PEARSON MAY

CHARTERED ACCOUNTANTS & CHARTERED TAX ADVISERS

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60 DAY REPORTING FOR SALE OF UK RESIDENTIAL PROPERTIES

Many property-owning individuals are still not aware of the '60-day regime' in relation to the reporting and paying of Capital Gains Tax (CGT) in connection with disposals of UK residential property by UK residents. If you have recently sold a property, or are planning to, then you may need to take urgent action.

What are the rules?

The changes brought in on 6 April 2020 mean that where the isposal of the residential property results in a gain on which CGT is payable, this must be reported to HM Revenue & Customs (HMRC) within 60 days following the date of completion, and the tax due must be paid over by the same date. The original rules stipulated a 30-day deadline, but this was extended to 60 days in the 2021 Autumn Budget (for completions on or after 27 October 2021).

This is a significant timing difference compared to the old rules, as previously the gain would have been reported on an individual's annual Tax Return and the tax paid over to HMRC by 31 January following the end of the tax year in which the disposal occurred. The change in law did not change any of the rules in relation to which gains are taxable or the rate of tax that is payable.

As you will appreciate, 60 days is not long to consider the position, prepare any necessary computations, report the gain to HMRC and pay the tax liability arising. If the deadline for filing the CGT UK Property Return is missed, an automatic £100 penalty can be charged with potential further penalties of £10 per day if the Return is still outstanding after three months. Additional penalties and interest may also apply for failure to make the capital gains tax payment on time.

Who do these rules apply to?

The following UK tax resident persons are within the scope of the 60-day CGT rules:

- Individuals;
- Trustees;
- Personal representatives;
- Partners in partnerships and limited liability partnerships; and
- Joint owners of property.

There are similar but different 60-day reporting rules for non-UK residents, covering both residential and non-residential property disposals, but these are beyond the scope of this article.

What disposals are caught?

The 60-day reporting regime catches any disposals of UK residential properties that result in a gain on which CGT is payable. Therefore, disposals of overseas residential properties are not caught (although there will almost certainly be requirements in the overseas jurisdiction and the disposal still needs to be reported on your UK Self-Assessment Tax Return). The regime also does not apply to UK residential property disposals that result in a loss or which do not give rise to a CGT charge e.g. because the gain is covered by the CGT Annual Exemption (£12,300 per individual for the current tax year). These disposals may still need to be reported on annual Self-Assessment Tax Returns.

This also means that if the gain is fully covered by a CGT relief, it is not usually caught. An example of this might be a disposal of your main home, which is fully covered by principal private residence relief. However, it would apply to the disposal of a UK second home, a property you have never lived in (or only lived in for part of the ownership period) or a UK let property, whether or not you lived in that property at some point. It would also, for example, apply to an inherited property sold for more than its probate valuation.

It is important to understand that the rules do not just apply to sales of property, they apply equally if you were to gift a property (e.g. to an adult child) even though you may not have received any money in exchange. A gift constitutes a disposal for CGT purposes with the deemed proceeds being the market value. This is an area which is frequently overlooked. If the disposal of the property is to a spouse or civil partner then special rules apply, so no CGT liability arises and no 60-day CGT Return is required as a result.

Some key points and planning tips:

- The 60-day payment and declaration apply regardless of whether you are in the Self-Assessment system or not;
- Self-Assessment taxpayers will also have to report the gain on their Tax Return (as well as on the 60-day Return) as usual and pay any CGT over and above the provisional payment by the usual Self Assessment deadlines;
- The 60-day time limit is triggered by the completion date (although the exchange of contracts is still the date of sale for CGT purposes);
- 60-day CGT Returns are not required for disposals of UK residential property by UK residents where no tax is due;
- 60 days isn't very long! Funds will need to be put in place to cover the CGT liability arising as soon as the sale is completed;
- As mentioned above, remember gifts can also result in gains, but don't produce any cash, so make sure the funds are available before the gift is completed;
- If you are planning a sale then gather the information required to compute the gain sooner rather than later, so that the tight deadline may be met;
- To work out the provisional CGT payable, your taxable income for the year will need to be estimated to determine how much CGT is payable at 18% and how much at 28%;
- Other CGT disposals which are not subject to these rules (e.g. sale of shares or commercial property) may be ignored in calculating the provisional tax due (but see below re losses);
- Capital losses brought forward from earlier years or made in the same year as the gains (but prior to the date of sale) can be offset if desired. You may want to give some thought as to whether any capital losses can be realised prior to the sale of the property, in order to reduce the CGT payable after 60 days of the sale of the residential property.

The above is for general guidance only and no action should be taken without obtaining specific advice.

Bath
37 Great Pulteney Street
Bath
BA2 4DA
+44 (0)1225 460491

Chippenham
67 & 68 St Mary Street
Chippenham, Wiltshire
SN15 3JF
+44 (0)1249 444666

Trowbridge
5 Wicker Hill
Trowbridge, Wiltshire
BA14 8JS
+44 (0)1225 764441