

CGT Payments – A chance to beat the system! (Lecture P1419 – 7.08 minutes)

Here is a little idea which could help some clients defer CGT on UK land and property disposals. But first, a bit of a refresher.

When is Capital Gains Tax (CGT) due?

It used to be 31 January following the end of the tax year of disposal. However, things changed a while back in respect of disposals of UK land and property when HMRC decided that:

- a) Such disposals were worthy of separate reporting (to add yet another layer of much-needed tax compliance); and
- b) The Government could no longer bear to wait until 31 January to collect the tax and instead insisted that CGT on UK land and property disposals should be paid within 60 days of completion.

Note that for UK residents, accelerated payment applies to residential property only (being a property used or capable of being used as a dwelling). Disposals of bare land or commercial property are reported via the self-assessment return with tax payable on 31 January.

A separate return is required for each land and property disposal. The return is due within 60 days of completion. Disposals on the same day can be reported on the same return. For jointly owned properties, a return is required by each joint owner.

Reporting is done via a Capital Gain Tax UK Property Disposals Return. Reporting is online via the taxpayer's digital account on the Government Gateway. Paper returns can be used but only in exceptional cases where the taxpayer has been unable to create an online account.

Non-UK residents have also been dragged into this net by virtue of the Non-Resident Capital Gains (NRCG) regime and must report:

- a) Direct disposals of all land and property situated in the UK (whether residential or commercial); and
- b) Indirect disposals of UK land and property (being assets which derive their value from UK land and property such as shares in certain property rich companies). Note that as things currently stand, UK residents with indirect disposals only need to report these via the SA return, although it wouldn't be the biggest surprise in the world to see these rules aligned.

Non-UK residents are also required to pay the CGT payment within the 60-day filing period.

Naturally, penalties are charged for the late submission of an online property return. Penalties can also be charged for late payments. Any late (or insufficient) payments of tax will carry an interest charge.

Individuals, Partnerships, Trustees and Executors of deceased estates are within these provisions. The rules do not apply to UK companies who report gains via their corporation tax self-assessment return. Non-UK resident companies are however within the NRCG regime.

The CGT payment

Taxpayers are required to make a payment on account in respect of the disposal within 60 days of completion.

This is a payment towards the CGT liability on the land and property disposal. The payment on account is required to be a best estimate of the CGT due based on information available to the taxpayer at the date of completion.

This means that the estimate can take account of the annual exempt amount and any capital losses made before the date of completion (either in the same tax year or brought forward from previous years). However, the estimate cannot take account of losses made after the completion date as these are unknown at that time.

The taxpayer may also have to make a reasonable estimate of the CGT rate which will apply to the disposal (based on an estimate of UK taxable income for the year and any basic rate band which may be remaining). If the payment on account is insufficient or excessive, any adjustment is made during the self-assessment process.

For non-resident taxpayers, the same process is carried out, albeit with gains calculated under NRCG rules (for example by using April 2015 or April 2019 values to compute the gains). This can in itself be problematic as the taxpayer will have only 60 days post completion to obtain relevant valuations, file the return and pay the tax. Note also that for non-residents, only NRCG losses can be set against NRCG gains.

Exceptions

Certain disposals do not need to be reported on the online property return. These include;

- Inter-spouse transfers which take place at no gain / no loss;
- Grants of leases for no premium;
- Disposals where no CGT is due (for example, gains within the annual exempt amount, disposals giving rise to a loss or gains covered by private residence relief). If a loss arises, it is sensible to report that loss via the Self Assessment return such that the loss is then available to be carried forward and relieved in future years.

For non-residents, the NRCG rules require a return to be submitted even if no CGT is due.

Interaction with self-assessment

For taxpayers who would not otherwise need to file an SA return, if the CGT payment on account made in respect of the UK land and property gains already reported to HMRC is correct (or excessive), no SA return is then required.

For taxpayers within Self Assessment, the SA return requires the reporting of disposals of any chargeable asset in the tax year. This means that disposals which have already been reported to HMRC via the online property return, must be reported again in the CG pages of the SA return. This is the case even if there is no further CGT to pay.

Which brings us to the main point of this article...

A UK land and property disposal does not need to be reported via the online UK Property Service if that disposal has already been reported via a self-assessment return. [Sch 2 Para 5 FA 2019.]

Therefore, even though reporting a disposal on an online UK property return does not absolve the taxpayer from reporting the same disposal under Self Assessment, reporting a gain via the SA return first does remove any obligation to report it again via the UK Property Service. Put simply, this means that if the SA return can be accelerated and filed within 60 days of the completion of the property sale, no online property return is required.

We can then take this exception a stage further because an obligation to make a payment on account of CGT only applies where a person is required to make a return under Schedule 2 FA 2019. Therefore, if there is no obligation to file an online property return under Schedule 2, no payments on account are required. Any CGT on the UK land and property gain is therefore payable on the normal due date - ie 31 January after the end of the tax year.

What all this means is that in the right circumstances, the tactical filing of an early SA return can give the taxpayer an extra eight or nine months to pay their CGT. For large liabilities (as can often be the case for property disposals), this could be worth a few quid.

Illustration

Natasha (UK resident) sold a UK buy-to-let property making a capital gain of £500,000. Contracts were signed on 24 March 2024 making the gain chargeable in 2023/24. The transaction was completed on 21 April 2024. The CGT is estimated to be £138,000.

An online property return is due within 60 days of completion - ie no later than 20 June 2024.

Natasha must also make a CGT payment on account of £138,000 by 20 June 2024.

However if Natasha submits her 2023/24 self-assessment return before 20 June 2024 (disclosing the property gain on the CG pages) then;

- No online property return is required; and
- The CGT due on the disposal is payable by 31 January 2025.

This planning is not easy to manipulate. But if circumstances permit, practitioners should consider taking advantage of it. Not only does it defer payment of CGT, it also avoids the client incurring an extra fee for the preparation of an online property return. So it shouldn't be a difficult sell.

It does of course need the client to be sufficiently organised and motivated to get their SA ducks in a neat row in a relatively short period of time post 5 April, but this is doable if the incentive is there.

You would, of course, do your best to submit a return which is "to the best of your knowledge correct and complete", but the important thing is that return is filed within the 60-day period and reports the land and property gain. The return can then be amended at a later date if you have inadvertently missed something off or if the odd number needs tweaking.

Practitioners should therefore be alert to their clients making UK land and property towards the end of the tax year. So if any proposed disposals are on the horizon, now is not a bad time to float this idea.

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