

## **Reporting capital gains on property (Lecture P1382 – 18.55 minutes)**

HMRC and the Treasury have been concerned for many years about the time-lag between individuals making capital gains and the reporting and payment of tax. Until the new rules were introduced for non-residents from April 2015 and for UK residents from April 2020 (with a temporary postponement of a few months for Covid-19), the capital gain would be reported on a self-assessment tax return (SATR) which would be due on the 31<sup>st</sup> January following the end of the tax year.

This meant that if, for example, one made a gain on the 10<sup>th</sup> April 2019, this would fall into the 2019/20 tax year and the resultant gain would only be reportable and tax payable on the 31<sup>st</sup> January 2021, a gap of nearly 22 months. HMRC's three concerns were that:

- 1) The passage of time would make the information less reliable,
- 2) Marrying up information received from the SATR with information received considerably earlier from the Land Registry and potentially Stamp Office,
- 3) There is more chance that the tax money that should have been set aside for tax would have been spent in the intervening 22 months.

HMRC therefore devised and implemented a plan whereby at first it was non-UK residents who were required to file a return reporting chargeable gains on UK property within 30 days of completion. This was then extended to commercial property sold by non-UK residents in 2019 and then finally to UK residents from April 2020.

### *Residents and non-residents*

Despite non-residents being brought into the CGT regime, there remain significant differences between the filing requirements for UK and non-UK residents.

Whenever a non-resident makes a disposal there is a requirement for a property tax return to be completed, irrespective of whether CGT is payable.

UK residents are only required to complete the property CGT return if there is a chargeable gain which results in a payment of Capital Gains Tax. Accordingly, for UK residents, if there is no CGT due because of: brought forward losses, covered by the annual exemption, losses made on the transaction, then no separate return is required. Clearly, a UK resident will need to include any capital losses in their self-assessment tax return or in some other disclosure to HMRC to take advantage of those losses against future gains.

The imposition of this extra reporting requirements has not been without initial teething problems and ongoing issues. The first point of contention was when HMRC started levying penalties for either failing to file a return or failing to file a return on time even when there was no CGT to pay.

The courts in about half the cases found in favour of the taxpayer and revoked the penalty. It is however less likely now that given the amount of time since this additional reporting was imposed that the courts would look so leniently on failure to file.

### *Completion not exchange*

It is the exchange of contracts which normally creates the Capital Gains Tax liability itself. So for example, if I exchange on a property I am selling on the 5th April 2023 then it would fall into the 22/23 tax year and the rules, annual exemption and rates for that year is what I would use.

It is the completion date which sets off the clock on the 60 days. Therefore, one needs to be particularly careful when the exchange and completion dates are in different tax years. The only way in which the additional reporting can be avoided when there is a chargeable gain is if the self-assessment tax return is completed within 60 days of the completion on the property.

### *Effect of reduction in Annual Exemption*

The Chancellor announced on the 17<sup>th</sup> November 2022 that the annual exemption would be cut to £6,000 for 2023/24 and £3,000 for 2024/25. If these plans go ahead, there will be more individuals who will be required to file property returns as they will have CGT to pay on their properties.

### *Who is within the scope of CGT?*

CGT is broadly levied on gains made on all UK residential property. The principal private residence relief then takes a large proportion of transaction on residential property out of the chargeable gains net. However, the main area where CGT is levied would be where a second property is being acquired or the individual is ineligible for principal private residents relief (see non-resident rules which are beyond the scope of the webinar).

### *Acquisition costs*

Acquisition cost or deemed acquisition cost. This is normally the cost paid for the property but could be a deemed cost if the property was acquired through inheritance where one would use the probate value or a transaction between connected persons (normally family) which would then need to be adjusted to market value at the time.

If the acquisition was before March 1982, then there is compulsory rebasing to the 31<sup>st</sup> March 1982 value.

### *Improvement cost*

It is necessary to distinguish between revenue expenditure on the property and capital. In this case capital expenditure is deductible against a capital gain whereas revenue expenditure would not.

This makes capital expenditure more valuable from a tax perspective where there is no revenue stream e.g. a second property not let out.

### *Incidental costs of acquisition*

These would be solicitors' fees, estate agent fees, stamp duty etc.

### *Disposal proceeds*

This would either be the actual disposal proceeds or the deemed disposal proceeds if between connected persons.

### *Incidental costs of disposal*

Incidental costs of disposal also need to be taken into account and maybe incurred after completion which complicates the timing of the return.

Although theoretically the property return is not a payment on account, there are quite often elements which cannot be ascertained at the time or could be subject to change. For example, there may be costs which cannot be accurately identified by the return is due. If market value is not being used, then it may be that one needs a surveyor to go back and value the original transaction e.g. market value at time of acquisition or March 1982 values.

### *Treatment of losses*

Capital losses can be carried forward from prior years and from self-assessment losses and gains are aggregated in the same year in order to come up with a blended and final chargeable gain.

By contrast, the property return does not allow you to take account of future chargeable losses even if they are relatively certain if they have not crystallised.

For example, Kirsty makes a gain of £20,000 on a property she sells in June 2022. She knows that she will make a loss of approximately £10,000 in September 2022. Whereas for the self-assessment tax return after the end of the tax year, the loss reduces the chargeable gain, this is not the case for the property return and she would have had to report and pay tax on the June gain. She can then claim the loss on the SATR when all the chargeable gains and losses for the tax year are taken into account.

The second challenge is that individuals do not necessarily know their marginal rate of tax. It is possible that all the gain is chargeable at 28% as a higher/additional rate taxpayer. But it is possible, particularly for retired individuals who have limited amounts of income or indeed individuals who are non-resident in the UK and therefore have limited taxable income in the UK, to have a part or all the gain chargeable at the rate of basic rate taxpayers which is 18% for residential property.

There could of course be a combination of the two. For example, if an individual has £40,270 of income and a £20,000 chargeable gain after all exemptions, that would leave £10,000 to be charged at basic rate for CGT on residential property i.e. 18% and 10% to be charged at the higher rate i.e. 28%.

You should note that commercial property is charged at CGT normal rate at 10% for basic rate taxpayers and 20% for higher/additional rate taxpayers.

### *Administrative issues*

The administrative challenges of filing the property return are not to be underestimated. If you are filing a return on behalf of your client and in most circumstances, this needs to be done online, then you need to get authorisation for filing the return which is separate from the normal agent authorisation. You may have to explain to a client, who may have been your client for many years that they will need to authorise you to prepare and file the return on their behalf.

Secondly, whereas most agents would use commercial software that they have brought or where they retain the records of carry-forwards, carry-backs and elections, this is not possible for the property return which is an HMRC form. It is therefore necessary to keep those records and potentially reinput them onto the self-assessment tax return if that is required.



### *Payments*

The payment of CGT is due 60 days after the completion of the return. If a further payment is due, then interest will be chargeable. If however there is a refund due, that may show on the self-assessment tax return but there is no mechanism currently in place for HMRC to automatically refund the CGT overpaid. This means that the agent often needs to chase HMRC for outstanding refunds.

In certain circumstances where taxpayers are vulnerable or disabled, paper returns may be accepted. There is also a facility to amend returns if new information comes to light.

### *Things to watch out for*

- 1) Property outside the UK is not subject to these rules.
  - If a UK resident is liable to tax on gains of property outside the UK, these are reported in the same manner on the SATR returns.
- 2) The additional filing requirement does not apply to commercial property.
  - Accordingly, if one sells as a unit a flat over a shop. The property return would relate to the gain on the flat, not the shop.

HMRC of course has access to information from the Land Registry and the Stamp Office in order to verify details of any chargeable gains made. It also uses artificial intelligence to compare details of transactions as recorded by the Land Registry and distinguish them from what has been put on the property tax return.

*Contributed by Jeremy Mindell*