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# ATED and CGT considerations for offshore structures

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## **Nerine Trust Company Limited** *7 April 2015*

As Benjamin Franklin famously wrote in 1789 “in this world nothing can be said to be certain, except death and taxes.” While we cannot do much about our own mortality, there is a whole industry centred around the mitigation of taxes. The world of taxes, particularly in the UK, is constantly evolving with annual Budget and pre-Budget announcements from the UK Chancellor. In this briefing, we look at the application of capital gains tax (CGT) and the annual tax on enveloped dwellings (ATED) to offshore structures.

### **Capital Gains Tax**

CGT is a tax on “chargeable gains” made on the disposal or deemed disposal of “capital assets” by individuals, personal representatives and trustees. Companies resident in the UK (or carrying on a trade through a UK permanent establishment) are subject to corporation tax, rather than CGT.

#### *Application of CGT to non-UK residents*

For non-UK residents (that are not companies), CGT arises if the taxpayer carries on a trade, profession or vocation in the UK through a branch or agency at the time of disposal.

From 6 April 2015, all non-UK resident persons (including individuals, trustees, personal representatives and companies) will be subject to CGT on any gains arising from a disposal of residential property in the UK worth £1 million or more (£500,000 or more from April 2016). Previously, the only non-UK resident persons subject to CGT were companies.

Non-UK tax resident close companies are subject to anti-avoidance rules where capital gains they realise may be taxed in the UK by attributing those gains to UK resident shareholders and certain other persons with an interest in the company, including the trustees of non-UK resident trusts. Although non-UK resident trustees would not themselves be subject to tax on the attributed gains, those gains may be further attributed to a UK resident settlor or beneficiary of the trust.

#### *Exemptions from CGT*

There are a number of exemptions from CGT. The main exemption of interest is principal private residence relief. Under this exemption, individuals who dispose of a dwelling-house which has been their only or main residence are not taxed on any gain that accrues. If an individual has more than one dwelling-house, HMRC will decide which is his main residence for CGT purposes unless he makes an election in writing to HMRC. The residence may be situated in the UK or abroad.

From 6 April 2015, a dwelling-house will be treated as not being occupied as a residence by an individual in relation to a particular tax year if:

- the individual was not tax resident for that tax year in the territory in which the property is situated; and

- the individual did not spend a minimum of 90 days in the property (or any other property in the same territory in which the individual had an interest (**Qualifying Unit**) during that tax year. Additional days spent by the individual's spouse or civil partner in the property or in a Qualifying Unit in relation to the individual, can count as days spent by the individual.

If the above two factors apply, the individual will not be eligible for principal private residence relief and, therefore, will be subject to CGT on the disposal of any such property.

Principal private residence relief is also available to the trustees of a settlement, provided that during the trustees' period of ownership, the dwelling-house (or part of the dwelling-house) has been the only or main residence of a beneficiary entitled to occupy it under the terms of the settlement. For the relief to apply, a claim must be made by the trustees.

### Annual tax on enveloped dwellings

Since 1 April 2013, ATED has been charged where a non-natural person (**NNP**) owns a UK residential property valued at more than £2 million. A NNP can be a company, a partnership with a corporate partner or a collective investment scheme. As the focus of the ATED charge is on UK high value residential property, the place of residence of the NNP is irrelevant.

From 1 April 2015, ATED will apply to dwellings valued at over £1 million, at the rates set out in the table below. From April 2016 the ATED charge will be extended to dwellings valued at over £500,000 and will be increased annually by reference to the increase in the consumer prices index.

Property value	ATED charge
£1 million up to £2 million	£7,000
£2 million up to £5 million	£23,350
£5 million up to £10 million	£54,450
£10 million up to £20 million	£109,050
£20 million +	£218,200

The actual ATED liability will be determined by multiplying the applicable ATED charge by the proportion of days that a chargeable person comes within ATED.

Please note that this briefing is intended for general information purposes only. Nerine does not give tax advice and no reliance may be placed on this briefing. Clients are strongly advised to obtain specific tax advice on the implications of the ATED and CGT regimes from their advisers. We work with a large number of advisers that we would be happy to recommend to those clients who do not have their own adviser in place.