

Chargeable gains for non-residents (Lecture B1414 – 16.40 minutes)

NRCGT history

Until 6 April 2015, non-residents were not liable to UK CGT, even on UK assets, unless it was a non-resident company realising a gain through a UK permanent establishment.

From 6 April 2015, non-residents disposing of UK residential property became liable for UK CGT (or corporation tax on the chargeable gains).

Calculation of the gain or loss

To calculate the gain, either time-apportion the total gain to find the post-6 April 2015 gain or rebase the cost to the market value on 6 April 2015.

From 6 April 2019, non-residents disposing of non-residential property, or indirect interest in UK property became liable to UK CGT (or corporation tax on the chargeable gains).

For direct disposals, the base cost is the market value on 6 April 2019 unless an election is made to use original cost. Time-apportioning is not permitted for these gains.

For indirect disposals, the calculation is the same as for direct disposals but any loss arising if using the original cost is not allowed.

Mixed use properties

For disposals between 6 April 2015 and 5 April 2019, the vendor is only liable on the residential part. This will require an apportionment of the proceeds. The base cost will either need to be apportioned, or the vendor can use the market value of the residential part at 6 April 2015.

For disposals from 6 April 2019, the gain on the residential part since 6 April 2015 is taxable. The gain on non-residential part since 6 April 2019 is also taxable.

Indirect disposals

From 6 April 2019, a non-resident is chargeable on a disposal of an entity that substantially derives its value from UK immovable property, whether commercial or residential in nature.

Indirect interests include:

- Any shareholding in a company deriving its value directly or indirectly from land;
- Any partnership interest deriving its value directly or indirectly from land;
- Any interest in settled property deriving its value directly or indirectly from land;
- Any option, consent or embargo affecting the disposition of land.

The gain is computed by reference to the gain on the interest in the entity that derives its value from land, not by reference to any increase in value of the land itself.

To calculate the gain, compare the proceeds on disposal to either the 6 April 2019 market value of the interest or the original cost (but if this gives rise to a loss, take as a zero gain).

For a disposal to be within the scope of these rules, the entity being disposed of must be “(UK) property rich” and the non-resident hold at least a 25% interest in the entity, or have held 25% or more at some point in the two years ending on the disposal date.

Related parties

Any interests held by related parties to the non-resident will also be taken into account when calculating whether the 25% test is met. This uses the connected party test (within the meaning in s.1122 CTA 2010) and the ‘acting together’ rules modelled on those in the corporate interest restriction rules (s.465(3) TIOPA 2010).

This will include situations where persons come together as a group with a common objective in relation to the envelope entity.

UK property rich?

The rules apply only where, at the time of disposal, more than 75% of the value of the asset disposed of derives from UK land, directly or indirectly (e.g. we include interests the entity holds in other entities which comprise UK land).

The calculation is based on the market value of the gross assets (ignoring liabilities) at the date of disposal.

All UK land (both residential and non-residential) held in the envelope entity is taken into account, but non-UK land is not counted toward the 75% limit.

Where it is necessary to trace value, the rules allow this to be done (for example, through layers of ownership or through entities, trusts or other arrangements)

Example 1

NRC SARL holds 100% of the share capital in newly incorporated company C1.

NRC paid £3m to acquire the shares in C1 when C1, giving C1 £3m in cash as its only asset so it is clearly not UK property rich at this point.

C1 later borrows £1.5m from a third party and purchases offices in the UK for £2m and land investments outside the UK for £2.5m.

The company is still not property rich, as the UK immovable property does not represent 75% or more of its gross asset value.

NRC disposes of the shares later for £7.5m.

At this time, the market value of the company’s assets were:

- £8m for the UK offices, and
- £2m for the property outside the UK

The loan liability of £1.5m was still outstanding.

The UK property-richness test is met, as 80% of the gross value of C1 is represented by UK immovable property.

The gain will be calculated on the basis of the shares, so will be the disposal proceeds of £7.5m less the cost of £3m. NRC SARL has a chargeable gain of £4.5m

Example 2

NRC SARL holds 25% of the share capital in company C2.

NRC originally paid £3m to acquire 25% of the shares in C2 which had a property portfolio at acquisition that included:

- £10m of UK commercial property, and
- £2m of other assets.

i.e. The company is property rich.

NRC disposes of a 5% interest in C2, for £820,000. On this date, the asset values of C2 are:

- £15m for the UK commercial property, and
- £4m for its other assets

The property-richness test is again met ($15/19 = 78.9\%$).

NRC SARL has a chargeable gain of:

Proceeds	820,000
Cost ($5/25 \times £3m$)	<u>600,000</u>
	<u>£220,000</u>

18 months later, NRC disposes of its remaining 20% shareholding in C2. NRC does not meet the 25% ownership test at this time but has done so within a period of two years before this disposal.

If C2 remains UK property rich at that point, any gain will be chargeable.

Contributed by Malcolm Greenbaum