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Tax-Free Capital Gains

How Non-Residents Can Protect Most of their Property Profits from Tax

By Carl Bayley BSc ACA

Important Legal Notices:

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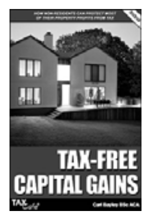

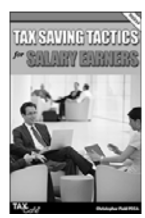

About the Author

Carl Bayley is the author of a series of 'Plain English' tax guides designed specifically for the layman and the non-specialist. Carl's particular speciality is his ability to take the weird, complex and inexplicable world of taxation and set it out in the kind of clear, straightforward language that taxpayers themselves can understand. As he often says himself, "my job is to translate 'tax' into English".

Carl enjoys his role as a tax author, as he explains: "Writing these guides gives me the opportunity to use the skills and knowledge learned over almost thirty years in the tax profession for the benefit of a wider audience. The most satisfying part of my success as an author is the chance to give my readers the same standard of advice as the 'big guys' at a price which everyone can afford."

Carl takes the same approach when speaking on taxation, a role he frequently undertakes with great enthusiasm, including his highly acclaimed annual 'Budget Breakfast' for the Institute of Chartered Accountants.

In addition to being a recognised author and speaker on the subject, Carl has often spoken on taxation on radio and television, including the BBC's 'It's Your Money' programme and BBC Radio 2's Jeremy Vine Show.

Carl began his career as a Chartered Accountant in 1983 with one of the 'Big 4' accountancy firms. After qualifying as a double prize-winner, he immediately began specialising in taxation.

After honing his skills with several major international firms, Carl began the new millennium by launching his own tax and accounting practice, Bayley Miller Limited, through which he provides advice on a wide variety of taxation issues; especially property taxation and tax planning for small and medium-sized businesses.

Carl is a member of the governing Council of the Institute of Chartered Accountants in England and Wales, Chairman of the Institute's Tax Faculty, and a former President of ICAEW Scotland. He has co-organised the annual Peebles Tax Conference for the last 13 years.

When he isn't working, Carl takes on the equally taxing challenges of hill walking and creative writing – his Munro tally is now 82, but his first novel remains firmly in the planning stage!

Carl lives in Scotland with his partner Isabel and has four children.

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Introduction

1.1 A WHOLE NEW WORLD

On 6th April 2015, the UK began taxing non-UK resident individuals and trusts, as well as many non-UK resident companies, on capital gains arising on the disposal of UK residential property.

This represents a major watershed in UK tax policy. Apart from the few exceptions discussed in Section 1.2, the UK has previously refrained from taxing non-UK residents on capital gains.

With this change, almost every person in the world who invests in UK residential property becomes exposed to UK Capital Gains Tax.

In short, the UK Treasury suddenly has a whole new world of people to tax!

In this guide, I will explore this new world and look at what it means for both current non-UK residents investing in UK property and UK resident investors planning to emigrate in future.

What we will see, as with many tax changes, is that whilst some of the potential savings have been diminished, there are still many opportunities to save tax by understanding the new regime and planning accordingly.

1.2 THE EVER-EXPANDING UK TAX NET

Non-UK residents have long been subject to tax on income from UK property but, prior to 6th April 2013, there were very few instances where a non-UK resident was subject to tax on a capital gain on UK property.

In fact, prior to that date, the only time a non-UK resident could suffer UK Capital Gains Tax was on the disposal of a property used in a trade carried on in the UK through a branch, agency or other permanent establishment. Such instances were rare and specifically excluded properties held purely as investments or to produce rental income. Even furnished holiday lets were excluded, despite their special status for many other tax purposes.

Then, from 6th April 2013, the UK began taxing companies and other 'non-natural' persons disposing of UK residential dwellings worth more than £2m which were held for (broadly speaking) the private use of the entity's owner or their family.

This charge, often referred to as 'ATED-related Capital Gains Tax' was expanded to cover property worth more than £1m from 6th April 2015 and will be further expanded to cover property worth more than £500,000 from 6th April 2016.

'ATED' stands for the Annual Tax on Enveloped Dwellings and this, together with the related Capital Gains Tax charge is covered in detail in Section 5.6. The interaction between 'ATED-related Capital Gains Tax' and other Capital Gains Tax charges on non-UK resident entities is also covered in Section 5.5.

Whilst 'ATED-related Capital Gains Tax' may potentially apply to any company or other 'non-natural' person holding UK residential property for private use, it is principally aimed at non-UK resident entities: which is why we have included it in this guide.

However, as important as 'ATED-related Capital Gains Tax' is for those who are affected by it, the main focus of this guide is the much more significant expansion in the scope of UK Capital Gains Tax from 6th April 2015. From that date onwards, any non-UK resident individual disposing of UK residential property may be subject to UK Capital Gains Tax.

Non-UK resident trusts disposing of UK residential property will also generally be subject to UK Capital Gains Tax from 6th April 2015 onwards, as well as many non-UK resident companies. We will take a closer look at the position for companies in Chapter 5.

In summary, we have moved quite rapidly from the position before 6th April 2013 where non-UK residents were very rarely subject to UK tax on UK property gains to the position from 6th April 2015 onwards where most non-UK residents will be subject to UK Capital Gains Tax on UK residential property (or on commercial property used in a trade carried on by the owner or their agent in the UK).

1.3 WHAT IS NOT CAUGHT?

Despite the ever-expanding UK tax net examined in the previous section, it is important to remember that UK Capital Gains Tax does not generally apply to the following types of property held by non-UK residents:

i) Commercial property
ii) Overseas property

Commercial investment property held by non-UK residents generally remains exempt from UK Capital Gains Tax. However, as explained in Section 1.2, it is important to remember that property used in a trade carried on in the UK by the property's owner (or their agent) may be subject to UK Capital Gains Tax.

The UK cannot generally tax overseas property held by non-UK residents, although charges do sometimes apply where property is held by a non-UK resident entity owned by, or under the control of, UK resident individuals.

1.4 SCOPE OF THIS GUIDE

The purpose of this guide is to examine the UK Capital Gains Tax position for non-UK resident individuals, trusts and companies disposing of UK residential property. The guide is aimed at both those who are currently non-UK resident and those who intend to emigrate and thus become non-UK resident in future.

The only taxes covered in this guide are therefore UK Capital Gains Tax and the Annual Tax on Enveloped Dwellings (see Section 5.6).

Other UK taxes applying to non-UK residents investing in UK property are discussed briefly in Section 1.7 but are not covered in detail in this guide.

Foreign taxes are beyond the scope of this guide and are not covered herein. However, it is important to remember that non-UK residents investing in UK property will also generally be subject to tax in their country of residence. Each country has its own tax system, and income or gains which are exempt in the UK may nevertheless still be liable to tax elsewhere.

For tax purposes, the UK does not include the Channel Islands or the Isle of Man, but comprises only England, Scotland, Wales and Northern Ireland.

Finally, the reader must bear in mind the general nature of this guide. Individual circumstances vary and the tax implications of an individual's (or other entity's) actions will vary with them. For this reason, it is always vital to get professional advice before undertaking any tax planning or other transactions which may have tax implications. The author cannot accept any responsibility for any loss which may arise as a consequence of any action taken, or any decision to refrain from action taken, as a result of reading this guide.

1.5 A WORD ABOUT THE EXAMPLES IN THIS GUIDE

This guide is illustrated throughout by a number of examples.

In preparing the examples in this guide, I have assumed that the UK tax regime will remain unchanged in the future except to the extent of any Government announcements already made at the time of publication; including the Budget on 18th March 2015.

It is, however, important to understand that some Budget proposals are not yet law and may undergo some alteration before they are formally enacted.

Furthermore, if there is one thing which we can predict with any certainty, it is the fact that change **will** occur. The reader must bear this in mind when reviewing the results of our examples.

All persons described in the examples in this guide are entirely fictional characters created specifically for the purposes of this guide. Any similarities to actual persons, living or dead, or to fictional characters created by any other author, are entirely coincidental.

1.6 SOME TERMINOLOGY

In order to simplify matters slightly, the following terms will have the meanings described below throughout the rest of this guide:

Capital Gains Tax	UK Capital Gains Tax
Married couple	Legally married couple or members of a registered civil partnership
Non-resident	Not resident in the UK for tax purposes
Spouse partner	Legally married spouse or registered civil
Tax year	The UK tax year (see Section 2.1)

1.7 UK PROPERTY TAXES

As explained in Section 1.4, the primary focus of this guide is Capital Gains Tax payable by non-residents investing in UK property. The Annual Tax on Enveloped Dwellings is also covered, mostly in Chapter 5.

Other UK taxes which may affect non-residents investing in UK property include:

Income Tax
UK Income Tax is payable on rental profits derived from UK property by non-resident individuals, trusts or companies. This subject is covered in detail in the Taxcafe.co.uk guide *How to Save Property Tax*.

UK Income Tax may also be payable by non-resident individuals or trusts trading in UK property.

Corporation Tax
UK Corporation Tax may be payable by non-resident companies trading in UK property. Corporation Tax is covered in detail in the Taxcafe.co.uk guide *Using a Property Company to Save Tax*.

Stamp Duty Land Tax
From 1st April 2015, Stamp Duty Land Tax is payable on the purchase of property located in England, Wales or Northern Ireland. The tax generally ceased to apply to property in Scotland from that date. A higher rate of Stamp Duty Land Tax (15%) applies to property subject to the Annual Tax on Enveloped Dwellings (see Section 5.6).

Stamp Duty Land Tax is covered in detail in the Taxcafe.co.uk guides *How to Save Property Tax* and *Using a Property Company to Save Tax*.

Land and Buildings Transaction Tax

Land and Buildings Transaction Tax is payable on the purchase of property in Scotland after 31st March 2015. Land and Buildings Transaction Tax is covered in detail in the Taxcafe.co.uk guides *How to Save Property Tax* and *Using a Property Company to Save Tax*.

Inheritance Tax

Non-residents will generally remain subject to UK Inheritance Tax on UK property. Inheritance Tax is covered in detail in the Taxcafe.co.uk guide *How to Save Inheritance Tax*.

Council Tax

Council Tax is a local authority charge on the occupiers of UK residential property. Where a property is unoccupied, the charge will usually fall on the owner.

Business Rates

Business Rates (or 'Non-Domestic Rates') are a local authority charge on the occupiers of non-residential property in the UK. Where a property is unoccupied, the charge may fall on the owner.

Value Added Tax

Value Added Tax (or 'VAT' as it is commonly known in the UK) does not generally apply to UK residential property. It may, however, apply to commercial property in the UK. The subject of VAT on property is covered in detail in the Taxcafe.co.uk guides *How to Save Property Tax* and *Using a Property Company to Save Tax*.

1.8 DOUBLE TAXATION AGREEMENTS

All UK taxes payable by non-residents are subject to the terms of any applicable double taxation agreement between the non-resident's country of residence and the UK.

It is worth noting, however, that most double taxation agreements generally allow the country in which property is located to retain full taxing rights in respect of that property. Any double taxation relief due is generally given by way of some form of deduction or credit against the tax arising in the taxpayer's country of residence.

In other words, the UK will generally retain the right to tax income, gains or other transactions involving UK property according to UK domestic law and as set out in this guide.

For the purposes of this guide, I will therefore ignore the impact of any applicable double taxation agreement on the basis that there will seldom be any such impact in any case.

Readers should remember, however, that they will often have the right to claim a deduction or credit for any UK tax suffered against any tax liability arising in their country of residence on the same income, gain or other transaction.

I will refer to this right to claim a deduction for the UK tax suffered by a non-resident taxpayer in a few instances throughout this guide: where the taxpayer in one of my examples is resident in a suitable country.

However, it is important to remember that this right to a deduction will not always apply as it is dependent on the domestic law of the taxpayer's country of residence and the terms of any double taxation agreement between that country and the UK.

Readers should also take note of the 'wealth warning' at the end of Section 4.5.