

Tax for family lawyers

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Introduction

- Separation
- Capital gains tax – the basics
- The matrimonial home
- Business assets
- Other assets
- Inheritance tax, trusts & Wills
- Income tax issues

Separation

- Relevant for income tax and capital gains tax but not inheritance tax.
- Separated in such circumstances that the separation is likely to be permanent.
- Living in the same house?
- Agreeing the date of separation.

Capital gains tax – the basics

- UK residents are liable to capital gains tax.
- Gains realised on the disposal of residential property located in the UK by non-UK resident individuals from 6 April 2015 will be taxed here. Only gains arising from 6 April 2015 are taxable.
- Residential properties held by a company may be subject to the annual tax on enveloped dwellings (ATED) rules. Only high value properties are caught but from 6 April 2016, the threshold is reduced to £500,000. Where ATED applies CGT is at 28%.

Capital gains tax – the basics

- Married couples/civil partners living together – no loss/no gain.
- Tax year of separation.
- After separation but before divorce/dissolution.
- Connected parties until divorce/dissolution is final:
 - Implications for losses.
 - Deemed market value.
- Transfer of asset under a court order after divorce or dissolution – deemed not at arm's length.

Capital gains tax: the basics

Tax rates from 6 April 2016:

- Gains accruing on the disposal of interests in residential properties that do not qualify for private residence relief and gains arising in respect of carried interest are:
 - For individuals (when added to other income):
 - Up to income tax basic rate limit of £32,000 – 18%
 - Above income tax basic rate limit of £32,000 – 28%
 - Gains accruing to trusts and personal representatives – 28%

Capital gains tax – the basics

- Gains accruing on the disposal of other assets:
 - For individuals:
 - Up to income tax basic rate limit of £32,000 – 10%
 - Above income tax basic rate limit of £32,000 – 20%
 - Gains accruing to trusts and personal representatives – 20%
- Annual exemption for individuals for 2016/16 - £11,100

Capital gains tax – the basics

Example:

- Property purchased in 2000 for £175,000
- Property owned jointly
- Current value £235,000
- Mortgage £120,000
- Estimated costs of sale - £1,200

H to transfer his 50% share to W

Capital gains tax – the basics

Example cont...

Market value		235,000
Less:		
Purchase price	175,000	
Actual cost of transfer	500	
	<hr/>	175,500
Gain		<hr/> 59,500
Half share		<hr/> <hr/> £29,750

Capital gains tax – the basics

- o Information needed:
 - Date acquired
 - Costs of purchase
 - Capital expenditure (when, how much, for what purpose)
 - Current value
 - Use of the asset/property
 - If property, has it ever been used as main residence (and if so when)

Capital gains tax – the basics

DISPOSAL BY	DATE OF DISPOSAL
Consent Order and asset transferred <u>before</u> decree absolute or final dissolution order	Date of Court Order
Consent Order <u>before</u> decree absolute or final dissolution order but asset transferred after decree absolute or final dissolution order	Date of Decree Absolute or Final Dissolution Order
Court Order (including a Consent Order) made after a decree absolute or final dissolution order	Date of Court Order
Unconditional contract	Date of contract
No contract	Date of transfer

Stamp duty land tax

- Transfers under court orders in divorce and dissolution proceedings are exempt from stamp duty land tax ([FA 2003, Sch 3, paras 3 and 3A](#)), including transactions agreed by the parties in contemplation or otherwise in connection with dissolution or annulment of the marriage or civil partnership or on the separation of the parties.

The matrimonial home

- Principle private residence relief.
- One or more residence – option to elect.
- The final period – 18 months from 6 April 2014.
- Extent of PPRR – 0.5 hectare (about 1.23 of acre).
- Extending PPRR if spouse/civil partner remains in the property.

The matrimonial home

Example:

- Property purchased for £375,000 in June 1996
- Property owned jointly
- H moved out in June 2014
- H transfers half share to W in June 2016
- Property worth £650,000

The matrimonial home

Example cont...

Market value		650,000
Less:		
Purchase price	375,000	
Actual cost of transfer	<u>500</u>	
		<u>375,500</u>
Gain		<u>274,500</u>
Half share of gain		<u><u>£137,250</u></u>

The matrimonial property

- o Example cont...

Property owned for 20 years

Main residence for 18 years

Final period 1.5 years

Gain	£137,250
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PPRR ($19.5/20 \times 137,250$)	£133,819
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Taxable gain	<u>£3,431</u>
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Property orders

- Mesher orders
 - Order for sale postponed until future event
 - Lifetime settlement
 - IHT
 - CGT
- Deferred charges
 - Capital sum based on future event
 - Fixed amount
 - Interest
 - Percentage share

Business assets

- Assets used in a business or shares in an unquoted trading company.
- Hold over relief.
- The need for an election by both parties.

Entrepreneurs' relief

- 10% tax rate on gains up to £10 million (lifetime allowance).
- Applies to a material disposal of a business asset.
- Includes:
 - Disposal of a business carried on by an individual
 - Partnership interests
 - Shares in a trading company which is a personal company

Entrepreneurs' relief

- A personal company is one in which the individual:
 - is an employee or director; and
 - owns at least 5% of the voting rights.
- Conditions must apply for at least 12 months prior to a disposal.
- Shares acquired on exercise of an EMI option.

Investor's relief

- Relief for individual who is not an employee or officer of the company;
- Unquoted trading company;
- Subscription for shares;
- Acquired on or after 17 March 2016;
- Owned for 3 full years (starting from 6 April 2016);
- Gains taxed at 10%; and
- Lifetime limit £10 million.

Chattels

- A single chattel or a set:
 - Below £6,000 exempt;
 - Above £6,000 subject to capital gains tax.
- Chattel exemption – $\frac{5}{3}$ rds of excess over £6,000.

Chattels

- o Example:

Painting worth £10,000

Purchase price £2,000

Gain £8,000

The gain is restricted by the amount of consideration over £6,000 (i.e. £4,000) times 5/3

$$5/3 \times £4,000 = £6,667$$

Wasting assets & exempt assets

- A wasting asset has a useful life of less than 50 years and is exempt from capital gains tax, examples are:
 - Yachts
 - Aeroplanes
 - Racing cars (not suitable for road use)
- Motor cars are specifically exempt.

Exchanges of joint interests in land

- Relief from capital gains tax can apply where joint owners of land exchange their interests.
- There is no requirement for the land to be used for a particular purpose.
- Where the exchange is for property with an unequal value a capital gain may still arise.

Inheritance tax

- Gifts to spouse/civil partners
- Limitation for non UK domiciled transferees
- Potentially exempt transfers
- Key exemptions:
 - section 10 (no gratuitous benefit)
 - section 11 (provision of maintenance)

Trusts

- Gifts to trusts
- Entry charge
- Relief under s10 or s11
- Divorce/dissolution – a planning opportunity?
- Anniversary and exit charges
- Hold over relief for capital gains tax

Wills

- Separation no impact.
- On divorce or dissolution of civil partnership wills remains valid but:
 - Appointment of former spouse as executor fails;
 - Spouse deemed to have pre-deceased.
- Caution if amending Wills after separation.
- Need to take advice.

Jointly held property

- Couples living together with jointly owner property.
- Assumption of 50:50 right.
- Election to be taxed based on beneficial interest.
- On separation must be taxed based on beneficial interest.

Born before 6 April 1935?

- 10% tax relief for maintenance.
- Married couples allowance for individuals.

QUESTIONS?

thank you



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