



TAXREP 02/13

(ICAEW REP 03/13)

ICAEW TAX REPRESENTATION

EXTENSION OF CAPITAL GAINS TAX CHARGE TO UK NON-NATURAL PERSONS

Comments submitted on 17 January 2013 by ICAEW Tax Faculty in response to request by HM Treasury in Ensuring the fair taxation of residential property transactions: summary of responses published in December 2012

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the possible extension of the CGT regime to disposals of high value residential property by UK Non-Natural Persons (NNP) that are within scope of Annual Residential Property Tax (ARPT) as requested in the document [Ensuring the fair taxation of residential property transactions: summary of responses](#) published in December 2012 by HM Treasury.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area. We will submit comments on the draft legislation in due course.
3. 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

4. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
5. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
6. 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.

KEY POINT SUMMARY

7. In line with our Ten Tenets for a Better Tax System we believe that the tax system should be simple. UK companies are already within the corporation tax system and would pay corporation tax on any gains realised on the sale of a residential property. To change the system to charge tax differently in certain circumstances would add an unnecessary complexity.
8. We accept that by charging corporation tax for UK companies the tax charge will be less than for EU companies liable to CGT but it may be simpler to amend the rate for EU companies than to change the rule for UK companies in certain circumstances.
9. Again, in accordance with our Ten Tenets for a Better Tax System tax should be fair and reasonable. If the CGT charge is extended to UK companies it is possible for such a company to be liable to multiple taxes on the same property. For example, a UK company could own and rent out residential property in Central London and also have a property, worth in excess of £2M (amongst many similar properties) that is occupied rent free by a Director. The director pays Schedule E on the benefit enjoyed and the company pays the appropriate Class 1A NIC. The company will now also have to pay the annual charge, without apparently any relief. If in addition it was now liable to pay CGT at an enhanced rate that would not be fair and reasonable.

10. If the CGT charge was extended to UK NNPs changes to the reliefs available would help to make the charge fairer and more reasonable. We suggest the following changes:

- 10.1. It seems to be that the ARPT reliefs, in contrast to the SDLT reliefs, require the beneficial owner of the dwelling to be carrying on the relievable trade or activity. That requirement could be removed. In group situations it could be a particular problem and also where there is contract farming.
- 10.2. Relief should be available where a qualifying person uses the property provided he or she pays the full market value for their use. UK tax will be payable on the income so there seems no reason why relief should be denied.
- 10.3. The conditions requiring a view to a profit need to be removed when considering the relief for the exploitation of a dwelling. It should just be that a commercial, market rate is charged. The concern here is that given the maintenance costs of a historic building charging the public to look round will generally be to have a contribution towards these costs rather than generating sufficient income to actually make a profit.
- 10.4. The qualifying trade requirement at draft clause 44(4) should be removed such that there is relief for employer/partner occupation whatever the trade. There seems no good reason for the restriction. In addition where the occupation of the property is taxable and liable to NI as an employment benefit the relief should be available regardless of the interest that the employer has in the company.
- 10.5. The qualifying farm worker condition should be removed. The relief should apply where part of the farmhouse is used for the business and not just when it is occupied by a qualifying farm worker. It seems unfair that when a farmer gets to an age when he or she can no longer take a day to day role in the business they have to move out of their home in favour of their successor for the relief to continue.
- 10.6. Relief should be extended to companies owning the freehold for a block of flats where the company is owned by the leaseholders of the flats where on sale of the leasehold the holding in the company passing across. Often the value of the freehold will be less than £2 million but there will be cases where the company will be caught.

E <mailto:sue.moore@icaew.com>

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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)