

Non-resident disposals of UK land and property

Sheffield – 0114 266 7141

| Doncaster – 01302 367 262

| Northampton – 01604 645 600

Direct Disposals – Residential Property

From 6 April 2015, the capital gains tax rules were extended to non-resident individuals disposing of residential land and property in the UK. 'Individuals' for these purposes also include personal representatives, partners, landlords and trustees.

Individuals are required to submit a non-resident capital gains tax return and pay over any capital gains tax due to HMRC within 30 days of completion, though if they are already in Self-Assessment, they may elect to defer the payment until the 31 January following the tax year of disposal. Interestingly, it is the completion date which is relevant for the 30-day deadline and not the exchange date, which is the trigger date for capital gains tax purposes. A return must be submitted even if the gain is covered by the annual exemption or if a loss arises. The return can be amended up to 12 months from submission.

The applicable capital gains tax rates are 18% or 28% or effectively a hybrid of both, depending on whether the gain falls below, above or straddles the individuals basic rate band. Individuals are automatically entitled to the capital gains tax annual exemption (unlike the personal allowance for income tax purposes which can only be claimed if the individual has a British passport, is a citizen of EEA country, worked for the UK government or if it is included in the Double Taxation Agreement which is held between the UK and their country of residence). Although please note the annual exemption may be restricted or not available at all in the case of personal representatives and trustees.



The non-resident capital gains tax charge only applies to the amount of the gain accruing from 6 April 2015. The default method of calculating the chargeable gain (or loss) is to rebase the value of the property at 6 April 2015 and calculate the gain or loss in the normal way, allowing for the usual deductions for capital expenditure, incidental costs of sale and acquisition, etc. Alternatively, the individual can elect to use a straight-line time apportionment basis or to calculate the gain over the whole period of ownership (if electing for the 'whole period' basis, the value must be rebased at 31 March 1982 if the property was held by the individual at that date).

Any losses arising will be ring-fenced to offset against gains arising on disposals of other UK property in the same or future tax years. This includes both indirect and direct disposals of both residential and commercial UK properties. Should the individual resume UK residency, any unused losses will become available to offset against other types of gain.



Hawsons Limited: Registered in England No. 2645865.
Hawsons and Hawsons Limited are registered to carry on audit work in the UK and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales



Non-resident disposals of UK land and property

Sheffield – 0114 266 7141

| Doncaster – 01302 367 262

| Northampton – 01604 645 600

Direct Disposals – Commercial Property

From 6 April 2019, individuals are also required to report disposals of commercial property under the same rules as for residential property. The reporting and payment deadlines remain the same, i.e. 30 days from completion, although again they can defer payment if they are already in Self-Assessment.

The applicable capital gains tax rates for commercial property are 10% or 20% or effectively a hybrid of both, depending on whether the gain falls below, above or straddles the individuals basic rate band. Individuals are automatically entitled to the annual exemption though it may not be fully available for personal representatives and trustees, as described above.

The capital gains tax charge only applies to the amount of the gain accruing from 6 April 2019. The default method is to rebase the value of the property at that date. If a loss would have occurred using the original cost (or the 31 March 1982 value, if applicable), an election to disapply the rebasing method can be made.

Any losses arising will also be ring-fenced to offset against disposals of other UK property in the same way as for residential property, as described above. Again, these losses will become available to be used against disposals of other assets should the individual return to the UK as a resident.

Direct Disposals – Mixed Use Property

The rules regarding reporting, payment, the annual exemption and losses for individuals disposing of property which has been used for both residential and commercial purposes are the same as for property which has only been used for one of those purposes.

The rebasing process for property which has been used for both purposes is more complicated than for single use property. The gain first has to be split into 2 separate elements to reflect the apportionment of residential and commercial use. The residential part of the gain can then be rebased to 5 April 2015 and the commercial part of the gain can be rebased to 5 April 2019.



Hawsons Limited: Registered in England No. 2645865.
Hawsons and Hawsons Limited are registered to carry on audit work in the UK and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales



Non-resident disposals of UK land and property

Sheffield – 0114 266 7141

Doncaster – 01302 367 262

Northampton – 01604 645 600

Indirect disposals

From 6 April 2019, the rules regarding direct disposals of UK land and property were also extended to indirect disposals.

These disposals occur when a non-resident individual (as defined above) disposes of shares in a company which derives 75% or more of its gross asset value from UK land and property, and the individual owns a significant interest, i.e. at least 25% of that company. The gains on these disposals will be calculated using the value of the shares, rather than the underlying value of the UK land and property.

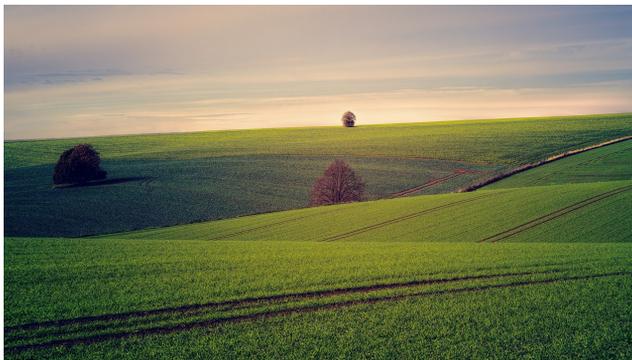
The 75% 'property richness' test compares the proportion of gross assets which are UK land and property to the overall gross assets of the company.

The 'significant interest' test not only includes shares held in the individual's name, but also includes shares held by persons connected to the individual, i.e. spouses, civil partners and lineal descendants, in the 2 years prior to disposal.



There is an exemption from the capital gains tax charge for property-rich companies which use the majority of their property in a trade, for example companies with retail or hotel businesses. The company must be trading both before and after the disposal to qualify for the exemption. This exemption does not apply to collective investment vehicles.

Rebasing provisions also apply from 6 April 2019 for indirect disposals, so that the individual can elect to calculate the gain based on the value of the shares at 6 April 2019, rather than the original acquisition cost. If the original cost is used and the result is a loss, it will not be an allowable loss for capital gains tax purposes.



Hawsons Limited: Registered in England No. 2645865.
Hawsons and Hawsons Limited are registered to carry on audit work in the UK and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales



Non-resident disposals of UK land and property

Sheffield – 0114 266 7141

| Doncaster – 01302 367 262

| Northampton – 01604 645 600

Annual Tax on Enveloped Dwellings (ATED)

All companies, both UK and overseas, which wholly or partially own high value UK residential property are subject to the ATED charge. They may also have been liable to an ATED related capital gains tax charge for disposals of UK residential property made between 6 April 2013 and 5 April 2019. The rate of capital gains tax payable on disposals during that period was 28%, with no indexation allowance.

The ATED related capital gains tax charge was abolished from 6 April 2019. From that date, companies are instead chargeable to corporation tax on relevant disposals at a rate of 19% (it was confirmed in the March 2020 budget that the corporation tax rate will be maintained at 19% from 1 April 2020, rather than reduce to 17% as was originally planned). Indexation allowance will also be available for properties held up to 31 December 2017.

From 6 April 2019, a separate ATED capital gains tax return is no longer required – instead gains arising on or after that date should be reported on the company's corporation tax return.

A 'company' for ATED purposes also includes partnerships where any of the partners is a company, and collective investment vehicles (i.e. unit trusts or open-ended investment vehicles).

How we can help

This is a very complicated area and careful planning of direct or indirect disposals of UK property is essential in order to take advantage of any possible tax planning opportunities and to ensure that penalties are not incurred by missing relevant deadlines.

Please do contact us if you are involved in this type of transaction and we can provide further advice.



Jenny Brown
Tax Manager,
Sheffield,
jmb@hawsons.co.uk
0114 266 7141



Aaron Hemmington,
Tax Director,
Northampton,
aaronhemmington@hawsons.com
01604 645 600



Hawsons Limited: Registered in England No. 2645865.
Hawsons and Hawsons Limited are registered to carry on audit work in the UK and regulated for a range of investment business activities by the Institute of Chartered Accountants in England and Wales

