

# The taxation of residential property transactions — update

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**CATEGORY:**  
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Since the publication of the consultation paper “Ensuring the fair taxation of residential property transactions” in March 2012, which set out proposals for a new annual charge and capital gains tax charge on non-natural persons (‘NNPs’) holding high value residential property, NNPs have been awaiting the publication of the Finance Bill 2013 with some anxiety. Now that (at least some of) the detailed legislation has been published, time is of the essence if action is to be taken before the proposed rules come into force.

There is good news and bad news for NNPs. Clarification and exemptions announced mean that neither the annual charge nor the capital gains tax will be as far reaching as originally feared. However, as always the devil is in the detail of the draft SDLT rules issued today, but although the proposals relating to the new capital gains tax rules are refined in HM Treasury’s summary of responses to the consultation, draft legislation setting out the details of these rules has not been published and is not expected until January 2013. NNPs may well need to take steps before then to ensure that they can complete any restructuring before the new annual charge rules come into force on Monday 1 April 2013.

## 1. Annual residential property tax (‘ARPT’)

The ARPT will be payable by NNPs who have a beneficial interest in a residential property worth more than £2million.

### 1.1 \_Who will be liable?

Liability to the ARPT will be restricted to companies, collective investment schemes and partnerships which have a company as a partner, wherever they are resident. Trusts, whether onshore or offshore and whether or not they have personal or corporate trustees, will not have a liability to the ARPT. Further, a number of significant exemptions will apply to ensure that ‘genuine businesses carrying out genuine commercial activity’ are excluded from the charge.

Relief will be available for:

(a) Properties exploited in a property development, trading or rental businesses provided the property is not occupied by a ‘non-qualifying person’.

The definition of ‘non-qualifying person’ is extremely wide and will include any beneficial owner person connected with them, including for example, the child or other relative of the settlor of a trust which holds residential property through a NNP.

The current requirement for a property development business to have been carried on for two years has been dropped for the ARPT.

(b) Properties exploited as part of a trade under which the property is available for use or enjoyment by the public at least 28 days a year on a commercial basis.

© Properties owned to provide employee accommodation.

(d) Properties held by charities for charitable purposes.

(e) Farmhouses, which are of a ‘character appropriate’ to the land being farmed and are occupied by farm workers and also certain other properties.

It should be noted that even where a relief is available, it will have to be claimed each year. The first returns will need to be filed by 1 October 2013. In future years returns will need to be filed by 30 April each year. Any charge due must be paid by 31 October in each year.

### 1.2 \_How much will they pay?

\_The rate of the ARPT is unchanged:

\*Taxable value of property

Annual chargeable amount

*£2 million – £5 million	£15,000
£5 million – £10 million	£35,000
£10 million – £20 million	£70,000
Greater than £20 million	£140,000

The 'chargeable period' will run from 1 April to 30 March of each year (rather than following the tax year). Where the ARPT is applicable for part only of a chargeable period, the annual chargeable amount will be apportioned accordingly.

The ARPT will be index-linked (annually to the CPI), but the thresholds will remain constant in nominal terms. Residential properties will need to be valued every five years, with the first valuation point being 1 April 2012 to see which level of charge applies.

## 2. Capital gains tax

The new capital gains tax regime will apply to the disposal of a residential property for more than £2 million on or after 6 April 2013.

### 2.1 \_Who will be liable?

– Non-UK resident NNPs holding high value residential property will only come within the scope of the new capital gains tax charge if they fall within the scope of the ARPT, so that those non-UK resident NNPs who qualify for the reliefs set out above will not be subject to the capital gains tax charge.

This change ensures consistency between the two charges – a consistency that was lacking under the original proposals. In particular this will be welcome news for non-UK resident corporate trustees and also those who rent properties to third parties, who will now remain outside the scope of the capital gains tax charge where they hold high value residential property directly.

### 2.2 \_How much will they pay?

#### (a) Gains subject to the charge

In acknowledgement of the fact that non-UK resident NNPs have hitherto been outside the scope of UK capital gains tax, capital gains tax will only be payable on gains attributable to increases in value post 6 April 2013 i.e. a rebasing is available.

The mechanism for the rebasing and whether a formal application will have to be made to benefit from the rebasing should be clarified in January 2013.

#### (b) Rate of tax

The applicable rate of capital gains tax will be 28% with a 'tapering relief' available where the value of the property falls 'just' over the £2 million threshold.

### 2.3 \_The sting in the tail

– The proposed rate of tax payable by non-UK resident NNPs is above that currently paid by UK resident companies. The Government is therefore to consider whether to extend this capital gains tax charge to UK resident companies as well.

## 3. Stamp Duty Land Tax

When the consultation was announced in March this year, the rate of SDLT on purchases of residential property by NNPs was increased to 15%. These rules will now also be amended to incorporate the same reliefs as will apply for the ARPT, so that the 7% rate will apply to persons who would not be subject to the APRT. Payment of the 7% rate will be conditional on the appropriate relief applying for three years following the purchase and the property not being occupied by a non-qualifying person in that time.

However, the amendments will only be effective from the date of Royal Assent of the Finance Bill 2013 (which is expected in June/July 2013) and so there will remain a period of time during which the existing rules will continue to apply.

## Conclusion

The detailed rules announced today, in general represent a sensible reduction of the scope of the new rules, while preserving their original intention. Many NNPs who had previously contemplated a frenzied period of restructuring to put in place a new structure before the 6 April deadline will now need to reconsider to see whether any action is in fact required. Some may now fall entirely outside the scope of the new charges and others may consider them an acceptable burden, particularly when the benefits of NNP structures from a privacy, inheritance tax and (following the Court of Appeal judgement in *Prest v Prest*) divorce perspective.

In considering any options for new property purchases, NNPs and their beneficial owners should consider the impact of the General Anti-Abuse Rule ('GAAR') which will also apply from the date of Royal Assent of the Finance Bill 2013. The GAAR provides for the re-characterisation of transactions that are considered abusive so that any tax advantages can be counteracted. While it seems that the GAAR is unlikely to apply to any steps taken before Royal Assent, the creation of any new structures or restructuring carried out after that date will be subject to the new rules.

For those looking for alternative structure and seeking long term stability, there are further uncertainties. While, in the Autumn Statement, George Osborne appeared to rule out any new taxes on property for this Parliament, the questions of; whether that ARPT will simply be a precursor to a mansion tax that applies to all high value residential property and whether all non-resident property owners will in time be brought within the scope of capital gains tax remain.

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