CGT and residential properties?

Personal tax | Tax voice



04 April 2016

Natalie Miller highlights the significant features of the ATED-related gains and NRCGT regimes

Background

There has been a raft of changes to the taxation of residential property in recent years. This article provides a comparison of two recent extensions to the capital gains tax charge arising on disposals of residential property, giving a high-level overview of these two new charging provisions.

Overview

The ATED (Annual Tax on Enveloped Dwellings) regime came into effect in 2013, with the necessary changes being made by the FA 2013. As it was primarily driven by the concern regarding SDLT avoidance, it falls within HMRC Stamp Taxes. The NRCGT (Non-Resident Capital Gains Tax) came into effect from April 2015 as a consequence of the concerns arising from the use of offshore ownership structures to mitigate UK taxation. Further changes it would appear (for example as regards IHT), are inevitable.

	ATED-related gains	NRCGT

Legislation	Sch 4ZZA TCGA 1992	Sch 7 FA 2015 (inserting/amending provisions in TCGA 1992)
In a nutshell	Extension of capital gains tax charge to high value residential property which is held in a corporate envelope and is within the ATED regime. Any non ATED-related gain is taxable in normal way.	Extension of capital gains tax charge to disposals of UK residential property by non-UK resident persons.
Aim	• Part of a suite of measures to deter the acquisition and ownership of UK residential property through a corporate envelope to ensure the “fair taxation of residential property transactions”. • Applies to disposals on or after 6 April 2013.	• To address the perceived imbalance between UK and non-UK resident owners of UK residential property. • Targeted at smaller non-UK resident persons with UK property rental and investments businesses. • Applies to disposals on or after 6 April 2015.

Scope of the charge

The residence status of the taxpayer is not relevant for the ATED charge and the CGT on ATED-related gains. There was some concern that the ATED would be a precursor to a broader "mansion" tax: the increase in the ATED charge by 50% above the rate of inflation (CPI) in 2015 and the progressive reduction in thresholds

(from £2m to £1m in 2015 and to £500,000 in April 2016) highlights the scope for extending the reach of this charge.

	ATED-related gains	NRCGT
On what?	Gains accruing after 6 April 2013 on property within the ATED regime, where there is: • A disposal of a chargeable interest; • In a property that has at any time been a single-dwelling interest; • Where the value exceeds the ATED threshold (£500k since 6 April 2016)	Gains accruing after 6 April 2015 on the disposal of an interest in UK residential property, however it has been used. Includes sale/grant of freeholds/leaseholds; grant of options to dispose of such property and right to acquire housing sold ‘off-plan’. • No de minimis. • All property included unless there is a specific exemption, such as those for care homes; children’s homes, student accommodation; prisons; hotels; land without housing. • Where there is a change of use, only the residential use element is subject to NRCGT. • Where a property is not habitable due to accidental damage, an exemption may be available.

	ATED-related gains	NRCGT
On whom?	• Non-natural persons (NNPs) within the scope of the ATED (whether or not they are UK resident); broadly companies, partnerships with a corporate partner and certain collective investment schemes. • Days when NNP not within ATED are discounted. • Excluded persons include individuals; trustees; and personal representatives. • Does not apply to indirect holding of property such as shareholdings in company which owns property. • Existing CGT exemptions continue to apply for authorised unit trusts, open-ended investment companies, investment trusts, venture capital trusts, charities; registered pension schemes and certain EEA collective investment schemes.	• Individuals; trustees (as a single body); personal representatives (PRs) (treated as a single body) and companies who are non-UK resident (broadly) when the disposal occurs. Special rules apply to groups of companies. • Automatic exemptions for investment trusts, venture capital trusts, charities and registered pension schemes. • Potential exemptions for widely held companies, certain life insurance companies and diversely held open investment companies. • Exemption must be claimed but may be disregarded under certain anti-avoidance provisions.

Computation

Inevitably, given the need to deal with commencement issues and record keeping, the computation of the taxable gain (or allowable loss) is complex.

	ATED-related gains	NRCGT

Calculating the gain	Choice between: • Default method: Rebasing: Notional post-April 2013 gain/loss calculated as if acquired interest at open market value on 5-Apr-13 (or April 2015/2016 where property within £1m/£500k thresholds respectively). • Election option: Irrevocable use of a pre-Apr-13 value (31-Mar-82 or acquisition date if later) as base cost, rather than rebasing. • Useful where properties decreased in value between purchase and Apr-13.	Choice between: • Default method: Sale proceeds less (open market value @ 5 April 2015 or acquisition cost if later + subsequent enhancement expenditure + legal costs). • Straight-line time apportionment: Sale proceeds less (acquisition cost +enhancement expenditure +legal costs); time-apportioned to determine post Apr-15 element. Cannot be used where it is a relevant high value disposal. Need to elect for this option (irrevocable). • Retrospective basis: Sale proceeds less (acquisition cost + enhancement expenditure +legal costs) – entire gain/loss.

Calculating the gain – tapering	Form of ‘tapering relief’ whereby the ATED-related chargeable gain is restricted to an amount which is the lower of— • the full ATED-related gain and • 5/3 times the difference between the consideration for the disposal and the threshold amount for that disposal. Where only a proportion of the gain (the ‘relevant fraction’) is an ATED-related gain, the amount excluded from charge is reduced by the same proportion.	N/A
Calculating the gain – other points	To prevent the disposal of property in tranches, the threshold amount is reduced using a fraction of the disposal consideration divided by the total value of the disposed of interest + any part of the chargeable interest retained + any chargeable interest in the same dwelling owned in the six years prior to disposal.	N/A

Losses, unsurprisingly are to be restricted.

	ATED-related gains	NRCGT
Losses	Losses on ATED-related disposals: • Are restricted – if the disposal proceeds do not exceed the ATED threshold but the deductible amounts do. The disposal consideration will be treated as if it exceeds the threshold by £1. • Are ring-fenced – they can only be set against ATED-related gains of the same or subsequent tax years.	Losses are ring-fenced – they can only be set against capital gains on similar property disposals by the same person in the future. However, if the owner subsequently becomes UK resident, the losses are then 'unclogged' and can be used in the normal way.

Interaction

There are a number of potential charging provisions and the need to consider the interaction has been met with detailed rules.

	ATED-related gains	NRCGT

Interaction with other charges / reliefs	• S13 TCGA 1992: Charge at the corporate level so attribution of gains to participators is not extended to the ATED-related CGT charge. However, non-ATED related gains could still come within s13. • S171 TCGA 1992: General rule for transfers between group companies to be calculated as no gain / no loss disapplied where disposal subject to ATED. • S161 TCGA 1992: ATED-related gains not within rollover election rules. • Sch 7 FA15: ATED-related CGT takes precedence over NRCGT.	• Principal private residence relief may be available in tax years in which the 90-day test is satisfied. • S10/s10B TCGA: NRCGT does not apply to gains already chargeable under these provisions. • S10A TCGA 1992: NRCGT takes precedence over temporary non-residence rules • Sch 4ZZA TCGA 1992: ATED-related CGT takes precedence over NRCGT. NRCGT applies only to gains not subject to ATED-related CGT • Other CGT hold-over /roll-over reliefs may be available in specified circumstances

Tax rate

For ATED related gains the charge is relatively simple: for NRCGT, the situation is very complex. It was confirmed in the March 2016 Budget that the reduction in the general CGT rates would not apply to residential property.

	ATED-related gains	NRCGT
The rate of tax	28% Non-ATED related gains remain chargeable to lower corporation tax rates and subject to deduction for indexation relief.	• 20% for companies • 18% or 28% for individuals • 28% for trusts and PRs • 28% in all cases where the ATED regime applies • but with relief for indexation when in corporate.

Administration

The additional compliance burden is to be noted and, as reflected in the Autumn Statement proposal to extend the 30 day period for payment on account to all residential property transactions from April 2019, further changes can be expected.

	ATED-related gains	NRCGT

Reporting the gain	ATED-related CGT return (separate from both the ATED and self-assessment returns). Liability must be reported on or before 5 October following the end of the tax year in which the disposal occurred.	NRCGT return (separate from the self-assessment return) submitted electronically within 30 days of conveyance. Must include an advance self-assessment of liability. Finance Bill 2016 contains provisions confirming that an ATED-related return will not be required in certain circumstances.
Paying the tax	Currently tax due no later than 31 January following the end of the tax year in which the disposal occurred. Proposal for payment date within 30 days of disposal for CGT on all residential property disposals from April 2019	Payment deadline within 30 days of conveyance. Those registered for UK self-assessment can elect to pay the CGT as part of their normal payment on 31 January following the end of the tax year. Proposal for payment date within 30 days of disposal for CGT on all residential property disposals from April 2019

Conclusion

Will probably not be long before the issue of CGT and residential property is on the agenda for the OTS!