

Further written evidence submitted by the Chartered Institute of Taxation (FB02a)

Chargeable gains on disposals of interests in UK land by non-UK residents

Clause 13 and Schedule 1

Executive Summary

While acknowledging the extensive positive engagement by officials in the consultation process, we are concerned that the consultation on this fundamental change began at too late a stage of the policy development. This complex legislation will require both timely guidance and extensive efforts from government to raise awareness of it, given that those affected will be resident outside the UK.

- 1.1 Clause 13 and Schedule 1 extend the UK tax base to include gains on the disposal of UK land by most non-UK residents. From April 2019 most non-UK residents will be chargeable on gains accruing on the direct and indirect disposal of non-residential (commercial) property for the first time. In addition, the existing capital gains tax (CGT) charge for non-UK residents disposing of UK residential property will be extended to indirect disposals and disposals made by widely-held companies.

Indirect disposals refers to disposals of interests in ‘property rich’ entities¹ rather than a direct disposal of the land.

The policy intent is to more closely align the tax treatment of non-UK resident owners of immovable property with that of UK residents creating a single cohesive framework as far as possible, including the welcome simplification brought about by the abolition of the charge to ATED-related CGT.²

The measure aligns the UK with most other jurisdictions in taxing non-residents on their gains on land and property situated in that jurisdiction.

- 1.2 While acknowledging the extensive positive engagement by lead officials in the consultation process and the aim to simplify and rationalise the provisions for taxing real estate gains on non-UK residents, we are concerned that the consultation on this fundamental change began at Stage 3 of the government’s tax consultation framework³.
- 1.3 The government’s policy paper *The new Budget timetable and the tax policy making process*⁴ recognises the value in early-stage consultations particularly where a large-scale reform is under consideration. This policy represents a fundamental shift in the

¹ Deriving at least 75% of their value from UK land where the person has a substantial indirect interest in that land (broadly, at least 25%)

² ATED-related CGT was introduced in 2013 for gains on disposals of residential property held indirectly via companies or other entities subject to the Annual Tax on Enveloped Dwellings regime.

³ <https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process#the-consultation-process>

⁴ <https://www.gov.uk/government/publications/the-new-budget-timetable-and-the-tax-policy-making-process/the-new-budget-timetable-and-the-tax-policy-making-process#the-consultation-process>

longstanding policy in relation to commercial property, yet stages 1 and 2 of the consultation process were not engaged. One of the key recommendations of the CIOT, Institute of Fiscal Studies and Institute of Government's Better Budgets report⁵ is to start consultation at an early stage.

- 1.4 The constrained consultation period has resulted in a relatively short period to devise very complex draft legislation, particularly in the latter stages of the consultation when the focus turned to consulting upon and drafting the provisions dealing with exempt investors and collective investment by funds in order to ensure that currently exempt investors would not incur unintended tax charges and that investors in collective investment vehicles would not suffer multiple tax charges on the same disposal.

Draft legislation for the new funds regime was published for the first time on 7 November in Finance (No 3) Bill 2017-19, together with a detailed technical note, providing limited time for investors and fund managers to assimilate the final provisions before the new rules take effect in April 2019.

- 1.5 There will be a need for timely guidance well in advance of the changes coming into effect. Guidance is promised by the end of 2018 to support these changes. The changes will substantially affect non-UK residents who may not have UK advisers and who will need to be aware of new reporting and payment obligations in relation to both indirect and direct disposals. The earlier introduction in April 2015 of NRCGT on gains arising on the disposal of UK residential property for certain non-resident individuals, trustees and closely-held companies has led to a number of cases in the First-tier Tribunal in relation to late filing penalties because non-UK residents were unaware of the changes to the reporting requirements.

It would be helpful if government could answer the question:

In addition to the publication of timely guidance, what steps are being taken to raise awareness of the new regime and the reporting requirements in advance of April 2019?

2 The Chartered Institute of Taxation

- 2.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,400 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

⁵https://www.instituteforgovernment.org.uk/sites/default/files/publications/Better_Budgets_report_WEB.pdf