

CGT for Non-Residents: UK Residential Property

Background

As a general rule, non-UK residents were not subject to UK Capital Gains Tax (“CGT”) arising from sales of UK property. However, the Annual Tax on Enveloped Dwellings (“ATED”) regime was introduced in April 2013. In addition to the imposition of an annual charge on certain high value UK residential property held by Non Natural Persons (“NNPs”), this introduced a capital gains tax (“ATED-CGT”) charge on the sale of UK residential property held by NNPs. The ATED-CGT rate is 28%. Changes to the ATED regime were announced in 2014, extending the regime to properties worth over £1 million from 1 April 2015 and £500,000 from 1 April 2016.

Furthermore, with effect from 6 April 2015, a new CGT charge applies to any non-UK resident who disposes of an interest in a UK residential property irrespective of its value (Non-Resident CGT or “NRCGT”). The NRCGT rate for companies is 20% and for individuals the rate is 18% or 28% (depending on the level of other UK source income/chargeable gains in the tax year of disposal). The charge only applies to gains arising after 5 April 2015. The taxpayer has the option to choose whether to calculate his gain using the market value of the property as at 5 April 2015, or to time apportion the historic gains with only the post 5 April 2015 part being taxed.

Two CGT Charges on UK Property – which applies?

The UK therefore has two capital gains taxes on UK residential properties owned by non-UK residential companies; an ATED-CGT and a NRCGT. In a case where both potentially apply, the ATED-CGT takes priority over the NRCGT and is charged at 28% as opposed to 20%. The Reliefs which apply to the ATED regime, including the relief for residential property used as part of a qualifying property rental business, do not apply to the NRCGT. Similarly, there is no de minimis threshold for the NRCGT.

HMRC approach to calculating the taxable gain or loss

For disposals of UK residential properties by non-UK residents where property is owned before 6 April 2015 the standard approach for calculating the gain is to use the market value at 5 April 2015 and to calculate as follows:

1. Establish the value of the property as at 5 April 2015 (known as rebasing).
2. Work out the difference between the value on 5 April 2015 and the value when the property is disposed of.
3. Deduct any costs of improving the property incurred after 5 April 2015 and the legal costs of selling the property.

Valuations

HMRC take the view that it is up to the taxpayer to choose how to value the property and whether to get more than one valuation; HMRC do not have a preference for how this should be done. It is not strictly necessary to get a valuation carried out in April 2015, instead a non-resident owner can wait until a disposal is made. However, non-resident owners of UK residential property should consider obtaining a value of the property as at 5 April 2015. At the very least it would be sensible to record what condition the property was in in April 2015 and any unusual features to help make a fair valuation later on.

Qualifying for Private Residence Relief as a non-UK Resident

If the property has been used as a residence the Capital Gain may qualify for Private Residence Relief. The criteria for the relief are set out more fully in our Briefing Note entitled: *Non-Resident Capital Gains Tax ("NRCGT") and UK residential property – The application of Private Residence Relief*.

Further administrative detail on reporting and paying NRCGT is set out in our separate Briefing Note entitled: *Reporting and Paying CGT for Non-Residents: UK Residential Property*.

For further information on any of the issues raised in this Briefing Note (or arranging any matters such as valuations on any properties), please contact a member of the Rooks Rider Solicitors Wealth Planning Team.



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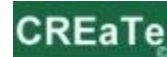
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