Capital Gains Tax in divorce proceedings: **Residential Properties**

The 2018 Budget introduced a raft of changes to Capital Gains Tax relating to residential properties, many of which will have a direct bearing on financial dispute proceedings.

A) A new reporting regime was introduced in Finance Act 2019 for disposals of residential property with completion dates on or after 6 April 2020, which requires:

- A report of the gain to be made to HMRC with 30 days of completion, and
- For the CGT to be paid over at the same time, based on a best estimate calculation.

This drastically reduces the period between the making of a gain and the payment of the CGT. For disposals up to 5 April 2020 gains are reported through the self-assessment regime and the CGT is due between 10 and 21 months from the completion date.

The sale of a family home where PRR is applicable for the whole period and where there is no gain will not require a return.

B) Draft proposals (scheduled to be introduced in Finance Act 2020) for implementation on 6 April 2020 to:

- Reduce the final period exemption for Private Residence Relief from 18 months to 9 months
- Abolish Lettings Relief unless there is shared occupancy with the tenant.

So, how might these **changes** affect **clients**?

Aside from the fact that CGT will be due much, much earlier, the reduction in Private Residence Relief and loss of Lettings Relief will impact on all those who have second properties that used to be the family home.

Consider, for example, Mr and Mrs Jones who purchased their family home in March 1999 for £200,000. They lived in the property for 10 years (120 months) before moving out to their current home. They decided to retain their first home as an investment. It has been rented out since. It now has a value of £650,000 and Mr and Mrs Jones, both of whom are higher rate tax-payers, separated during the current tax year (2019/20) and have owned the property in joint names throughout.

There is a marked difference between the tax position if the property is sold in say March 2020 (total period of ownership 21 years = 252 months) or post 6 April 2020 (253 months). The impact is shown below (costs of purchase and sale are ignored for illustrative purposes.

The gross gain is £450,000 (£650,000 - £200,000) so each party's share of the gain is £225,000.

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Date of sale (2020)	March £	April £
Gross gain (each)	225,000	225,000
PRR: (120+18)/252	(123,214)	
(120+9)/253		(114,723)
Gross gain due to letting	101,786	110,277
Lettings Relief (lower of):		
• £40,000		
• PRR granted (£123,214)	(40,000)	n/a
• Gain due to letting (£101,786)		
Chargeable gain (each)	61,786	110,277
Annual exemption (2019/20 rate)	(12,000)	(12,000)
Taxable gain (each)	49,786	98,277
CGT @ 28% (each)	13,940	27,518
Total CGT (both parties)	27,880	55,036
Latest due date for payment of CGT	31 Jan 2021	31 May 2020

Thus, a delay of only one month in the disposal of the property nearly doubles the total amount of CGT payable (in this example) and brings forward the date of payment by 8 months.

Of course, a longer delay in the ultimate disposal of the property will defer the date of payment, but also means that the amount of PRR relief available will gradually reduce further, but Lettings Relief will be lost (unless the accommodation is shared with the tenant). The value of Lettings Relief is up to £11,200 (40,000 at 28%) each.

Now, more than ever, and given the time it takes to sell a property, it is necessary to ascertain the full details of second/ third properties, where such used to be the family home, such that both parties are appraised of the current position so they can jointly make a decision whether to sell.

As advisors to family solicitors and to clients Nick White Divorce Accountants can assist with the calculation of potential CGT and the options available to clients.

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