

Prior to 6 April 2015 those who were not resident in the UK could escape a charge to UK capital gains tax (CGT) on the sale of UK property. From that date, non-residents are liable to UK CGT on the sale of residential property located in the UK. The new rules seek only to tax the proportion of the gain accruing after 5 April 2015.

A new set of reporting requirements include the obligation to deliver a tax return, known as a NRCGT return, to HMRC within 60 days of completion of the sale of the residential property. However, where there is no gain or loss; the taxpayer is not required to make and deliver a NRCGT return, but may do so. This rule was introduced in Finance Act 2016, but backdated to 6 April 2015.

Calculating the chargeable gain

The default treatment is to ‘rebase’ the base cost of the property to the market value as at 5 April 2015. A valuation as at that date is therefore required. However, there are alternative methods (the straight line basis or retrospective method) which may be preferable depending upon the particular circumstances of each case. Elections are made on a disposal by disposal basis.

Interaction with CGT for temporary non-UK residents

Broadly, a taxpayer is considered “temporarily” non-resident if immediately following a period of UK residence they become non-resident for a period of 5 full tax years or less, and they were a UK resident for at least 4 of the 7 years immediately preceding the year of departure. Temporary non-residents remain liable to UK CGT.

The temporary non-resident rules do not apply to the proportion of a gain otherwise chargeable to CGT, so gains which are charged under the NRCGT rules will not be taxed again. Instead, the gain already taxed under NRCGT rules will be deducted when calculating any gain chargeable in the year of return.

The temporary non-resident legislation is not limited to residential property; therefore please contact us for further advice.

Who will be affected?

The following table summarises the types of non-UK resident owners:

Identity of seller	Tax rate	Other relevant information
Individual	18% or 28%	Tax rate depends on the level of UK income and chargeable gains during the tax year of disposal. Capital gains annual exemption available (£12,300 for 2021/22) Private Residence Relief (PPR) to be considered.
Trustees	28%	Capital gains annual exemption available (up to £6,150 for 2021/22). Could be entitled to PPR.
Company	19% currently and 17% from April 2020. 28% if ATED applies.	Indexation allowance available. No exemption from the CGT charge if a property investor, however certain companies can claim other exemptions.

Reporting and paying the NRCGT charge

The NRCGT return must be filed with HMRC for each property sold after 5 April 2015 (even if a loss arises) within 60 days of completion, and is required regardless of whether you are UK tax registered through the Self-Assessment system. The form must include a calculation of the chargeable gain (or allowable loss) and details of the NRCGT due, although less detail is required on the NRCGT return if you have already been issued with a Tax Return by HMRC or an ATED Return has been filed.

You may also be required to pay any non-resident CGT due within the same 60 day period, although there are exceptions to this rule if you already have an existing relationship with HMRC, for example you are already registered for UK Self-Assessment.

Provisional returns and possible penalties

The legislation recognises that this deadline is a lot shorter than the usual compliance time limits and consequently in some cases it may not be possible for the taxpayer to obtain all of the necessary information by the deadline, especially if the taxpayer is an individual and the rate of tax would be dependent on the UK income for the whole year.

In these circumstances it is possible to file a provisional calculation using a reasonable estimate and amend the NRCGT return at a later date. Provided that the estimates are fair and reasonable no penalties should arise. However, late filing penalties will be charged if the deadline is missed and further tax-gear penalties may be issued if the NRCGT return is inaccurate.

Uncertainty over your residency status?

There are likely to be situations where at the time of sale of a UK residential property, it is not clear whether the owner will be UK resident in the year of the disposal, and their residency status would need to be determined using the Statutory Residence Test (SRT). The SRT is retrospective, involving looking back at the tax year and previous years to determine residency status based on the facts of each case, therefore it may not be possible for the individual (or their tax adviser) to determine whether or not the taxpayer will be non-resident in the tax year at the time of the disposal (or within 60 days of completion, when the NRCGT return would be due).

If a taxpayer files a NRCGT return and pays tax on the assumption that they will be non-resident at the time of disposal, but it transpires that they are resident in the UK, HMRC will refund any tax paid and the NRCGT return is treated as not having been made. The disposal must then be reported by the UK resident taxpayer and any UK CGT due paid in the usual way.

Find out more

For further information, advice and guidance please contact one of our specialists:

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This is a general illustrative guide only and individual professional advice should be obtained on specific issues. Information is believed correct at time of publication but may alter.

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