Temporary non-residents and Capital Gains Tax

Contacts
Please phone:
- the number printed on page TR 1 of your tax return
- the SA Helpline on **0845 9000 444**
- the SA Orderline on **0845 9000 404** for helpsheets

or go to **hmrc.gov.uk**

This helpsheet explains the treatment of gains accruing during a period of temporary non-residence. But it is only an introduction. If you are in any doubt about your circumstances you should ask your tax adviser. We will also be pleased to help you and provide any forms you may require. You can also consult our Capital Gains Manual, which explains the rules in more detail, at **hmrc.gov.uk/manuals/cgmanual**

This helpsheet will help you fill in the *Capital gains summary* pages of your tax return.

Introduction

Liability to tax and residence in the United Kingdom (UK). Individuals are normally charged Capital Gains Tax (CGT) on the gains on disposal of assets if they are resident or ordinarily resident in the UK in the year of disposal. But an individual who is not resident and not ordinarily resident in the UK may nonetheless be taxed on certain gains if they are carrying on a trade in the UK through a branch or agency. The taxable gains will be those which arise on disposals of assets which are (or have been) used for the purposes of that trade or of the branch or agency.

Subject to this, an individual who goes to live abroad and ceases to be resident and ordinarily resident in the UK will not be chargeable on gains made in years of assessment after they left the UK unless their non-residence was temporary and they resume tax residence in the UK within a certain time. These 'temporary non-residence' rules are contained in Section 10A of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) and are described later on in this helpsheet.

You can find detailed information on the terms 'resident' and 'ordinarily resident' in Booklet *HMRC6 Residence, Domicile and the Remittance Basis* at **hmrc.gov.uk**

A 'year of assessment' starts from 6 April in one year to 5 April in the next.

In this helpsheet we refer to the year of assessment as the 'tax year'.

Remittance basis entitlement. If you are not domiciled in the UK, gains arising before 6 April 2008 on assets situated outside the UK were only charged to CGT when they were received in the UK: this treatment was automatic. After 5 April 2008 this 'remittance basis' treatment is no longer necessarily automatic. It may be necessary to make a claim if you wish the remittance basis to apply to you in a particular year. The *Residence, remittance basis etc. notes* explains this fully.

'Split year treatment' when leaving or arriving in the UK part-way through a tax year. Strictly, if you leave or arrive in the UK part-way through a tax year then because you were resident for part of the tax year you can be taxed on all gains which arise in that year even if you were not resident in the UK when the gains arose. Subject to certain conditions, Extra-Statutory concession D2 (ESC D2) allows gains which arise after you cease to be resident, or before you become resident, not to be taxed. This is sometimes

known as the split-year treatment: it applies only to the tax year in which you arrive in or depart from the UK. The conditions for it to apply are explained later on in this helpsheet.

What is temporary non-residence?

For a charge to Capital Gains Tax (CGT) to accrue under Section 10A TCGA 1992 all four of the following conditions must be met:

- the individual has become resident or ordinarily resident in the UK for at least some part of a tax year and is not Treaty non-resident (referred to as the 'year of return')
- the individual was previously resident or ordinarily resident and not Treaty non-resident at some earlier time before he became not resident and not ordinarily resident (referred to as the 'year of departure')
- there are fewer than five complete tax years between the year of departure from and year of return to the UK. These years are referred to as intervening years
- the individual was resident or ordinarily resident and not Treaty non-resident in the UK for any part of at least four out of the seven tax years before the year of departure.

Where Section 10A TCGA 1992 applies, gains and losses which arise in a tax year during the whole of which an individual was neither resident nor ordinarily resident in the UK (an intervening year) are treated as arising – and are therefore taxed or allowable – in the year of return.

Example 1

Mr Smith, who has lived all his life in the UK, left the UK on 25 March 2009 for a contract of employment abroad. He returned to the UK and resumed residence in the UK on 2 February 2013.

He realised a chargeable gain (on an asset acquired before he left the UK) of £35,000 on 15 September 2009. Mr Smith fulfils all of the residence conditions in Section 10A TCGA 1992:

- he has resumed UK residence in 2012-13 (the year of return)
- there is a period of less than five complete tax years (here the years are 2009-10, 2010-11 and 2011-12) immediately before the year of return where he was not resident in the UK
- he was resident in the UK for at least four out of the seven tax years immediately prior to his year of departure (in this example, in fact, all seven).

Mr Smith will be chargeable under Section 10A TCGA 1992 in the tax year of return to UK residence (2012-13) on the gain of £35,000.

Treaty non-residence

Different countries may have different fiscal years and residency rules, so an individual may be resident in the UK under its domestic law as well as resident in another country under its law. Where an individual is a resident of both countries the Double Taxation Agreement between the countries will provide tie-breaker rules to enable residence for the purposes of the agreement to be determined. If the tie-breaker rules determine the residence to be in the other country for a period, this is a period of the Treaty non-residence in the UK. Booklet HMRC6 *Residence, Domicile and the Remittance Basis* provides more information. Go to **hmrc.gov.uk**

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What gains and losses are included?

Some gains and losses arising during periods of temporary non-residence are not within the scope of Section 10A. An individual may acquire assets after leaving the UK for a period of temporary residence abroad. If such assets are disposed of in an intervening year, any gains or losses on such assets are not normally treated as arising in the year of return.

Example 2

Mr Jones, who has lived all his life in the UK, left the UK on 22 March 2011 for a contract of employment abroad. He returned to the UK and resumed residence on 12 January 2013.

On 6 June 2011 Mr Jones bought 20,000 shares in a UK company. He sold all of the shares on 15 March 2012, realising a gain of £12,000.

Mr Jones fulfils all of the conditions for Section 10A to apply, but because the shares were acquired after his departure from the UK the gain is not treated as arising in the year of return.

While gains and losses on assets acquired after leaving the UK are in general excluded from the scope of Section 10A, there are some important exceptions to this exclusion. Some assets acquired after departure from the UK, and when the acquirer is not resident and not ordinarily resident, have a connection with the earlier period of residence. Gains accruing on the disposal of such assets during the intervening years are not excluded but are treated as chargeable in the tax year of return.

Gains accruing on the following assets remain within the scope of Section 10A:

- assets acquired from another person who acquired them when resident or ordinarily resident in the UK but did not pay tax on their disposal because of no gain/no loss treatment under the rules for
  - husband and wife or civil partner transfers (Section 58 TCGA 1992), or
  - the death of a life tenant (Section 73 TCGA 1992), or
  - works of art (Section 258(4) TCGA 1992)
- any interest in a settlement
- assets which have had their acquisition cost reduced by a capital gains rollover relief being given on the disposal of another asset which had been acquired by the individual while resident or ordinarily resident in the UK.

The rollover reliefs to which this refers are
- compensation and insurance (Sections 23(4)(b) or (5)(b) TCGA 1992)
- business assets rollover relief (Sections 152(1)(b) or 153(1)(b) (for disposals after 16 March 2005) TCGA 1992)
- transfer of business to a company (Section 162(3)(b) TCGA 1992)
- compulsory acquisition of land (Sections 247(2)(b) or (3)(b) TCGA 1992).

Example 3

Mr and Mrs Black, who have lived in the UK all of their lives, left the UK on 26 March 2011 for Mr Black to take up a contract of employment abroad. They resumed tax residence in the UK on 1 December 2012.

Mr Black acquired a property in the UK on 14 September 2000. On 12 June 2011 he gave the property to Mrs Black. Mrs Black sold the property on 5 February 2012 realising a gain of £100,000.

Section 58 TCGA 1992 applies to the gift by Mr Black, so that for Capital Gains Tax purposes at the time of transfer neither gain nor loss arises. On the sale by Mrs Black, the gain is treated as accruing in the year of return as she fulfils all of the conditions for Section 10A TCGA 1992 to apply, and the asset is not excluded from the scope of the Section.

Also, a gain or loss will not be excluded from the scope of Section 10A if it represents a gain or loss on an asset which was held before the individual left the UK, and if that original gain or loss was 'held-over' or deferred so that it would not arise until another asset was disposed of. If that other asset is disposed of, crystallizing the gain, while the individual is temporarily non-resident then the gain is not excluded from Section 10A. Instead, the gain is treated as accruing in the year of return to UK tax residence.

The capital gains deferral reliefs are:

- reorganisations, conversions and reconstructions where the new asset is a Qualifying Corporate Bond (Section 116(10) or (11) TCGA 1992)
- compensation stock (Section 134 TCGA 1992), and
- depreciating assets (Section 154(2) or (4) TCGA 1992).

Gains of non-resident companies and settlements

A 'closely controlled non-resident company' means a company controlled by five or fewer participators.

Gains accruing to a 'closely controlled non-resident company' or a non-resident settlement may, in certain circumstances, be treated as gains accruing to individuals who are participators in the company or settlors or beneficiaries of the settlement. The statutory provisions are contained in:

- Section 13 TCGA 1992 which provides that gains accruing to a closely controlled non-resident company are attributed to UK resident participators in proportion to the extent of their participation
- Section 86 TCGA 1992 which taxes a UK resident and domiciled settlor for gains accruing to their non-resident settlements
- Section 87 TCGA 1992 which taxes a UK resident beneficiary who has received capital payments for gains accruing to a non-resident settlement.

The provisions of Section 10A apply to chargeable gains arising in the intervening years where:

- a UK resident individual is temporarily non-resident and on their return to the UK satisfies the conditions for Section 10A TCGA 1992 to apply, and
- chargeable gains would have been attributable to them under Section 13 or 86, TCGA 1992 in an intervening year had they been UK resident.

Such gains are treated as gains accruing to the individual in the year of their return.

Similarly, if a gain accruing to a non-resident settlement would be charged under Section 87 TCGA 1992 on beneficiaries who have received capital payments were the beneficiaries resident in the UK, then if the beneficiaries were temporarily non-resident the gains will be treated as accruing to them in the year of their return.

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Section 86A TCGA may reduce the charge under Section 86 on the temporarily non-resident settlor if gains have been charged under Section 87 TCGA on UK resident beneficiaries in the intervening years. Please ask your tax adviser or phone HMRC Residency on **0845 300 0627**.

Double taxation relief

Section 10A TCGA 1992 provides for gains that accrue in an intervening year are charged to CGT for the year of return. In some cases this may mean that a gain is taxed in another country in the year that it arises and then in the UK for the year of return. If tax has been paid on the gain in another country, you may be able to claim relief for double taxation.

If you think you may be entitled to make a claim then you must include the following details in the 'Any other information' box, box 36 on page CG 2 or in your supporting computations:
- details of the country in which the gain has been taxed
- a computation of the chargeable gain on the rules that apply for UK Capital Gains Tax (CGT) purposes
- a separate computation of the gain actually charged to tax in the other country (because different computational rules may apply)
- details of the foreign tax paid and the amount of Foreign Tax Credit Relief that you wish to claim.

The foreign tax credit that can be claimed cannot exceed the amount of UK CGT liability and will be subject to the terms of the Double Taxation Agreement with the other country. You can find more information on double taxation and a list of agreements in force at **hmrc.gov.uk**

Split-year treatment for the years of arrival and departure: Extra-Statutory Concession D2 (ESC D2)

The provisions of Section 10A TCGA 1992 apply only to gains accruing during the intervening years, the complete tax years between the years of departure and return. However, an individual may dispose of assets in the parts of the year of departure or year of return when they are not resident or ordinarily resident in the UK. Gains on such disposals are chargeable in the year that they arise under the normal rules. Extra-Statutory Concession D2 (ESC D2) allows the years of commencement and cessation of residence in the UK to be split for CGT purposes. The conditions for ESC D2 to apply are broadly consistent with the temporary non-residence rules described above in that it will not apply where the individual has been UK resident for a specified time before departure, or where their absence was temporary. Where ESC D2 applies, gains accruing during the part of the split-year when the individual was not UK resident will not be charged.

Gains in the year of departure

Under paragraph 2 of ESC D2, split-year treatment is available only where the individual was not resident and not ordinarily resident in the UK for the whole of at least four out of the seven tax years immediately preceding the tax year in which they left the UK. If this condition is met then the individual is not charged to CGT on gains from disposals made after the date of departure.

Where the individual has been resident or ordinarily resident in any part of four out of the seven preceding years then gains from disposals made in the year of departure, after the date of departure, are charged to CGT, whether or not they ever return to the UK to become resident again.

Example 4

Mr Green has always been resident and ordinarily resident in the UK. On 12 August 2012 he left the UK and from then on he was neither resident nor ordinarily resident in the UK. He realised a gain from a disposal made on 14 October 2012.

The gain is chargeable to Capital Gains Tax. Split-year treatment does not apply because Mr Green was resident and ordinarily resident in the UK for at least four out of the seven years before the year of departure.

Gains in the year of arrival

Where an individual arriving in the UK has not been resident or ordinarily resident in the UK at any time during the five tax years immediately preceding the tax year in which they arrived in the UK, split-year treatment is available under paragraph 1 of ESC D2. In such cases chargeable gains from disposals made in the year of arrival, before the date of arrival, are not charged to CGT. Split-year treatment does not apply if the individual was previously resident or ordinarily resident in the UK and there were fewer than five tax years between the year of return and the earlier year of departure. The chargeable gains from disposals made at any time in the year of arrival are charged to CGT.

Split-year treatment under ESC D2 is always available to an individual who arrives in the UK to take up residence for the first time and who has not been resident or ordinarily resident in the UK for tax purposes previously.

Example 5

Mr Brown was resident and ordinarily resident in the UK until July 2009. He then left the UK and was neither resident nor ordinarily resident until his return in November 2012. He realised a gain from a disposal in June 2012.

The gain is chargeable to Capital Gains Tax. Split-year treatment does not apply because Mr Brown was resident in the UK during some part of the five years before the year of his arrival in the UK.

Example 6

Miss Doe is a citizen of the USA where she has lived all of her life until she arrived to take up permanent residence in the UK on 24 November 2012. She realised a gain from a disposal in September 2012.

The gain is not chargeable to Capital Gains Tax. Split-year treatment applies because Miss Doe has not been resident or ordinarily resident in the UK at any time during the five tax years immediately preceding the year of her arrival in the UK.