



HM TREASURY

# Ensuring the fair taxation of residential property transactions

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May 2012





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ISBN 978-1-84532-978-5  
PU1319

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# 1

## Introduction

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**1.1** The Government announced a package of measures in Budget 2012 to ensure that individuals and companies pay a fair share of tax on residential property transactions and to tackle avoidance, including the wrapping of property in corporate and other “envelopes”. This consultation is on two specific parts of this package:

- An annual charge on residential properties valued over £2 million owned by certain “non-natural” persons (broadly companies, partnerships including companies and collective investment vehicles); and
- The extension of Capital Gains Tax (CGT) to the disposal by certain non-resident non-natural persons of residential property, interests in such property, or the envelopes in which they are held.

### Policy context

**1.2** The Government’s aim is to ensure that everyone pays their fair share of tax on residential property. While most people do pay their property taxes (and without them the Government could not begin to afford the public services on which the country depends) there are some who avoid paying their share. The Government is determined to address this.

**1.3** One of the sources of property tax avoidance which the Chancellor highlighted in his Budget speech “...is the way some people avoid the stamp duty the rest of the population pays, including by using companies to buy expensive residential property [“enveloping”].”

**1.4** To address this form of avoidance, and to ensure the owners of high value residential property pay their fair share of tax, the Government has adopted a threefold approach:

- First, the introduction from 21 March 2012 of a 15 per cent rate of SDLT on acquisitions of residential dwellings costing more than £2 million by certain non-natural persons (companies, partnerships including a company and collective investment vehicles);
- Second, from 1 April 2013, an annual charge on residential property owned by non-natural persons, which is discussed in Chapter 2; and
- Third, from 6 April 2013, the extension of Capital Gains Tax (CGT) to gains on the disposal of residential property by non-resident companies and others (but not individuals), which is discussed in Chapter 3.

**1.5** As far as possible, the three measures will be aligned to minimise the administration and compliance burden and to ensure they are targeting similar activities.

**1.6** The aim of the CGT extension is to support the annual charge by creating a further deterrent to enveloping and to create more equal tax treatment between UK residents and non-residents. In order to be consistent with the annual charge, it is envisaged that this extension will only apply to residential properties disposed of for more than £2 million.

**1.7** Draft legislation for the annual charge and extension of CGT will be published in the autumn and introduced in Finance Bill 2013.

**1.8** The changes complement a wider package of measures to tackle SDLT avoidance announced at the Budget, including: an extension of the General Anti-Abuse Rule (GAAR) to SDLT; new legislation to make clear that the grant or assignment of an option cannot satisfy sub-sales rules and a wider consultation on the SDLT sub-sales rules. In addition, the Government also announced it will take action to close down future SDLT avoidance schemes with effect from 21 March 2012, where appropriate.

## Initial stakeholder reaction

**1.9** Stakeholders have reacted positively to the Government's stated aim of tackling SDLT avoidance on the purchase of high value property. However, they have raised concerns that the coverage of the 15 per cent SDLT rate (and the possible coverage of the annual charge) risk:

- Inhibiting the high end of the property market by including individuals who envelope property for reasons other than SDLT avoidance, property investment companies (including those structured as collective investment vehicles), and property development companies who fail to meet the terms of the exemption in the legislation; and,
- Having adverse knock-on effects lower down in the property market as affected property companies will have less money to invest.

**1.10** The Government has noted these concerns and the consultation document discusses them further in Chapter 2.

## Background policy details

**1.11** The following sections provide further background details on SDLT and CGT.

### Stamp Duty Land Tax (SDLT)

**1.12** SDLT is a transaction tax, payable by the buyer, on the purchase of land and/or property or the acquisition of an interest in land or property. The amount is charged on the consideration given for the land and property or for the interest in land and property acquired.

**1.13** SDLT is charged as a percentage of the price of the land or property purchased. The charges for residential property are as follows:

**Table 1.A: SDLT rates for residential property**

Property Value	SDLT Rate
< £125,000	0%
£125,001 - £250,000	1%
£250,001 - £500,000	3%
£500,001 - £1,000,000	4%
£1,000,001 - £2,000,000	5%
£2,000,001+	7% <sup>1</sup>
£2,000,001+ purchased by certain non-natural persons	15% <sup>2</sup>

*Source: HMRC*

<sup>1</sup> Introduced at Budget 2012

<sup>2</sup> Introduced at Budget 2012



**1.14** The 7 per cent rate of SDLT was announced at the Budget to ensure that the owners of high value residential properties pay a fair share of tax on their property transactions. This new SDLT rate applies to residential property transactions from 22 March 2012.

**1.15** A new SDLT rate of 15 per cent was introduced in the Budget on 21 March 2012 for single residential dwellings purchased for over £2 million by certain non-natural persons. This new rate applies to transactions from Budget Day (21 March 2012).

## **Capital Gains Tax (CGT)**

**1.16** CGT is a tax on the gain or profit made when someone sells, gives away or otherwise disposes of assets such as shares or real property.

**1.17** Under existing CGT rules, non-UK residents are not liable to a charge on gains arising from the disposal of UK residential property. This means that a non-UK resident seeking to make arrangements to circumvent the annual charge has a clear financial advantage over a similarly-minded UK resident. It is therefore necessary to extend CGT to support the annual charge.

**1.18** More generally, this proposal also creates a more equal tax treatment between UK residents and non-residents and brings UK tax policy more into line with other countries, many of whom already tax capital gains made by non-residents.

## **Aim of the consultation**

**1.19** This consultation will cover the new annual charge and the proposed changes to CGT for non-resident non-natural persons, and the need to align the two measures (and the 15 per cent SDLT rate) as far as is possible.

**1.20** The consultation will explore the proposed details of the new annual charge, inviting responses in particular about who should and should not be included, and the impact on those affected. The consultation will also look at issues regarding the valuation of properties for the purpose of the new measures.

**1.21** The consultation will set out the proposed extension of the CGT regime to the disposal of high value UK residential property by non-resident non-natural persons. Responses are sought on whether the proposal is the most effective way of achieving the policy objective of creating more equal treatment between UK residents and non-residents in the CGT regime, in particular in light of the introduction of the annual charge to encourage de-enveloping of residential property. The Government is seeking views on whether the proposals set out in the consultation will *in practice* create more equal treatment, and whether there is potential for unintended consequences of the proposals that would be inconsistent with this aim.

## **Structure of the consultation**

**1.22** The remainder of this consultation document is divided into three sections:

- Chapter 2 – provides a brief overview of enveloping and how it works, sets out details on the proposed annual charge and examines the details of who will be included within the charge.
- Chapter 3 – sets out the proposed extension of the CGT regime and what and who will be included.
- Chapter 4 – provides a summary of the interaction and differences between the annual charge and CGT.

**1.23** Finally, Chapter 5 provides information on how to respond to this consultation and summarises the questions raised.

## Timing of the consultation

**1.24** The consultation will be open for 12 weeks and will close on Thursday 23 August 2012.

**1.25** After the consultation has closed, the Government will consider all the responses and continue to engage with stakeholders. The Government will publish a response to the consultation in the autumn. Draft legislation will be published for consultation in the autumn and introduced in Finance Bill 2013.

**1.26** For further information on how to respond to the consultation please see Chapter 5.

# 2

## Introducing an annual charge

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**2.1** The Government's approach to tackling the avoidance of tax on high value residential property, and ensuring the owners of high value residential property pay their fair share, is threefold:

- First, the introduction, on 21 March 2012, of a 15 per cent rate of SDLT on residential property over £2 million owned by certain non-natural persons, as described briefly in the introduction;
- Second, the introduction of an annual charge on such properties, which is discussed in this chapter; and
- Third, the extension of CGT to disposals of residential property owned by certain non-natural non-resident persons, which is discussed in Chapter 3.

### Background

**2.2** The Government is concerned at the prevalence of enveloping of high value residential properties and the potential for SDLT avoidance on subsequent changes of ownership of the properties. The annual charge is a new tax being introduced to encourage those who own UK residential properties valued over £2 million in envelopes to take them out of those envelopes. This will ensure that any future transfers of the property will be subject to SDLT, and that a fair share of tax is paid on these properties.

### What is enveloping?

**2.3** Enveloping of a property occurs when that property is acquired using a "non-natural" person. For example, an individual may set up a company which then purchases a property to hold as the sole asset of the company. The property is then said to be "enveloped" into the company. In the context of the annual charge, a non-natural person is defined as companies and other bodies corporate, collective investment vehicles and partnerships including one or more such entities.

**2.4** The Government's concern with regard to enveloping centres on the example set out above whereby an individual establishes a company to envelope a property owned for the personal use of that individual or their family. It is then possible to transfer the ownership of the company (and thereby the economic ownership of the property) without paying SDLT by selling the shares in the company.

**2.5** The Government recognises that there are a number of reasons, in addition to offering a future SDLT avoidance opportunity, why residential properties are enveloped. For companies this is likely to be the default (and indeed only) option, supporting good business practice and limiting liability. For individuals, this may include: to protect ownership, for inheritance planning, for family reasons, and to comply with laws in foreign jurisdictions.

**2.6** The Government aims to target the annual charge at those circumstances where tax avoidance may be a significant factor whilst minimising the wider impact for bona fide businesses.

## **Tax implications of enveloping**

**2.7** Holding residential property within an envelope has a number of potential tax implications:

### **Stamp Duty Land Tax (SDLT)**

**2.8** When a property is first purchased by the non-natural person, or enveloped, SDLT will generally be paid. On residential properties over £2 million, this will be paid at the new 15 per cent rate introduced at Budget 2012.

**2.9** On subsequent transfers however, if ownership of the company is transferred through a share transaction, rather than ownership of the property being transferred by a sale of the property itself (a land transaction), the transfer is not liable to SDLT as the property itself has not changed ownership, although the 'economic' ownership has changed.

### **Stamp Duty & Stamp Duty Reserve Tax (SDRT)**

**2.10** Broadly, where a company is incorporated in the UK the transfer of the shares is chargeable at 0.5 per cent of the consideration given. Where a company is registered overseas no Stamp Duty or SDRT is payable unless the transfer of shares of that non-UK incorporated company is effected in the UK. Companies used for enveloping are frequently incorporated outside the UK.

### **Capital Gains Tax (CGT)**

**2.11** Unlike residential properties disposed of by individuals, gains on property disposed of by or through a UK resident envelope do not generally benefit from Private Residence Relief (which exempts from CGT many disposals of residential properties by individuals). Gains accruing to a non UK resident person are generally not taxed.

## **The annual charge**

**2.12** The aim of the new annual charge is both to deter avoidance and to ensure the owners of high value residential property pay their fair share of tax. The charge will encourage individuals who have put such high value property into envelopes for reasons including tax avoidance to take them out, thereby ensuring that the onward sale of the property is subject to SDLT and a fair share of tax is paid. Individual owners of high value residential property who wish for other reasons to continue to hold them within an envelope will have to pay a charge to do so.

**2.13** The annual charge will be introduced in Finance Bill 2013. The proposed structure is discussed below.

### **Who will the charge apply to?**

**2.14** The proposed annual charge will apply to the ownership of interests in residential property by certain non-natural persons if the interest is valued over £2 million on the relevant valuation date.

**2.15** As noted in the introduction, it is part of a package of measures, alongside the new 15 per cent SDLT rate and the proposed changes to CGT liability for non-resident non-natural persons, to address enveloping of high value residential property and to ensure the owners of high value residential property pay their fair share of tax. The coverage of the annual charge therefore needs to fit coherently with these other measures.

### **Non-natural persons and exclusions**

**2.16** The overall intention is that the coverage of the annual charge will be the same as that of the 15 per cent SDLT rate, with the same definition of non-natural persons and the same exclusions.

**2.17** From 21 March 2012, the 15 per cent rate of SDLT on the purchase of residential property over £2 million applies in the following circumstances:

- (a) When the purchaser is a company<sup>1</sup>; or
- (b) When the acquisition is made by, or on behalf of, the members of a partnership one or more of whose members is a company; or
- (c) When the acquisition is made for the purposes of a collective investment vehicle.

The 15 per cent rate is also payable where one of the above is, together with individuals, a joint purchaser of residential property.

**2.18** A company owning land solely in its capacity as a trustee, other than of a bare trust, is excluded from the 15 per cent rate. It is proposed to apply the exclusion to the annual charge in the same way. Charities are also excluded from the charge. A property interest held by a company acting as a bare trustee will be treated as it is for SDLT purposes: as an interest of the person for whom the company is a trustee.

**2.19** A bona fide property development business is also excluded, providing it meets the conditions that:

- The property is acquired as part of a bona fide property development business; and
- The business has been operating for a minimum of 2 years; and
- The property was purchased with the intention of re-development and re-sale.

## Initial stakeholder concerns

**2.20** A number of stakeholders have expressed concerns to the Government on the impact of the 15 per cent SDLT rate and proposed annual charge on companies, partnerships and collective investment vehicles, carrying on genuine residential property development and property investment businesses.

**2.21** These stakeholders argue that neither the affected residential property development nor property investment businesses currently carry out transactions that avoid SDLT, but nonetheless will suffer a significantly increased tax burden. This may affect their competitiveness and their ability to attract and make investment in the UK. They also point out that, unlike an individual owning a residential property through an envelope, they have no realistic option to 'de-envelope'.

**2.22** In terms of property development companies, concerns centre on the requirement to have been trading for two years as a property developer to qualify for exclusion from the new rules. It is stated that this requirement will act as a significant barrier to new entrants to the market and that it impedes establishment of special purpose joint venture companies to raise sufficient finance to purchase new properties.<sup>2</sup>

**2.23** For property investment companies, concerns have been raised that the £2 million starting threshold will catch many high value residential property investors, almost exclusively investing in London, including collective investment vehicles. They state that they do not avoid paying SDLT, have no intention of living in the properties themselves, and, of business necessity, need to envelope their properties. As a result of the higher tax burden the new and proposed measures imply, they believe they will be less competitive in the property market and their business model may be compromised. In addition, they claim that the new policies will reduce the supply of high

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<sup>1</sup> References to a company do not include a company acting in its capacity as trustee of a settlement.

<sup>2</sup> At present the legislation requires a property development company to own at least 75% of any SPV (and to have a two year track record) in order to be exempt from the charge.

value residential property in the capital with knock on effects for the wider rental market (where it is argued that returns from the high-end help to offset lower returns further down the market).

**2.24** The Government's aim is to target the 15 per cent SDLT rate and annual charge at those circumstances where tax avoidance may be a significant factor and to ensure individuals pay their fair share, whilst minimising where possible the wider impact for bona fide businesses. The Government would welcome stakeholder views as to how, and to what extent, the concerns of bona fide residential property development and investment businesses might be addressed without undermining the core policy intent of addressing tax avoidance. The Government would also welcome stakeholder views on how any exclusion of collective investment vehicles could be crafted to distinguish between widely-held funds and quite narrowly held ones that might potentially be used for avoidance.

#### **Question 2.1**

Do you think that the current criteria for the 15 per cent rate should also apply to the annual charge? If not, what exclusions or additions would you make to the coverage of the annual charge? Why would you recommend such changes?

#### **Question 2.2**

Is the exclusion for property development businesses sufficient both to address the risk of avoidance and to ensure bona fide businesses are excluded from the charge? If not, what changes to the exclusion for property development businesses would you recommend and why? How could such changes be policed?

#### **Question 2.3**

How might it be possible to develop an exclusion from the annual charge for collective investment vehicles which distinguishes between widely-held funds and quite narrowly held ones (that might potentially be used for avoidance)?

## **What will the charge apply to?**

**2.25** The new annual charge will apply to interests owned in residential property.

**2.26** It is proposed to use the terms and definitions used for the 15 per cent SDLT rate included within the proposed Section 55A and Schedule 4A of FA 2003 introduced in Finance Bill 2012.

**2.27** The charge will therefore apply to a residential dwelling, which may be all or part of a residential or mixed use property. For example:

- If the residential dwelling is part of a larger property including non-residential parts (e.g. a penthouse flat above an office block) then the property to be valued will be the residential part only.
- If the property consists of a number of self-contained dwellings (e.g. a block of 10 self-contained flats), then each dwelling will normally be separately valued.

**2.28** However, it is proposed that if the property comprises of a main dwelling with one or more parts suitable for use as staff accommodation then the valuation will be of the main dwelling in its entirety.

**2.29** Some unusual types of properties that may satisfy the definition of residential property will be exempted from the tax. For example, boarding schools accommodation, hospitals, student halls of residence, military accommodation, care homes and prisons.

#### **Question 2.4**

Should the definition of 'residential property' be the same as that used for Stamp Duty Land Tax? (See Annex B). If not, what amendments or exclusions (in addition to those set out above) could be made and why?

### **Interest in property subject to annual charge**

**2.30** The interest to which the charge will apply will be the freehold or leasehold interest owned by the non-natural person within the charge (or jointly owned with other people outside the charge).

**2.31** In the majority of cases, there is unlikely to be any distinction between legal and beneficial ownership of an interest in a property. However, if beneficial and legal ownership of the interest in the property are separated, as for instance where ownership is through a bare trustee, then as is the case for SDLT the legal ownership will be treated as combined with the beneficial ownership.

**2.32** Where there is a freehold interest and one or more subordinate leasehold interests in the same dwelling, and each is owned by unconnected persons within the charge, each will need to value their distinct interest and each may be liable to the annual charge based on those valuations. So, for example, when a property is purchased on a lease but the freehold is owned by a separate company, then both the freehold and the leasehold will be valued and the annual charge applied separately to the freehold (if valued over £2 million) and the leasehold (if valued over £2 million if also owned by a non-natural person).

**2.33** It is proposed that there will also be rules to ensure that the charge cannot be avoided through any other artificial arrangements solely or mainly intended to avoid the annual charge.

**2.34** Properties may move into or out of the annual charge during a year. For example:

- A property may be newly constructed, may start to be converted to residential use or be converted from residential use.
- Property interests may begin or cease to be held by a non-natural person in the year and the value of an interest may fall below or exceed the £2m threshold by the creation or cessation of subordinate leasehold property interests granted for genuine reasons to unconnected persons.

**2.35** It is proposed that the charge will apply pro-rata for the proportion of the year for which the property interest and the person is liable.

#### **Question 2.5**

What, if any, policy issues do you see with the proposed application of the annual charge to properties which either move into or out of liability or to multiple property ownership interests? What rules for valuation and submission of returns of annual charges in these circumstances do you think will be most appropriate?

## How will the charge be calculated?

### Property valuations

**2.36** The value of the property interest which will be relevant for the annual charge for the five years from 1 April 2013 is proposed to be:

- The value of the property interest on 1 April 2012 if the interest was owned on that date.
- The value on acquisition if the interest is acquired later.
- The value on any later creation or cessation of a relevant subordinate property interest.

**2.37** Property valuations for the annual charge will be self-assessed by the persons liable to the charge and submitted to HMRC as part of their annual charge tax return. HMRC will have powers to enquire into returns and also to make assessments so that non-compliance can be effectively challenged (see 2.38-2.45 below for further detail).

**2.38** The valuation date has been set at 1 April 2012 to ensure that valuations can be carried out before the proposed annual charge comes into effect in April 2013. Non-natural property owners will need to establish that they come within the charge band and where they are in doubt may wish to obtain a valuation report providing a valuation of their property at 1 April 2012.

**2.39** HMRC guidance will set out that a valuation provided to a taxpayer by a suitably qualified valuer of real estate would normally protect the taxpayer from possible penalties should it be subsequently established that their property has been significantly undervalued. A self valuation would bear a higher risk of not providing such protection.

**2.40** Non-natural persons who believe they own a residential dwelling below, but in the region of, £2 million pounds may be liable to penalties if they fail to take proper care to establish a correct valuation on the appropriate date, and the property interest is in fact worth more than £2 million.

**2.41** Properties will be re-valued every five years<sup>3</sup>, so a further valuation will not be required again until 1 April 2018, when the relevant valuation date will be 1 April 2017.

**2.42** The valuation should provide a point valuation (i.e. a specific price). The property can then be placed within one of the banding structures in Table 2.A. That band will apply to the property for the year of the valuation and the next four charging years with the exception of properties which are enveloped, or re-enveloped within that five year charging period when they will be re-valued at the point of purchase into the envelope (the value in all likelihood being the consideration given).

**2.43** Valuations submitted to HMRC will be subject to checking by the Valuation Office Agency (VOA).

### Basis of valuation

**2.44** The valuation required will be an assessment of the 'market value' of the residential property on 1 April 2012. 'Market value' will be defined in similar terms to the definitions used for capital gains tax, as described in the Royal Institution of Chartered Surveyors Valuation Standards UKGN3 and the VOA Guidance Manuals: <http://www.voa.gov.uk/>

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<sup>3</sup> The revaluation will cover all properties paying the charge on 1 April 2017 plus all those properties which are not currently paying the charge but whose value has appreciated sufficiently to put it above the £2 million threshold.



## Information to be provided by property owners

**2.45** Property owners may, as part of their annual charge tax return, provide a professional valuation report. The provision of this information will reduce the number of cases where the VOA needs to make an internal inspection of the property.

## Prior agreement of property valuations

**2.46** To assist taxpayers in compiling their annual charge tax return HMRC and the VOA will offer a pre-return valuation checking service to property owners. Property owners will be able to submit their proposed valuations to HMRC for checking and in any case where a proposed banding cannot be accepted the VOA will advise the taxpayer and enter into discussions to endeavour to agree the appropriate banding.

### Question 2.6

Do you think a prior agreement service along the lines described will be helpful to property owners? If so what would be the best way for it to operate from a stakeholder point of view?

## Appeals

**2.47** Any disputes over the annual charge tax liability will be referred to HM Courts and Tribunals Service in the same manner as in other HMRC administered taxes. In cases where there is a dispute over the property valuation and consequent banding the matter will be determined by the Upper Tribunal (Lands Chamber).

### Question 2.7

Are there any other aspects of the valuation proposals that will cause difficulties or require further clarification?

## Rate of tax

### Charging structure

**2.48** The charges on properties valued above £2 million owned by certain non-natural persons will be as follows:

**Table 2.A: Annual charge charging structure**

Property Value	Annual Charge 2012-13
£2m - £5m	£15,000
£5m - £10m	£35,000
£10m - £20m	£70,000
£20m+	£140,000

*Source: Budget 2012 Policy Costings*

**2.49** The annual charge will be indexed to Consumer Price Index (CPI) and updated in April each year based upon the CPI of the previous September. This uprating will commence from the second year of charge; namely, 1 April 2014. For example, if CPI in September 2013 is 2 per cent then the lowest band will be charged at £15,300 for the year commencing 1 April 2014

(and the highest band at £142,800). The uprating calculation will round the CPI figure down to the nearest 0.1 per cent and round the increase in the annual charge down to the nearest £50. Where CPI is negative there will be no calculation carried out.

**2.50** The charging bands will remain the same and there is no intention to lower the starting threshold.

## Annual charge tax returns

**2.51** A return will require separate information for each relevant dwelling owned by a non-natural person within the charge. So, for example, if a company owns 3 dwellings within the annual charge (i.e. each is valued over £2 million), it will need to return separate values and information for each. A single payment may, however, be made.

**2.52** The return must include details of: the address of the property, the Land Registry title, the interest held, the beneficial owners of the property (including their addresses if different from the property address), the self-valuation of the relevant property<sup>4</sup>, the band applicable and the amount due.

**2.53** It is proposed that the due date for returns and for payment of the full annual charge will be 15 days after the commencement of the period of account, i.e. by 15 April of each year.

**2.54** As the first period of account (1 April 2013 – 31 March 2014) will commence before Royal Assent is given to Finance Bill 2013, special rules will apply to the first period. The date by which returns and payment will be required for this first period of account will be 1 October 2013 or 30 days after Royal Assent is given if that is after 1 September 2013.

**2.55** As full payment will be made at the start of the period of account, situations will arise where the property leaves or enters the envelope during the period of account, in these cases a repayment of the charge can be claimed on a pro rata basis<sup>5</sup>.

### Question 2.8

What length of time do you think is reasonable for submitting the annual charge return and why? Would monthly payment instalments be a more preferable option?

## Administration

### Compliance

**2.56** HMRC will administer the new annual charge and will carry out compliance activity to ensure that all relevant owners are assessed to the correct level of annual charge.

**2.57** This will primarily include:

- Seeking those who have failed to make returns, who will be subject to penalties; and
- Challenging what appear to be unreasonable valuations of properties. Penalties will apply where the property moves above the £2 million starting threshold or into a higher band, and the owner's initial valuation was low because of negligence.

<sup>4</sup> Further details on self valuation can be found from Paragraph 2.37

<sup>5</sup> Likewise for properties which either move into or out of the Annual Charge (e.g. due to conversion from commercial property to residential property, or vice versa) it is proposed that the charge will apply on a pro-rata version for the proportion of the year for which the property is liable.

## Enforcement

**2.58** HMRC will robustly pursue non payment of the annual charge to obtain payment of the amounts outstanding. All beneficial owners of the property or interest in the property that is within the charge will be jointly and severally liable for making returns and payment.

## Impacts

**2.59** The aim of the annual charge is to ensure the owners of high value residential property do not avoid paying their fair share of tax by encouraging the de-enveloping of property and imposing a significant charge on those individuals who chose to keep their property within an envelope. The Government's broad assessment of the impact of the annual charge is set out in Annex A. However, the precise impact of the charge will clearly be dependent upon who is liable to pay it and the potential to pass it on to the occupier of the property (if it is not occupied by the beneficial owner or the beneficiary of a trust structure within the charge).

**2.60** Whilst one of the aims of the consultation is to gather stakeholder views on who should be liable for the charge, we would nonetheless be interested in stakeholder views on the impact of the charge if the coverage was as set out in paragraphs 2.14 and 2.15, how it differs from the impact of the 15 per cent SDLT rate and on the necessity of continuing with the 15 per cent SDLT rate once the annual charge is in place.

### Question 2.9

What will the impact of the annual charge be on (i) the high value residential property market as a whole, and (ii) landlords and tenants? What evidence do you have to support your view?

### Question 2.10

To what extent do you think the impact of the 15 per cent SDLT charge will differ from the annual charge? Should the Government continue with both measures once the annual charge is in place? If not, why not?

### Question 2.11

Do you think there are any equality issues that arise for people with protected characteristics as a result of the proposed annual charge?



# 3

## Capital Gains Tax

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### Introduction

**3.1** The Government announced in the Budget that it will extend the Capital Gains Tax (CGT) regime from April 2013 to gains on the disposal of UK residential property by non-resident non-natural persons, such as companies. The measure creates a more equal treatment in the CGT regime between UK residents and non-residents, and brings the UK's tax policy in line with that of other countries, many of whom already tax non-residents' gains. It will broadly align the tax treatment of gains on disposals of UK residential properties by the persons in which the properties are enveloped, irrespective of whether those persons are resident in the UK or elsewhere. This will act as a further discouragement for residential property to be held through enveloping arrangements.

**3.2** Under existing rules, tax is generally only applied on chargeable gains accruing to a UK resident person. The extended regime will therefore also help ensure that non-UK resident non-natural persons making disposals of UK residential property also pay their fair share of tax and will ensure that, where they choose to de-envelope a property, a non-resident does not have a clear financial advantage over a UK resident.

**3.3** It is intended that, where possible, the existing body of legislation for calculating chargeable gains will apply for the extension of the scope of CGT. There will be some modifications, outlined in general terms below, which will be required to take account of the fact that the scope of CGT is not being extended to all non-residents; and that the extension is only in terms of UK residential property and assets that derive most of their value from UK residential property, rather than to all assets.

**3.4** This Chapter sets out the Government's proposed extension, detailing who it will apply to, what gains will be in scope, and how CGT will be applied.

### Who will the charge apply to?

**3.5** Budget 2012 announced that, from April 2013, CGT will be extended to certain non-natural persons who are not resident in the UK for tax purposes.

**3.6** Gains on UK residential property held directly by a non-resident individual will not come into the CGT regime, as any disposal of a non-enveloped property will attract a SDLT charge.

**3.7** "Non-natural person" is a general term that applies to any person who is not considered to be an individual. Without further qualification or restriction, this will include:

- Companies and other bodies corporate;
- Trustees (excluding bare trustees but including trustees who are themselves individuals) and collective investment vehicles;
- Personal representatives;
- Clubs and associations; and
- Entities that exist in other jurisdictions that allow property to be held indirectly.

**3.8** To support the annual charge, the categories of non-resident non-natural person to whom the CGT regime will be extended will necessarily have to include those categories that are subject to the annual charge. This consultation considers what additional categories should be included to ensure that non-UK resident persons pay their fair share.

**3.9** The current CGT regime includes a number of specific reliefs or special treatment for particular arrangements. The intention is to replicate such treatment for their non-resident equivalents, where there is a valid case for doing so, and where it is practically possible without opening up the regime to avoidance opportunities.

**3.10** Partnerships carrying on a trade or business will be treated as transparent in accordance with the normal CGT rules<sup>1</sup>. Any gain on the disposal of a UK residential property would, as now, be apportioned between the partners in accordance with their respective shares in the property. To the extent that any gains are apportioned to 'non-natural' partners resident outside the UK, tax would be chargeable on them.

**3.11** A charity currently exempt from tax on its gains<sup>2</sup> will similarly be exempt from the extended CGT regime.

#### **Question 3.1**

**Are there entities or forms of ownership whose status as an individual or non-natural person requires clarification?**

#### **Question 3.2**

**Are there entities or other forms of ownership, other than charities, which should either be relieved from or included within the charge?**

## **What will the charge apply to?**

**3.12** Budget 2012 announced that the CGT regime would be extended to gains made on UK residential property by non-resident non-natural persons. In order to extend the CGT regime effectively, a number of decisions have been taken as to the scope of this extension.

### **Value of the residential property**

**3.13** In order to be consistent with the design of the annual charge, it is envisaged that the extension of CGT will only apply to the disposal of residential properties where, for capital gains purposes, the amount or value of the consideration for the disposal exceeds £2 million.

**3.14** In proposing that the charge is limited in this manner it is recognised that, like the annual charge, the inclusion of a £2 million threshold will create a cliff-edge between those properties that do and do not come into charge, and create additional complexity in certain circumstances, for example where there are part disposals. Consideration will also need to be given to whether such a threshold could easily be manipulated, and appropriate safeguards where necessary.

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<sup>1</sup> Sections 59 and 59A TCGA 1992

<sup>2</sup> Section 256 TCGA 1992

### Question 3.3

Would the introduction of a £2 million threshold create any particular difficulties or adverse behavioural effects? If so, what are these likely to be?

### Question 3.4

Would a limit to properties valued at over £2 million create any particular complexities? If so, what are these likely to be?

## Interest in the property

**3.15** The extension of the CGT regime will apply to gains on the disposal, or part disposal, of relevant UK residential property, including the grant of an option over such property.

**3.16** It will also apply to the whole of any gains that accrue on the disposal of assets (of whatever form) that represent directly or indirectly relevant UK residential property. The latter category will include shares, interests or securities in a property-owning company where more than 50 percent of the value of the asset is derived from UK residential property.

### Question 3.5

Would this cause any compliance difficulties for collective investment arrangements or where share ownership is heavily diluted? If so, please explain what these would be.

## Residential property

**3.17** This measure is only applicable to UK residential property, consistent with the aims of the annual charge.

**3.18** It is proposed that the definition of residential property follows the meaning of 'dwelling' used for the 15 per cent SDLT rate and the new annual charge (see Annex B).

### Question 3.6

Does the adoption of the SDLT definition of 'residential property' (in Annex B) create any problems? If so, what amendments or exclusions (in addition to those set out above) need to be made and why?

**3.19** The CGT regime will apply irrespective of the use to which the residential property is put. It will apply to commercially let residential property and property owned by an employer to provide accommodation for its employees or directors.

## How will the gains be calculated?

**3.20** In order to maintain consistency with the existing CGT regime, gains will be computed in accordance with the normal CGT provisions in the Taxation of Chargeable Gains Act (TCGA) 1992, providing for the deduction of allowable costs in accordance with the current legislation.

**3.21** The measure will apply to the *total* gain accrued during ownership of the property (and not only the gain accrued after implementation of the new charge in April 2013).

**3.22** In general, losses arising on disposals of UK residential property in circumstances where tax would be chargeable had a gain accrued will be available to offset only against gains on disposals of UK residential property in the same or future years.

**3.23** Gains (and losses) will be reduced where either:

- The property was not a residential property throughout the period of ownership; or
- Depending on how 'residential property' is defined, the property's use or character can clearly be apportioned between residential and non-residential.

**3.24** Non-UK resident companies that trade through a UK permanent establishment are already liable to corporation tax (CT) on certain UK-situated assets; gains of other non-UK resident companies (i.e. those that do not have a UK permanent establishment) are not subject to CT. It is therefore proposed that:

- For non-UK resident companies that are currently liable to CT, gains arising from the disposal of UK residential property will be chargeable to CT; and,
- For non-UK resident companies that are not liable to CT, gains will be chargeable to CGT (rather than bringing these companies into the CT regime).

## Rate of tax

**3.25** Rates are not a subject for consultation and will be confirmed by the Chancellor at Budget 2013.

## Avoidance

**3.26** TCGA already contains significant anti-avoidance legislation. With the extension of the scope of the tax to certain non-resident non-natural persons, consideration will have to be given to how such persons might seek to avoid CGT.

**3.27** Rules, whether general or targeted, are likely to be needed to ensure that connected persons (including grouped or associated companies) cannot artificially depress or delay gains, or exaggerate or accelerate losses for artificial, tax-motivated reasons.

## Interaction with existing charges and obligations

**3.28** There are situations under the current rules in which gains accruing to a non-resident non-natural person can effectively be charged to CGT. In particular:

- Section 13 of TCGA 1992, which attributes gains of certain non-resident companies to UK participators; and
- Sections 86 and 87 of TCGA 1992, under which settlors or beneficiaries of non-resident trusts can be charged to tax on gains accruing to the trustees.

**3.29** As part of the development of the policy, the interactions between such provisions and the rules for the extended regime will be considered with the aim of avoiding unnecessary complexity and to ensure a sensible prioritisation of charging provisions.

**3.30** Private residence relief (PRR)<sup>3</sup> will, in general, not be available as the disposal will not be by an individual. Where a resident non-natural person is eligible for PRR under the existing CGT regime, it is proposed that similar treatment will apply to their non-resident equivalents, subject to this being practically possible and consideration of any avoidance concerns.

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<sup>3</sup> Sections 222 to 226B TCGA 1992



**3.31** Double Taxation Agreements routinely preserve the right of the Contracting State to tax gains arising from the disposal of immoveable property situated in that State. As part of the consultation and design process, the Government will ensure that the final design of the proposed CGT extension is compatible with international tax agreements and EU law.

**Question 3.7**

Are there any other issues concerning the design or delivery of the policy that need to be considered?

**Question 3.8**

Do you think there are any equality issues that arise for people with protected characteristics as a result of the proposed extension of the CGT regime?



# 4

## Interaction between annual charge and Capital Gains Tax extension

**4.1** As noted in the introduction, the intention of the new annual charge is to encourage the de-enveloping of residential properties valued over £2 million. As a result of this measure, the Government has also decided to extend the application of CGT to residential property owned by certain non-resident non-natural persons, to ensure that when properties are de-enveloped they are taxed in an equivalent manner whether they are resident or non-resident.

**4.2** Table 4.A sets out an illustrative example of the impact of the CGT extension. It assumes that a UK residential property is owned by a company. Following the introduction of the annual charge the controlling shareholder decides not to incur the annual charge on the property by transferring it out of the company into a different form of envelope (which is not subject to the annual charge).

**Table 4.A: Impact of CGT extension**

UK resident company	Company resident overseas – existing rules	Company resident overseas – extended rules
Any gains on disposal of the UK residential property are liable to corporation tax	Any gains on disposal of the UK residential property not liable to corporation tax or CGT	Any gains on disposal of the UK residential property are liable to CGT

**4.3** The extension of the CGT regime to cover all UK residential property held by non-natural non-resident persons will ensure those caught by the new annual charge pay their fair share of tax, and that, where they choose to de-envelope a property, a non-resident does not have a clear financial advantage over a UK resident.

**4.4** Due to the complementary nature of the two policies, the coverage and application of the two measures will be developed in a consistent way in so far as it is possible. However as the annual charge is a new tax and CGT is current tax regime with existing objectives there will inevitably be some differences which are set out in the table below.

**Table 4.B: Difference between the annual charge and application of CGT**

	Annual charge	Capital Gains Tax
Proposed Charges	£2m - £5m: £15,000 £5m - £10m: £35,000 £10m - £20m: £70,000 £20m+: £140,000	Rate to be determined, but is not part of the consultation
Indexation	The annual charge will be indexed to CPI and up rated in April each year based upon previous September CPI.	The rate will not be indexed.
Threshold	£2 million	£2 million

Payment date	15 April each year (with exception of 2013 where the charge is due on a date dependent upon when Royal Assent is given to Finance Act 2013).	CGT is paid through the Self Assessment (SA) system. As this measure is an extension of the CGT regime chargeable gains occurring from 6 April 2013 will need to be reported and paid by 31 Jan 2015 and thereafter in the appropriate SA return.
Coverage	The charge will apply to residential properties valued over £2 million owned by certain non-natural persons where: <ul style="list-style-type: none"> <li>- the purchaser is a company;</li> <li>- the acquisition is made by, or on behalf of, the members of a partnership one or more of whose members is a company; or</li> <li>- the acquisition is made for the purposes of a collective investment vehicle, or</li> <li>- the defined non natural person is a joint owner with persons otherwise outside the charge</li> </ul>	The rate for the CGT charge will apply to non-resident, non-natural persons such as companies. The exact scope of who this will include is yet to be determined.
Exclusions	Trusts: companies owning land solely in its capacity as a trustee of a settlement trust will be excluded from the annual charge	A charity currently exempt from tax on its "chargeable gains" will similarly be exempt from this extension to CGT.
	Property Developers: property development companies with a 2 year history of trading will be excluded from the annual charge.	
Definition of residential property	Interests in dwellings – the same definition as for the higher 15 per cent rate of SDLT	The definition of residential property will be consistent with that in the annual charge unless issues arise during consultation that preclude this.

# 5

## Responding to the consultation

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### Closing date and how to respond

**5.1** The closing date for this consultation is Thursday 23 August 2012

**5.2** Responses to the consultation should be sent either by post to:

Annual Charge Consultation  
Property Tax Team  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

Or email: [annualchargeandcgt.consultation@hmtreasury.gsi.gov.uk](mailto:annualchargeandcgt.consultation@hmtreasury.gsi.gov.uk)

**5.3** This document can be found on the HM Treasury website ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)). When responding, please state whether you are responding as an individual or as part of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents and, where applicable, how the members' views were assembled.

### Consultation: Technical Working Group

**5.4** During the development of the proposals, it will be helpful to consult on a range of issues on an ad hoc basis. To this end, it is intended to form working groups of around a dozen representatives from interest groups. Separate working groups will be created for the annual charge and Capital Gains Tax.

**5.5** Bodies wishing to nominate representatives should contact:

- [Samantha.Pigden@hmtreasury.gsi.gov.uk](mailto:Samantha.Pigden@hmtreasury.gsi.gov.uk) to participate in the annual charge Technical Working Group; or
- [capitalgains.taxteam@hmrc.gsi.gov.uk](mailto:capitalgains.taxteam@hmrc.gsi.gov.uk) to participate in the Capital Gains Tax Technical Working Group.

### Summary of consultation questions

#### Annual charge

**Question 2.1** Do you think that the current criteria for the 15 per cent SDLT rate should also apply to the annual charge? If not, what exclusions or additions would you make to the coverage of the annual charge? Why would you recommend such changes?

**Question 2.2** Is the exclusion for property development businesses sufficient both to address the risk of avoidance and to ensure bona-fide businesses are excluded from the charge? If not, what changes to the exclusion for property development businesses would you recommend and why? How could such changes be policed?

**Question 2.3** How might it be possible to develop an exclusion from the annual charge for collective investment vehicles which distinguishes between widely-held funds and quite narrowly held ones (that might potentially be used for avoidance)?

**Question 2.4** Should the definition of 'residential property' be the same as that used for stamp duty land tax? (See Annex B). If not, what amendments or exclusions (in addition to those set out above) need to be made and why?

**Question 2.5** What, if any, policy issues do you see with the proposed application of the annual charge to properties which either move into or out of liability or to multiple property ownership interests? What rules for valuation and submission of returns of annual charges in these circumstances do you think will be most appropriate?

**Question 2.6** Do you think a prior agreement service along the lines described will be helpful to property owners? If so, what would be the best way for it to operate from a stakeholder point of view?

**Question 2.7** Are there any other aspects of the valuation proposals that will cause difficulties or require further clarification?

**Question 2.8** What length of time do you think is reasonable for submitting the annual charge return and why? Would monthly payment instalments be a more preferable option?

**Question 2.9** What will the impact of the annual charge be on (i) the high value residential property as a whole, and (ii) landlords and tenants? What evidence do you have to support your view?

**Question 2.10** To what extent do you think the impact of the 15 per cent SDLT charge will differ from that of the annual charge? Should the Government continue with both measures once the annual charge is in place? If not, why not?

**Question 2.11** Do you think there are any equality issues that arise for people with protected characteristics as a result of the proposed annual charge?

## **Capital Gains Tax**

**Question 3.1** Are there entities or forms of ownership whose status as an individual or non-natural person requires clarification?

**Question 3.2** Are there entities or other forms of ownership, other than charities, which should either be relieved from or included within the charge?

**Question 3.3** Would the introduction of a £2 million threshold create any particular difficulties or adverse behavioural effects? If so, what are these likely to be?

**Question 3.4** Would a limit to properties valued at over £2 million create any particular complexities? If so, what are these likely to be?

**Question 3.5** Would this cause any compliance difficulties for collective investment arrangements or where share ownership is heavily diluted? If so, please explain what these would be.

**Question 3.6** Does the adoption of the SDLT definition of 'residential property' (in Annex B) create any problems? If so, what amendments or exclusions (in addition to those set out above) need to be made and why?

**Question 3.7** Are there any other issues concerning the design or delivery of the policy that need to be considered?

**Question 3.8** Do you think there are any equality issues that arise for people with protected characteristics as a result of the proposed extension of the CGT regime?

## Confidentiality disclosure

**5.6** All written responses may be made public on the Treasury's website unless the author specifically requests otherwise in writing.

**5.7** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regime. These are primarily the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004.

**5.8** If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as being confidential. If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

**5.9** In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

**5.10** Subject to the previous two paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions - one for publication on the website with the confidential information deleted, and another confidential version for use by the Treasury.

**5.11** Any FOIA queries should be sent by email to:

[public.enquiries@hmtreasury.gsi.gov.uk](mailto:public.enquiries@hmtreasury.gsi.gov.uk)

Or by post to:

Correspondence and Enquiry Unit  
Freedom of Information Section  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

## Code of practice for written consultation

**5.12** This consultation is being conducted in line with the Code of Practice for written consultation, which sets down the following criteria:

- When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Clarity of scope and impact – Consultation document should be clear about the consultation process, what is being proposed, the scope of influence and the expected costs and benefits of the proposals.

- Accessibility of consultation exercise – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees’ buy-in to the process is to be obtained.
- Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Capacity to consult – Officials running consultations should seek guidance on how to run an effective consultation exercise and share what they have learned from the experience.

**5.13** If you feel that this consultation does not fulfil these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess, Consultation Coordinator  
 Budget & Finance Bill Co-ordination Group  
 HM Revenue & Customs  
 100 Parliament Street  
 London  
 SW1A 2BQ

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

## Next steps

**5.14** As stated above, this consultation began with the publication of this document and will last for a period of 12 weeks, closing on Thursday 23 August 2012. After the consultation period has closed, the Government will consider the responses to the consultation.

**5.15** In line with the Code of Practice for written consultations, the Government will publish a summary of responses to the consultation.

**5.16** After the consultation has closed, the Government will consider all the responses and continue to engage with stakeholders.

**5.17** The Government will publish a response to the consultation later in the year. The draft legislation will be published in autumn 2012 for consultation. The final legislation will be introduced in Finance Bill 2013.



# A

## Tax impact assessment

**A.1** To ensure effective tax policy making, the Government produces a tax impact assessment to assist with the design and formulation of tax policy. This annex brings together the Government's thinking on a range of impacts.

**A.2** As part of the consultation, the Government would welcome views on the overall impact of these changes. The information provided as part of the consultation process will help the Government in understanding the potential impact of the proposal, and feed in to the assessment of what design is most appropriate. Following conclusion of the consultation and agreement on the final design, the Government will provide a more detailed tax impact assessment alongside draft legislation published in the autumn.

**Table A.1: Annual charge**

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17
	Negligible	+65	+65	+65	+75
	These figures capture the Exchequer impact of the Government's wider reforms to SDLT to tackle avoidance on residential property and associated CGT changes and are set out in Table 2.1 of Budget 2012. They have been certified by the Office for Budget Responsibility. More detail on the full reform package can be found in the policy costings document published alongside Budget 2012.				
<b>Economic impact</b>	<p>The measure is likely to have only marginal impact on the wider housing market. In so far as purchasers continue to envelope, it will lead to a reduction in the value of the original property (as the tax is capitalised into the price). It will also lead to properties close to the starting threshold falling in value in order to avoid the charge with knock on effects on SDLT (but only where that potential purchaser would be within the higher charge).</p> <p>To the extent that the measure reduces the attractiveness of UK for international property investment, at the margins it may also reduce the demand for such developments and the overall price of high value properties (particularly in London).</p>				
<b>Impact on individuals and households</b>	There will be no individuals affected as the annual charge is only applied to non-natural persons. Some beneficiaries of trusts, investors in collective investment vehicles, or owners of shares in companies that own expensive property will see the value of their interest affected due to the levying of an annual charge. Where the non-natural person cannot meet the cost of the annual charge this may fall on the beneficiary, investor or shareholder.				
<b>Equalities impacts</b>	The measure is not anticipated to impact on groups with protected characteristics any more than on those without such characteristics.				

<b>Impact on business including civil society organisations</b>	The charge will not be levied on charities. The charge will apply to housing associations where they hold individual properties valued at over £2 million.
<b>Operational impact (£m) (HMRC or other)</b>	HMRC will require new IT and a small staff to implement the annual charge: to deal with returns, collect and account for payments and ensure compliance. This would cost, on early estimates, £3.3 million upfront and £120,000p.a. thereafter for the IT and £1.3 million pa for supporting staff.
<b>Other impacts</b>	Small Firms Impact – many of the companies used to hold high value residential property are Special Purpose Vehicles which will own a single property. Whilst the company may have no employees and only professional company officers, and therefore will be a small firm, it is not considered that the measure will have an impact outside the policy intention.

**Table A.2: Capital Gains Tax**

<b>Exchequer impact (£m)</b>	The Exchequer impact is expected to be negligible but it will depend on the information gathered and the decisions made as a result of this consultation. Detailed costings will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2013 where appropriate.
<b>Economic impact</b>	The CGT measure is expected to have no significant macroeconomic impact. Depending on the final design of the proposal, some commercial activity relating to residential property could be liable to CGT as a result of the proposed extension.
<b>Impact on individuals and households</b>	The new charge is targeted at non-resident non-natural persons disposing of property valued at over £2 million. The CGT regime will not be extended to non-resident individuals holding property directly. There is no impact on individuals and households resident in the UK and any impact on non-residents is assumed to be minimal.
<b>Equalities impacts</b>	The measure is not anticipated to impact on groups with protected characteristics any more than on those without such characteristics.
<b>Impact on businesses and Civil Society Organisations</b>	It is assumed that the main type of businesses which might be affected by the proposal is offshore enveloping vehicles whose sole (or main) function is simply to hold residential property in the UK ultimately owned by non-residents. The scale of this impact is difficult to determine at this stage in the policy development process. Views on the likely impact of the proposals on business are sought, to inform the impact assessment and the decision on the final design of the proposal.
<b>Impact on HMRC or other public sector delivery organisations</b>	The exact method of delivery has yet to be determined. We are in the process of scoping delivery options and will be in a position to make a realistic estimate within the next few months.
<b>Other impacts</b>	None expected.

# B

## Current legislation: definition of 'residential property'

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### Stamp Duty Land Tax: Finance Bill 2012

Stamp duty land tax (higher rate for certain acquisitions by companies etc)

That—

- (1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended in accordance with paragraphs (2) to (22).
- (2) Section 55 (amount of tax chargeable: general) is amended in accordance with paragraphs (3) to (7).
- (3) In subsection (1), after “chargeable transaction” insert “to which this section applies”.
- (4) After that subsection insert—  
“(1A) This section applies to any chargeable transaction other than a transaction to which paragraph 3 of Schedule 4A or step 4 of section 74(1A) (higher rate for certain transactions) applies.”
- (5) In subsection (2), for “That percentage” substitute “The percentage mentioned in subsection (1)”.
- (6) In subsection (5), for “74” substitute “74(2) and (3)”.
- (7) In subsection (7), after “this section” insert “, step 4 of section 74(1A) or paragraph 3 of Schedule 4A”.
- (8) After section 55 insert—  
**“55A Amount of tax chargeable: higher rate for certain transactions**  
Schedule 4A provides for the calculation of the tax chargeable in respect of certain transactions involving higher threshold interests in dwellings.”
- (9) After Schedule 4 insert—

#### “SCHEDULE 4A

#### STAMP DUTY LAND TAX: HIGHER RATE FOR CERTAIN TRANSACTIONS

##### *Meaning of “higher threshold interest”*

- 1 (1) In this paragraph “interest in a single dwelling” means so much of the subject-matter of a chargeable transaction as consists of a chargeable interest in or over a single dwelling (together with appurtenant rights).
- (2) An interest in a single dwelling is a higher threshold interest for the purposes of this Schedule if chargeable consideration of more than £2,000,000 is attributable to that interest.

##### *Transactions involving a higher threshold interest*

- 2 (1) Sub-paragraphs (2) to (8) apply to a chargeable transaction whose subject-matter consists of or includes a higher threshold interest.
- (2) If the main subject-matter of the transaction consists entirely of higher threshold interests, the transaction is a high-value residential transaction for the purposes of paragraph 3.
- (3) If the main subject-matter of the transaction includes a chargeable interest other than a higher threshold interest, the transaction (“the primary transaction”) is to be treated for the relevant purposes as two separate chargeable transactions as follows—

- (a) a transaction whose subject-matter is all the higher threshold interests, together with any appurtenant rights;
  - (b) a transaction whose subject-matter is the remainder of the subject-matter of the primary transaction.
- (4) For those purposes, the chargeable consideration for a transaction treated as occurring under sub-paragraph (3) is so much of the chargeable consideration for the primary transaction as is attributable to that transaction.
- (5) The transaction mentioned in sub-paragraph (3)(a) is a high-value residential transaction for the purposes of paragraph 3.
- (6) “Relevant purposes” means the purposes of—
- (a) paragraphs 3 and 5 of this Schedule,
  - (b) section 55 (amount of tax chargeable: general),
  - (c) Schedule 5 (amount of tax chargeable: rent),
  - (d) Schedule 6B (transfers involving multiple dwellings), and
  - (e) any other provision of this Part, so far as it is necessary because of any of paragraphs (a) to (d) to treat the purposes in question as relevant purposes.
- (7) If a transaction treated under sub-paragraph (3) as two separate transactions is notifiable, each of the separate transactions (but not the primary transaction) is also treated as a separate, and notifiable, transaction for the purposes of section 76 (duty to deliver land transaction return).
- (8) The provisions relating to land transaction returns are to be read with any adjustments that may be necessary as a result of sub-paragraph (7).
- (9) The reference in sub-paragraph (1) to a chargeable transaction does not include a transaction to which section 74 (exercise of collective rights by tenants of flats) or section 75 (crofting community right to buy) applies.

*Amount of tax chargeable: higher rate for certain transactions*

- 3 (1) Where this paragraph applies to a chargeable transaction—
- (a) the amount of tax chargeable in respect of the transaction is 15% of the chargeable consideration for the transaction, and
  - (b) the transaction is not taken to be linked to any other transaction for the purposes of section 55(4).
- (2) This paragraph applies to a chargeable transaction if—
- (a) the transaction is a high-value residential transaction, and
  - (b) the condition in sub-paragraph (3) is met.
- (3) The condition is that—
- (a) the purchaser is a company,
  - (b) the acquisition is made by or on behalf of the members of a partnership one or more of whose members is a company, or
  - (c) the acquisition is made for the purposes of a collective investment scheme.
- (4) References in sub-paragraph (3) to a company do not include a company acting in its capacity as trustee of a settlement.
- (5) If there are two or more purchasers acting jointly, the condition in sub-paragraph (3) is treated as met if it is met in relation to at least one of those purchasers.
- (6) In relation to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17(2) of Schedule 15, sub-paragraph (3) has effect as if the following were substituted for paragraph (b) of that sub-paragraph—
- “(b) the purchasers (see paragraph 17(3) of Schedule 15) include a company, or”.
- (7) In relation to an event that is a chargeable transaction by virtue of paragraph 17A(4) of that Schedule, sub-paragraph (3) has effect as if the following were substituted for paragraph (b) of that sub-paragraph—
- “(b) the purchasers (see paragraph 17A(5) of Schedule 15) include a company, or”.

(8) For the purposes of sub-paragraph (3), paragraph 3 of Schedule 16 (bare trustees) applies as if sub-paragraphs (2) and (3) of that paragraph were omitted.

(9) In the case of a transaction for which the whole or part of the chargeable consideration is rent, this paragraph has effect subject to section 56 and Schedule 5 (amount of tax chargeable: rent).

(10) The Treasury may by order amend this paragraph for the purpose of limiting the circumstances in which the condition in sub-paragraph (3) is to be treated as met.

#### *Acquisitions of interests in the same dwelling through different transactions*

4 (1) Sub-paragraphs (2) and (3) apply if—

(a) the subject-matter of a chargeable transaction includes a chargeable interest in or over a dwelling,

(b) one or more land transactions, the subject-matter of each of which includes a chargeable interest in or over the dwelling, are linked to that chargeable transaction, and

(c) the total consideration attributable to the interests mentioned in paragraphs (a) and (b) (and to any appurtenant rights, but disregarding any rent) is more than £2,000,000.

(2) Each of those chargeable interests is treated as a higher threshold interest for the purposes of this Schedule.

(3) If the condition in paragraph 3(3) is met in the case of the transaction mentioned in sub-paragraph (1)(a), it is also treated as met in the case of each transaction mentioned in sub-paragraph (1)(b) that is a chargeable transaction.

(4) The transactions referred to in this paragraph do not include any transaction to which section 74 (exercise of collective rights by tenants of flats) or section 75 (crofting community right to buy) applies.

#### *Property developers*

5 (1) A company is treated as not being a company for the purposes of paragraph 3(3)(a) if—

(a) the company acquires the subject-matter of the chargeable transaction in the course of a bona fide property development business and for the sole purpose of developing and reselling the land, and

(b) the company has carried on that business for at least two years before the effective date of the transaction.

(2) Where the subject-matter of a chargeable transaction is acquired by or on behalf of the members of a partnership, those members are taken not to include a company for the purposes of paragraph 3(3)(b) if—

(a) that subject-matter is acquired in the course of a bona fide property development business and for the sole purpose of developing and reselling the land, and

(b) the partnership has carried on that business for at least two years before the effective date of the transaction.

(3) In relation to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17(2) of Schedule 15 (“the partnership transfer”) the purchasers are treated as not including a company for the purposes of paragraph 3(3)(b) (as modified by paragraph 3(6)) if—

(a) the acquisition effected by the land transfer referred to in paragraph 17(1)(a) of that Schedule was made in the course of a bona fide property development business, and for the sole purpose of developing and reselling the land, and

(b) the partnership is continuing to carry on that business at the effective date of the partnership transfer, and has carried it on for at least two years before that date.

(4) In relation to an event that is a chargeable transaction by virtue of paragraph 17A(4) of Schedule 15 (“the qualifying event”) the purchasers are treated as not including a company for the purposes of paragraph 3(3)(b) (as modified by paragraph 3(7)) if—

- (a) the acquisition effected by the land transfer referred to in paragraph 17A(1)(a) of that Schedule was made in the course of a bona fide property development business, and for the sole purpose of developing and reselling the land, and
- (b) the partnership is continuing to carry on that business at the effective date of the qualifying event, and has carried it on for at least two years before that date.

(5) A property development business is a business that consists of or includes buying, and redeveloping for resale, residential property.

(6) For the purposes of sub-paragraph (1)(b) a property development business is treated as having been carried on by the company at any time when it was carried on by a company which is a member of the same group as the company.

(7) Companies are members of the same group for the purposes of this paragraph if they are members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7).

#### *Partnerships: application of paragraph 2 to certain transactions*

6 (1) Sub-paragraphs (2) and (3) apply where the subject-matter of a transaction to which Part 3 of Schedule 15 applies consists of or includes a higher threshold interest.

(2) The transaction is not to be treated as a high-value residential transaction by virtue of paragraph 2(2) unless the chargeable consideration for the transaction is more than £2,000,000.

(3) Paragraph 2(3) to (8) does not apply to the transaction if—

(a) the subject-matter of the transaction includes a chargeable interest other than a higher threshold interest, and

(b) the result of applying paragraph 2(3) and (4) would be that chargeable consideration of £2,000,000 or less would be attributable to the separate transaction mentioned in paragraph 2(3)(a).

(4) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a transfer of an interest in a partnership that is a chargeable transaction by virtue of sub-paragraph (2) of paragraph 14 of Schedule 15 is—

(a) if the transfer is a Type A transfer, the relevant partnership property as defined in sub-paragraph (5) of that paragraph, or

(b) if the transfer is a Type B transfer, the relevant partnership property as defined in sub-paragraph (5A) of that paragraph.

(5) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a transfer of an interest in a partnership that is a chargeable transaction by virtue of sub-paragraph (2) of paragraph 17 of Schedule 15 is the subject-matter of the land transfer referred to in sub-paragraph (1)(a) of that paragraph.

(6) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a chargeable transaction that is treated as occurring by virtue of sub-paragraph (4) of paragraph 17A of Schedule 15 is the subject-matter of the land transfer referred to in sub-paragraph (1)(a) of that paragraph.

#### *Meaning of “dwelling”*

7 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.

(2) A building or part of a building counts as a dwelling if—

(a) it is used or suitable for use as a single dwelling, or

(b) it is in the process of being constructed or adapted for such use.

(3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.

(4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of the dwelling.

- (5) The subject-matter of a transaction is also taken to include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
  - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
  - (c) construction or adaptation of the building, or part of the building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5) “contract”, “relevant deeming provision” and “substantially performed” have the same meaning as in paragraph 7(5) of Schedule 6B.
- (7) A building or part of a building used for a purpose specified in section 116(2) or (3) is not used as a dwelling for the purposes of sub-paragraph (2).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.
- 8 (1) The Treasury may by order amend paragraph 7 so as to specify cases where use of a building is to be use of a building as a dwelling for the purposes of sub-paragraph (2) of that paragraph.
- (2) The reference in section 116(8)(a) (power to amend section 116(2) and (3)) to “the purposes of subsection (1)” includes a reference to the purposes of paragraph 7(2).

#### *Interpretation*

9 In this Schedule—

“appurtenant rights”, in relation to a chargeable interest that is, or is part of, the subject-matter of a transaction, means any rights or interests appurtenant or pertaining to the chargeable interest that are acquired with it;

“attributable” means attributable on a just and reasonable basis;

“collective investment scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act);

“company” means a body corporate other than a partnership.”

- (10) Section 74 (exercise of collective rights by tenants of flats) is amended in accordance with paragraphs (11) and (12).
- (11) After subsection (1) insert—
- “(1A) The rate of tax is determined as follows.
- Step 1  
Determine the fraction of the relevant consideration produced by dividing the total amount of that consideration by the number of qualifying flats contained in the premises.
- Step 2  
If the amount produced by step 1 is £2,000,000 or less, determine the rate of tax and the tax chargeable in accordance with subsections (2) and (3).
- Step 3  
If the amount produced by step 1 is more than £2,000,000 and the condition in paragraph 3(3) of Schedule 4A is not met with respect to the transaction, determine the rate of tax and the tax chargeable in accordance with subsections (2) and (3).
- Step 4  
If the amount produced by step 1 is more than £2,000,000 and the condition in paragraph 3(3) of Schedule 4A is met with respect to the transaction, subsections (2) and (3) do not apply, and the amount of tax chargeable in respect of the transaction is 15% of the chargeable consideration for the transaction.”

- (12) For subsection (2) substitute—  
“(2) The rate of tax is determined under section 55 by reference to the fraction of the relevant consideration calculated under step 1 of subsection (1A).”
- (13) Section 109 (general power to vary Part 4 of the Finance Act 2003 by regulations) is amended in accordance with paragraphs (14) and (15).
- (14) After subsection (2) insert—  
“(2A) The power under subsection (2)(b) includes power to alter the conditions for the application to a chargeable transaction of paragraph 3 of Schedule 4A (higher rate for certain transactions), other than the condition that the transaction must be a high-value residential transaction.”
- (15) In subsection (3)—  
(a) for “subsection (2)(b),” substitute “subsections (2)(b) and (2A),”,  
(b) omit the “or” at the end of paragraph (a), and  
(c) after that paragraph insert—  
“(aa) section 74(1A) (exercise of collective rights by tenants of flats),  
(ab) Schedule 4A (amount of tax chargeable: high-value interests in dwellings), or”.
- (16) Schedule 5 (amount of tax chargeable: rent) is amended in accordance with paragraphs (17) and (18).
- (17) In paragraph 9—  
(a) in sub-paragraph (4)—  
(i) after “section 55” insert “or 74(1A)”, and  
(ii) after “Schedule” (in the second place it occurs) insert “4A or”, and  
(b) in sub-paragraph (5)—  
(i) for “that section” substitute “section 55”, and  
(ii) after “Schedule” (in the second place it occurs) insert “6B”.
- (18) In paragraph 9A(1), for “where there is chargeable consideration other than rent.” substitute “where—  
(a) there is chargeable consideration other than rent, and  
(b) section 55 (amount of tax chargeable: general) applies to the transaction (whether as a result of paragraph 2 of Schedule 4A or otherwise).”
- (19) In paragraph 2(4) of Schedule 6B (transfers involving multiple dwellings)—  
(a) omit the “or” at the end of paragraph (a), and  
(b) after that paragraph insert—  
“(aa) paragraph 3 of Schedule 4A applies to it, or”.
- (20) Schedule 15 (partnerships) is amended in accordance with paragraphs (21) and (22).
- (21) In paragraphs 11(2C) and 19(2C), in the substituted sub-paragraph (4)—  
(a) after “section 55” insert “or 74(1A)”, and  
(b) after “Schedule” (in the second place it occurs) insert “4A or”.
- (22) In paragraph 30(2)—  
(a) for “either or both” substitute “one or more”, and  
(b) after paragraph (a) insert—  
“(aa) paragraph 3 of Schedule 4A applies to the transaction;”.
- (23) Except as mentioned in paragraph (24), the amendments made by this Resolution have effect in relation to any land transaction of which the effective date is on or after 21 March 2012.
- (24) Those amendments do not have effect in relation to any transaction that is—  
(a) effected in pursuance of a contract entered into and substantially performed before 21 March 2012,  
(b) effected in pursuance of a contract entered into before that date and not excluded by paragraph (25), or  
(c) excepted by paragraph (26).



- (25) A transaction effected in pursuance of a contract entered into before 21 March 2012 is excluded by this paragraph if—
- (a) there is any variation of the contract, or assignment (or assignation) of rights under the contract, on or after 21 March 2012,
  - (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
  - (c) on or after that date there is an assignment (or assignation), subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.
- (26) A transaction treated as occurring under paragraph 17(2) or 17A(4) of Schedule 15 to the Finance Act 2003 (partnerships) is excepted by this paragraph if the effective date of the land transfer referred to in sub-paragraph (1)(a) of the paragraph concerned is before 21 March 2012.





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ISBN 978-1-84532-978-5

