Shorter payment window for Capital Gains Tax on residential properties

Management of taxes **Personal tax**

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The ATT and CIOT have responded to an HMRC consultation on the requirement for individuals and trustees to make a payment on account of CGT on the disposal of a residential property. The payment on account, together with a payment on account return, will be required within 30 days of completion.

The ATT and CIOT have responded to HMRC's consultation 'Capital Gains Tax: Payment window for residential property gains (payment on account)'. This is the first consultation since the government announced in 2015 that it would be requiring payment of CGT arising on the disposal of certain residential property to be made nearer the time that the transaction is completed. Originally intended to take effect from April 2019, it was announced in 2017 that these new rules would not be introduced until April 2020.

Under the new rules, individuals and trustees disposing of residential property will be required to make a calculation of the CGT due on disposal, make a report of the position and make a payment on account (POA) all within 30 days of completion. The payment will be credited against any future self-assessment liability for the tax year of disposal. The return and POA will be needed whether the property is sold or gifted. A return will not be required where there is no CGT due. This could be because private residence relief (PRR) applies in full, or the disposal is made for no gain, or a loss.

In their responses, both the ATT and CIOT highlighted some of the practical difficulties of the new requirement. For example, the individual may not be able to determine the correct rate of tax to apply when their income for the year is not known, or be able to obtain professional valuations, or access historic information, within the proposed timescale. The ATT suggested that more time to report and pay,

or the ability to make amendments to an initial report, would be beneficial.

In terms of the difficulties in establishing the rate, the CIOT mooted the provision of an option to apply a flat percentage of the proceeds. Such an option may assist taxpayers with lower value transactions where compliance is practically impossible within the timescale for the reasons noted above.

Both bodies also expressed concerns over how CGT losses would be taken into account in the POA computation. There is currently no provision to offset capital losses realised after the disposal of the residential property unless a further disposal of residential property is made in the same year. This means that the initial POA could be too large, with the individual not able to recover the overpayment until either an end of year reconciliation, or self-assessment return, is completed. The ATT suggested that there should be provision to make amendments as further facts are established to reduce the POA, similar to the ability to reduce POA calculated for self-assessment purposes.

In addition, the ATT expressed some detailed concerns about the special payment on account return proposed to report the transaction. Incorporating recent feedback about iForms, the ATT response reiterated the importance of a well-designed, and easy to use, reporting system.

Given the recent penalty cases for late non-resident CGT returns and the lack of awareness of the rule changes, the ATT also asked for a soft-landing for penalties in the early years of the new regime.

The CIOT emphasised the need for timely and comprehensive communication of the changes, in advance of their implementation. Communication should be extended not only to the tax pages of GOV.UK and to taxpayers already within self-assessment but also disseminated via professional bodies whose members are involved in valuation and conveyancing processes, and to GOV.UK pages dealing with land registration.

In addition, the CIOT suggested that in view of the potential complexities of the application of partial PRR for unrepresented taxpayers, consideration might be given to retaining CGT payable in respect of gains attributable to the disposal of a main residence that is covered in part by PRR wholly within the self-assessment process rather than being subject to the 30-day reporting and payment on account. Such an approach would appear to accord with the indication that the changes will mainly

affect those disposing of a second home or rental property.

Finally, the CIOT is disappointed that consultation is taking place at Stage Two of the consultation process omitting Stage One entirely. The CIOT observed that the longer time period allowed for payment of corporation tax on gains arising on the disposal of residential property may have the unintended consequence of helping to promote the tax benefits of incorporation.

The full CIOT response can be found on the CIOT website and the full ATT response on the ATT website.