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CAPITAL GAINS TAX ON PROPERTIES HELD BY A NON-UK RESIDENT

With effect from 6 April 2015, non-UK residents are subject to UK tax on the disposal of UK residential property.

What property is within the charge?

The extended CGT charge applies to all directly-held UK residential property. There will be no general exclusions for property held for the purposes of a property rental business and houses that merely have rooms let out to students are within the charge. Property development activity of a non-UK resident will continue to be subject to income not capital gains tax.

Certain types of communal residential property are however excluded from the charge. These include accommodation used as a children’s home; care homes for those in need because of (e.g.) old age or disability; communal accommodation for members of the armed forces; prisons and similar establishments; and “Purpose Built Student Accommodation” (“PBSA”).

Property which is in the process of being converted to a dwelling are within the charge, as will residential property sold “off plan” (i.e. before it has been built). Bare land and residential property being converted to commercial use will normally be regarded as non-residential and outside the scope of the charge.

What owners are liable?

The new CGT charge applies to all non-resident individuals, trustees and other persons holding UK residential property. Non resident companies which hold residential property are within the charge to CGT where:

- The company has five or fewer shareholders;
- There are no institutional investors as one of the shareholders; and
- The funds are not widely marketed on a stock exchange

Rate of tax, computation and reliefs

Individuals are subject to tax at 18% or 28% depending on their level of UK income. The annual CGT exempt amount is however available. Losses from UK residential properties can be offset against gains from UK residential properties in the same or future periods.

Trusts are subject to tax at 28%.

Non-resident companies will be taxed at the same 19% rate of tax as applies to UK-resident companies. Indexation allowance is available in computing gains but only up to 31

December 2017 (in contrast to the rules for ATED - see below - related gains where no allowance is available). Groups of companies are also able to offset gains and losses on UK residential property provided they can provide HMRC with proof of their ownership structure.

The charge under this new regime extends only to a gain which accrues after 6 April 2015.

The normal rule is that the gain is calculated as if its base cost is its value at 6 April 2015. However the taxpayer can elect to use either a time apportionment basis if preferred (unless the disposal is also within the ATED rules) or simply take the gain/loss for the whole period of ownership (this is beneficial if there are losses). In all cases the taxpayer can choose to use the actual gain arising over the whole period of ownership. **We strongly recommend that you obtain a formal valuation or informal contemporary evidence of the valuation of the property at 6 April 2015. This could be more difficult to obtain when the property comes to be sold, perhaps many years in the future.**

Principal Private Residence (PPR) relief for homes

Like any other individual, a non-resident individual may in principle be able to claim a measure of relief from tax ("PPR Relief") where the property sold is or has been his or her home. However, the general rule (applying to residents and non-residents alike) will be that a property can qualify for relief for a tax year only if:

- The person selling the property was tax resident in the same country as the property is located; or
- The person spent at least 90 midnights in the property in the year.

Helpfully, the 90-day test rule includes occupation by the individual **or spouse or civil partner.** However, each occupation at midnight can only count once.

Example: Suppose Fred who is resident in Sweden and own a flat in London stays in the flat on 80 occasions and is here at midnight each time. His wife Matilda accompanies him on 30 of those nights but she also stays on alone for an extra 12 midnights. Thus, Fred passes the 90 midnight test because the property has been occupied by one of them on 92 occasions. But if say Matilda is out at parties on three of these additional nights and so only gets back to the flat before midnight on 9 of the 12 nights, Fred has now failed the test (he only has 89 nights) – thus he cannot make a PPR election for the flat for that tax year.

The "Trap" for Non-Residents

There is one large trap that awaits the non-resident who owns UK residential property. Given that in many cases a person who consistently spends 91 midnights in the UK becomes tax-resident here, the practical effect of the rules will in many cases be that a non-resident will be unable to claim the relief. The only way a non-resident can claim PPR relief is if s/he spends exactly 90 midnights in the UK, but not 91.

Clearly, it will be vital for that non-resident to have accurate and detailed records of all stays in the UK in order to prove.

Administration

The taxpayer must notify HMRC of a property disposal within these rules within 30 days from the day after the conveyance. The conveyancing solicitor is not required to deduct tax at source.

If the non-UK resident is already within income tax, corporation tax or ATED (see later), the tax payable can be settled through the normal filing process. Otherwise you will have to make an advance self assessment and pay the tax to HMRC within 30 days. In this, you will need to provide a reasonable estimate of your tax payable under TMA 1970 new s 12ZF(1)(c):

- Showing whether 18% or 28% tax rate applies;
- Gains or losses on later disposals in the year are ignored, but account is taken of any capital losses in the same year up to the date of disposal;
- You must give details of how the tax estimate has been arrived at; and
- Provided the estimate is reasonable, you should be protected from any penalties.

Interaction with the Annual Tax on Enveloped Dwellings (ATED)

The new CGT regime will sit alongside the ATED regime (see our separate fact sheet on this) which applies, broadly speaking, to certain residential property owned by "non-natural" persons (mainly companies and trusts). Where ATED applies, it takes priority over the new charge. However, the scope and exemptions of the ATED regime differ very significantly from the extended CGT charge so great care is needed in the interaction between the two. It is even possible that in some cases a single disposal may give rise to tax charges under both the ATED regime and the new extended CGT regime. Although note that the ATED regime does have an exclusion for property held for the purposes of a property rental business or in the course of a property development activity.

Penalties

Your CGT return must be made within 30 days of completion of the sale even if there is no capital gain to report.

As with the penalties for ATED, penalties for not submitting a return under the rules governing sales of residential property by non-UK residents start at £100 per return, with daily penalties of £10 cutting in once the delay exceeds 3 months and a penalty of £300 (or, if higher, 5% of tax due) if the return is more than 6 months late, and a further £300 or 5% if the return is still outstanding after a year. No tax related penalty can be imposed if no tax is actually due. BUT note the non-tax related penalties add up to a tidy £1,300 for a delay of 6-months, even if no tax is payable. You can't ignore filing your CGT return where you are eligible for relief and so no tax will be due – you must still file your return – otherwise, HMRC will impose the penalties anyway.

This fact sheet is for information only. It provides an overview of the regulations currently in force and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore, no responsibility for loss occasioned by any person or refraining from action as a result of this material can be accepted by the authors or the firm.