



## NEWS UPDATE - FEBRUARY 2021

# Capital Gains note for Residential Management Companies

Boards of Residential Management Companies, and Managing Agents that act for them should be aware that in certain situations, properties can fall within the new 30 day reporting rule in respect of Capital Gains Tax arising on the sale of UK residential property.

- Where a company holds the freehold on trust for the leaseholders through a nominee relationship, then for all tax purposes the income and gains are the income and gains of the individual leaseholders and not the company and the individual leaseholders are responsible for reporting and paying income tax and capital gains tax as appropriate depending on their individual circumstances.
- If on the other hand there's no nominee arrangement and the company owns the freehold, the company is responsible for all reporting and all taxes in relation to income arising from that asset.
- For UK resident individuals - the current rules (in place from 6 April 2020) are that UK resident individuals must report UK residential property disposals to HMRC within 30 days of completion and pay the tax due within the same 30 days if there is any capital gains tax to pay on the gain. If there is no tax to pay, the disposal is either not reportable, or it is reportable under self-assessment. Before that, UK resident individuals could report residential property gains and pay the tax due through their tax returns under self-assessment.
- Non UK resident individuals – as above but they must report all UK land and property disposals (direct, indirect, residential or commercial) within 30 days irrespective of whether or not there is any tax to pay. Any tax is also payable within 30 days. (Brief history of the rules before that for non-residents are below \*.)
- Where a disposal is made, Boards (and Managing Agents that act for those Boards) should be aware that the disposal could be reportable to HMRC within 30 days of completion and that capital gains tax could be payable at the same time. Failure to comply could result in penalties and interest. Details of the disposal should be passed to their adviser if they have one. For more info on the rules, the leaseholders should be aware of the HMRC guidance at:  
  
[https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property?\\_ga=2.79928535.1150588271.1595324635-2144710097.1577111015](https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property?_ga=2.79928535.1150588271.1595324635-2144710097.1577111015)

- If the company owns the freehold in its own right (and not as nominee) any gains would be subject to corporation tax and not subject to the new HMRC 30 day reporting rules.
  - However, companies should be aware that the Annual Tax on Enveloped Dwellings regime may apply if leases are short (less than 80 years) and that causes the underlying value of the freehold to become exceptionally high. Although it should normally be possible to claim one of the ATED reliefs to avoid any tax being payable, we are finding HMRC are taking an increasingly punitive view even where nil returns are required, and you should contact your BGM contact should you require any clarification or advice.
- \* (From 6 April 2019 to 5 April 2020 - non-resident individuals reported the disposal in a 30 day NRCGT ('non-resident capital gains tax') return and they had the option of deferring and paying the tax due under self-assessment in their tax returns. Between 6 April 2015 and 5 April 2019 - non-resident individuals only had to report direct disposals of UK residential dwellings within 30 days via the NRCGT return and the tax could be deferred/paid under self-assessment and indirect/commercial disposals were not taxable. Before that, UK gains – including UK residential property gains - made by non-residents, were outside the scope of UK capital gains tax.)*



Should you wish to discuss any of the points raised in this News Update in further detail please contact Brian Clifford ([BrianClifford@bgm.co.uk](mailto:BrianClifford@bgm.co.uk)) or Louise Delamere ([LouiseDelamere@bgm.co.uk](mailto:LouiseDelamere@bgm.co.uk))

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