STEP Response to Capital Gains Tax: Payment window for residential property gains (payment on account)

About Us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries, with over 7,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members’ views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

STEP welcomes the opportunity to respond to this consultation.

Response

1 GENERAL COMMENTS AND Q 1: ARE THERE AREAS WHERE THE PROPOSED SCHEME FOR UK RESIDENTS COULD BE IMPROVED TO MAKE IT EASIER FOR TAXPAYERS TO COMPLY?

1.1 As the proposed system will merely accelerate tax receipts in a particular tax year rather than increasing the overall tax take, we are concerned that it is an additional unnecessary complication to the system which will adversely affect many taxpayers and indeed cause some landlords to leave the buy to let market.

1.2 We can see some logic in non-UK residents having to pay CGT within 30 days as usually they will not be in the self-assessment regime: the non-resident CGT return will usually be the only UK tax compliance required of them in relation to a particular tax year. The position is very different for UK resident taxpayers, whose compliance burden will only be increased, as presumably will HMRC’s.

1.3 As it is, the rate of CGT on residential property gains is different to the rate on other gains. Introducing different CGT reporting and payment dates for residential property gains (and with the date of exchange being relevant for some purposes and the date of completion being relevant for other purposes) adds yet further complexity.

1.4 As a taxpayer’s CGT rate is dictated by his income tax rate, the current system (whereby both taxes are on the whole dealt with at the same time after the end of the tax year, when all the figures are known) makes good sense. The proposed 30 day system for CGT will have
adverse implications for the significant proportion of taxpayers who do not know until after the end of the tax year into which income tax band they fall, including the self-employed, those working in the “gig economy” or those who unexpectedly lose their jobs. Many such people (who can probably ill afford it) will end up overpaying (at 28%, rather than 18%) simply to avoid the threat of penalties.

1.5 A 30 day window may not allow a client sufficient time to calculate the gain or if necessary seek tax advice, particularly where perhaps the property was acquired a long time ago and/or there has been capital expenditure. Many taxpayers will lack understanding of the implications until very late in the transaction.

1.6 Digital reporting is supposed to be simplifying compliance for taxpayers and, by setting up the Office for Tax Simplification, the Government has recognised that the tax system is overly complicated. The proposed new system is a significant further complication. Taxpayers will be required to submit multiple tax returns. Currently if a landlord sells three properties in a tax year, he reports once in his self-assessment return. He would now be obliged to report the three sales separately all within 30 days of disposal and then to repeat his work by reporting the same disposals in his self-assessment return. The vast majority of taxpayers are in the habit of liaising with their advisers only once a year to deal with their tax affairs. These proposals are will lead to increased costs for taxpayers in taking professional advice as there will be extra returns and compliance.

1.7 The proposal is increasing taxpayers’ exposure to penalties for failure to submit returns on time as they will now be obliged to submit multiple returns. Perhaps a fairer solution would be to charge interest on late payment of the tax but a penalty should only be chargeable if the disposal was not properly returned in the self-assessment return (ie similar to the way payments on account operate for income tax).

1.8 A person disposing of a furnished holiday let by way of gift can hold over the gain under section 165 TCGA. The taxpayer has four years to make this election from the date of disposal, though in practice a decision normally needs to be made by 31 January following the tax year of disposal. Now they will be required in practice to make this decision within 30 days. Otherwise they would have to pay the tax and later claim it back, which would increase administration for HMRC and the taxpayer. This will also apply to disposals where a gain can be held over under section 260 TCGA.

1.9 Holdover relief is withdrawn if the donee emigrates in the following six years. Will the trustees/donor have to make a report and pay the tax within 30 days of a donee emigrating? There would be very little time for trustees or a donor to obtain the tax from the donee, even assuming that they are aware in good time that the donee has emigrated.
1.10 Landlords operating furnished holiday lets are entitled to claim rollover relief for one year before or three years after a disposal. There will often be situations where the replacement property has not been purchased within 30 days of the sale of the old property. The landlord would then have to pay the CGT, which may well affect his ability to purchase the new property. Can there be an exception to the 30 day payment rule where the landlord intends to roll over the gain?

1.11 In situations where holdover or roll over relief is claimed after the tax has been paid, can HMRC give an assurance that they will refund the tax within 30 days of a reclaim being made?

1.12 Coming on top of the withdrawal of mortgage interest relief, the number of properties available for renting may be reduced. Currently a landlord can sell a property on 6th April and replace it straightaway. Assuming roll over relief is not available, he then has almost 22 months before he has to pay the CGT on the disposal of the first property. A reasonable amount of rental income will have been received from the new property during those 22 months and that rent (net of income tax) is available to pay at least part of the CGT. This will not be possible under the new system. And that may cause some taxpayers to stop being landlords.

1.13 We note that there is a plan to take account of tax payable overseas and for those using the remittance basis, but very often it is not until after the end of the tax year that the person concerned will be able to assess whether it is worth his while to pay the remittance basis user charge and to claim the remittance basis. Such persons may have to report and pay the tax within 30 days (with all the additional complications of working out allowable costs in a foreign currency) to avoid the risk of interest and penalties if they subsequently decide not to claim the remittance basis for the year in question.

1.14 There have been numerous problems with overseas taxpayers being unaware of their obligations to report on sales of UK residential property. How does HMRC plan to ensure that appropriate publicity is given to the proposed system?

2 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?

2.1 The proposal fails to take account of losses incurred in the year by a taxpayer after the sale of the residential property and the payment of tax. This could lead to significant cash flow issues for some taxpayers. While it is appreciated that HMRC wishes to collect tax sooner this seems to fail to meet the criterion of fairness.
3 ARE THERE AREAS WHERE THE SCHEME FOR NON-RESIDENTS COULD BE IMPROVED TO MAKE IT EASIER FOR TAXPAYERS TO COMPLY?

3.1 Many non-resident taxpayers have failed to appreciate the change in rules has meant that they are taxable in the UK despite not being resident here. The publicity for the changes has been poorly targeted leading to a large number of penalty appeals.

3.2 The further change to payment within 30 days must be directly targeted at those affected. Ideally an estate agent should notify the taxpayer with the delivery of a government produced document as part of the “selling pack” to help the taxpayer to understand their obligations as early as possible. It may also be helpful if this document guides overseas residents as to where to seek advice if they are confused between self-assessment and the capital gains tax report that will stand alone.

3.3 At present the non-resident CGT form does not allow information to be saved on the form. You have to complete and submit it in one go. This means that you cannot send a draft to a client for approval: you have to complete the form twice, leading to unnecessary additional compliance costs.

3.4 On submission of a non-resident CGT return, HMRC send an email with a reference, but there is nothing linking that reference to the client or the property. This makes it very difficult for an adviser who is doing several returns at the same time. A subsequent email from HMRC notes whether tax is payable and that email includes the client reference and an abbreviated version of the client’s name, so the two can be matched at that point, but it would be much easier if the first email did the same.

4 DO YOU HAVE COMMENTS ON THE PROVISIONAL TABLE OF IMPACTS?

4.1 As stated at 1 above, we are concerned that the advantages of the new system for HMRC will be heavily outweighed by the extra administration and costs for taxpayers.

4.2 The impacts table recognises that landlords may be affected by this. The timing is such that loss of mortgage interest relief will also bite hardest at the same time, making some property businesses unviable.

4.3 This may affect the available housing stock for rental as indicated above.

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