

UK Capital Gains Tax on sale of UK property by non-UK residents*September 2020***Introduction**

Sale or disposal of UK property and land by non-UK resident persons (companies or individuals) may trigger UK Capital Gains Tax ("CGT") and also creates a reporting obligation. This applies both to a direct sale (i.e. the sale of UK property) as well as an indirect sale (i.e. the sale of shares of a company holding UK property).

As such, international investors of UK property are affected and must be aware of these provisions.

This information sheet does not cover all technical details but rather provides a brief outline for awareness purposes. It is always recommended that proper UK tax advice and/or assistance is obtained where needed.

Applicability

More specifically, the UK CGT on the sale or disposal of UK property and land by non-UK residents applies as follows:

- Non-resident CGT ("NRCGT") applied to disposals of UK residential property from 6 April 2015 to 5 April 2019 by individuals who were not resident in the UK for the tax year of disposal.
- From 6 April 2019, NRCGT was abolished and non-residents were instead brought within the scope of 'normal' CGT on disposals of all UK land and property.

Further, as of 6 April 2019, non-UK residents will be subject to UK tax on gains arising from disposals of all types of UK land and interests (e.g. shares) in UK property rich entities.

- Temporary non-resident individuals of the UK have some additional aspects to consider.

This is a significant expansion of the NRCGT rules, which used to apply in only limited circumstances to direct disposals of residential properties.

Disposal of shares

Unless an exemption applies, a non-resident will be subject to UK tax on gains arising from disposals made on or after 6 April 2019 of interests in UK property (including land) as well as on interests in entities deriving at least 75% of their value from such UK property (i.e. 'UK property rich' entities) where the investor has a 25% or more interest in the property rich entity.

Noting that in relation to Collective Investment Vehicles (CIV's), which are UK property rich, there is a different subset of rules to determine how the NRCGT rules should apply.

Disposal of UK residential properties from 6 April 2015

If a residential property was owned before 6 April 2015, then the person will only be liable to tax on the part of the gain which has accrued from 6 April 2015.

There is a choice as to how to calculate the gain on which the charge is based:

1. On the difference between the selling price of the property and its value at 6 April 2015 (which shall need to be established); or
2. Over the whole period of ownership, which shall then be time apportioned and the part of the gain that relates to the period from 6 April 2015 would be subject to these provisions; or
3. If the property is sold for less than its cost, then to calculate the loss over the whole period of ownership, but the way the loss is used is restricted.

An election needs to be made in order to choose either of option 2 or 3.

If the property was purchased after 6 April 2015, then the whole gain will be chargeable (subject to private residence relief).

If the property was at some point the person's main home, private residence relief may apply against any chargeable gain.

Disposal of all other UK land and property from 6 April 2019

With the exception of UK residential property disposal (refer to the above section), for land or property owned before 6 April 2019, the person will only be liable to the part of the gain which has accrued from 6 April 2019.

There is a choice as to how to calculate the gain on which the charge is based:

1. On the difference between the selling price of the land or property and its value at 6 April 2019 (which shall need to be established); or
2. If the property or land is sold for less than its cost, then to calculate the loss over the whole period of ownership, but the way the loss is used is restricted.

An election needs to be made in order to choose option 2.

If the property was purchased after 6 April 2019, then the whole gain will be chargeable.

If the sale involves UK land or property which was partly residential during the period of 6 April 2015 and 5 April 2019, then different rules apply.

Trading exemption:

There is a specific exemption from NRCGT in relation to the disposal of companies that are UK property rich, but where this property is used for trading purposes. Generally, in such cases, the seller must have the expectation for the trade to be carried on by the purchaser for a significant period of time following the disposal.

Reporting and CGT payment

A chargeable disposal must in all cases be reported to HMRC and, where applicable, any resulting CGT due to be paid, within 30 days of the transaction completion.

Applicable 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 17% from April 2020 (before April 2020 it was 19%).
- 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%.

Noting that certain classes of investors, subject to conditions/ criteria, fall outside the scope of NRCGT (e.g. overseas pension schemes and qualifying institutional investors).

Other non-UK tax considerations

Gain from the sale of UK property or shares of a company holding UK property may also create a taxable event in the foreign country of tax residency of the seller (company or individual).

The tax rules of such foreign country shall need to be looked at separately. Noting that where such foreign tax event is also created, in most cases, a double tax relief of any UK CGT paid should be available against the foreign tax resulting from the same gain.

*Noting that in the case of a **Cyprus tax** resident seller, gain from sale of shares as well as capital gain relating to the sale of real estate property situated outside Cyprus, are specifically tax exempt from Cyprus tax.*

Notes

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve will be glad to assist you in this respect.