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CAPITAL GAINS TAX AND THE FAMILY HOME

The capital gains tax (CGT) exemption for gains made on the sale of your home is one of the most valuable reliefs from which many people benefit during their lifetime. The relief is well known: CGT exemption whatever the level of the capital gain on the sale of any property that has been your main residence. In this factsheet we look at the operation of the relief and consider factors that may cause it to be restricted.

Several important basic points

Only a property occupied as a residence can qualify for the exemption. An investment property in which you have never lived would not qualify.

The term 'residence' can include outbuildings separate from the main property, but this is a difficult area. Please talk to us if this is likely to be relevant to you.

'Occupying' as a residence requires a degree of permanence so that living in a property for say, just two weeks with a view to benefiting from the exemption is unlikely to work.

The exemption includes land that is for 'occupation and enjoyment with the residence as its garden or grounds up to the permitted area'. The permitted area is half a hectare including the site of the property which equates to about 1.25 acres in old money! Larger gardens and grounds may qualify but only if they are appropriate to the size and character of the property and are required for the reasonable enjoyment of it. This can be a difficult test. In a court case the exemption was not given on land of 7.5 hectares attached to a property. The owner said he needed that land to enjoy the property because he was keen on horses and riding. The courts decided that the owner's subjective liking for horses was irrelevant and, applying an objective test, the land was not needed for the reasonable enjoyment of the property.

Selling land separately

What if you want to sell off some of your garden for someone else to build on? Will the exemption apply? In simple terms it will if you continue to own the property with the rest of the garden and the total original area was within the half a hectare limit.

Where the total area exceeds half a hectare and some is sold then you would have to show that the part sold was needed for the reasonable enjoyment of the property and this can clearly be difficult if you were prepared to sell it off.

What if on the other hand you sell your house and part of the garden and then at a later date sell the rest of the garden off separately, say for development? Then you will not get the benefit of the exemption on the second sale because the land is no longer part of your main residence at the point of sale.

More than one residence

It is increasingly common for people to own more than one residence. However an individual can only benefit from the CGT exemption on one property at a time. In the case of a married couple (or civil partnership), there can only be one main residence for both. Where an individual has two (or more) residences then an election can be made to choose which should be the one to benefit from the CGT exemption on sale. Note that the property need not be in the UK to benefit although there are additional restrictions from April 2015 detailed below. Also foreign tax implications may need to be brought into the equation.

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The election must normally be made within two years of the change in the number of residences and the potential consequences of failure to elect are shown in the case study that follows.

Furthermore the case study demonstrates the beneficial rule that allows CGT exemption for the last nine months of ownership of a property that has at some time been the main residence. Where the owner of the property is in long term care or a disabled person, and meets the necessary conditions, they benefit from a CGT exemption for the last 36 months of ownership.

Case study

Wayne, an additional rate taxpayer, acquired a home in 2009 in which he lived full-time. In 2013 he bought a second home and divided his time between the two properties.

- Either property may qualify for the exemption as Wayne spends time at each - ie they both count as 'residences'.
- Choosing which property should benefit is not always easy since it depends on which is the more likely to be sold and which is the more likely to show a significant gain. Some crystal ball gazing may be needed!
- The choice of property needs to be made by election to HMRC within two years of acquiring the second home. Missing this time limit means that HMRC will decide on any future sale which property was, as a question of fact, the main residence.

Wayne elects for the second home to be treated as his main residence for CGT purposes. In June 2024 he sells both properties realising a gain of say £100,000 on the first property and £150,000 on the second property.

The gain on the second property is CGT-free because of the election.

Part of the gain on the first property is exempt, namely that relating to:

- the four years before the second property was acquired (when the first property was the only residence); and
- the last nine months of ownership will qualify, providing the property has been the main residence at some time.

The overall gain on the first property would be time apportioned between the exempt period and the period remaining chargeable.

Can you claim PRR relief on your property?

A person's residence may not be eligible for Private Residence relief (PRR) for a tax year unless either:

- the person making the disposal was resident in the same country as the property for that tax year; or
- the person spent at least 90 midnights in that property.

The rules apply to both a UK resident disposing of a residence in another country and a non-resident disposing of a UK residence.

New reporting and payment requirement

It is important to note that from 6 April 2020 those liable to CGT on a residential property disposal must send a new standalone online return to HMRC and make a payment on account of the tax due within 60 days of completion of the sale. These requirements do not apply if the gains are covered by PRR.

Business use

More and more people work from home these days. Does working from home affect the CGT exemption on sale? The answer is simple - it may do!

Rather more helpfully the basic rule is that the exemption will be denied to the extent that part of your home is used exclusively for business purposes. In many cases of course the business use is not exclusive, your office doubling as a spare bedroom for guests for example, in which case there is not a problem.

Where there is exclusive business use then part of the gain on sale will be chargeable rather than exempt. However, it may well be that you plan to acquire a further property, also with part for business use, in which case the business use element of the gain can be deferred by 'rolling over' the gain against the cost of the new property.

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Residential letting

Prior to 6 April 2020 letting relief gave up to £40,000 (£80,000 for a couple who jointly own the property) to someone letting part or all of a property which was their main residence or was their former main residence at some point in their period of ownership. However under the revised rules letting relief is only available where the owner and tenant share occupancy throughout the period of the let.

Periods of absence

Certain other periods of absence from your main residence may also qualify for CGT relief if say you have to leave your property to go and work elsewhere in the UK or abroad. The availability of the exemption depends on your circumstances and length of period of absence. Please talk to us if this is relevant for you. We would be delighted to set out the rules as they apply to your particular situation.

Trusts

The exemption is also available where a property is owned by trustees and occupied by one of the beneficiaries as their main residence.

Until December 2003 it was possible to transfer a property you owned but which was not eligible for CGT main residence relief into a trust for say the benefit of your adult children. Any gain could be deferred using the gift relief provisions. One of your children could then live in the property as their main residence and on sale the exemption would have covered the entire gain.

HMRC decided that this technique was being used as a mechanism to avoid CGT and so blocked the possibility of combining gift relief with the main residence exemption in these circumstances.

How we can help

The main residence exemption continues to be one of the most valuable CGT reliefs. However the operation of the relief is not always straightforward nor its availability a foregone conclusion. Advance planning can help enormously in identifying potential issues and maximising the available relief. We can help with this. Please contact us if you have any questions arising from this factsheet or would like specific advice relevant to your personal circumstances.

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