)

ICAEW TAX REPRESENTATION

ENSURING THE FAIR TAXATION OF RESIDENTIAL PROPERTY TRANSACTIONS: Summary of responses

**Comments submitted on 6 February 2013 by ICAEW Tax Faculty in response to
*Ensuring the fair taxation of residential property transactions: summary of
responses* published December 2012**

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the [*Ensuring the fair taxation of residential property transactions, summary of responses*](#) and the [draft legislation](#) published by HM Revenue & Customs (HMRC) in December 2012.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. We responded to the initial consultation document in [TAXREP41/12](#). We also commented on the introduction of capital gains tax for UK non-natural persons in [TAXREP2/13](#).
4. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

5. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
6. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
7. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

GENERAL COMMENTS

8. While we understand the Government's policy concern about the avoidance of stamp duty land tax (SDLT), taken as a whole this package of measures is of serious concern, adding considerable extra complexity and uncertainty into the UK tax system and imposing new administrative burdens on both HMRC and taxpayers while maintaining the unsatisfactory 'slab' system of taxation used by SDLT.
9. We are concerned at the targeting of these measures although we accept, and welcome, the various reliefs that have been introduced in order to try and improve the targeting. Nevertheless, taken as a whole these measures in effect apply a punitive tax regime to residential properties held in companies and are designed to discourage the holding of residential property through companies. However, the regime will apply regardless of whether the company concerned eventually sells the property which will give rise to an SDLT charge on the purchaser in the normal way. This appears unfair – it would be reasonable to allow the company to elect out of this regime in exchange for providing an undertaking that SDLT would be paid in the normal way if the company was ever sold rather than the property – although we accept that such a measure would add complication to an already highly complicated provision.
10. There are many reasons other than tax as to why residential property is held through a company. Given that these are punitive measures, there needs to be proper transitional provisions and time given for existing structures to be reorganised or unwound without giving

rise to further tax charges. The policy is to discourage 'enveloping' residential property valued at more than £2m but the proposals do not provide for taxpayers to effectively 'de-envelope' existing arrangements.

11. Annual residential property tax (ARPT) is a stand-alone tax on residential property valued at more than £2m which is owned through a company. Separate ARPT returns will be required to be lodged at the time the payment is made, therefore imposing new administrative burdens and costs on companies owning such property but also, as noted above, imposing on HMRC the administration of a brand new tax at a time when resources and headcount are being cut.
12. For 2014/15 onwards, the chargeable period starts on 1 April and the ARPT and return are due by **30 April in that chargeable period**, i.e. at the end of the first month of the period, so ARPT for 2014/15 will be due on 30 April 2014. For 2013/14 only, the ARPT return and payment are due on or before 31 October 2013. HMRC therefore has nine months to design, build, test and implement ARPT so that companies can make a return and pay ARPT for 2013/14 by 31 October 2013 with the return for 2014/15 due and payable only six months later, ie by 30 April 2014.

MAJOR POINTS

13. The new rules impose a number of complexities, including the following:
 - Rather than a straight ad valorem charge, ARPT will use a slab system similar to that used in SDLT. This will create unfairness at the margins, for example a residential property worth £2m will not attract ARPT but if it was worth 1p more then ARPT of £15,000 will be payable (0.75% ARPT) every year. A residential property worth £5m will also pay ARPT of £15,000pa (0.3% ARPT rate) but if it is worth 1p more the rate will be £35,000pa (0.7% ARPT), a difference of £20,000 every year.
 - The maximum amount of ARPT will be £140,000pa payable for properties worth more than £20m.
 - ARPT will be calculated by reference to the market value of the property which will have to be revalued every five years.
 - Where a property is owned at the beginning of the year, then the ARPT will be due and payable 30 days later. If the property is subsequently sold, then a claim will have to be made to recover the excess ARPT paid.
14. From a compliance perspective the available reliefs will probably take many properties out of the rules, but further work is needed on the details of the reliefs to ensure that they work properly. However, there are various conditions attached and a claim will need to be made so even where the reliefs do help there is still an additional compliance burden.
15. While we appreciate the specific relief afforded by clause 47, we do not think it goes far enough because, for various reasons, many residential properties connected to farming businesses were put in farming companies and they will now be caught up in these rules. Clause 47 states that the relief for farmhouses requires that the qualifying farming trade must be carried out by the person beneficially entitled to the interest in the dwelling. Given the complex structures of some farming businesses the relief should be granted to dwellings where the farm trade is carried on by a person connected to the person with the beneficial interest. One solution might be to 'grandfather' residential properties in a farming company out of these rules.
16. We are concerned that the reliefs for the 15% SDLT rate will not be introduced until Royal Assent of Finance Bill 2013 (para 3.9 of the responses); this delay could hinder and delay development work which would be contrary to the Government's growth agenda.

17. The relief for properties exploited to provide an income require that there must be a qualifying trade carried out on a commercial basis with a view to make a profit, clause 36. The high maintenance costs of many historic homes mean that the business often only makes a contribution to the running costs and do not generate a profit. We do not think such businesses should be denied the relief.
18. The relief for property rental businesses as drafted appears to be restricted to those businesses in charge to corporation tax, clauses 34 and 35; we believe the relief should also be available to unincorporated, such as partnerships, property rental businesses.
19. Many of the companies owning properties will have no cash resources with which to pay the ARPT. Is there an intention to extend the scope of ITA2007 s.809V such that funds remitted from offshore to pay the ARPT will not be treated as a remittance?
20. The new ARPT runs to 60 clauses and two schedules and occupies 49 pages of draft legislation. It adds considerable extra complexity into the UK tax system. In addition there are 10 pages of draft legislation for the new CGT charge on UK companies to apply to disposals from 6 April 2013. It is our opinion that this is too tight a timetable in which to design workable new rules for disposals after 6 April 2013, and we believe that the introduction of the rules should be deferred for a year to allow time for the rules to be finalised and for those affected to take advice and where needed make changes to existing arrangements.

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)