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UK Residents and UK Residential Property Gains

Introduction

Since April 2015, non-UK resident individuals and entities have had to submit a capital gains tax ("CGT") return within 30 days of completing the sale of UK residential property and pay over any CGT due by that date. This was extended to 60 days for transactions completing after 27 October 2021.

However, for UK resident individuals, trustees and personal representatives, any sales of UK residential property have only needed to be declared on the self assessment tax return after the end of the relevant tax year and any CGT paid on 31 January following. In some cases, this resulted in the CGT being paid nearly 22 months after the sale had taken place.

From 6 April 2020, the position has been brought in line with the treatment for non-UK residents, with a CGT return being required, along with an on-account CGT payment having to be made, within 60 days of the sale completing (previously 30 days for disposals between 6 April 2020 and 27 October 2021).

This helpsheet provides a brief overview of the reporting requirements and their impact on UK taxpayers. However, we will be happy to review your particular circumstances in more detail and advise what action needs to be taken to ensure you comply with the legislation.

What disposals are affected?

Any sales of UK residential property owned by a UK resident individual, trustee or executor where contracts are exchanged on or after 6 April 2020 will fall into the regime whereby, in most circumstances, any gain arising must be reported to HMRC, and an on-account CGT payment made, within 60 days of the sale completion date.

Swift action is needed as the taxpayer will need to apply online for a CGT reference, even if they are using an agent to complete the actual CGT return.

For those taxpayers already registered with the HMRC online service, setting up a CGT account and obtaining a reference number should be fairly straightforward; however, for those taxpayers not already registered, it may take a little longer.

There are some circumstances where the return cannot be made online and a manual paper return will need to be completed. These include:

- Digitally excluded individuals who do not have access to a computer or are unable to pass HMRC's online verification.

- Trusts or estates where the trustee or personal representative is a corporate trustee company.

- A capacitor such as Power of Attorney authorising an agent to file the property return.

In such cases the client will need to contact HMRC directly to register for a CGT on UK Property Account and obtain a reference.

We would therefore recommend that given the short time scale for reporting the CGT reference is applied for as soon as the sale completion date is known (as this is one of the items of information needed to obtain the reference).

No return is required where:

- The gain arising is not chargeable to CGT (for example, it is fully covered by private residence relief, unused losses or the annual exemption);

- It is a no gain/no loss disposal;

- The sale results in a capital loss (although, if there has been a previous UK residential property sale in the same tax year on which CGT has been paid, the taxpayer may wish to submit a CGT return to claim the loss and get a tax refund); or

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We will be happy to review the property disposal ahead of contracts being exchanged to determine whether a gain arises, so that you know well in advance of the completion date whether a CGT return will be required.

What if the property is or has been my main residence?

Where the property has been used as your only or main residence throughout your ownership and the garden and grounds of the property do not extend to more than half a hectare (approximately 1.2 acres), it is likely that full private residence relief will be available on the gain.

However, where:

- There have been periods of absence from the property;

- Another property has been owned or rented at the same time; or

- The garden and grounds of the property are more than half a hectare

it is possible that not all of the gain will be covered by private residence relief and this will need to be considered further.

We will be happy to advise you on whether any of the gain arising on your main residence will not be covered by private residence relief.

How do I calculate how much CGT to pay?

Tthe CGT payable on property disposals reportable within 60 days is referred to by HMRC as “notionally payable” and is a payment on account towards CGT due for the tax year with, in most cases, the final calculation of the overall CGT liability for the year dealt with via self assessment after the end of the tax year.

The taxpayer must make a “reasonable estimate” of the CGT due, which includes taking into account their estimated taxable income for the year and any UK residential property gains already made in the year that exceed the unused basic rate tax band. This will determine whether their on-account payment is at 18%, 28% or a combination of the two rates.

Gains already made in the tax year on other assets are ignored when calculating the notional tax due.

If the individual, trustees or executors have unrelieved capital losses available at the time of the chargeable disposal, they can offset these against the gain.

Note, however, that losses arising after the sale (unless arising on the disposal of another UK residential property) can only be taken into account via the self assessment tax return after the end of the tax year.

What if I sell another UK residential property in the same tax year?

Where a second or further UK residential property is sold in the same tax year and a capital gain or loss arises, a cumulative approach is taken.

The on-account CGT payment is calculated taking into account the other disposal(s) of UK residential property in the same tax year, then deducting the CGT paid on the previous disposal(s) to give the amount of CGT due or refundable on the subsequent disposal.

Do I also need to complete a self assessment tax return?

Taxpayers who are already dealt with under the self assessment system will need to declare the disposal(s) on their self assessment tax return with any on-account CGT payment being taken into account when calculating their overall tax liability for the year.

For those taxpayers not within the self assessment system, there is no requirement to register to complete a self assessment tax return if their only tax liability is in respect of the gain declared on the CGT return and if the on-account CGT paid equates to the actual CGT due for the year.

HMRC Enquiries & Discoveries

HMRC have broadly the same rights to enquire into a CGT return as they do for self assessment tax returns.

Where the taxpayer is also dealt with under self assessment, the enquiry time limit is the

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same for the CGT return as for the corresponding self assessment tax return.

For taxpayers not dealt with under self assessment, the enquiry window runs to the later of 12 months after the usual filing deadline for self assessment tax returns for that tax year or 12 months after the filing date for the CGT return.

Next Steps

If you are considering selling a UK residential property, or are already in the process of selling one, early consideration needs to be given to the possible need to file a CGT return within 60 days of the sale completion date.

To complete the return, details of the purchase date and price, costs of purchase and sale, any enhancement expenditure etc., will be needed. Therefore, you should start gathering together this information as soon as possible so that it is ready as soon as completion takes place.

Where the property you are selling has been gifted or inherited, or where the property has been owned prior to 31 March 1982, it may be necessary to obtain valuations so, again, early action should be taken so that these valuations are ready in good time to get the CGT return prepared and filed.

If you are in any doubt as to the information you will need, we will be happy to advise further.

How can Charter Tax help?

Charter Tax have been preparing and filing NRCGT Returns for our non-UK resident clients since April 2015 and for UK taxpayers since April 2020.

As a guide, in most cases we will be able to carry out the work for £600 plus VAT following completion of our questionnaire. However if, following a review of the completed questionnaire, we consider that our fee is likely to be higher, we will let you know before we commence any work.

If you would like to find out more about how we can help, please do not hesitate to contact us on 020 7084 5771 or 01580 313108.

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