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Introduction

Capital gains Tax (“CGT”) arises on the disposal of any property. Tax is charged on the increase in value between the date of acquisition and the date of disposal at a rate of 18% or 28%, depending on whether the person disposing of the property is a basic or higher rate tax payer. CGT is a self assessed tax with the obligation on the tax payer to calculate the tax payable on any disposal by means of a self-assessment tax return.

It is often assumed that CGT does not apply to the majority of Residential Property (“RP”) transactions because of the Private Residence Relief (“PRR”) exemption. However, there are a number of potential traps and the purpose of this Guide is to help identify whether CGT may, in fact, be relevant in your case.

What is a “Disposal”?

Clearly if a RP is sold it has been disposed of. It is not always fully appreciated that CGT also applies to GIFTS of property and, bearing in mind the donor will have no sale proceeds available with which to pay the tax, this can come as an unpleasant shock.



Does PRR apply?

CGT will not be payable where the conditions for PRR are met. In general, this is where a RP is disposed of which has been the owner's only (or main) residence.

However, if a RP is disposed of and the answer to any of the following questions is "YES", PRR may NOT apply:

- Have you ever owned another property at the same time as this one?
- Does the property have land of more than half a hectare (1.25 acres)?
- Have you ever lived somewhere else during your period of ownership?
- Does the property have significant outbuildings (whether in size or number)?
- Is only part of the property being disposed of?
- Has any part of the property (including outbuildings) ever been used for business purposes?
- Has all or any part of the property ever been let?
- If the property has been regularly let – does the property qualify as a furnished holiday let?

If you are buying a RP and any of the above factors apply (or will apply whilst you own it), you should bear in mind that CGT may be payable when you dispose of it. If so, it will probably make sense to structure the purchase in a way which assists in managing the tax that is payable upon disposal.

If the property has been let might other reliefs apply?

Whilst PRR may not apply if you are disposing of a RP and all or any part of it has been let, one of the following reliefs may be available:

- Lettings Relief
- Business Asset Rollover Relief
- Entrepreneurs' Relief

How is any gain calculated?

In calculating the increase in value of the RP between the acquisition date and the date of disposal, the following factors will be relevant:

- **IF THE PROPERTY WAS ACQUIRED IN DIFFERENT TRANSACTIONS AT DIFFERENT TIMES, THE GAIN WILL NEED TO BE APPORTIONED.** All relevant acquisition and disposal costs can be deducted.
- If substantial improvements or additions have been made to the property any capital expenditure may be added to the acquisition cost.

What if you are a Non-UK Resident (for tax purposes)?

Since April 2015 non-UK Residents have been liable for CGT on disposals of RP (when PRR is unavailable). There are strict reporting obligations and deadlines to comply with.

What if you believe CGT may apply to your residential property transaction?

Our tax team can help by:

- Advising whether CGT does, in fact, apply to your transaction and how to mitigate the tax payable, if possible.
- Ensuring an accurate declaration of any gain is made to HMRC.

Please contact Alan Taylor, our Senior Tax and Trust Manager at ataylor@hcrlaw.com or 01223 532740.

Talk to us...



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