ICAEW

REPRESENTATION 23/18

TAXING GAINS MADE BY NON-RESIDENTS ON UK IMMOVABLE PROPERTY

Issued 16 February 2018

ICAEW welcomes the opportunity to comment on the consultation document Taxing gains made by non-residents on UK immovable property published by HM Revenue & Customs on 22 November 2017.

This response of 16 February 2018 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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MAJOR POINTS

Key point summary

1. The government announced at Autumn Budget 2017 that from April 2019 tax will be charged on gains made by non-residents on disposals of all types of UK immovable property, extending existing rules that apply only to residential property. Extending capital gains tax (CGT) to non-residents disposing of UK residential property from April 2015 was a major change to the UK tax system and extension to non-residential property is a logical move. We agree that that the taxation of foreign owned real estate is a widespread feature of many tax systems, and the fundamental principle is not objectionable.

2. We are concerned there is no coherent policy running through the taxation of real estate and time needs to be taken to simplify the entire regime and ensure it all meshes together. This comment applies not just to non-residents and CGT but also to residents and the entire tax regime for property which has long been in need of a complete review. Too much of the tax regime for property has been built on a piecemeal basis making it difficult for taxpayers to comply despite the best will in the world.

3. Annual tax on enveloped dwellings (ATED) related CGT should be withdrawn from when this new charge is introduced as all gains on real estate will be covered by existing and new legislation (current NRCGT and extended NRCGT). Retaining ATED related CGT for gains post 5 April 2019 (or 5 April 2020 if the suggestion to defer in paragraph 6 is taken up) would result in an extremely complicated system which we do not believe is justified.

4. Ideally to simplify the rules the new regime would apply to all disposals after the effective date (6 April 2019 per the consultation document but see 6 below). That is, for a gain on an asset acquired prior to then there would not be the need to apply more than the current NRCGT and the proposed extended NRCGT. Government may however not want to withdraw ATED related CGT for gains it covered prior to when these new provisions come in. This would be unfortunate given the complexity of retaining ATED related CGT for this category of effected assets. If it is to be retained then, in order to help taxpayers in situations where more than one set of provisions apply, HMRC guidance should be produced with plenty of examples.

5. The opportunity should be taken to review the current procedure for non-residents to report their disposals. The existing system for non-residents to report their disposal of residential property was described in the first tier tribunal by the judge in less than complimentary terms as follows: “The arguments advanced by HMRC about knowledge of the law are little short of preposterous. To say that information about NRCGT returns is “well within the public domain”, as if the public domain had boundaries where one could tell whether something was just in it or well within it or completely within it, is also claptrap.” (see para 176 of Rachel McGreevy and HMRC TC/2017/04089)

6. It is already proposed to move companies owning property into the corporate tax regime away from the income tax regime from April 2020, it would make more sense to coordinate the two changes in April 2020 rather than introduce these CGT changes in 2019. Companies will find they are in the non-resident CGT regime for one year and then into the corporate tax regime for gains in the next year. Taking an extra year to implement the changes should also result in better formulated legislation.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Are there any issues specific to non-residents when considering how they fit into the UK definitions of persons chargeable to UK tax (CGT or CT)?

7. Some commonly used structures cannot be easily classified as corporate/non-corporate such as the US LLC structure and the Dutch Cooperative structure. Structures classed as opaque/transparent for tax are classed differently in the UK compared to their home country and this could lead to multiple layers of taxation on the same gain without access to the tax treaty because of the different categorisation.

Q2: Do you see any issues or complications arising with respect to rebasing which need to be addressed?

8. As with any rebasing valuation the valuation is subjective. Clear guidelines as to what steps need to be taken as regards a sustainable valuation needs to be given and where the guidelines are followed the scope for HMRC to challenge the valuation at some time in the future should be restricted. A properly carried out contemporaneous valuation should take precedence over a valuation carried out at some point in the future when historical information is required, for example as regards market conditions and state of the property.

9. It seems that non-resident companies migrating to the UK would lose their ability to rebase putting them at a disadvantage compared to staying offshore so deterring them from such a move. It would be preferable if such companies could continue to rebase on the assumption it is not the policy intention to deter migration to the UK.

10. It is not reasonable that the option to use original cost rather than rebasing is not available on shares in property companies. It seems the logic for this is that HMRC is worried that a company could have incurred substantial losses on a trade, shut down the trade and started to invest in UK property. However the instances of that happening must be fairly rare. Most overseas landlord companies have been formed just to hold UK properties. The legislation needs to be properly targeted so that the wider body of taxpayers do not suffer financial loss because a few companies in an abnormal situation may benefit.

Q3: Do you agree with the basic principle that gains on direct disposals within these new rules should be computed using the same computational rules as other chargeable gains?

11. Yes, the whole premise of the proposal is to bring non-residents in line with residents so to calculate the gain under different computational rules would undermine the proposal. We assume that this would extend to provisions such as s171 TCGA 1992.

Q4: Further to the specific modifications identified, are any other changes needed to recognise differences in how the tax system applies to non-residents?

12. When NRCGT was introduced, instead of allowing the disposal to be reported as part of the normal reporting cycle under self-assessment a new regime was introduced but with no means of communicating this to affected individuals. When these compliant individuals then reported the disposal on their self-assessment they were charged with penalties of up to £1,600 even where no tax was payable. On the other hand those who chose not to report the disposal where they were not already registered for self-assessment not only avoided the penalty but also potentially tax due on the gain. A better system is needed for the roll out of this extension to taxing gains on UK immoveable property. In addition since another chance may not arise for the foreseeable future, the opportunity should be taken to improve the NRCGT reporting and tax paying system.

13. As commented in the NRCGT consultation, a system of withholding tax is not practicable in the UK as it is not necessary to use a third party professional for buying and selling property. The Land Registry could perhaps take an active role in policing and managing the system.

Q5: For businesses: Will the proposals for direct disposals mean that your company will now be required to register for UK CT?

14. Many such businesses will already be registered under the non-resident landlord (NRL) scheme if the property is rented out, or for having a permanent establishment in the UK if the property is used in the business. If the property is neither rented out nor used in a business the company would still have to be registered for ATED in the case of residential properties.

15. Registration for CT is pointless in many cases as there will only be one return ever required. In practice if a property owner is not registered, whether corporate or otherwise, a system whereby the tax on the gain could be paid by reference to the land registry number of the property would be useful so any additional registration requirement would be redundant. Where the taxpayer owned multiple properties and wished to be able to offset losses between property disposals registration is, however, probably unavoidable.

Q6: For businesses: Will the proposals for direct disposals lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

16. A disposal of the property would have an additional cost related to the reporting and payment of the tax. If the business is required to register with HMRC there will be a one-off cost, and potential future costs if HMRC requested a return, raised an enquiry, etc – these latter costs could be avoided if HMRC had a new 'dormant' flag for taxpayers with no UK presence beyond the ownership of a property.

Q7: For individuals: Will the proposals for direct disposals mean that you will be required to pay Capital Gains tax for the first time?

17. This will be true for many non-resident individuals since previously they would have been exempt from CGT aside from NRCGT on residential property disposals. Such individuals are unlikely to read a UK consultation document. We suggest that their concerns will centre around any registration requirement (ATED is a good example of how NOT to require non-residents to register as it forced many agents to set-up a personal account for the non-resident), and the filing requirement.

18. For the filing requirement we suggest a simple online form for the disposal. It would be helpful if the form could be pre-populated from the land registry data.

19. Hopefully lessons will have been learnt from the poor implementation of the reporting system for NRCGT which has caused considerable confusion particularly for non-residents already filing self-assessment where they were entitled to believe the reporting could be done via their self –assessment tax return.

Q8: Do you consider that the rules for indirect transactions are fair and effective?

20. One issue is the attribution of interests, where properties are held in a group of companies with multiple tiers of ownership, while an indirect holding via a single company is

reasonably likely to be recognised as having a UK link, particularly if owned by UK residents, if the UK property is many companies down a chain or the ultimate shareholders are not UK tax resident then it is likely that any UK issue will not be identified at the date of sale.

21. There is also a problem with attribution in the case of some international trust structures which can be extremely difficult to look through, particularly ones which have endured for more than one generation. In such cases a seller may not be able to trace the ownership of related parties to identify whether they and their associates own the requisite 25% shareholding. While in practice such opacity means that fragmentation is unlikely to have had an avoidance motive, technically the tax would remain due, albeit unlikely for HMRC to identify the issue and investigate non-compliance. This means that taxpayers keen to be honest and thorough will incur an administrative cost of investigation which will in practice only ever be a disadvantage to them. The proposed rules are likely to bring certain non-residents into the charge to UK corporation tax in relation to some indirect transactions. However, in order that legislation can be applied appropriately, potential taxpayers should have certainty over their position. This is more likely to be the case where a single UK property is owned by a single non-resident entity and with few beneficial owners. In circumstances where there is more than one property and, in particular if there is a mixture of UK and overseas property, there will be far less certainty as to whether or not the entity represents a ‘property rich’ entity. This could vary from one day to the next based on the valuation of properties in each jurisdiction.

22. It is not clear how rebasing in April 2019 will operate. As specified at 4.31 it is proposed that rebasing to April 2019 will be the only basis permitted rather than to allow the alternative methods proposed in relation to direct disposals. In some circumstances a company may not be a property rich entity in April 2019 because, for example, it is solely invested in non UK property. It may become a property rich entity at a later date if, for example, it diversifies its investment portfolio to include UK property. In these circumstances, rebasing to the value of the shares in April 2019 would seem inappropriate as the entity would not have been within the scope of UK corporation tax on that date.

23. It would, therefore, seem reasonable to include alternate methods of calculation for indirect transactions. These could include, by way of example, rebasing of the shares to the market value on the date when the entity first becomes a ‘property rich’ entity or time apportionment to the period post first becoming a ‘property rich’ entity.

24. We note that the proposal is to bring within the charge to corporation tax the entirety of any increase in value of the shares where the property richness test is met. However, as the property richness test is set by reference to a requirement that only 75% of the value of the company is attributable to UK land, this would have the effect of bringing gains attributable to non UK assets into the charge to corporation tax for non UK residents.

25. The 75% test should be over a period of, say, a year rather than a snapshot as the value of assets can vary significantly over a relatively short time frame.

26. There is also scope for double taxation. An entity could invest in a UK property which it then subsequently sells, at a gain, and which would be charged to UK corporation tax as a ‘direct’ disposal. The proceeds could be reinvested in another UK property with the shares then subsequently being sold while still owning that property. In these circumstances, as there would be no rebasing in the value of the shares on the first disposal, the gain on the

sale of the shares would reflect the increase in value of the company attributable to both disposals resulting in the gain on the first property being charged to UK corporation tax twice.

27. The five-year look back for ownership is a very long period and, particularly for non-natural persons where there is a change of controlling mind, it is highly likely that the ownership of a historically larger share of a property or property-rich company may not be known. If this is an anti-avoidance provision then it should be for a much shorter period – at most two years, as disposals over longer periods are unlikely to have incurred a delay of more than one or two years merely to avoid UK tax.

28. The test of whether a company is property rich can be impossible to perform. For example Sainsburys is probably property rich as its supermarkets are likely to be trade related properties so it will have high property values and smallish goodwill. By analogy Walmart in America is likely to be property rich too. Walmart owns Boots, which owns UK properties, so a shareholding in Walmart would be caught (but for the fact that most shareholders own a lot less than 25%). There are obviously similar closely held trading companies in other countries though.

29. Looking through shareholdings of overseas companies is also impossible in many cases. If offshore co has 100% subsidiaries it ought to know what properties are held by subsidiaries so a 25% shareholder should be able to ask it. However it is unlikely to know what properties are held by companies in which it is a passive investor, yet once a company is labelled property related looking through does not appear to be limited to looking through subsidiary companies.

Q9: Are any other conditions necessary to ensure the policy is robust in meeting the objective of taxing non-residents on gains on indirect disposals?

30. The policy does not mention stamp duty land tax (SDLT) and stamp duty reserve tax (SDRT). A common method for avoiding SDLT is to envelope a property and sell the shares in the company thereby paying SDRT at 0.5% rather than SDLT at usually a far higher rate. The proposal for capital gains tax means that one tax will be based on the underlying asset, and one on the actual asset sold. This is inconsistent, particularly given the apparent motive of targeting use of corporate structures to avoid tax.

31. It is unclear how this policy to tax gains will be policed. It is likely that the seller will have no or virtually no awareness of UK tax and there is no particular reason for any UK tax adviser to be involved in the transaction since it involves a disposal by a non-resident and, in the UK, capital gains tax has looked at the residence of the seller, not the asset. As such we would expect widespread non-compliance, indicating a major need for HMRC to quickly and effectively challenge non-filing/payment. In the case of indirect holdings, however, it is difficult to see how HMRC would know of the sale, particularly where the company holding the property is not a UK company requiring an entry in the people with significant control (PSC) register.

32. An alternative approach might be to target tax-reliefs available on incorporation, and encourage disincorporation of property through the tax system by increased annual taxes and generous disincorporation reliefs. That approach would be ineffective on property used in a business, but such properties are unlikely to be caught by the gross asset test anyway.

33. Also as outlined above, the current proposals currently go further than is necessary in that

they could result in bringing gains attributable to non-UK assets into the charge to UK corporation tax and/or to a double charge to UK corporation tax.

Q10: For businesses: Will the proposals for indirect disposals mean that your company will now be required to register for UK CT?

34. If so, they are unlikely to realise it. As the gross assets fluctuate wildly on a seasonal basis for many businesses the requirement will come and go across a year, and is likely to only arise shortly prior to the property sale for some businesses as often when a trade is wound down the property is sold last.

35. It would also depend on the mechanics in the legislation for filing details of the disposal and paying the tax – if this can be done without a UTR as noted in the answer to Q5 (for example by listing the CRN, relevant land registry references) then no registration would be required.

Q11: For businesses: Will the proposals for indirect disposals lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

36. The up-front cost of registering will depend on the details of the registration process (see answers to Q5 and 10). Ongoing costs should only occur when there is a disposal. In the case of structures where the ultimate shareholders are non-UK or there are multiple tiers of ownership in a group, it is likely the company will not realise UK tax may be due, so no cost will be incurred unless HMRC somehow identifies the sale and pursues the taxpayer.

37. If the taxpayer does recognise that UK tax is in point, then they will need local advice on the disposal. Particularly for non-UK residents and non-UK trusts the know-your-clients requirements of the Proceeds of Crime Act (PoCA) mean that obtaining UK tax advice can be a prohibitively expensive process in such one-off advisory projects and it is unclear how the system will work in practice for more complex ownership structures.

38. It will be necessary to incur expense to obtain valuations of every property and of each shareholding entity as at 1 April 2019.

Q12: For individuals: Will the proposals for indirect disposals mean that you will be required to pay Capital Gains tax for the first time?

39. The non-residents will pay CGT for the first time unless they were formerly UK resident and made a chargeable disposal, or NRCGT previously. In practice awareness of the UK tax to be considered in the disposal will be minimal for non-UK residents, and barely better for UK residents (who due to the exemption from CGT for the PPR, cars and chattels have low awareness of CGT) so it is possible that in practice they will pay only after enquiry at which point registration would be redundant.

Q13: Do you consider that it is right to harmonise ATED-related CGT given the changes proposed in this document?

40. Yes. ATED-related gains have been obsolete as a concept, if not unfortunately in tax law, since NRCGT was introduced. A single harmonised system should have been introduced at that point rather than having two systems for computing the gain, each overly complex and with its own rate.

Q14: Are there any issues, risks, or complexities created by harmonising the ATED-related CGT rules in the manner proposed, and how can these be addressed?

41. The repeated changes to the system are likely to cause confusion, ATED-related gains and NRCGT are relatively new taxes and changing them so soon indicates a poorly thought through policy at introduction; we suggest a review of the policy making process to identify how and why such significant changes are required so quickly.

42. The timing of property disposals is likely to be heavily motivated by when tax changes occur, with NRCGT for an individual currently at 18%/28% (as applicable since these are treated as upper rate gains) and for trustees and personal representatives at 28%. For a company the entire gain could be: (i) ATED related CGT at 28%; (ii) NRCGT at 20% (changing to CT @19% on April 2019 and CT @ 17% on April 2020), or (iii) a combination of the two. This sort of time-critical taxation leads to timing manipulation that is not a productive use of HMRC's resource to police or taxpayers' time to consider.

43. It is unclear why for 'widely held' companies ATED and NRCGT will not be harmonised (5.13) but for 'closely held' companies they will be harmonised based on NRCGT – the latter has ties to the attribution rules but the policy purpose is unclear and the result will be confusion (albeit with a minimal extra tax take).

Q15: For businesses: Will the proposals for disposals of residential property mean that your company will now be required to register for UK CT?

44. Possibly. Residential properties have been subject to tax since ATED was introduced, so they should already be registered, albeit for ATED and not necessarily CT. Non-resident landlords (NRL) should have been registered in many cases as well and from 2020 these will be registered for CT – quite why the NRL timetable is not harmonised with the CGT change (for at least new NRL) is unclear.

Q16: For businesses: Will the proposals for disposals of residential property lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

45. See answers to Q6 and Q11.

Q17: For individuals: Will the proposals for disposals of residential property mean that you will be required to pay Capital Gains tax for the first time?

46. See answers to Q7 and Q12.

Q18: Do you agree with the general approach to ownership of non-residential property through CIVs outlined above?

47. We agree with the general approach as set out in the consultation document in so far as it applies to UK REITS. In particular, we welcome the acknowledgement that gains made by non-resident members of a UK REIT group will be treated as exempt in accordance with the normal REIT rules.

Q19: Will the proposals for CIVs mean that you will now be required to register for UK tax?

45. It seems that non-resident investors, that are otherwise exempt from tax on income and gains, e.g. by reason of being an overseas pension fund, will now be subject to UK tax on gains at the point of disposal of their interest in a CIV and as such it is likely that such investors will have a new UK tax filing obligations.

Q20: Will the proposals for CIVs lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

48. The result of bringing certain classes of otherwise exempt investors into the charge to UK tax seems to be a bigger policy change than simply aligning the treatment of non-residents with UK residents. Indeed, some previously tax exempt investors are likely to need to undertake costly restructuring exercises to avoid a double tax charge – as noted above.

49. We also note that investment structures that accommodate different investor classes, e.g. via Luxembourg with both UK and overseas tax exempt investors, may need to restructure so as to not prejudice those UK based investors. A wider exemption would prevent such additional restructuring obligations.

Q21: Are there changes needed to the rules for CIVs, particularly around exemptions, to ensure a robust system of taxing non-residents on gains on disposal of interests in UK property?

50. No comment.

Q22: Are there any specific circumstances where the treatment of gains on non-residential UK property should be different to the treatment of gains on UK residential property in the context of a CIV?

51. There is a concern that the five year look-back rules would prejudice seed investors in some CIVs where the relevant investor has a larger percentage holding on day one which is subsequently reduced below the 25% ownership test. Unless this is addressed it may discourage seed investment in CIVs from investors that would otherwise fall within the exemption.

Q23: Do you have any further comments on the taxation of gains on non-residential UK property held through CIVs?

52. No comment.

Q24: Do you foresee any difficulties with the reporting requirements for the seller?

53. Yes, the same problems as currently occur for NRCGT and ATED-related CGT. Lack of awareness is rife, registration is unduly difficult (non-UK residents people will generally not have a personal tax account or gateway account and will find opening one difficult), and the timetable for registration and payment is very short. It already often takes non-UK residents many months to get a UK UTR, so in practice sellers are likely to receive their UTR long after the due date for filing and payment is past.

54. The whole approach for indirect property is flawed as it presumes much greater knowledge of the UK tax system than any non-resident has a reason to hold. Some investors in UK property are very unsophisticated, investing in the UK due to a combination of UK familial relations (to identify the investment property) and concerns about local investment (state appropriation, perception of wealth locally, desire to avoid having all assets invested locally, desire to have a bolt-hole if their local area becomes unstable, etc).

Q25: Do you foresee any difficulties with the charge on the UK group company?

55. Yes. Firstly the wrong vehicle is being taxed, the UK company is unlikely to have been involved in the disposal and may be completely unaware of it.

56. Secondly HMRC needs to identify the link between the parties, not easy for sister subsidiaries owned by a non-UK parent, much less so for more distant group relatives;

57. Thirdly ownership may vary even within a group so the people ultimately bearing the tax may not be the people ultimately benefiting from the disposal (particularly where dividends and capital rights are not pro-rata across all share classes);

58. Fourthly the UK subsidiary may not be able to pay the tax leading to non-recovery;

59. Fifthly it is unclear what a UK representative of the company might be - an employee? A subcontractor/sales rep? A shareholder is not a 'representative' but an 'owner' (the company represents their interests, they don't represent it) but the shareholders are the only credible target, but why should the UK shareholders bear the entire burden when there may be many shareholders?

60. This whole approach to indirect taxation is unworkable. HMRC would first need to identify the tax, then be in time to assess it, then identify the related party and then recover from them. All these steps have significant practical problems and non-collection risks becoming endemic.

Q26: Do you agree with the proposal to use the normal CT Self- Assessment framework?

61. Yes for companies already registered for CT.

62. No for companies not already registered. There is no point to such registration, they should just file and pay the tax based on the land registry details. Why require CT registration (which can take months) in the UK when there is no enduring tie to the UK? This seem to be a completely unnecessary burden to place on the taxpayer. The only reason for such a system appears to be avoiding the creation of a bespoke system for HMRC to track the filing and tax and query as appropriate. The actual system required for this should be relatively straight forward.

Q27: Will the proposed information and reporting requirements lead to an increase in your administrative burdens or costs? Please provide details of the expected one-off and ongoing costs.

63. It is likely that many people will suffer no burden as they will be unaware of the need to file or pay, so will continue in blissful ignorance.

64. Where the property is currently within ATED/NRCGT the creation of a credible system can only reduce the costs.

65. Where the property is already within CT there should be minimal burden – merely a calculation of the tax due and payment together with a deferral letter.

Q28: For third-party advisors: what is the best way to ensure the proposed information and reporting requirements do not lead to an undue increase in your administrative burdens or costs? Please provide details of likely one-off and ongoing costs in respect of any options or proposals.

66. The requirement should be restricted to advisers who either advise on the sale, the reinvestment of the funds, or on an existing CT/NRL return for the company which will

contain the disposal. Other advisers are too distant from the event for it to be reasonable for them to investigate the disposal tax treatment.

67. In the case of these advisers ‘close to’ the deadline should be extended as the adviser may not become aware of the transaction until long after the event – 60 days from identification of the disposal would be more workable than a flat ’60 days from disposal’.

68. The current proposal of ‘related to’ appears extremely broad and could catch people doing company secretarial work to update a PSC register, a book-keeper writing up company transactions, etc – such people have a minimal existing requirement (under PoCA) to know about the source of funds relating to work that they do, but they wouldn’t be expected to know the tax rules themselves, much less be able to check that they had been correctly applied.

69. What does ‘relating to’ mean? What happens where the advisor doesn’t get involved until after the 60 days? Why would any UK adviser be involved anyway for indirect disposals by non-UK residents? It appears that non-resident advisors are being treated more favourably than UK resident advisors. If properties being sheltered in corporate wrappers is a tax problem, and we accept that SDLT avoidance through the use of a corporate wrapper has been an issue for years, then the use of the corporate wrapper should be targeted and not someone who is engaged to change the PSC register and is now expected by HMRC to (at their own cost) to investigate the disposal by the former owners (for whom they may never have acted, although they should have some knowledge of under know your client rules).

Q29: What channels and methods should HMRC use to raise awareness of this change in the law, to ensure that affected non-residents will know that they are impacted?

70. For direct disposals the land registry forms could be changed such that the registration can only be changed once the tax is paid or in a UK lawyer’s escrow account. The buying process would then have an extra step in that the buyer would take an active role in ensuring the amount he pays for the property is split between the seller and HMRC or the solicitor’s escrow account.

71. For indirect disposals there is no apparent method beyond advertising globally (prohibitively expensive and highly unlikely to be effective) or using land registry details to write to non-resident property owners (practically impossible as land registry doesn’t keep contact details, just a name – which is often that of a nominee).

72. Perhaps any land registration going forward could require a help pack to be provided to the new owner on relevant UK tax? This would not help existing owners but over the coming decades awareness might percolate marginally more swiftly with such notification. However given the speed of change of UK tax law it is unlikely the pack issued on purchase would still be relevant on disposal.

APPENDIX

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx).