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Capital Gains Tax on Residential Properties

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Introduction

From April 2019 all Residential properties that are NOT “Private Principal Residences” are now subject to the same rules.

This means that vendors will need original cost; costs of purchase; and any enhancement costs. This will enable them to provide the required data, and so avoid penalties.

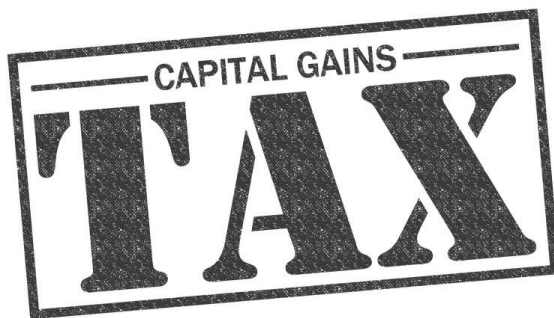
Goddards Accountants tax department have been preparing Capital Gains Tax computations for many years, and so are very experienced in these matters. We always recommend that you seek professional advice before finalising any declaration or capital gains tax calculation.

Capital Gains Tax

Capital Gain Tax is the tax which is due as a result of the financial gain (often referred to as profit) received once an asset is sold or disposed of.

The total gain is calculated by subtracting the sale value from the original purchase value.

For example, if you are selling a property, the sale value will normally be the sale price, or in some cases the market value which the property could be reasonably expected to sell for in an open market. You would use the market value if you give the property away, sell it at a reduced cost or pass it to a connected person (such as a family member).



Assets Liable for Capital Gains Tax

Assets which are liable for Capital Gains Tax include all forms of property (unless it is specifically exempt), certain gifts made, inheritance, shares and assets transferred through divorce or civil partnership which has been dissolved.



The main assets that it applies to are land, buildings, shares and business assets including goodwill. Until recently, expats and non-UK residents with a UK property were not liable for Capital Gains Tax, however, that loophole has now been closed.

Capital Gains Tax declarations when selling property as a non-resident

In 2013, most non-UK resident companies became liable for capital gains tax on UK residential property.

In 2015, the government introduced “non-resident capital gains tax” (“NRCGT”), which applies to all non-UK residents including individuals and trusts as well as companies.

All non-UK residents now pay NRCGT on UK residential property.



Since the new rules came into force in April 2015 as a non-resident, when you sell a UK residential property you must tell the HMRC, even if you have no capital gains tax to declare. This also applies if you are selling, or have sold, your main residence.

Failure to correctly make a capital gains tax declaration to the HMRC within 30 days after conveyancing (transferring ownership of) your property is likely to result in a penalty – even if there is no capital gains tax to pay.

New Legislation – UK property and the Finance Act 2019

From 6 April 2019, there are three occasions when a non-UK resident individual may need to pay UK capital gains tax on their disposals.

- When the individual carries on a trade, profession or vocation through a UK branch or agency and the asset disposed of was used, held or acquired for the purposes by the branch or agency.
- When individual makes a direct disposal of UK land – either residential or commercial.
- When the individual makes an indirect disposal of UK property by disposing of shares in a company which is UK property-rich and where they hold/have held a substantial interest.

The requirement on non-residents to pay CGT on assets used in a branch or agency has been around since the inception of the tax in 1965 and on residential UK property since April 2015. Finance Act 2019 (FA2019) introduces two significant changes from April 2019 by extending the current liability to UK CGT from residential to commercial property and introducing the entirely new concept of the indirect disposal.



Finance Act 2019

The Changes: Extension to Commercial Property.

From 6 April 2019, a single capital gains tax regime will apply to all UK land owned by non-UK residents. Non-residents will pay NRCGT on all UK real estate whether residential or commercial.

This is a significant expansion of the current Non-Resident Capital Gains Tax (NRCGT) rules which apply in only limited circumstances to direct disposals of residential properties. It therefore represents a fundamental change to the existing regime. This is a topic that will impact all overseas investors in UK property, including real estate funds.

The 2019 property tax reforms affect both homeowners and investors, including charities and pension funds.



The Changes: Indirect Disposals

For the new category of indirect disposal, the individual will be liable to UK CGT where they have disposed of a right or interest in a company based anywhere in the world which:

- Derives 75% of its value from UK land (by calculating the proportion of gross assets that are UK land in relation to the overall gross assets); and
- Where the individual holds a significant interest. This means that they, together with certain related parties, have at some point during the two years prior to disposal, held an interest of 25% or more in the company.

From 6 April 2019, non-residents will pay NRCGT on a sale of shares in a company that owns UK real estate if:

The company is “land rich”: at least 75% of its value must come from UK land. If a company is worth £1m and owns shops worth £800,000 and investments worth £200,000, the shareholders will be taxable under the new rules.

The shareholder owns at least 25% of the company’s shares. The shareholdings of certain family members are added together to see if they meet the 25% test; or

The shareholder (and their connected shareholders) has met the 25% test within the two years before the sale.

The new rules apply to widely held companies, not just family companies.

From 6 April 2020, non-UK companies will pay corporation tax in relation to UK real estate.

Collective Investment Schemes/REITs (Real Estate Investment Trusts)

At present, offshore REITs do not generally pay UK tax on their investments. Investors are taxed on distributions, but the receipts of investors such as charities and pension funds are exempt from tax under the normal rules.



The new rules will apply to widely held property investment funds. The 25% holding rule does not apply, so all shareholders are potentially taxable on sales of shares or units in a fund.

The default position is that the investment fund itself will also be subject to NRCGT

Capital Gains Tax Rates

Non-residents realising chargeable gains post 5 April 2019 will be taxed as follows:

Non-resident companies will be subject to corporation tax at 19% (17% from April 2020)

Non-resident individuals disposing of non-residential property will be subject to capital gains tax at 10% or 20%, depending on their marginal rate. Gains realised on disposal of residential property will

be subject to capital gains tax at 18% or 28%, depending on their marginal rate.

Non-resident trusts disposing of non-residential property will be subject to capital gains tax at 20%; whereas gains realised on disposal of residential property will be subject to capital gains tax at 28%.



Tax Returns and Payment of Tax

Capital gains tax is normally paid as part of the self-assessment cycle. The tax for a particular tax year must be paid by the 31 January following the end of the tax year. A taxpayer who owns a number of assets can look at his gains and losses for the whole year and only pays tax on the net gains.

If a non-UK resident sells UK residential property, they must submit a NRCGT return within 30 days of the sale and any tax due must be paid at the same time.

The requirement to make a payment on account is different from the pre-April 2019 practice for reporting residential disposals by non-residents. A non-resident reporting a residential property disposal on or before 5 April 2019 who is already in self-assessment can defer payment of any CGT until completion of their self-assessment return. For disposals from 6 April 2019, the individual must make a payment of the tax calculated as due at the time of the report within 30 days – whether or not they are within self-assessment.

Where an individual makes more than one disposal in the same tax year with the same completion date, then both disposals must be reported on the same return. Under the system prior to 5 April 2019, it was permissible to report the disposals together or separately.

A report must be made even if the non-resident has made a loss on disposal. The only disposals which a non-resident does not need to report are:

A disposal to which the no-gain/no-loss provisions apply (for example, a transfer between spouses).



A grant of lease for no premium to an unconnected third party.

A disposal by a charity or a disposal of pension scheme investments.

If they sell more than one property and make a gain on the first property and a loss on the second, they must pay the tax on the gain on the first property when sold. When they make the loss, they may be able to reclaim any tax overpaid on the basis on the running total.

The government has said that some transactions will be exempt from these new obligations including:

- Gifts and sales between husband and wife
- Gifts and sales of non-UK shares by a UK resident but non-domiciled individual who claims the remittance basis
- Sales of an individual's main residence (which is exempt from capital gains tax).

Many non-resident property owners are unaware that they must submit NRCGT returns within 30 days of sale.

HMRC may impose penalties on a person who fails to submit a return in time. No penalty is charged if the individual has a "reasonable excuse" for not submitting the return.

Rebasing

Gains on the sale of commercial property and gains on all property owning companies will only be taxable to the extent they accrue after 6 April 2019.



An owner who bought a property or shares bought before that date will be treated as if they bought them for their market value on 6 April 2019. Gains that accrued before that date will not be taxable.

If the owner will not benefit from rebasing, for example because rebasing produces a gain but there has actually been a loss on the property, the owner can opt out of rebasing and calculate the gain in the normal way.

UK Citizens

As from 1st April 2019 the same rules will now apply to UK Citizens selling any property that is NOT their Principal Private Residence.

That is, with 30 days of sale a Capital Gains Tax Return must be submitted to HMRC irrespective of whether a Gain has been made. If there is any Tax due on the gain, that is immediately payable; unless you ask for deferment because you will be completing a Self Assessment Tax Return for that year.

Conclusion

Property taxation is complex. Capital Gains Tax is only one of the taxes which affect people who own UK property or property owning companies.

If you have a UK property, or other assets, in the UK which you are considering selling, you should seek qualified advice about your best course of action to mitigate any unnecessary Capital Gains Tax bills. Goddards Accountants Tax department can help in this area.

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