

OVERSEAS ASPECT OF CAPITAL GAINS TAX

Capital Gains Tax is a tax on the rise in value of a "capital" asset. CGT arises when an asset is "disposed of", which will usually be by a sale but will also occur on a gift or on the receipt of any capital sum where an asset is destroyed e.g. compensation or insurance proceeds.

UK Capital Gains Tax

Individuals who are resident or ordinarily resident in the UK and Companies resident in the UK are subject to CGT on their gains worldwide. An individual who is UK resident or ordinarily resident but is not UK domiciled, may be assessed to CGT on worldwide gains. However a non-UK domiciled person may be assessed to CGT on UK assets and overseas assets remitted into the UK only provided they pay a £30,000 annual charge for such favourable treatment.

Persons or companies who are neither resident nor ordinarily resident in the UK are not subject to UK Capital Gains Tax. This is in contrast with the position in many countries, including Ireland, where certain classes of assets such as land, mineral rights etc. are always subject to Irish CGT irrespective of the residence of the person disposing of them. The definition of residence and ordinary residence is the same as for income tax. See our separate note on "Residence" and "Ordinary Residence" under UK tax law.

As of April 2008, UK CGT is charged at the flat rate of 18%. Several exemptions and reliefs have been abolished to facilitate this reduction in the tax rate. Prior to this date the standard rate was 40%. There were however generous reliefs which reduced the rate to 10% in many instances.

When an individual leaves the UK, he or she is treated as not UK resident or ordinarily resident from date of departure if he or she leaves permanently or temporarily due to taking up a full time employment contract which is to last for a complete year or more. The exemption from CGT tax from the date of departure only applies to a temporary

period of absence if the individual is resident in the UK for four out of the seven years before leaving the UK and the period spent abroad exceeds five complete tax years. If an individual takes up a full time contract abroad, but returns to the UK within five years, the individual remains liable to UK CGT.

The sale by an Irish resident individual of a property in the United Kingdom could be subject to UK Income Tax (which is not exempt for non residents) if it is part of a trade for buying, selling, or developing property. Therefore, it cannot be assumed that there is automatic exemption for UK tax as the sale property itself could fall subject to UK income tax, for which non residents are liable. Capital gains of the UK branch of an Irish business are subject to UK CGT.

Irish Capital Gains Tax

Individuals who are resident or ordinarily resident in Ireland are subject to Irish CGT on their gains worldwide. An individual who is Irish resident or ordinarily resident but is not Irish domiciled, is liable to Irish CGT on the sale of overseas assets only to the extent they are remitted into Ireland.

Irish CGT always applies on the sale of Irish land or minerals or shares that derive their value from them. Gains accruing to a non-resident company or non-resident trust may, in certain circumstances, be attributed to and taxed on Irish resident shareholders/beneficiaries. Persons who are non-resident for less than 5 years, can be subject to Irish CGT on certain assets under special rules.

An individual's liability for Irish Capital Gains Tax cannot be taken in isolation. It is necessary to look at all individuals capital gains and losses in a given year. Credit may be allowed for losses in previous years that are unrelieved. Capital Gains Tax is payable on the net at a rate of 25% (since 7th April 2009). There is a simple personal credit at the rate €1,270.00 which is not transferable between spouses.

Ireland / UK Double Taxation Relief

Double tax relief is available in Ireland in relation to gains chargeable to UK CGT. This may, for example, occur in respect of the gains attributable to a UK branch of an Irish resident company.

Tax on gains arising from sources in the UK is allowed as a credit against Irish tax paid in respect of those gains. The exact manner in which credit is actually granted in Ireland is governed by the rules relating to credit relief. See our Guide in relation to credit relief on income.

Tax on gains arising from sources in Ireland is allowed as a credit against UK tax paid in respect of those gains. Again, the credit granted in the UK will be calculated by reference to the detailed UK rules governing credit relief.

An individual who is UK resident or an ordinarily resident individual may be subject to CGT under the laws of the country say where the asset concerned is situate. Double taxation relief will often be available under a Treaty between the UK and the overseas country concerned. Alternatively, unilateral credit might be available.

Double taxation Treaties generally operate as follows. Tax is calculated under the UK rules in the normal way. There is then deducted the lower of the overseas CGT suffered or the UK CGT attributable to the overseas assets. To calculate the UK CGT attributable to the overseas assets certain computations are undertaken.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.