



**intergenerational
foundation**

Fairness for Future Generations

A response from the Intergenerational Foundation to the public consultation on implementing a capital gains tax charge on non-residents

Who we are...

The Intergenerational Foundation (www.if.org.uk) is a think tank which researches fairness between the generations in the UK, in order to protect the interests of younger and future generations, who are at risk of being ignored by current policy-makers.

Our response...

The Intergenerational Foundation (IF) is pleased to be able to respond to this public consultation on implementing a capital gains tax charge (CGT) on non-residents. IF's involvement in this topic stems from a research paper we published in 2013 that analysed the tax incentives which are given to buy-to-let landlords which enable them to out-compete first-time buyers in Britain's extremely competitive housing market. It received national media coverage and can be viewed by following the link below:

(2013) *Why BTL (buy-to-let) equals "Big Tax Let-off"* London: The Intergenerational Foundation

Anecdotal evidence suggests that a significant proportion of Britain's private landlords are non-residents, although there seems to be a lack of available data to support this. IF's report demonstrated that landlords in Britain are able to exploit a range of loopholes in the CGT system which enable them to minimise – and, in some cases, completely eradicate – their CGT liabilities when they dispose of properties. Therefore, it is important that if non-resident landlords are going to be charged CGT under the new regulations then they are not simply able to avoid it by taking advantage of the loopholes in the current system. The measures which benefit landlords include:

- A landlord can claim private residence relief on the final 36 months of ownership as long as the property was their main residence at some point during their ownership. Following recent changes in the rules, this period of exemption is being reduced to 16 months from 6 April 2014. There is widespread evidence that landlords take advantage of this rule by briefly living in one of their rental properties as their main residence specifically to gain this exemption.
- "Letting Relief": Landlords can also claim a separate allowance called "Letting Relief" which is worth the lowest of the following three sums: the amount of private residence relief which has already been claimed, the value of the increase in capital gains which occurred during the period when the property was being let, or £40,000. Two individuals can combine their Letting Relief allowance, so it can be worth up to £80,000 for a married couple who let out properties which are held in joint ownership.

- All private citizens also benefit from the “annual exemption” from CGT, which was worth £10,600 during the 2012-13 tax year. The Consultation Document proposes that this allowance should be extended to cover non-residents as well.

IF’s report contained the following worked example which explained how these loopholes can be used in combination to vastly reduce a landlord’s liability to pay CGT when they sell one of their properties, even if they have made significant capital gains on it:

“Arthur bought a flat in South London for £100,000 in the year 2000 and sold it in January 2010 for £223,000. This means he made a gain of £123,000. He lived in the property for the first three years and then rented it out for the remaining seven. For tax purposes, capital gains are assumed to have accrued equally throughout the period of ownership; therefore Arthur officially made gains of £12,300 per year. The capital gains which accrued during the first three years qualify for private residence relief, in addition to the gains which accrued during the final three years (because of the 36 month rule), so this shelters £73,800 from taxation.

This leaves £49,200 worth of gains which accrued during the first four years when the flat was rented out. Arthur can then claim letting relief, which would be worth £40,000 (because this is less than the amount of private residence relief which has already been claimed, £73,800, or the gains which occurred during the period under consideration, £49,200). This reduces the sum on which capital gains tax would be liable to just £9,200, but this liability can also be removed if Arthur has a wife or partner who can also claim her own £40,000 worth of letting relief; or if Arthur declares no other capital gains during this tax year, he can use his capital gains tax annual exemption, which was worth £10,100 during the 2009/10 tax year. Therefore, using entirely legal means he is able to avoid paying any capital gains tax, despite the size of the profit he made from selling his rental property.”

There is also evidence to suggest that landlords within the buy-to-let sector may be guilty of committing significant amounts of outright tax evasion; HMRC have estimated that tax evasion by landlords who did not complete a self-assessment tax return during the 2009–10 tax year may have been worth £550 million.

IF argues that it undermines the arguments in favour of extending the CGT regime to cover non-resident landlords if they are able to take advantage of these loopholes and allowances to avoid paying it. Therefore, the report proposed that the support which is given to landlords ought to be re-examined in light of the current conditions in Britain’s housing market, where there is a chronic under-supply of new homes and millions of would-be first-time buyers are unable to get on the housing ladder. The report also argued that the way in which CGT is collected ought to be reformed to include a withholding system, so that sellers do not receive their money from a successful sale until the CGT liability has been deducted and paid, in order to reduce evasion. In theory, making non-resident landlords liable for CGT should make the UK rental market appear less attractive to them, reducing competition between landlords and first-time buyers; however, this attractive feature of the new policy may fail to succeed if the system is not tightened to make it harder for them to avoid paying it.

Author: