CHARTER TAX

Helpsheet:
Non-UK Residents and
UK Land & Property Disposals

Introduction

Since April 2015, non-UK resident individuals, trusts and companies 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.

From 6 April 2019, this was extended to include all UK land and property, as well as disposals of interests in "property-rich companies".

In addition, from April 2019 non-resident companies, that previously would have been subject to UK CGT on such gains, became liable to corporation tax instead with different due dates for filing and payment of tax.

This helpsheet provides a brief overview of the legislation and its impact on non-UK taxpayers, though it is not a complete advice note designed to cover all situations.

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, particularly as HMRC will levy penalties where either the tax return or tax payment is late.

Note that there are separate rules in relation to property development, and businesses with a UK permanent establishment, that are outside of the scope of this helpsheet.

What disposals are affected?

Any disposals of UK real estate, be it land, residential property or commercial property, or interests in property-rich companies owned by a non-UK individual or trustees of a non-UK resident trust, even if there is no taxable gain, must be reported to HMRC.

There are slightly different rules for Companies, who may not be required to report a disposal if there is no gain arising, however we recommend that every disposal is reviewed to ensure all reporting requirements are met.

For individuals and trustees, disposals must be reported, and any CGT due paid, within 30 days of the completion date. Note this is still the case even if those individuals and trustees already complete UK self assessment tax returns.

Due to the tight timeframe for non-resident individuals and trustees to report such disposals, we would recommend that you get in touch with us as soon as the property is put on the market.

We can then advise you what information will be needed to prepare the CGT return to allow sufficient time to have this information ready ahead of the sale completing.
Individuals and trustees must also apply for a UK CGT reference via HMRC's website, *except* where the disposal is of an interest in a property-rich company or a mixed-use property.

The UK CGT reference cannot be applied for until the sale completion date is known (so in most cases, as soon as contracts have been exchanged).

Again, we would recommend that this reference is applied for as soon as details of the completion date are known. We can provide details of what information will be needed to apply for the UK CGT reference and also direct you to the right area of HMRC's website.

For companies, disposals must be reported on their corporation tax return within 12 months of the end of the relevant accounting period. Any corporation tax due on the gain must be paid 9 months and 1 day after the end of the accounting period, or via quarterly instalments for larger companies.

For some companies, where the UK property disposal is the only transaction bringing them into the charge to UK corporation tax, then potentially their accounting period will be just for one day (the day of the sale).

We will be happy to assist those non-resident companies that do not already have a UK corporate tax reference with obtaining this, as well as completing and filing the UK corporation tax return on their behalf.

What is a "property-rich company"?

A property-rich company is one whose value is derived substantially from UK land and property.
For the sale of an interest in such a company to be taxed under the new legislation, two conditions must be satisfied.

Briefly, these are:

1. At the date of the disposal, at least 75% of the company's assets must either be UK land or derive their value from UK land, either directly or indirectly.

   With a multi-level structure, the ownership chain must be traced through to determine whether the 75% condition is satisfied.

2. The non-UK resident taxpayer must own at least a 25% interest in the property-rich company either at the time of the disposal or in the two years running up to it.

   There are various tests that must be used to determine whether the 25% condition is satisfied and it should be noted that, where connected persons have an interest, the 25% condition is applied on an aggregate basis.

   Note that for the purposes of the property-rich company tests, a "connected person" is the taxpayer's spouse or civil partner and direct lineal ancestors and descendants.

If you are not sure whether a company you have an interest in will fall within the definition of a property-rich company, please get in touch and we will be happy to discuss this further.

How do I calculate the gain or loss on the sale?

UK Residential Property

The default position for UK residential property that was owned by an individual or trustee prior to the change in legislation in 2015 is to substitute the original purchase price for the market value of the property at April 2015.

However, if it would be more tax-beneficial to use the original purchase price (for example, if it results in a lower gain or a capital loss), then the taxpayer can elect to use this instead.

Any purchase and property enhancement costs are allowable as a deduction from sale proceeds, unless the April 2015 market value is being used and these costs were incurred prior to that date.

Costs of sale, such as legal fees and estate agent's fees, can also be deducted.

Where the property has in the past been used as the individual's main residence, there is some limited scope to consider whether "principal private residence relief" may be available. We will be happy to advise further if you think this may apply to you.

Prior to April 2015, where "high value" UK residential property was owned by a non-UK resident corporate entity and used privately, it would, in most cases, have been subject to ATED CGT with rebasing to April 2013 available where the property had been owned prior to that date.

From April 2019, ATED CGT no longer exists; instead, UK residential properties that previously would have fallen into the ATED CGT regime are now within the normal CGT regime and able to apply an April 2015 rebased value instead, so the April 2013 valuation drops away.

Again, if it would be more tax-beneficial to use the original purchase price, the taxpayer can elect to use this instead of the rebased value.

Corporate entities that had previous obtained an April 2013 valuation of their property should now obtain a valuation at April 2015 instead.

UK Land and Commercial Property

In a similar way to UK residential property, the gain or loss on UK non-residential property is calculated using the market value of the property at April 2019 as the default position, unless it will be more tax-beneficial to use the original cost. This is the case for both individuals and trustees, as well as corporate entities.

Again, any purchase and property enhancement costs are allowable as a deduction from sale proceeds, unless the April 2019 market value is being used and these costs were incurred prior to that date.

Costs of sale, such as legal fees and estate agent's fees, can also be deducted.

Interests in property-rich company

Shares and other interests in property-rich companies are also rebased to April 2019.

As before, the taxpayer can elect for rebasing to disapply and the original acquisition cost be used instead, if this will be more beneficial.

Some taxpayers in relevant treaty jurisdictions will wish to look at their treaty position to see whether the UK does in fact retain taxing rights on such share disposals.

How do I calculate how much UK tax to pay?

Non-resident individuals and trusts

Non-resident individuals and trustees of non-resident trusts are subject to UK CGT on any gain arising on the disposal.

The annual tax-free exemption can, where applicable, be deducted from the gain before the CGT is calculated.

For individuals, the annual exemption is £12,300 for the 2020/21 tax year and for trustees it is £6,150.

The following CGT rates are then applied:

INDIVIDUALS

- *UK residential property*: 18% for gains up to £37,500 (for 2020/21), 28% for any gain in excess of that amount.

- *UK land and commercial property*: 10% for gains up to £37,500 (for 2020/21), 20% for any gain in excess of that amount.

- *Interests in property-rich companies*: 10% for gains up to £37,500 (for 2020/21), 20% for any gain in excess of that amount. Note that this is regardless of whether the underlying UK property is residential or commercial.

TRUSTEES

- *UK residential property*: 28% on the whole gain.

- *UK land and commercial property*: 20% on the whole gain.

- *Interests in property-rich companies*: 20% on the whole gain.

Non-resident companies

- Standard corporation tax rate applied to all gains (so 19% for accounting periods up to 31 March 2021).

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Next Steps

If you are considering selling a UK property or an interest in a property-rich company, or are already in the process of a sale, please get in touch with us as early as possible, particularly if you are an individual or trustee where the time limit for filing the return and paying the tax is only 30 days from completion.

We will be happy to advise on what information you will need to calculate the gain or loss on disposal, as well as assist with the completion and filing of the necessary tax forms and calculating the tax due.

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