

## CAPITAL GAINS TAX ON UK RESIDENTIAL PROPERTY FOR ALL NON- UK RESIDENTS

From 6 April 2015 UK Capital Gains Tax (CGT) has applied to all non-UK residents on the disposal of a UK located residential property on gains realised by way of sale or gift. The CGT charge applies to non-resident companies, individuals, partnerships, trustees and personal representatives of deceased non-UK resident persons no matter the value of the sale proceeds of the property or the purpose for which the property was held. The charge does not apply to non-residential property.

The details are:

- CGT applies to all gains on the sale of UK located residential property from 6 April 2015 onwards by non-resident persons.
- There are no reliefs or exemptions if the property is held for investment purposes.
- Non-resident companies not paying the Annual Tax on Enveloped Dwellings (ATED) charge are within this new CGT charge. ATED related capital gains take priority over this new charge.
- The charge also applies to residential properties in the process of being constructed or adapted for residential use, and includes land that forms the garden or grounds of a residential building.
- Only gains from 6 April 2015 are charged. The default position is to rebase the property to its market value at 5 April 2015, but alternatively (i) time apportionment can be used to calculate the post 6 April 2015 gain, or (ii) the gain or loss can be computed over the whole period of ownership.
- CGT applies even if the residential property has always been rented out as an investment.
- The charge applies to non-resident trustees, individuals, partnerships, companies and personal representatives of deceased persons.
- Those companies with properties already subject to Capital Gains Tax on Enveloped Dwelling (CGTED) charges for the entire period from 6 April 2015 to date of sale are not affected by these new provisions.

- Main Residence relief is available if a nomination is made by an individual. It may only be made if (i) the property is located in the same country in which the taxpayer is resident for tax purposes, or (ii) the taxpayer spends at least 90 midnights in the property in the tax year, or 90 days spread across all the properties the person owns in the country where the property is located.
- Any Main Residence Relief being claimed needs to be notified to HMRC.
- Certain types of institutional living accommodation, halls of residence, hotels, boarding schools and care homes are exempt.
- The charge does not apply to qualified institutional investors, e.g. non-UK resident pension schemes or foreign real estate investment trusts investing in UK residential property.
- The charge applies to “close” non-resident companies, i.e. those controlled by 5 or fewer persons.
- The charge applies in priority to existing anti-avoidance legislation in which (i) gains in non-resident companies are attributed to UK resident members (S.13 TCGA 1992), and (ii) gains realised by non-resident trustees are attributed to UK resident settlors of settlor-interested trusts.
- Losses on the sale of such properties are available for offset against gains made in the same year, or to carry forward to set against future gains of the same person.
- Losses may in some circumstances be group-relieved between non-resident group companies.
- The annual exempt amount (£11,100 for 2016/17) is available to non-resident individuals.
- The rate of CGT for non-resident individuals mirrors that for UK resident individuals, i.e. 18% or 28%, depending on whether the individual is a basic or higher rate taxpayer.
- Half the annual individual’s exempt amount (i.e. £5,550 for 2016/17) is available to non-resident trustees.
- The rate of CGT for non-resident trusts is 28%.
- The rate of CGT for non-resident companies is 20%, and indexation allowance is available to take inflation into account.
- The rate of CGT on members of a partnership is that appropriate to the individual, corporate or trust member of the partnership.
- **All non-residents** have to notify HMRC within 30 days of the conveyancing (on a sale or gift) of any UK located residential property. This requirement will apply even if there is a loss, no gain or loss, or the gain is below the annual exempt amount.



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- Those already within Self-Assessment are able to include the gain on their Self-Assessment tax returns, with the usual filing and tax payable dates. This is in addition to the notification required within 30 days of completion.
- Those not currently within Self-Assessment are required to deliver a return and pay over the tax within 30 days.
- From April 2019 all taxpayers liable to the non-resident CGT charge will have to make a payment on account of the CGT due on the disposal of UK residential property within 30 days of completion of the sale.

**If you would like to know more then please contact**

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