

Capital Gains Tax and non-residents

The government introduced a capital gains tax (CGT) charge on the disposal of UK residential property by non-residents with effect from 6 April 2015.

Properties affected

From this date CGT was extended to non-UK residents (whether individuals, trusts or companies) holding UK residential property directly, irrespective of the value.

The CGT charge will apply to properties that are used or suitable for use as a dwelling. Commercial properties are not affected. Office and industrial buildings will therefore not be caught, provided they are not in the process of being adapted or constructed for residential use.

Rate of tax for individuals

The tax rate for non-resident individuals will be the same as the rates applicable to UK resident individuals. CGT is charged at a rate of 18%, or 28% if they are higher rate taxpayers. Non-residents will therefore be required to declare their UK income to determine whether or not they are liable to the lower or higher rate of CGT. Non-resident individuals will also be able to use the annual exemption, currently £11,100, to reduce the CGT payable.

Rate of tax for companies

Residential properties worth more than £1 million owned by companies are already potentially subject to CGT through the existing ATED regime which is being extended in April 2016 to apply to properties worth more than £500,000. The existing ATED-related CGT charge will take precedence over the new non-resident CGT charge. The CGT rate for companies disposing of property falling within the ATED regime is 28%.

Where non-resident companies do not fall within the ATED regime, the CGT rates to be charged on the disposal of residential property will be the same as the rate of UK corporation tax, currently 20%. The new 20% CGT charge will therefore apply to enveloped properties that are outside the ATED regime because they are valued at less than £500,000 and also to properties that are valued at more than £500,000 but qualify for relief from the ATED-related CGT charge, for example commercially let residential properties.

However, a property may be subject to both ATED-related Capital Gains Tax and non-residents' Capital Gains Tax. If both charges apply:

- ATED-related Capital Gains Tax will take precedence

- any ATED-related gain will be subject to ATED-related Capital Gains Tax at 28%

- any remaining gains made after 5 April 2015 will be subject to non-residents Capital Gains Tax at 20%

Non-resident companies will also benefit from a form of indexation allowance and an option for groups of companies to offset gains and losses made on disposals of UK residential property by different members of the same group, subject to certain conditions being met.

Treatment of losses

For individuals, losses on disposals of UK residential property will be ring-fenced and will be able to be used to reduce gains on disposals of other UK residential property arising to the same person, either in the same period or a later period.

Where companies are not a member of a group, or where they do not elect to pool the losses, losses will be treated in the same way for companies as they are for individuals.

Rebasing provisions

Rebasing provisions ensure that only the portion of the gain accruing after 5 April 2015 will be subject to the CGT charge. This matches the way a gain is calculated for the purposes of the ATED-related CGT charge. However, the rules also allow a time-apportionment of the whole gain with the taxpayer presumably able to opt for whichever gives the best tax result.

Taxpayers will also have the option to use neither of the rebasing provisions and may instead compute the gain (or loss) over the whole period of ownership.

Principal private residence relief

Principal private residence (PPR) relief is available to ensure that individuals do not pay CGT on gains accruing on a property during periods when that property is their main residence.

Generally, a non-UK resident will not have their main residence in the UK and so the PPR relief will not be appropriate.

A property will only be treated as an individual's PPR where the person has either been tax resident in the same country as the property for that tax year or resided in the property for at least 90 midnights in the tax year. This applies equally to a UK resident individual disposing of an overseas residence.

The subsidiary features of PPR, such as lettings relief and final period relief, remain unchanged and are available to non-residents.

Trusts

All types of non-resident trust fall within the scope of the new charge and PPR relief will be available to non-resident trustees when the beneficiary meets the appropriate conditions. The new charge will take precedence over existing anti-avoidance provisions that attribute gains to settlors or beneficiaries of non-resident trusts.

Reporting and payment

All individuals and companies need to report a disposal to HMRC within 30 days of completion of sale. Where the individual or company already submits tax returns to HMRC the reporting of the gain must also be made in the self-assessment tax return, and payment of any tax can be made as part of the self assessment process. Otherwise a person will need to make payment at the same time the report is delivered, within the permitted 30 days after the property is conveyed.

IMPORTANT NOTE: The comments above describe the position under current legislation, and of course, are subject to change if legislation changes.

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