



# Capital gains tax for non-residents on UK residential property – The mechanics of reporting and paying the tax

Any non-UK resident owner (including individuals, trustees and companies) which makes a disposal, on or after 6 April 2015, of a UK residential property which is within the scope of the new CGT charge will need to deliver a NRCGT return within 30 days of the date of disposal, and in many cases also estimate and pay any tax due.

From 6 April 2015 capital gains tax (CGT) will be charged on gains made by non-resident owners of UK residential property interests. We consider here the mechanics of reporting disposals, claiming relevant exemptions and paying any tax due.

## The NRCGT return

Any non-UK resident owner which makes a disposal of a UK residential property interest will be required to deliver a tax return, known as a “NRCGT return”, to HMRC within 30 days of completion of the disposal.

The NRCGT return will need to contain information prescribed by HMRC.

Unless a non-UK resident owner has been given notice to file a self-assessment return, a corporate tax return, or has delivered an annual tax on enveloped dwellings (ATED) return for the property in question in the preceding tax year, the NRCGT return will need to include an assessment of any tax due and the tax will need to be paid within the 30 day period. Otherwise, assessment of the tax due and payment of any tax will be required by the normal due date for the tax year in which the disposal is made (i.e. for individuals by 31 January following the end of the tax year of the disposal and for companies 9 months after the end of the financial year).

The NRCGT return has to be filed whether a gain or a loss has been made and whether any tax is due at that time. Any applicable exemptions must be claimed in the return.

## Tax assessment

The tax return and assessment of tax will take into account any claims for Principal Private Residence Relief for individuals and trustees and any exemptions applying to corporate owners.

Where the taxpayer is an individual, the individual will need to make a reasonable estimate of the amount of taxable income the individual will receive in the tax year to determine the applicable rate of CGT. Provided that such estimates are fair and reasonable in all the circumstances, no penalties will arise in the event the return turns out to have been inaccurate. If the estimate turns out to have been wrong, the NRCGT return can be amended within 12 months of 31 January following the tax year in which the disposal was made.



### Uncertainty over residence status

There may be situations where, at the time of disposal of a UK residential property, it is not clear whether or not the property owner will be resident in the UK in the tax year of the disposal. This is most likely to be an issue for individuals whose residence status will be determined under the Statutory Residence Test (SRT).

If a taxpayer files a NRCGT return and makes a payment of CGT on the reasonable assumption that they will be non-resident and it subsequently transpires that the taxpayer was UK resident, the disposal will be treated as not having been made by a non-resident but by a resident taxpayer. Any tax paid will be refunded by HMRC. The disposal will need to be reported by the UK taxpayer and any CGT due paid in the usual way.

Alternatively if a taxpayer cannot reasonably assume that they are non-UK resident at the time of a disposal, but later the conditions for non-residence are met, the filing deadline for the NRCGT return is 30 days from the date at which the certainty as to non-UK residence is met. Given the complexities of the SRT, accurately determining this date may present practical challenges.

### HMRC powers

A range of HMRC powers will be introduced in respect of NRCGT returns that will broadly replicate HMRC's powers to enquire into Self-Assessment tax returns and apply penalties for non-compliance, with at the same time similar protections for the taxpayer as to limiting the period within which HMRC can make enquiries.

### For more information contact

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