UK Capital Gains Tax for Non-UK Residents

Background

In April 2015, the charge to UK Capital Gains Tax ("CGT") was extended to apply to non-UK residents. The rules affect individuals, trustees, offshore companies and non-UK resident partnerships. Initially, it only applied to UK residential property but, in April 2019, the charge was extended to include all direct and indirect disposals of UK property and land.

Tax is payable on the increase in value since the relevant change in the law so a rebasing of the property (or shares or units if held indirectly) to the April 2015 or April 2019 value is allowed, making the gains that accrued before the change exempt from tax.

Indirect Property Holdings

An indirect property holding is a right to assets that derive at least 75% of their gross asset value from UK land. These will typically be shares in UK property rich companies or units in Collective Investment Vehicles such as Real Estate Investment Trusts.

There is a de minimis holding threshold of 25% for investors in property companies but this does not apply to holdings in collective investment vehicles.

Disposals by residents of countries with a UK Double Tax Agreement ("DTA") will typically be exempted from being taxed in the UK on the disposal of shares in which there is substantial and regular trading on a recognised stock exchange (as is the case under the Guernsey and Jersey DTAs). Some other DTAs go further and exempt all indirect property disposals from UK tax.

There is also an exemption available where the underlying property has been used in a qualifying trade for a year or more leading up to the disposal. Another exemption applies to linked transactions when the combined property element is below the 75% threshold when considered together.

Working Out the Chargeable Gain

Individuals benefit from an Annual Exempt Amount that equates to £3,000 for the 2024/25 tax year to reduce the amount of the gain on which tax is charged. The remaining chargeable gain is taxed at between 18% and 28% for residential property and between 10% and 20% for non-residential property.

Companies pay Corporation Tax ("CT") at between 19% and 25% on all their income and gains with no tax free allowance.

Capital losses can be offset against gains in the same tax year and unused losses are carried forward. Use of losses are restricted, however. Non-resident capital losses carried forward can only be used to reduce gains on other UK property, not other chargeable gains or income. Similarly, non-resident capital gains can only be reduced by losses that were within the scope of the tax (or would have been).

Main residence relief applies if the vendor lived in the property at any time and this exempts part of, or all of, the gain. There would be no CGT to pay if the property was used as the person's main residence for the duration of their ownership. If it were the main residence for any period of time, the last nine months is always treated as a period of deemed occupation to allow time to sell.

Reporting

Reporting to HMRC is mandatory for non-UK residents whether a gain or a loss is realised or whether there is any tax to pay, although certain no gain no loss disposals, such as those between spouses, do not need to be reported.

The mechanism by which they are reported depends on whether the seller is an individual or a company.

Reporting Obligations for Individuals

Disposals made by individuals must be reported, and any tax paid, within 60 days of the sale (30 days if the sale was before 27 October 2021). The calculation and tax payment are based on the factors known at the time. There may be other disposals in the tax year or other factors that subsequently change the tax due. If anything changes the tax charge, this must be reported to HMRC and additional tax paid or overpayment reclaimed.

If the individual is registered for Self Assessment, the disposal will also need to be declared on the CGT pages of their tax return for the relevant year.

Reporting Obligations for Companies

Since April 2020, non-UK resident companies have been taxed under the Corporation Tax ("CT") regime on their UK rental income. Any company that receives rental income will submit annual CT returns and property disposals are reported on the annual tax return. Tax is payable nine months and one day after the end of the accounting period in this scenario.

If the company does not submit CT returns (because they do not receive any UK rental income), when a disposal is made, the company must register with HMRC for CT within three months of the disposal. A CT accounting period of a single day is created each time a disposal is made. A Corporation Tax return is required for each accounting period. This method of reporting also applied to property disposals by companies that occurred between 6 April 2019 and 5 April 2020. Tax is payable three months and 14 days after the sale.

Disposals that took place before April 2019 were reported and dealt with slightly differently.

Penalties and Interest

For individuals, if the 60 day submission deadline is missed, a penalty of £100 may be applied. If it is more than six months late, there may be a further penalty of £300 (or 5% of any tax due if greater), and if it is more than 12 months late, there may be a further penalty of £300 (or 5% of any tax due if greater). This means that, for a jointly owned property, a couple could face a combined penalty of as much as £1,400 even if there is no tax to pay. In addition, if the tax payment is late, interest may be charged.

For companies, there are penalties for not telling HMRC that the company is liable for CT and these are variable based on the amount of tax involved as well as the seriousness of the failure. Once a notice to submit a CT return has been issued, there are also penalties for the late submission of the CT return if submitted after the deadline specified on HMRC's notice.

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