

Briefing Note

Capital gains tax extended to disposals of UK residential property by non-UK residents

Introduction

The Chancellor announced in the 2014 Budget that capital gains tax would apply to disposals of UK residential property by non-UK residents from 6th April 2015. The legislation providing for this extension of capital gains tax to non-UK residents has now taken effect.

Pre 6th April 2015 rules for UK residential property

Where a person is non-UK resident for at least five years, UK capital gains tax does not apply to any disposals they make during the period of non-residence, including disposals of UK residential property. A disposal is any gift, sale or a sale at less than market value.

Where a person is non-UK resident for less than five years, any gains realised while they are outside the UK are subject to tax in the year they return to the UK, other than assets which they acquired and disposed of while non-UK resident.

The present rules will continue for all asset classes other than UK residential property.

Rules from 6th April 2015 for UK residential property

From 6th April 2015, any person who is not UK resident for tax purposes will be subject to capital gains tax on the disposal of UK residential property. This will affect non-UK resident individuals, companies and trustees. The new rules apply to the disposal of residential property only, and not commercial property or land.

Properties subject to the charge will be re-based to 6th April 2015 so that only gains from 6th April 2015 are subject to tax. Where a property is owned before 6th April 2015 an election can be made for the post 6th April 2015 gain to be calculated by the total gain during the ownership period being apportioned between the number of days ownership pre- and post-6th April 2015. Alternatively, the gain can be determined according to the market value of the property at 6th April 2015.

Individual taxpayers will be subject to capital gains tax at the same rate as a UK resident individual, i.e. 18% or 28%, and will also be entitled to the annual exempt amount. For trustees the tax rate will be 28% and companies will pay corporation tax on any gain after indexation.

Certain types of residential property are excluded from the charge such as accommodation for school pupils or the armed forces, residential care homes and hotels or similar establishments. Similarly residential property held by businesses as trading stock will be excluded from the charge to capital gains tax although profits on disposal of such stock will continue to be taxed as income.

Changes to principal private residence relief

A non-UK resident could elect for their UK home to be treated as their principal private residence and receive 100% relief from capital gains tax. Changes to the rules on principal private residence relief will be introduced from 6th April 2015 which will now require a taxpayer to spend at least 90 nights at a property in any tax year for it to be eligible for election as their principal private residence for the purposes of this relief. This could have implications for an individual's tax residence under the statutory residence test and should be reviewed carefully.

Who needs to take action?

Given the choice of calculation options in determining post 6th April 2015 gains, it would be sensible for valuations of property at that date to be obtained. On a future disposal the method of determining the post 6th April 2015 gain which results in the lower gain can then be used.

Where an individual was non-UK resident for at least five years, planning was common place to trigger a disposal of their UK property to a family holding structure to wipe out the gains before they returned to the UK. Such planning will remain possible for all other asset classes but will no longer be possible for UK residential property after 6th April 2015. Persons who own UK residential property and who have been or intend being non-UK resident for at least five years but who intend only to dispose of their UK property after they return to the UK, will be liable to capital gains tax on all gains on the property and not just the post 6th April 2015 gains. Anyone in this situation should consider triggering a disposal of the UK residential property to a family holding structure before 6th April 2015 so the structure is only subject to tax on gains after 6th April 2015 on a future disposal of the property. Alternatively, an individual could minimise the tax exposure by disposing of the property prior to returning to the UK (i.e. while he/she is still non-UK resident) so that the tax is assessed only on the gain accruing from 6th April 2015 rather than on the whole of the gain realised.

Where a non-UK resident owns a property in the UK in which a family member or friend is living, the post 6th April 2015 gains on such a property would be within the scope of UK capital gains tax if they sold it while non-UK resident. Currently no tax would apply if the owner had been non-UK resident for at least five years when they sold the property. In this situation, transferring the property to a trust before 6th April 2015 with the family member/friend being included as a beneficiary of the trust and given a right to occupy the property, should enable 100% principal private residence relief to be available.

If you are affected by the proposed extension of capital gains tax to disposals of UK residential property by non-UK residents or wish to discuss how Turcan Connell can assist you, please contact Donald Simpson on 0131 228 8111 or by email donald.simpson@turcanconnell.com