

How the forthcoming changes to Capital Gains Tax may affect you

Capital Gains Tax ('CGT') is normally charged on any gain made when you sell or otherwise dispose of an asset. A transfer of assets between a married couple or civil partners, living together, is treated on a 'no gain/no loss' basis.

This favourable tax treatment automatically ends on divorce/dissolution, though is actually lost earlier than that and ceases to apply at the end of the tax year in which the couple separate and cease 'living together'. Conversely, this means therefore that anytime during the tax year of separation assets can still be transferred between the couple on the 'no gain/no loss' basis.

The recipient of the transfer receives the asset for CGT purposes at its original cost. This doesn't mean that you avoid the CGT forever – but can mean that you can defer it and won't have to pay HMRC straight away. However, from 6 April following the separation this advantage is lost forever, and the transferring individual may be liable to pay CGT in the normal way. If you have separated within the last tax year it is important that you give consideration now to the need to transfer any assets before you lose this potentially valuable benefit. It is crucial to note that time runs according to the tax year, and not the actual year of separation. Therefore, if you separated in May 2013 you would have 11 months to take advantage of this benefit, whereas if you separated in March 2014, you only have a few weeks to do so.

Often it is the transfer of the family home that is the most significant in the case of a divorce. Normally a sale or transfer of the family home will not give rise to a CGT charge because it will be covered by the Principle Private Residence ('PPR') exemption which specifically exempts main residences from CGT. Spouses and civil partners who live together can only have one PPR between them, and any nominations must be made jointly. You cannot claim PPR on more than one property at any one time. You do not need to live in the property at the time of the sale in order to obtain the benefit of PPR as the relief automatically applies to the final three years of ownership provided the property was used as the main residence at some point in the past. This three year exemption is particularly useful for those individuals with more than one property. Often couples may have retained the original family home and moved to a new property. Any disposal of the former home would trigger a disposal for CGT but with the benefit of the relief for the final 3 years of ownership effectively wiping out some or all of the gain. CGT is also commonly encountered on the second property, though it can also arise in relation to the transfer of other valuable assets such as shares, investments, antiques, etc.

With effect from 6 April 2014 the three year period of exemption is being halved to 18 months. The following example may help to illustrate (ignoring the availability of other reliefs and annual exemptions):

<p>Janet & Michael purchase a property for £500,000 on 1 January 1994 and move in on the same day. They move out of the property on 31 December 2003 and purchase another property which becomes their main residence. On 31 December 2013 they sell the property for £1 million.</p>			
Before 6 April 2014		After 6 April 2014	
Gain	£500,000	Gain	£500,000
Less PPR		Less PPR	
13/20 x £500,000 <small>(10 years of occupation plus final 3 year exemption)</small>	£325,000	11.5/20 x £500,000 <small>(10 years of occupation plus final 18 month exemption)</small>	£287,500
Total chargeable gain	£175,000	Total chargeable gain	£212,500
CGT payable at 28% <small>(higher rate)</small>	£49,000	CGT payable at 28% <small>(higher rate)</small>	£59,500

The reduction in the relief may have a significant effect on your overall CGT liability, as could the end of the tax year generally. If you have not already done so, we would strongly advise you to seek advice from your accountant regarding your position or alternatively, our private client team would be happy to assist.

For further information and assistance please contact:

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