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# Briefing document

## Selling UK residential property

**Introduction**
In this note we have set out a high-level overview of how tax applies on disposal of UK residential property.

This note does not consider:

- The tax position on disposal of non-residential property.
- The tax position where gains are classed as income, rather than as chargeable gains. Income tax may apply if, for example, the property is used in a property development business.
- The detailed rules for properties standing at a loss, but, broadly, where a capital gain would be chargeable if a gain arose on disposal, any loss would be allowable and could be offset against chargeable gains realised on disposal of other assets.

This note comments on the tax position on the basis that the owner of the property will make the disposal. The tax position will differ if an entity which owns the property is sold (e.g. if shares in a company which owns a UK residential property are sold instead of the company selling the residential property).

**Individuals**

### Overview of individuals' taxation

Individuals are chargeable to Capital Gains Tax (CGT) on gains realised on disposal of UK residential property, with no relief for inflation, unless Private Residence Relief (PRR) (and possibly letting relief) is available for all or part of the ownership period (see below). Enhancement expenditure (which adds to the capital value of the property) may also be deductible when calculating the gain or loss arising on disposal of the property, depending on when the costs were incurred and the method of calculation used.

UK residents are taxable on the entire gain realised on disposal of UK residential property. As CGT was only extended to non-UK residents with effect from 6 April 2015, non-UK residents are only taxable on the uplift in value of UK residential properties from 5 April 2015 (see below for details).

Individuals are each entitled to an annual exemption within which gains are tax free (£12,300 in 2020/21). Gains on residential property are subject to 18% CGT to the extent there is remaining basic rate band and 28% CGT on any gains realised in excess of the remaining basic rate band.

### Private Residence Relief (PRR)

PRR may be available if a property is used as the only or main residence of an individual. Where PRR is available, it either reduces or eliminates the gain on disposal of the property. If PRR is only available for part of the period in which a property has been owned, the gain is pro-rated between periods where PRR is available and periods it is not, and CGT only applies to any gain attributable to the latter period.

Individuals may have more than one property which they use as a residence, but only one property may be eligible for PRR at a given time (subject to an exception for the final nine months a former residence is owned). Where more than one residence is available it is possible for the individual to make an election as to which of the available residences should be his or her main residence for tax purposes. In certain cases an individual may be deemed to occupy a property as their main residence where he or she is temporarily absent, absent due to employment and/or during the final nine months a property is owned.

Spouses and civil partners are only able to have one PRR for tax purposes between them. Spouses and civil partners must therefore make joint PRR elections where the election will affect both members of the couple.

Strict time limits apply for making PRR elections and so advice should be sought if more than one residence is available or if the residences available for use change (e.g. if a new residence is acquired).

Broadly, a residence for PRR purposes is a property which is occupied as a home with some degree of permanence. There is no precise definition of this term, but properties which are rented may be a residence for these purposes (and so eligible for PRR despite the fact that a capital gain is highly unlikely to arise) in which case it is advisable to make a PRR election to apply to a different eligible residence on which a taxable gain would otherwise arise. This may be relevant where, say, a property is owned and used as a residence at weekends and during annual leave, but a separate property is rented by the individual for use near his or her place of work.

Since 6 April 2015, PRR has only been available on a UK residential property for a given tax year where:

- The individual who occupies the property is UK resident, or;
- The individual's spouse or civil partner is UK resident, or;
- The property is occupied for at least 90 nights in the tax year. Nights spent by the individual or by his or her spouse or civil partner count towards the 90 night limit (but nights cannot be double counted).

Where none of the above conditions are met, PRR is not available for the tax year in question and so CGT will be payable on the gain attributable to the ineligible tax year(s) on a pro-rata basis.

Overseas properties may also be residences for PRR purposes and so should be taken into account when deciding whether or not to make a PRR election. Relief from CGT will only be available on the overseas residence if the individual and/or their spouse or civil partner is resident in the jurisdiction in which the property is situated and/or if the property occupation test set out above is satisfied.

In certain circumstances letting relief may also reduce the chargeable gain. The availability of letting relief has been reduced with effect from 6 April 2020, and is now only available where the landlord continues to occupy the property as a main residence (i.e. relief is unavailable if the entire property is let).

### Non-UK resident individuals

The tax position of non-UK residents mirrors that of UK residents, except that PRR is more likely to be restricted (as set out above) and non-UK residents are only taxable on the uplift in value of the property in question since 5 April 2015. There are two ways in which the post-5 April 2015 gain can be calculated:

- The default position is that the property is revalued to its market value on 5 April 2015, and CGT only applied to any increase in value of the property from this date.
- An election can be made to calculate the gain based on the increase in value from original cost, and the resultant figure time-apportioned between pre and post 5 April 2015 periods, with CGT only applicable to the latter period. This may be preferable where the values involved are relatively low, such that the cost of obtaining a professional valuation is excessive, or where the property increased in value at a faster rate post-5 April 2015, such that a straight-line apportionment would result in a lower chargeable gain.
- Alternatively, the gain can be calculated using the original cost, resulting in the entire gain/loss being within the scope of CGT. This may be the preferred option where the property is standing at a loss.

Certain individuals who were previously UK resident and who are non-UK resident for five years or less will be taxable on gains made during their period of temporary non-UK residence on resumption of UK residence. If a UK residential property is disposed of while temporarily non-UK resident, the post-5 April 2015 gain would be taxed at that time and the individual would be taxable on the pre-6 April 2015 gain on their return to the UK.

### Trustees

Non-UK resident trustees are subject to CGT on the same basis as UK resident trustees, such that 28% CGT applies to the extent gains realised by trustees exceed the trustees' annual exemption (£6,150 in 2020/21). The exception is that non-UK resident trustees are by default only subject to CGT on the uplift in value of UK residential property from 5 April 2015, though they can elect for the gain to be time-apportioned on a straight line basis or calculated using original cost, as for individuals above.

Trustees may be eligible for PRR where an individual trust beneficiary occupies a property as their only or main residence. PRR may be restricted where the individual and his or her spouse or civil partner are non-UK resident and use the property for fewer than 90 nights in a given tax year, as set out in the individuals section above.

Where an individual has more than one residence available to them (including residences owned by trusts of which they are a beneficiary) they may make an election to determine which of the available residences should be their main residence for tax purposes. Where the election is to nominate a property owned by a trust, the trustees and individual must make the election jointly. If the election will also affect the individual's spouse or civil partner, the spouse or civil partner must also be a party to the election.

If part of the gain realised on disposal of a UK residential property realised by non-UK resident trustees is not taxable (i.e. pre 5-April 2015 gains), UK resident settlors or beneficiaries of the trust may be taxable instead.

**Companies**

Companies are subject to corporation tax on gains made on disposal of UK residential property (19% in FY20/21).

As for individuals and trustees, the automatic position is that non-UK resident companies are taxable on property gains realised from the date the property gain came within the scope of taxation. This means that non-UK resident companies are generally taxable on the uplift in value of UK residential properties from 5 April 2015. In certain cases non-UK resident companies are instead taxable on the uplift in value of UK residential properties from 5 April 2019, as an exemption that previously applied to 'diversely-held' companies was abolished with effect from 6 April 2019.

As with individuals and trustees, companies can elect for the entire gain to be calculated using original cost, or can elect to time apportion the gain between pre and post 5 April 2015 periods on a straight-line basis.

If any gain realised on disposal is not otherwise taxed (e.g. the gain attributable to the period before 5 April 2015), UK resident company shareholders or, where the company is owned by trustees, trust beneficiaries, may be taxable on the otherwise untaxed gain, depending on how the property is held.

**Reporting and tax payment deadlines**

The reporting and tax payment deadlines vary depending on the residence and nature of the person who disposes of the property. Deadlines can be short. Notably, in almost all cases non-UK resident individuals and trustees who dispose of a property must report the disposal to HMRC and pay any CGT due within 30 days of completion. There are extremely limited exemptions from filing, for example, nil gain/nil loss disposals, such as transfers between spouses/civil partners. UK residents are also subject to the 30 day reporting and payment regime if the disposal results in CGT being due.

Different filing and tax payment deadlines apply to companies. Broadly, the shortest deadline that would apply to companies is to notify HMRC if the company has come within the scope of corporation tax within three months of doing so. Tax filing and payment deadlines vary depending on the size of the company.

**Find out more...**

It can be seen from the above overview that the tax position in this area can be complex. This note does not cover all aspects of this subject. It is therefore essential to obtain professional advice prior to acquiring and/or selling a UK residential property.

This note reflects the law in force as at 30 April 2020 together with draft legislation in the Finance Bill 2019-21. Changes may be made to the draft legislation before enactment of the Bill. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Mark Stokes (mastokes@deloitte.co.uk) or Michelle Robinson (michellerobinson@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk