The Times They Are A-Changin’: Clause 14 (payments on account of CGT)

Management of taxes | Personal tax

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From April 2020, individuals, trustees and personal representatives disposing of residential property will need to make a payment on account of any capital gains tax within 30 days.

Although it did not feature in the Budget itself, the government have confirmed that they are proceeding with the plans to introduce a 30-day payment window for capital gains tax (CGT) for UK residents disposing of residential properties from 6 April 2020. These provisions are introduced by clause 14 and included in Schedule 2 of the Finance Bill, which also extends the existing obligations for non-UK residents who dispose of UK land from 6 April 2019.

The ATT has focused its comments on the impact for UK residents disposing of UK residential property. The requirement to report and make a payment on account of CGT in these circumstances is a major change to UK CGT compliance. The changes also coincide with the proposed reduction in the final exemption period for private residence relief from 18 months to nine months and restrictions to letting relief.

The ATT raised a number of concerns about the 30-day measure during the consultation on the draft clauses earlier this year. We are pleased to report that almost all of our concerns about the draft legislation have been addressed in the latest Bill including:

- The interaction between a new residential property return (RP-return) and the existing self-assessment return (SA-return) has now been clarified and the submission of an SA-return will effectively supersede an RP-return.

- Reasonable estimates of values and apportionments needed to compute the gain because information is not available before the payment deadline are now permitted.
- Individuals will be able to make an RP-return based on a reasonable assessment of the individual's likely residency at the time this return is made.
- When estimated figures are established, or if residency changes, the taxpayer has an option to either submit an amended RP-return (by assuming that an additional, notional, disposal has occurred) or wait and make the correction via their SA-return.

We had also expressed concern about the potential for interest charges if a payment on account was found to be insufficient on completion of the SA-return. It is often not possible to establish the CGT liability until the end of the tax year when all the facts are known. HMRC have confirmed that, provided reasonable estimates were used at the time of the report, interest will not be charged if the payment on account is subsequently found to be insufficient.

The only major concern we raised which is not addressed in the revised legislation is that only capital losses incurred prior to the completion date of the residential property disposal can be taken into account when calculating the payment on account. If an individual makes a capital loss later in the tax year, they cannot claim a refund of any CGT paid on account until they submit their SA-return. This means that individuals who dispose of residential property early in the tax year and then realise capital losses later on, may have to wait many months to recover any overpayments. A further representation on this point has been made to the Public Bill Committee.

Beyond the details of the legislation, ATT have also raised concerns about ensuring that the changes receive sufficient publicity and asked for a soft landing for penalties in the first year.