

CGT changes announced in the Budget

(Lecture P1063 – 16.56 minutes)

Annual CGT exemption

The annual CGT exemption for individuals and personal representatives has been increased in line with inflation to £11,700 for 2018/19. The exempt amount for most trusts is £5,850.

There are no changes to any of the CGT rates, nor to the maximum entrepreneurs' relief limit that therefore remains at £10,000,000 for 2018/19.

CGT payment window

The introduction of the 30-day window between a capital gain arising on a disposal of residential property and the payment of CGT is to be deferred until 6 April 2020.

In his Autumn Statement on 25 November 2015, the then Chancellor announced that, from 6 April 2019, a payment on account of any CGT due on the disposal of residential property would be required within 30 days of the transaction's completion date. CGT is currently due on 31 January following the end of the tax year in which the disposal takes place – this results in the tax being payable between 10 and 22 months after the actual disposal. The curtailment of the normal payment window is being postponed by one year.

This will then mirror the 30-day deadline for the submission of NRCGT returns and the payment of any related tax. It is presumably intended to correct the anomaly under which most non-UK residents are required to pay their tax within 30 days, although some – if they are already within the self-assessment regime – do not have to settle their liability until the usual 31 January date.

It will be interesting to see whether this change means that the solicitor handling the disposal transaction will in future have to deduct the estimated CGT from the sale proceeds and hand this sum over to HMRC.

Taxing non-UK residents' gains on immovable property

The Government have stated that, from April 2019, UK tax will be chargeable on gains made by non-UK residents on a direct or indirect disposal of immovable property in the UK. In addition, the existing NRCGT regime will be extended so that 'widely held' companies, ie. those which are not 'closely-held' (see Sch C1 TCGA 1992 for a definition of this term), will be subject to tax on a sale of UK residential property.

Currently, where a non-UK resident disposes of non-residential property which has been held for long-term investment purposes, that person falls outside the scope of a UK tax charge on any gain which arises. However, non-UK residents who acquire UK property with a view to sale have been subject to a UK tax charge on their profits since July 2016 – see Ss76 – 82 FA 2016. Furthermore, non-UK residents holding UK residential property for long-term investment purposes have been caught by an NRCGT charge since April 2015, unless they are diversely owned companies or widely marketed entities.

With effect from 1 (or 6) April 2019, tax will be chargeable on gains made by non-UK residents on the direct or indirect disposal of all types of immovable property in the UK. This will be the case, regardless of the nature of the property or the residence status of the disponent.

The NRCGT regime is to be broadened so that 'widely held' companies will be liable to tax on a sale of UK residential property from 1 April 2019 onwards.

Gains will arise in respect of indirect disposals where the:

- entity being disposed of derives 75% or more of its value from UK land (this is referred to as a 'property rich' entity); and
- non-UK resident owner of this 'property rich' entity holds, or has held, an interest of 25% or more in that entity at any time within the five years prior to that disposal.

For direct disposals, there will be a rebasing to April 2019 so that only the uplift in value from that date will be liable to UK tax. However, where the seller would be subject to tax under this rule but has in fact made a loss, that person will have the option of using original cost as the deductible amount. The rebasing date will be April 2019 in all cases involving indirect disposals.

This reform represents a fundamental change to how gains made by non-UK residents are taxed in the UK and will bring parity to the tax treatment of onshore and offshore structures. Although the legislation will not come into force until 1 (or 6) April 2019, an anti-forestalling measure to support these changes will have effect for arrangements entered into on or after 22 November 2017.

Entrepreneurs' relief

The Government have confirmed that they intend to hold a consultation in early 2018 on how access to entrepreneurs' relief might be given to businessmen whose holding in their company is reduced below the normal 5% qualifying level as a result of raising funds for commercial purposes by means of an issue of new shares. In the words of HMRC:

'Allowing relief in these circumstances would incentivise entrepreneurs to remain involved in their businesses after receiving external investment.'

One wonders whether this proposal has come about, at least partly, because of the recent Upper Tribunal decision in *HMRC v McQuillan* (2017).

Contributed by Robert Jamieson