

## The family home

One of the most often used and valuable of the capital gains tax (CGT) exemptions is the Private Residence Relief when you sell the family home.

CGT is a tax on the profit made from selling certain assets such as property, shares or other investment e.g. antiques and fine art. There are a number of exemptions available which can reduce or remove a taxpayer's liability to CGT.

In general, there is no CGT on a property which has been used as the main family residence. An investment property which has never been used will not qualify. This relief from CGT is commonly known as private residence relief.

### Full relief from CGT

In general, UK taxpayers are entitled to full relief from CGT where all the following conditions are met:

- The family home has been the taxpayer's only or main residence throughout the period of ownership.
- The taxpayer has not been absent from the home other than for an allowed period of absence or because they have been living in job-related accommodation, during the period of ownership.
- The garden or grounds including the buildings on them are not greater than the permitted area.
- No part of the family home has been used exclusively for business purposes.

### Main residence

It is increasingly common for taxpayers to own more than one home and there are several issues that home owners should be aware of. An individual, married couple or civil partnership can only benefit from CGT on one property at a time. However, it is possible to choose which property benefits from a CGT exemption when it comes to be sold by making an election. There are special rules which determine the timing and frequency of changing an election which need to be considered.

Where a taxpayer lives in more than one property, they must inform HMRC as to which property is their main home. The home owner must make a 'nomination' within two years of changing the number of properties that they live in. A new nomination should be made whenever the number of homes a taxpayer lives in changes.

For example, a taxpayer lives in Manchester and purchases a second home in London in April 2019. The home owner can nominate either property as his main home provided this is done within two years i.e. by April 2021.

Where the taxpayer does not make a nomination within 2 years, HMRC will decide which is the main home based on the facts. This may significantly affect the amount of CGT to be paid.

Taxpayers that are married or in a civil partnership and own two or more homes between them must make a joint nomination and are only entitled to private residence relief on one home between them.

### Absences from the family home

There are special rules for home owners that have not lived in their home for the total period of ownership.

## **Final period of ownership**

The final 18 months of ownership are treated as if the home owner had lived in the house as long as the property had been occupied by the owner as a main home during part of the period of ownership.

## **Working away from home**

There are also special rules which may entitle the home owner to full relief due to not living in the house due to reasons of employment. For example, where a homeowner carried on all of their work or duties outside the UK or where the distance from work or the requirements of their job stopped them living at home and they were absent for less than four years.

In addition, the home in question must have been the taxpayer's only or main residence both before and after they worked away. The taxpayer can also not have been entitled to private residence relief on any other property during that time.

## **Living away from home**

There are additional reliefs for taxpayers who were absent but not working away.

Some periods, when a home owner was not using the house as his/her only or main residence will still qualify for relief and can be treated as periods of actual occupation in calculating the fraction of any gain that qualifies for relief.

The first 12 months (and exceptionally up to two years), because a homeowner was waiting to sell an old home or carrying out refurbishment, can be treated as if the house had been the only or main residence in that period.

## **Size of the garden**

The entitlement to private residence relief is usually only available if the garden or grounds including the site of the house, is no greater than 5,000 square metres (a little over an acre).

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.

HMRC should be notified where a taxpayer sells a house where the total site exceeds 5,000 square metres. In cases of dispute, the district valuer will be asked to determine the size and location of the permitted area.

## **Business use**

There are also special rules for business use. Home owners who work from home do not suffer any restriction to the relief, where business use of the home is not related to a specific area e.g. where a home office also doubles as a spare bedroom.

However, where part of the home is used exclusively for business purposes e.g. a photo studio, then part of the proceeds from the sale of the house will relate to a chargeable rather than exempt use.

## **Selling land independently of the house**

In certain cases, it is possible to qualify for relief from CGT when selling part of the garden attached to your home independently of a house sale.

In general, the exemption will apply if the homeowner will continue to own the property with the rest of the garden and the total original area was within the half a hectare limit.

On the other hand, if a homeowner sells a house and part of the garden and then at a later date sells the rest of the garden off separately, say for development? This would not qualify for exemption on the second sale because the land is no longer part of the main residence at the point of sale.

## Letting relief

Where all or part of the home has been rented out, the entitlement to relief may be affected. However, this may be covered by letting relief.

Home owners that let all or part of their house may not benefit from the full private residence relief but can benefit from letting relief.

The maximum amount of Letting Relief due is the lower of:

- £40,000;
- the amount of private residence relief due;
- the amount of gain you've made on the let part of the property.

The letting exemption can be a valuable exemption but is only available on a property that has been a taxpayer's main residence. It is not available on a 'buy to let' property in which a taxpayer never lived.

### Worked example

You used 60% of your house as your home and let out the other 40%.

You sell the property, making a gain of £60,000.

You're entitled to private residence relief of £36,000 on the part used as your home (60% of the £60,000 gain).

The remaining gain on the part of your home that's been let is £24,000.

The maximum letting relief due is £24,000 as this is the lower of:

- £40,000
- £36,000 (the private residence relief due)
- £24,000 (the gain on the part of the property that's been let)

There is no capital gains tax to pay - the gain of £60,000 is covered by the £36,000 private residence relief and the £24,000 letting relief.

## Forthcoming changes

From April 2020, the government intends to make two changes to the private residence relief:

1. The final exempt period will be reduced from 18 months to 9 months, with no change to the 36 months available for those disabled or in care homes, and
2. Lettings relief will be reformed so that it only applies in certain circumstances where the property owner is in shared occupancy with the tenant.

## CGT rates

CGT is charged at a simple flat rate of 20% (2018-19: 20%) and this applies to most chargeable gains made by individuals. If taxpayers only pay basic rate tax and make a small capital gain they may only be subject to a reduced rate of 10% (2018-19: 10%). An 8% surcharge applies to gains on the disposal of residential property (apart from a principal private residence).

If part of the gain you make on disposing of your home is subject to CGT, a rate of 28% will normally apply. This rate is used when the total of your taxable income and gains are subject to higher rate tax. CGT is only payable if your total gains in the tax year are above your annual exempt amount. In 2019-20 this is £12,000.

If two or more of individuals own the property, you would normally each be subject to CGT on your share of the gain and you would each be entitled to offset your annual exemption with CGT only being payable on the excess.

## **Making a loss**

In today's market, it is quite possible for homeowners to make a loss on the disposal instead of a gain. HMRC do not make any allowances for this loss on the basis that any gain would not have been taxable.

If the homeowner would have only been entitled to partial relief on the gain, then the same percentage will be allowable as a loss.

## **Claiming relief from HMRC**

In general, taxpayers who qualify do not have to claim private residence relief. It is usually given automatically.

## **Notifying HMRC of liability to CGT**

Taxpayers who complete a self assessment tax return can notify HMRC of any gains. The self assessment return will indicate if and when a taxpayer is required to provide any additional information.

## **Payment of tax**

CGT is due on the 31 January following the end of the tax year. For example, for the tax year ended 5 April 2019, any CGT due must be paid by 31 January 2020 in order to avoid penalties and interest.

UK residents will be required to make a payment on account for CGT due on a residential property sale from April 2020. The new regulations will also affect disposals by non-UK residents and applies from April 2019.

This will not apply where no CGT is payable, for example if covered by private residence relief.