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Capital Gains Tax for non-UK residents

As first announced in the 2013 Autumn Statement and now enacted in the Finance Act 2015, capital gains tax (CGT) applies to non-residents disposing of UK residential property, with some exceptions, on gains arising on disposals after 5 April 2015.

Before then, CGT did not apply to non-residents, other than those carrying on a trade in the UK and, since April 2013, on companies subject to the 'annual tax on enveloped dwellings' (ATED) charge.

The extension of the CGT charge is intended to harmonise the UK system with other jurisdictions that charge tax on the basis of where the property is located rather than where the owner is resident.

- The CGT charge applies to gains realised by non-resident individuals who hold UK residential property directly or via a partnership, non-UK resident trusts and non-resident companies, with certain exceptions.
- The charge applies to gains realised on disposal of UK residential property and property that has the potential to be used as a residence. This includes property which is currently being built or adapted to be used for residential purposes.
- Residential property which is used on a communal basis, like hotels, care homes, school boarding houses, military accommodation, hospitals, hospices, prisons and purpose-built student accommodation including at least 15 bedrooms (if occupied by students on at least 165 days in the tax year) is exempt from the new CGT charge.
- The charge will not apply, on a claim, to a 'diversely-held' company or a widely-marketed OEIC or unit trust. A 'diversely-held' company is one that is not 'closely held'; one broadly like a close company.
- Pension funds established for 'a diverse range of individuals' are excluded from the charge.
- It is assumed that charities will also be excluded.
- For residential property held on 6 April 2015 and disposed of on or after that date, the 'default' position will be for the gain on disposal to be on the excess over the market value at 5 April 2015. Alternatively the disponer may either elect to apportion the gain over original cost (or the market value at 31 March 1982 if acquisition was earlier) by reference to the proportion of ownership after 5 April 2015 compared with the total period of ownership, or adopt the overall gain or loss as chargeable/allowable.
- The charge will apply to rental properties as well as those 'owner-occupied', in contrast to the ATED-related CGT charge, where residential rental property held as part of a genuine business is exempt.
- ATED-related gains, currently subject to tax at 28%, will be excluded from those subject to the new charge.
- Otherwise, non-resident companies will be subject to CGT at 20%, on the gains affected, net of an adjustment for inflation.
- For individuals, the CGT charge will be at 18% for basic rate taxpayers and at 28% for higher and additional rate taxpayers. The applicable rate will be determined by reference to the non-UK resident individual's UK income levels for the relevant tax year. They will be entitled to the CGT annual exemption.
- For non-resident trusts the CGT charge will be at 28%, and they too will be entitled to an annual exemption, at half the rate for individuals. Presumably this is shared between trusts with the same settlor.
- Gains chargeable as described will be excluded when applying the anti-avoidance provisions affecting participators in non-resident 'close' companies (as with ATED-related gains), settlors and beneficiaries of non-resident trusts and 'temporary non-residents'.
- Allowable losses on UK residential property realised by non-residents will be ring-fenced, and only set against gains realised on disposal of UK residential property, either in the same year or carried forward to later years.
- Unused allowable losses on UK residential property realised by UK

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residents who become non-residents may be set against gains on UK residential property subsequently realised when non-resident. When a non-resident becomes a UK resident unused losses on UK residential property realised while non-resident are to be available to be set against general chargeable gains, however.

- Gains on UK residential property included within the deemed gains arising on a trust or a company becoming non-resident may be deferred by election until actual disposal of the property.
- Disposals are to be reported within 30 days of completion of the disposal.
- Except where a UK self-assessment tax return is already required, the tax is payable within 30 days of completion. Where ordinary self-assessment returns are being filed the tax will be payable according to the usual timing for self-assessment. Thus, for example, for individuals and trustees, the tax will be due by 31 January next following the tax year in which disposal occurs (which would generally be on exchange of contracts).

Main residence election

Before 6 April 2015 someone with two or more residences might elect which would attract CGT exemption on disposal. Thus, if the law were not changed, a non-resident with homes in both the UK and overseas could have expected to avoid the new CGT charge simply by electing for his UK home to enjoy the exemption. The Government was initially considering simply withdrawing that election; and only the home which was *really* the main residence would be exempt. Instead, however, from 6 April 2015, someone not resident in the UK may only claim a dwelling in the UK to be his main residence in a particular tax year if he spends at least 90 days in that year in one or more dwelling houses in the UK in that year. Similarly, a UK resident is to be only able to claim the main residence exemption on disposal of a residence overseas if he spends at least 90 days in a tax year in one or more dwelling houses in the overseas territory in that year.

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