

GMS Flash Alert

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United Kingdom - Consultation on Capital Gains Tax Changes to Private Residence Relief

On 1 April 2019, HM Revenue & Customs (HMRC) in the U.K. published a [consultation](#) on Capital Gains Tax changes to Private Residence Relief¹, originally indicated in the Autumn 2018 Budget². The proposed changes will reduce the relief available on the sale of a home in some circumstances.

The proposed changes are likely to be of interest to all individuals who own a property in the U.K., as these may impact the U.K. Capital Gains Tax treatment on the sale.

WHY THIS MATTERS

This could be of interest to U.K.-outbound assignees who may rent out or sell their home while on assignment overseas, or who sell their property after subsequently returning to the United Kingdom. The proposed changes to the reliefs could further complicate the U.K. Capital Gains Tax landscape in respect of U.K. property owners going on assignment, and in some cases, additional U.K. tax may eventually be due when the home is sold.

Companies may wish to consider reviewing their assignment policies and the support they provide to their assignees who own property in the U.K. prior to their undertaking an assignment overseas.

In addition to these changes, gains on U.K. property realized by non-U.K. residents have been chargeable to U.K. tax since 6 April 2015 (see *GMS Flash Alert* 2015-049)³.

Background and Consultation with Proposed Changes

Under current U.K. Capital Gains Tax legislation, an individual can claim relief for any period where the relevant property is occupied as the individual's principal private residence ("PPR"), i.e., his/her main home. There are some periods where the property is deemed to be occupied even where the owner(s) may be absent from it.

One of these periods is the last 18 months of ownership of a PPR, which is currently regarded as an exempt period even where the owner is absent from the property. In addition, where a PPR has been let out for some of the period of ownership, an individual can claim “lettings relief,” which may reduce significantly the gain relating to a period the property is let.

HMRC has issued a consultation on proposed changes to both of these reliefs and proposes to make the following two changes with effect from April 2020:

- The individual will only be able to claim relief for the final 9 months of ownership, reduced from 18 months;
- The individual will only be able to claim “lettings relief” in relation to a period (or periods) where the owner was in “shared occupancy” with the tenant.

The government estimates that the calculation of gains on 40,000 property disposals per year will be impacted by these changes thus raising additional tax of up to £150 million by 2023/24. This may include current or former assignees as many assignees have used one or both of these reliefs when calculating a chargeable gain on the disposal of their homes.

More Details: Current Rules and Changes Proposed

Gains on the disposal of U.K. residential property are liable to U.K. Capital Gains Tax in the first instance; however, an individual can claim relief for any period where the property is owned and occupied as the individual’s PPR, i.e., his or her main home.

In addition to periods of actual occupancy, an individual can currently also claim relief for the following periods of “deemed” occupancy which include:

- (i) absence for any reason totaling no more than 36 months;
- (ii) absence where a person owns a home that he or she intends to occupy as a main residence but for work reasons needs to live elsewhere;
- (iii) employment-related absences during which all duties are carried on outside the U.K.;
- (iv) absences of not more than 48 months in total where either the location of the person’s work prevents him or her living at home, or the employer requires him or her to live away from home for the effective performance of the person’s duties;
- (v) the final 18 months of ownership (or 36 months in certain cases); and
- (vi) limited relief for periods of letting where part or all of a main residence is let as residential accommodation.

The relief given for absences under (iii) and (iv) still applies if a person cannot return to his or her home afterwards because the nature of the person’s work requires him or her to work away again. The absences at (iii) and (iv) will also apply if the employment was of the spouse or civil partner.

This consultation covers two proposed changes to PPR, originally indicated in the Autumn 2018 Budget, and relating to (v) and (vi) above. It also addresses one or two other matters.

Final Period of Ownership

Currently, an individual can claim relief for the final 18 months of ownership, where the property had been the individual’s PPR at any point during his/her ownership. The intention is to allow an individual a period to sell the property without accruing a gain for this period. If an individual is disabled or living in a care home, this period is extended to 36 months.

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The government proposes to reduce this relief from the final 18 months of ownership to the final 9 months of ownership. The extended period for individuals with a disability or in a care home will not change.

Lettings Relief

An individual can also claim lettings relief for any periods where the PPR is let out. This relief is limited to the lesser of:

- £40,000;
- the portion of the gain related to the period when the property was let out; and
- the amount of PPR already calculated.

It is important to note this applies to each individual so lettings relief of up to £80,000 can be claimed in respect of a jointly-owned property. Currently, the individual does not need to live in the property at the time it is let. However, the government proposes to change the rules on lettings relief so it will only be available where the owner lives in shared occupancy with the tenant.

KPMG NOTE

This is likely to impact U.K.-outbound assignees who let out their properties while on assignment overseas and do not meet the conditions for deemed occupancy periods by, for example, not reoccupying the home after their return to the U.K. after the end of their assignment, as they will no longer be able to claim lettings relief for this period. Further, it is unclear whether there will be any grandfathering of the lettings periods prior to the introduction of this change, in which case all disposals after 5 April 2020 would be impacted.

Other Proposals

In addition, the government proposes to change the rules relating to transfers between spouses and civil partners, to help ensure that these are fairer.

Currently, transfers between spouses and civil partners take place on a “no-gain/no-loss” basis. However, the PPR calculation depends on whether the couple were living together in the property as their only or main residence at the time of the transfer. This impacts PPR as follows:

- *If the property is the couple’s only or main residence at the time of transfer:*
 - they are deemed to have the same period of ownership as the transferring spouse – even if that period started before marriage.
- *If the property was not the main residence for the receiving spouse at the time of transfer:*
 - the period of ownership over which any PPR is calculated starts from the date the interest was transferred to the receiving spouse. This can mean that PPR is due on the whole gain, even where the property had been previously let out by the transferring spouse. Alternatively, PPR may not be due even if it was used as a main residence by the transferring spouse before the transfer, if it was not used as the main residence after the transfer.

HMRC is considering changing these rules so that the receiving spouse always inherits both the transferring spouse's period of ownership and the use to which the property was put during this time.

Summary

When an assignee and his or her family are about to undertake an assignment overseas and own a home in the U.K., they will need to understand the tax implications in the U.K. and the host country of their absence from the property, letting it out, or selling it (either while overseas or on their return to the U.K.).

These prospective changes could add further complication in considering the U.K. tax position on any disposal of the property.

It should be noted that those already on assignment may also be impacted by these changes.

FOOTNOTES:

- 1 See HM Revenue & Customs "[Capital Gains Tax: Private Residence Relief: changes to ancillary reliefs](#)," Consultation document (1 April 2019).
- 2 See GMS [Flash Alert 2018-141](#) (30 October 2018).
- 3 See GMS [Flash Alert 2015-049](#) (7 April 2015).

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