ICAEW
REPRESENTATION 64/18

CAPITAL GAINS TAX: PAYMENT WINDOW FOR RESIDENTIAL PROPERTY GAINS (PAYMENT ON ACCOUNT)

Issued 6 June 2018

ICAEW welcomes the opportunity to respond to the *Capital gains tax: Payment window for residential property gains (payment on account)* consultation published by HMRC 11 April 2018.

This response of 6 June 2018 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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MAJOR POINTS

Key point summary

1. We are concerned that this consultation has been issued as a technical consultation only; there has been no consultation on the policy. Looking at the Tax Consultation Framework the whole of Stage 1 (Setting out objectives and identifying options) has been omitted and only a part of Stage 2 (Determining the best option and developing a framework for implementation including detailed policy design) is included within the consultation. The intention of this policy was given in the 2015 Autumn statement by the previous government but the detail of it has not been subject to consultation.
2. It was stated in the 2015 Autumn statement that the earlier payment was required as some taxpayers no longer have enough of the proceeds from the disposal to cover the tax charge. No evidence was given for this statement and in particular no distinction was made as to whether the tax payer had insufficient to pay the tax because they had used the proceeds to clear the outstanding loan on the property or if they had spent the proceeds subsequently. If the former then an earlier payment window will have no impact on the taxpayers ability to pay and may make it worse for some taxpayers who may have been able to raise the funds before the 31 January due date.
3. It is fundamentally wrong that transactions within the same tax year after the date of disposal of the residential property cannot be taken into account when calculating the tax payable. If the tax has to be calculated based on what has happened prior and not post the disposal then it should be possible to claim a refund as soon as a transaction has occurred that impacts the tax payable; the taxpayer should not have to wait until their self assessment is submitted. Taxpayers not in self assessment will receive their overpaid CGT back as soon as their computation is finalised so the policy discriminates against those in self assessment.
4. As with the payment on account system for income tax it should be possible to reduce the CGT payment on account once the calculation is finalised in advance of the self assessment and generate a repayment using the same conditions and penalties as for reducing income tax payments on account.
5. If the policy persists that post disposal events cannot be taken into account until the self assessment is submitted then excess capital gains tax (CGT) should be repaid as soon as it is submitted even if there is income tax payable the following 31 January. The excess capital gains tax paid should not be used to reduce the income tax that is not due under the legislation until 31 January following the end of the tax year.
6. Overall the taxation of property has become over complicated with several bits of legislation “bolted on” and, as we have noted before, the whole area needs a complete review to be made more coherent and simpler to understand. Apparently simple matters are complicated, for example the date of exchange is the trigger for CGT but the date of completion starts the clock ticking for the 30 day reporting window.

General comments

7. Taxpayers may well incur additional compliance costs as they will be required to submit a provisional tax computation within 30 days of completion with a second computation being required when perhaps further costs or information have come to light or subsequent capital events have occurred necessitating a revised computation and then the final report on the self assessment. As an alternative to a computation of the gain a system similar to that in other countries where a fixed percentage of the sale proceeds are paid over on account of the CGT with a repayment/additional payment being made once the detailed computation has been submitted could be an elective option for taxpayers.

8. In our view the proposal will vastly increase the number of duplicate returns and payments that have to be made and will cause stress and anxiety to previously tax compliant citizens. As noted above we are concerned there has been no consultation on the actual policy and no evidence presented to demonstrate this change will generate additional revenues but it will lead to additional costs for HMRC as well as the taxpayer. The idea was mooted by the previous government in the Autumn Statement 2015 but it has not been the subject of a consultation.
9. The 30 day window is impractical for many taxpayers as has been evidenced by the non resident CGT (NRCGT) debacle and the number of penalty appeal cases being taken to the tribunal. Lessons need to be learned from the roll out of NRCGT about how to make sure taxpayers are aware of the change; First Tier Tribunal judges have been very critical of the way NRCGT was implemented and the information disseminated. Many taxpayers will not want to commission a valuation, even if they realise one is necessary until after the sale is certain, so not until exchange making the 30 day window inadequate.
10. We foresee several tribunal cases arising as a result of the change, for example where there are arguments over whether a disposal was of a residential property or not, whether private residence applied in full or not and the level of penalties charged as with the NRCGT regime.
11. We are concerned at the complexity being introduced in this specific area, that is taxing gains on residential property, we have annual tax on enveloped dwellings related CGT, NRCGT and now UK resident CGT with potentially tweaking of the NRCGT rules following this consultation. Is there any wonder that taxpayers do not know what to report and when?
12. These proposed rules do not apply to corporates, another factor pushing landlords down the corporate route, is that the policy intent?

RESPONSES TO SPECIFIC QUESTIONS

Q1: Are there areas where the proposed scheme for UK residents could be improved to make it easier for taxpayers to comply?

13. The expression “if it ain’t broke, don’t fix it” comes to mind; the current system for reporting disposals of residential property and the payment of CGT that is embodied in the well understood self assessment regime appears to work in the majority of cases so why is it necessary to introduce an entire new system? The new system will inevitably have teething problems, it will increase the work load for HMRC as calculations will have to be checked at least twice, it will increase the time and potentially professional costs for vendors reporting the disposal twice and ultimately only speeds up the tax receipt rather than increasing it.
14. Unrepresented taxpayers in particular will find it very confusing that residential property disposals have to be reported in a different way and to a different time scale when compared to disposals of other chargeable assets.
15. Introducing a de minimis for a payment on account and reporting would reduce the administrative burden for some taxpayers, say £1,000 as for income tax.
16. Setting the rate of tax at 18% with any additional tax taking it to the 28% rate being paid on the 31 January payment date would remove the requirement for taxpayers trying to assess in advance how much of their gain will be taxed at 18% and how much at 28%. There could be an argument for claiming the 18% rate on all the gain within the basic rate band if the completion date was in early April before any income had been received/earned for the tax year.
17. Paragraph 3.6 says no payment on account will be required if the gain will be taxed in another country and an amount of double taxation relief will be available but it may not be

possible to know if foreign tax is payable within the 30 day payment window. Many countries deduct a fixed percentage from the sale proceeds and the actual gain is not calculated and assessed for several months. Will the legislation remove the need for a payment on account if a fixed percentage has been deducted from the sale proceeds even if subsequently there is no foreign tax payable? Or can the 30 day UK reporting period start at the time the foreign tax is assessed? Non domiciliary taxpayers will have the additional burden of deciding if they will be claiming the remittance basis or not for the year of disposal, potentially long before they have the full information to make that decision.

18. Under the ruling in Bentley v Pike Ch D 1981, 53 TC 590; [1981] STC 360 the gain/loss on disposal of a foreign asset is calculated by using the rate of exchange at the time of acquisition for the cost and the rate of exchange at the time of disposal thereby sweeping the exchange loss/profit into the calculation. Will the payment on account just be due on the gain on the residential property after stripping out the exchange loss/profit?

19. Paragraph 3.10 gives two instances where no payment on account and no return is required; what about where for example, a gain is deferred by a previous enterprise investment scheme investment, or the gain is below the annual exemption, or the gain is held over on a transfer into trust or incorporation relief is available, will a return be required even though no tax is payable?

Q2: Does the proposed treatment of losses on disposals of residential property and disposals of other assets strike the right balance between simplicity and fairness? If not, what alternative approach would you propose?

20. In our view the proposal is unacceptable. All subsequent sales and CGT deferral/relief investments should be taken into account and any CGT overpaid should be repaid within a 30 day window the same timeframe as given for the initial payment. As there will be a mechanism in place to adjust for subsequent residential property sales which will incorporate other chargeable disposals up to that date there is no reason it should not be applied to all chargeable disposals. It is inappropriate to leave the taxpayer out of pocket “to avoid undue complexities”, abandoning this policy would remove all the complexities.

Q3: Are there areas where the scheme for non-residents could be improved to make it easier for taxpayers to comply?

21. The scheme could be improved by extending the time limit, 30 days is inadequate as many of these disposals are likely to be complex with improvement expenditure, mixed use, partial principal residence relief, letting relief, inherited property with no agreed valuation etc. Quite often the sales complete quicker than anticipated and so the information for the calculation is not collated in advance but more often the vendor is not aware of the 30 day rule until the sale is completed. This applies equally to UK residents.

Q4: Do you have comments on the provisional table of impacts?

22. It is impossible to see how the impact assessment figures have been arrived at. The changes are introducing a timing difference in the payment of tax, they will also collect more tax than the government is entitled to as for example subsequent losses cannot be taken into account until the end of the tax year and the self assessment is submitted and processed but again that is a temporary timing issue so it is not clear how it will raise revenue of £1.7bn. Without the rationale of how the impact is calculated it is not possible to comment on it.

APPENDIX 1

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

The tax system should be:

- Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
- 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.
- Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
- Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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 https://goo.gl/x6UjJ5).