

Change in payment date for CGT (Lecture P1179 – 10.28 minutes)

Currently, Capital Gains Tax for individuals is paid on the self-assessment due date and has no impact on the payments on account. Given this date is 31 January following the end of the tax year, this means it can be paid anywhere between 10 months and 22 months after the date of the sale. Legislation has been introduced which will make the due date for sales of residential property 30 days after the date of the disposal as well as imposing an obligation to make a return of the sale. This will give a large one-off additional tax yield to the Exchequer.

This will apply for disposals on or after 6 April 2020. Self-assessment taxpayers will have to report the gain on their tax returns as well.

This regime already applies for disposals by non-residents and this legislation extends those provisions to UK resident sellers.

Provisions

The legislation applies to direct disposals of UK land on which a residential property gain accrues. This distinguishes it from the gains which arise to non-UK residents which also include indirect disposals of land (i.e. shares in property companies). It relates only to UK land.

It will not apply where the gain is an excluded disposal which are:

- No gain/no loss disposals;
- Disposals which are the grant of an arm's length lease for no premium to a person unconnected with the grantor;
- Disposals by charities;
- Disposals of any pension scheme investments (of course, unlikely to be residential property gains in any case).

A return does not have to be made where the person is not required to make a payment on account of their CGT liability. This might include gains covered by private residence relief, or where there are losses or where the gain is covered by the annual exemption.

A return must be made within 30 days of the date of disposal. For the purposes of these provisions, it is the date of completion which is treated as the trigger date rather than exchange which is, of course, still the date of sale for CGT purposes. No return has to be made if the person has submitted or is due to submit, prior to the filing deadline for the return, a self-assessment return which takes into account the disposal. This is going to be a rare occurrence.

The notional tax due must also be calculated and submitted within the same timescale. It is referred to as a payment on account of the CGT due. Any other disposals in the year not subject to this regime are ignored when computing the tax due. The tax is due on same day as the return is due.

In calculating the tax due the following principles apply:

- Capital losses can be offset where available;
- Other relevant disposals are taken into account (i.e. earlier residential property sales) in determining availability of annual exemption or basic rate band so that a cumulative tax payable figure is calculated where there are multiple disposals in a year;
- An in-year repayment could be made if factors change. So if a person makes an allowable loss on a disposal which, if a gain had accrued would have been reportable, the person can make a return to facilitate a repayment. This only applies where the loss relates to residential property. So someone who pays tax on disposal of a buy-to-let and then makes a loss on another buy-to-let could make a return to facilitate a repayment. Someone who pays tax on disposal of a buy-to-let and makes a loss on shares after the date of the original disposal cannot as the event causing the repayment had not happened at the time of the original return being due. You would have to get repayment at the time of the completion of the self-assessment return;
- HMRC acknowledge that information may not be available or complete within a short timescale (so where valuations need to be made for example) and in this case the return has to be completed to the best of the taxpayer's ability with the legislation allowing for certain estimates and assumptions to be made.

A return must include information as specified in the relevant provisions and must include a declaration that return is completed to the best of the person's knowledge and is complete.

The return may be amended but only in respect of events which had already occurred at the date the return was delivered. There is the normal 12-month period for amending the return but the return cannot be amended once the self-assessment return has been filed or the self-assessment filing date has passed (whichever is earlier). If the person is not required to submit a self-assessment return, the disposal of UK land return can be amended within 12 months of the 31 January following the tax year in which the disposal was made.

The standard enquiry regime applies for these returns and if there is an enquiry into a self-assessment return, then any return made under this legislation that is also shown on that return is deemed to be under enquiry too.

Residential property gain

A residential property gain has the meaning given to it in Schedule 1B TCGA 1992. It effectively means a chargeable gain accruing to a person on a disposal of residential property.

A person disposes of residential property if they dispose of an interest in land where:

- The land consisted of or included a dwelling;
- The land subsisted for the benefit of land that consisted of or included a dwelling; or
- The interest in land subsists under a contract for the acquisition of land consisting of or including a building that is to be constructed or adapted for use as a dwelling (basically an off-plan purchase).

A dwelling in this context means a building which is used or suitable for use as a dwelling or in the process of being constructed or adapted for use as a dwelling. It does not include 'institutional buildings' which include hotels, prisons, hospitals, care homes, student accommodation (meaning halls of residence) and residential accommodation for school pupils.

Where land is mixed use, it is necessary to attribute the gain relating to the residential property. Firstly, you calculate the 'relevant fraction' which is the number of days in which the land consists of or includes a dwelling divided by the total number of days in the applicable period (being the day on which the interest was acquired and ending with the day before the disposal occurred). Secondly if there is land which falls within the definition above and land which does not in a single sale, the gain has to be adjusted on a just and reasonable basis.

Practical issues

The main issue is going to be education of taxpayers who are attuned to the self-assessment cycle to disclose their tax liabilities.

The second issue is going to be to find out about disposals at the time when they are made so that gains can be calculated and tax paid. There is going to need to be some delineation of responsibilities with conveyancers.

The final issue is going to be having sufficient information to be able to prepare returns and compute tax liabilities.

Contributed by Ros Martin