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CAPITAL GAINS ON UK RESIDENTIAL PROPERTY

On 28 November 2014, HMRC replied to the consultation that has been taking place on capital gains made by non-UK residents on UK residential property. Their proposed legislation includes changes to the rules for the Main Residence Exemption that apply to UK residents as well as non-residents.

If you are not resident in the UK, then you are not liable to UK capital gains tax on assets in the UK. There are certain exceptions to this, involving short term absences from the UK and also certain assets used in a UK trade, but with effect from 6 April 2015, a new category of asset will also be liable to UK CGT – residential property.

If a non-UK resident sells a UK property on or after 6 April 2015, they will be liable to UK capital gains tax on any gain they make. The rate of tax will be the same as for UK residents and will, depending on their other

The new rules will take a while to bite because the gains that will be taxed are those arising after 5 April 2015. There are two ways the non-resident may calculate the gain:

- Have the property valued as at 5 April 2015 and treat this as the "cost" for CGT, or
- Time apportion the gain over the actual period of ownership and only pay tax on the amount attributed to the period after 5 April 2015.

Example

Marie-Noelle owns a UK rental property which she bought in April 2006 for £150,000. She sells it in April 2016 for £250,000. As she is a Swiss resident, she can time apportion the gain over her ten years of ownership, which means the gain for the one year after April 2015 is only £10,000. She is entitled to the same annual exempt amount as a UK resident (currently £11,000) so her gain is entirely covered by this and she has no need to incur the cost of valuing the property at April 2015.

The Main Residence Exemption

This is also available to non-residents but from April 2015 the rules for claiming it will change for non-residents **and UK residents.**

Currently, if you have more than one residence, you can elect which is to be treated as your main residence for UK tax purposes, provided you do so within two years of acquiring the second residence. After 5 April 2015, there is an additional requirement for a property to be regarded as your main residence:

- The property must be situated in the country in which you are resident for tax purposes, or:
- If it is not in your country of residence, you must spend at least 90 nights in the property during the tax year in which you claim it as your main residence.

At present there is a two year time limit from the acquisition of the second residence to nominate which is the main residence. For non-residents, this nomination can be made when they sell the property – even if it relates to an earlier tax year in which they spent 90 days there.

Planning Point

The new rules may be bad news for some, but like all new legislation, they also open up some new planning ideas. If Marie-Noelle in our example had spent 90 days in her UK property during the 2009/10 tax year, and if she sold it for £350,000 so that there was a taxable gain for the period after April 2015 greater than the annual exempt amount, she could now nominate the property as her main residence for 2009/10, and thus benefit from the final 18 month exemption, which would wipe out the taxable gain.

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