Low Incomes Tax Reform Group
A voice for the unrepresented

Office of Tax Simplification (OTS): Capital Gains Tax (CGT) review – call for evidence
Response from the Low Incomes Tax Reform Group (LITRG)

1. Executive Summary

1.1. We welcome the opportunity to provide input into this call for evidence on simplifying the taxation of chargeable gains, "to ensure the system is fit for purpose and makes the experience of those who interact with it as smooth as possible".[1]

1.2. Although LITRG did not provide a written response to the first stage of this review on the principles of CGT,[2] we hope that in this submission we are able to provide some helpful evidence from the perspective of low-paid, unrepresented taxpayers on various aspects of the current CGT regime and its administration.

1.3. We are specialists in tax and related welfare benefits for people on low incomes. We provide free information about the UK tax system to the public via our websites, which received 5.7 million unique visitors in the 12 months to 30 June 2020. We are frequently contacted by members of the public who need help, often where they have been unable to find answers to their questions on GOV.UK. From these enquiries and through working with other stakeholders, we have insight into the tax issues affecting those on low incomes and where the current provision may be failing them.

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[1] Letter from the Chancellor of the Exchequer to the OTS, 13 July 2020, see: https://www.gov.uk/government/publications/chancellor-requests-ots-review-of-capital-gains-tax

[2] We instead participated in a roundtable discussion with the OTS and the Chartered Institute of Taxation on 7 August 2020.

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1.4. From the outset, we would like to debunk a common misconception that CGT is a 'rich man's tax'. The 2017/18 statistics quoted in the call for evidence document show that, while most CGT is paid by those with gains of £1 million or more, the majority of CGT taxpayers either pay no income tax or pay it only at the basic rate, and the recently published 2018/19 statistics suggest that 171,000 out of 256,000 CGT taxpayers in that year (i.e. two thirds) fall into that category.[3] Therefore, we think that the OTS should prioritise their efforts on recommending simplifications for this population above more 'niche' areas.

1.5. We believe the area of focus for this population should be in relation to the disposals of properties which have at some point been the taxpayer's only or main residence. This is an issue which brings complexity and challenge across almost all of the main stages of compliance:

- awareness that a chargeable disposal has been made (with the tax and onerous reporting obligations which flow as a consequence);
- calculating the gain (having to grapple with understanding how to calculate partial private residence relief);
- calculating the tax (potentially needing to use a combination of rates but not being able to know with certainty how much of the gain is charged at what rate when completing an in-year report), and finally;
- reporting the disposal and making the payment (within an incredibly tight timescale, with the digitally excluded facing particular challenges under a digital-by-default system).

1.6. Throughout this response, we make suggestions on how we think the CGT system may be made simpler for unrepresented taxpayers, so that they have a better chance of understanding and meeting their CGT obligations. These include:

- consideration of how to make taxpayers more aware of their potential CGT obligations on the sale of property;
- a possible additional CGT allowance which applies to the disposal of a main residence where full private residence relief is not available;
- relaxations for separating couples to allow them more time to make no gain/no loss transfers, and extended private residence relief for former spouses and civil partners who leave the family home;
- clarifications and improvements to the process of nominating a property as a main residence;
- various possible exclusions from the obligation to make a 30-day report on the disposal of UK residential property, as well as an extension of the period allowed to 90 days; and
- improved guidance on GOV.UK on various CGT issues.

[3] https://www.gov.uk/government/statistics/capital-gains-tax-statistical-tables

1.7. We provide detailed comments below under the various main headings of the call for evidence.

2. About Us

2.1. LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

2.2. LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

2.3. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient tax system for all affected by it: taxpayers, advisers and the authorities.

3. Structural CGT issues

3.1. *Identifying a chargeable disposal*

3.1.1. Mostly, low-income taxpayers will need to interact with the CGT system when they dispose of real property, rather than shares or other assets which will likely either be exempt (for example, share disposals within an ISA, motor cars or chattels sold for less than £6,000) or on which the gain will fall within the annual exempt amount.

3.1.2. As a broad generalisation, landlords who have invested in buy-to-let properties will be used to filing Self Assessment tax returns to report their rental profits and many will have engaged an accountant or tax adviser to assist them in meeting their tax obligations. They will generally be aware, or otherwise be made aware by their agent, that the disposal of a buy-to-let property is within scope of CGT. There will, however, be some who are not so 'savvy' – for example, those who have not deliberately *invested* in rental property but who have instead become a landlord more by accident, such as renting out their home when moving in with a partner, or after inheriting a property.

3.1.3. At the other end of the spectrum, it is generally well-known that an individual who disposes of a property which has been their main residence for the entire period of ownership will not be liable to capital gains tax on the disposal. However, we have seen evidence of some confusion that even these disposals have somehow been brought within scope of the CGT regime as a result of the April 2020 rule changes, as demonstrated by the following query:

"hello, could you please tell me why I have to inform HMRC that I have sold my house that has been my main residence since I bought it 42 years ago."[4]

3.1.4. Complications arise when an individual disposes of a property which has at some point been their main home but they have not lived in it throughout the entire period of ownership. This frequently happens when couples move in together or separate, or otherwise where a taxpayer moves house and lets out their former home rather than selling it. Some taxpayers mistakenly believe that such a disposal is 'exempt' simply on the grounds that the property was used as their main home at some point in the past. Others struggle to understand the rules on calculating partial private residence relief (PRR) and it is on this point that we receive most CGT enquiries.

3.1.5. More broadly, there is no definition of disposal within the legislation. Therefore, taxpayers must rely on their general understanding of the meaning of the term. It is far from well understood, for example, that there can be a chargeable disposal upon gifting an asset (for example, where property is gifted to the next generation) and that there is a potential CGT liability based on the market value of the asset at the time of the gift. From the enquiries we receive, it appears that many unrepresented taxpayers are simply oblivious to the point.

3.1.6. It is a natural assumption for an unrepresented taxpayer that giving away an asset is not within scope of CGT. Why should it be, where there are no proceeds from which to pay any liability? Education is therefore required – someone (perhaps a solicitor dealing with the property transfer – see 5.1.2 et seq for further discussion) to prompt the donor to consider or take advice on the issue. Even if someone thinks to look on GOV.UK, they might dismiss relevant guidance without close inspection. For example, the section on GOV.UK entitled *Tax when you sell your home*[5] might be considered not relevant (as the title uses the term 'sell' without any qualification that the page is also relevant in other situations). The general CGT guidance only makes reference to the market-value substitution rule at the very end where it is likely to be missed without cross-referencing from the other text.[6] Finally, the guidance on Inheritance Tax makes no reference to a potential CGT liability when passing on a home before you die.[7]

3.1.7. Taxpayers disposing of property are also often unaware that it is the date of exchange which is generally relevant for determining the date of disposal for CGT purposes. This is counter-intuitive considering that you might still live in the property and consider it to be your home until 'moving day' on the date of completion, when the keys are physically handed over. This

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[4] Received via our website, 4 August 2020

[5] https://www.gov.uk/tax-sell-home

[6] https://www.gov.uk/capital-gains-tax/market-value

[7] https://www.gov.uk/inheritance-tax/passing-on-home

can lead to confusion for unrepresented taxpayers – perhaps particularly where the dates of exchange and completion straddle the tax year. The fact that the 30-day reporting window commences from the date of *completion* and not exchange further complicates the position.

3.1.8. As a general point, CGT is not well-understood by unrepresented taxpayers, largely because they interact with the CGT system relatively infrequently.[8] While we think it is a good thing that the unrepresented are spared the complexity of CGT other than on the odd occasion, the consequence is that when they make a chargeable disposal, the rules are unfamiliar. This makes compliance challenging.

3.1.9. Very often, when unrepresented taxpayers make chargeable disposals they can be completely unaware of the fact they may have tax payment and reporting obligations as a result. This leaves them exposed to interest and penalties and a great deal of stress, as and when HMRC eventually catch up with them. As one individual wrote to us:

"I and my son inherited my Mother's house [in] February 2015 and we were going to sell it straight away but then decided to rent it out and did so through a Property Management Company. We eventually sold it in about October 2018. […] I have just recently been informed by the UK Tax Department Self assessment ''Needs Extra support team'' who I am dealing with regarding my previous Tax Assessments that we must also complete a Capital Gains Tax Return and should have done so after we sold the house. This is a bit of a shock to me as I am on a low low income and retired last December, have not been having good health the last 5 years …I am very worried about this new information about Capital Gains Taxation liability as I have a low income and no savings / money available at all anymore and would like to request for some advice and clarification about this subject. I should add the reason I am dealing with the Needs Extra Support Team is because of my bad health and the significant stresses and pain I have been living with and the sheer frustration with the complicated bureaucracy which is so hard to deal with. I am struggling with my life on a daily basis without the extra stress.... so your help and guidance would be appreciated."[9]

3.1.10. Unrepresented taxpayers therefore need to be helped to be aware that they have a potential CGT liability at the time they make a chargeable disposal. We discuss this further briefly at 5.1.2 et seq in the case of disposals of property.

3.2. *CGT and couples*

3.2.1. Related to the question of awareness of the occurrence of a chargeable disposal is the fact that couples who are married or in a civil partnership are able to transfer assets between

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[8] The call for evidence states that 70% of all those who pay CGT did so only once in the 11 years to 2017/18. Unrepresented taxpayers are likely to pay CGT even less frequently.

[9] Received 11 November 2019. Throughout this submission, we have quoted enquiries received verbatim where possible, but in some cases we have removed or changed any words that may identify the individual.

them at no gain/no loss. It is therefore crucial for taxpayers to understand whether or not they are part of a couple for CGT purposes. Transfers of chargeable assets between individuals who are not, or not yet, married or in a civil partnership will give rise to a chargeable disposal.

3.2.2. If the couple is married or in a civil partnership and the relationship breaks down, for CGT purposes they must determine whether or not they are separated in circumstances 'likely to be permanent' – and if so, when this became the case. This is not always clear cut and the resulting ambiguity has consequences in other areas of the tax system, not just CGT.[10] We explored these issues in detail in our 2015 report, *Couples in the tax and related welfare systems – a call for greater clarity.*[11]

3.2.3. Once a couple is able to determine that they have separated in circumstances likely to be permanent (bearing in mind that each party may have different views on this point), they have only until the end of the tax year in which this occurs to make transfers of assets between them in connection with the separation. This can be extremely problematic: a couple separating towards the end of the tax year will have very little time to resolve affairs between the parties. If the deadline is missed, the transferor may incur a dry[12] tax charge (based on market value) at a very difficult time, when communication between the couple may be strained.

3.2.4. We support the calls of other organisations, such as the Association of Taxation Technicians,[13] on this point for the time window to be extended. Given the difficulty of pinpointing precisely when separation occurs, we would favour an extension to the end of the tax year *following* separation, rather than a specific time period which depends precisely when the probability of permanent separation flips from unlikely to likely.

3.2.5. There are also particular issues relating to private residence relief when a couple separates, and we discuss these later at 4.3.

3.3. ***Calculating the chargeable gain***

3.3.1. The calculation of the capital gain on disposal of an investment property in which the owner has never lived themselves is relatively straightforward in most cases, because of the

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[10] In *Manku v HMRC* [2020] UKFTT 308 (TC), a case involving the High Income Child Benefit Charge, HMRC disputed this very point with the taxpayer. The judge found that the taxpayer had indeed separated from his wife in circumstances likely to be permanent, despite the fact they subsequently got back together.

[11] https://www.litrg.org.uk/latest-news/reports/150511-couples-tax-and-related-welfare-systems-–-call-greater-clarity

[12] That is, without liquid funds to settle any liability.

[13] https://www.att.org.uk/technical/submissions/ots-capital-gains-tax-review-–-call-evidence

simplicity of deducting the cost from the proceeds. However, the distinction between capital and revenue expenditure can be unclear. In some cases, it can also be difficult to identify and evidence enhancement expenditure unless accurate records have been maintained.

3.3.2. It can also be difficult to establish the base cost of assets which have been held for a very long time and where records have not been maintained. Question 32 of the call for evidence asks whether moving to a more recent rebasing date than 1982 would help with this. However, we are not convinced that a more recent rebasing date would represent an overall simplification for taxpayers. Such re-basing would not be of any benefit to those disposing of assets acquired after the re-basing date. Those who acquired assets prior to the re-basing date would need to obtain a new valuation, even if the base cost of the asset being disposed of was clearly recorded. A policy of optional re-basing would address this latter point, but at the same time it would introduce a choice (and hence complexity) where one does not currently exist, as well as additional costs (in obtaining such a valuation) to understand which option would give the most favourable tax treatment. Finally, if a re-basing policy is to be revenue neutral, it would presumably need to be accompanied by a rise in rates of CGT (or a reduction in exemptions or reliefs).

3.3.3. Thus, we would instead favour a pragmatic approach by HMRC where taxpayers have difficulty in establishing the base cost of assets, rather than necessarily insisting on a professional valuation. In the case of real property in the UK, for example, the use of the House Price Index (under which historical data is derived back to 1968), could be used to estimate a base cost where no alternative data is available.[14] HMRC could also provide more public guidance about what to do in the situation where the base cost of an asset is unknown, while being more transparent around how they might accept different methods of establishing it.

3.3.4. We also see confusion over the scope of CGT for migrants who owned assets before moving to the UK, as demonstrated by the following enquiry:

"I have never lived in UK until 10 months ago, I came to UK by following my husband's work. I had a property oversea and bought in 2007 and thinking to dispose it. I would like to know how to calculate the capital gain tax if I will bring the money to UK. Will I use the original buying price in 2007 or the market value of the property when I arrived at the UK?" [sic][15]

This is a reasonable question. Why should the gain which accrued prior to this taxpayer's arrival in the UK be taxable?

3.3.5. We also understand there is some confusion amongst unrepresented taxpayers who commonly believe that the chargeable gain on disposal of a property is simply the amount of cash they receive after repaying any borrowings against the property. Even if they do have

[14] https://landregistry.data.gov.uk/app/ukhpi

[15] Received 15 July 2020

some understanding that borrowings are not deductible in the capital gains computation, they may not readily be able to confirm this from available guidance. For instance, we received this enquiry to our website on this very point:

"I needed to know if mortgage repayments were included in capital gains tax calculation, I didn't think they were but gov web site does not mention it. The LITRG site answered my query clearly. Thank you."[16]

3.3.6. Finally, when a taxpayer disposes of shares and the shareholding has a long and complicated ownership history, taxpayers face horrendously complicated rules to calculate the base cost of the shares sold. Unrepresented taxpayers stand very little chance of getting this calculation right, so we would support simplification of the rules on this point.

3.4. ***Annual exempt amount (AEA)***

3.4.1. The AEA is very important for unrepresented taxpayers and it is a simple way to take small gains out of scope of CGT (both payment and reporting). The AEA is not just important for determining whether or not CGT is actually payable but also whether or not an individual is required to report the gain. For example, HMRC's Self Assessment criteria state that with respect to a chargeable disposal, an individual triggers a requirement to file a Self Assessment tax return (containing the capital gains tax pages) only if there is actually CGT to pay.[17] Though as the following query demonstrates, this is not universally understood:

"If I were to make a sale of shares and make a small gain which is within my tax free allowance, do I still need to report it? And if so, is there a form I need to fill out?"[18]

3.4.2. Similarly, 30-day reporting for disposals of UK residential property is not required if there is no CGT to pay – though this latter point is not covered explicitly on the main guidance page on GOV.UK, as we discuss at 5.1.5.[19]

3.4.3. The AEA is also relevant for those already in Self Assessment, because where total *proceeds* do not exceed four times the AEA, the gains are not required to be reported if there is no CGT to pay.[20]

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[16] Received 18 September 2020

[17] https://www.gov.uk/hmrc-internal-manuals/self-assessment-manual/sam100050

[18] Received 11 June 2020

[19] https://www.gov.uk/capital-gains-tax/report-and-pay-capital-gains-tax

[20] See *Capital gains summary notes, 2019-20*, which state that you should fill in the 'Capital gains summary' pages if [inter alia] you 'sold or disposed of chargeable assets which were worth more than £48,000':

3.4.4. We would therefore object to any proposal to lower the AEA from its current level (£12,300 for 2020/21). Any lowering of the AEA is likely to increase the compliance burden on unrepresented taxpayers, which is unlikely to be justified by the increase in tax yield. The number of taxpayers falling foul of their obligations through lack of awareness would also increase.

3.4.5. In the roundtable discussion we attended with the OTS on 7 August 2020, it was suggested that the AEA may be reduced under a cost-neutral proposition which involved the ability to carry-forward unused AEAs from previous years. We would not favour such a move on the grounds that the AEA in its current form is easier to understand. It would also mean that individuals would have to calculate and keep track of all gains each year – however small – in order to establish the carried forward amount. This would create a compliance challenge for HMRC, as if people are not asked to report all gains each year, how would HMRC establish the veracity of a claim to (say) 3 years' worth of carried forward allowances when a larger gain arises?

3.4.6. However, we find that unrepresented taxpayers are not especially aware of the AEA and how it works. For example, we receive a number of queries from taxpayers asking if they can offset unused personal allowance against their gains – perhaps indicating a lack of awareness of a separate exempt amount for capital gains which is distinct from the personal allowance:

"I am retired. My annual income is about £2500 below the taxable threshold. ie. I pay no tax normally. My husband and I have sold a second home. Since I am a 'low earner' am I due to pay capital gains tax on all of my share of capital gain from the sale - or can some of the gain be offset against personal allowance/ income from savings etc.? I notified HMRC last September but they have made numerous errors/ delays and I am still waiting!!!!!"[21]

"I work part time and earn less than £7,000 annually. I own a half share of my late mothers house which I will sell with my sister. I will make a capital gain on the sale of the house. Bearing in mind that I do not use my full personal allowance of £12,500 are there any circumstances that I could offset £5,500 (approx) against the capital gain."[22]

"I have read you can use your tax free yearly allowance on capital gains. Is this the case when filling out my self assessment that was taken into account when paying tax on rental income

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876771/SA108_Engish_notes_2020.pdf

[21] Received 12 March 2020

[22] Received 4 September 2019

or is it a different allowance? Also if I was able to use this could I use it for every year I have been renting?”[23]

3.4.7. Given the way that an individual’s rate of CGT can vary depending on the amount of unused basic rate band available, it seems to us that these are natural questions to ask.

3.4.8. Having two separate allowances – the personal allowance and the AEA – at levels which are similar but not quite the same creates scope for confusion.[24] We recognise, however, that increasing the AEA to match the level of the personal allowance, and aligning the two amounts going forward, may be an expensive proposition. As an alternative, although it would add a degree of complexity to the structure of CGT, we wonder if there is scope for an extension of the AEA in cases where an individual disposes of a property which has at some point been the taxpayer’s main home. We discuss this further at 4.1.5.

3.5. ***CGT rates and income tax interaction***

3.5.1. The four different rates of CGT have undoubtedly introduced complexity to a system under which, not so long ago, all gains (other than where entrepreneur’s relief applied) were taxed at a flat 18%. Since that point, in 2020/11 we saw the reversion to a system which is more complicated for basic-rate taxpayers where they have a gain which straddles the higher-rate threshold. This is now a particular issue for 30-day reporting, which we discuss further at 5.1. In 2016/17, different rates were introduced depending on the class of asset being disposed of.[25] This significantly increased the level of complexity for unrepresented taxpayers.

3.5.2. The less clear the CGT liability on disposal of an asset, the more difficult it is to budget for that liability when it becomes due, which can be anytime from 10 to 22 months after the disposal if a 30-day report and payment is not required.

3.5.3. A single, flat rate of CGT would make it easier to calculate CGT due, especially in the case where a basic-rate taxpayer needs to make an in-year report. However, we recognise that for such a measure to be cost-neutral, a merging of the rates would mean a higher charge than at present for basic-rate taxpayers, and a lower rate for higher-rate taxpayers. Because this would increase the difference for higher-rate taxpayers between the rate of tax applicable to income and the rate applicable to capital gains, it would increase the incentive for distorting behaviour.

3.5.4. The partial integration with income tax can be problematic as it can lead to confusion. As we highlighted above, the interactions between CGT and income tax are inconsistent in that

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[23] Received 12 June 2019

[24] In 2020/21, the personal allowance is £12,500 and the AEA is £12,300.

[25] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908636/Table_A1.pdf

there are strictly separate (and slightly different) allowances, yet the capital gains tax rate varies depending on whether or not the gain falls within the basic-rate band for income tax. Furthermore, one could question why the capital gains tax rate varies around the higher-rate threshold, but not the additional rate threshold. The confusion is neatly demonstrated by the following (relatively sophisticated) website query:

"I notice that when you consider the various taxes to be paid, you 'stack' wages, then savings and finally dividends (in that precise order) before performing the calculations. If one has a CGT taxable gain (ignoring for the moment how this would be calculated) then would one simply stack the CGT taxable gain (minus one's personal allowance) on top of the dividend income and perform the tax calculations appropriately. If one has a CGT taxable gain (minus CGT personal allowance) of, say, £200,000 (sale of a second property) then I am assuming that the income personal allowance and the savings personal allowance would both disappear because one's income is greater than £150,000. Is this correct? Also what comes next in the 'stack' after CGT - is there anything?"[26]

3.5.5. Others wonder whether they can offset trading losses against capital gains, or capital losses against income:

"Can one set CGT losses against investment income?"[27]

"I have had losses in my self employment work [for the] past 4 years. Can I offset them against a capital gains I had this year? I inherited part of a family property and am subject to capital gains tax."[28]

3.5.6. Whilst the answer to the first of these queries is relatively straightforward,[29] the second requires consideration of (a) whether the individual is trading on a commercial basis with a view to making a profit, (b) when the losses arise, (c) whether the cash or accruals basis is used, (d) what other income the taxpayer has, and (e) whether a claim under s64 ITA 2007 is made. Even in the event that the trading losses cannot be offset against the gain directly, it may be that they are able to reduce the amount of CGT payable if they reduce the amount of income otherwise taxable. Thus while the question appears straightforward, the answer is far from simple.

[26] Received 4 October 2018

[27] Received 16 January 2020

[28] Received 17 August 2020

[29] It is not generally possible to set capital losses against income, other than in very specific circumstances (broadly, if you have disposed of qualifying trading company shares).

3.5.7. We would also caution about the complexities for taxpayers in devolved administrations.[30] At present, Scottish taxpayers who have non-savings/non-dividend income as well as capital gains need to consider the Scottish rates and bands for income tax as well as those for UK income tax when working out their income tax and CGT liabilities. Thus, when considering the interactions with income tax, there should be an awareness and understanding of how this will interact with the income tax powers devolved to Scotland and Wales.

4. Private Residence Relief (PRR)

4.1. *Taxpayer awareness and recent changes*

4.1.1. Many unrepresented taxpayers do not understand their liability to CGT when disposing of a property which has been their main residence. We regularly receive queries on this topic and we have included a selection in an appendix.

4.1.2. For every taxpayer who questions their liability to CGT on the disposal of a property which has been their main home, there may be others to whom the question of a possible CGT liability does not even occur. It is easy to distil the detailed rules on private residence relief into the idea that you do not have to pay capital gains tax when you sell your home. For individuals who might have let out a property which used to be their main home, or who are selling a family home which they have inherited and perhaps once lived in when they were younger, it can be natural to assume that these 'homes' are not within scope of CGT.

4.1.3. Recent changes to private residence relief have exacerbated the issue – especially the effective abolition of letting relief for cases other than when the owner has been in occupation with the tenant, and the halving of the final period exemption to just nine months. LITRG argued against both of these changes as they were being introduced – for example, on the grounds they would lead to inadvertent non-compliance.[31] However, the rules were introduced unchanged and as scheduled.

4.1.4. The rationale for the reduction of the final period exemption was to prevent individuals from accruing private residence relief on two properties simultaneously. The change in letting relief was apparently a return to its original policy intent (a point which was met with confusion by various stakeholders, given the unambiguous wording of the legislation which allowed the relief in circumstances where the property had been '*wholly* or partly let'). The retroactive nature of the change to letting relief, as a result of the relief being denied even for periods before 6 April 2020, has a significant impact on taxpayers and potentially some tenants, as demonstrated by the following query:

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[30] See section 3.3 in our submission on the Treasury Committee's call for evidence on *Tax after coronavirus*: https://committees.parliament.uk/writtenevidence/11719/pdf/

[31] https://www.litrg.org.uk/latest-news/submissions/190524-capital-gains-tax-private-residence-relief-changes-ancillary-reliefs

"I bought a house in 2007 but had to move for work in 2015. I rented it out as I could not afford the selling fees and also could not have afforded to buy near where I work. I have now heard about the changes that the government will impose in April. i.e. that the £40,000 exemption is to be scrapped. This means I will never be able to sell and buy near my place of work. I am thinking of asking my tenants to vacate so that I can move back in and will have to travel to work quite a distance. I get that I have left it too late to sell now before April 2020 but if I move back in and make it my primary residence again for a year or so, will this help at all. I am distraught at this news as I have been trying really hard to save up to cover selling & buying fees for a future move to where I work. I would be grateful of some help."[32]

4.1.5. We do not propose to reiterate the arguments already made against these reforms. But it strikes us that the introduction of an extended annual exempt amount, or some kind of nil-rate band (as for inheritance tax), for disposals of properties which have been the taxpayer's main residence should be considered. Such a measure would sit alongside the changes to address concerns about simultaneous PRR accrual and letting relief 'abuse' while protecting unrepresented taxpayers who have been newly brought within scope of CGT because of the changes.

4.2. ***Nominating a main residence***

4.2.1. We believe that the process for nominating a property as your main residence needs improvement. First, the relevant legislation begins "so far as it is necessary for the purposes of this section to determine which of two or more residences ***is*** an individual's main residence for any period, the individual may conclude that question…" (our emphasis).[33] This reads to us as a mechanism for the taxpayer to achieve certainty in cases where there may be some doubt as to the facts; that is, either residence might be argued to be the taxpayer's main residence. It is a useful provision.

4.2.2. However, we understand that some taxpayers use this provision as a tax planning tool – and indeed, represented taxpayers may even be encouraged to do so – in order to achieve private residence relief for the period of 'occupation' (for example, if it is anticipated that the nominated property will increase in value to a greater extent) or for the final nine months of ownership. They may do this by nominating a property which is nominally used as a residence but where the facts clearly indicate that their *main* residence is elsewhere. We feel unrepresented taxpayers are at a disadvantage if they do not appreciate that s222(5) can be used in this way: the legislation is clear that you are declaring the property which *is* your main residence (not, for example, 'choosing' which property *is to be treated as* your

[32] Received 27 January 2020

[33] s222(5), Taxation of Chargeable Gains Act 1992

main residence[34]). It is confusing to have a situation where a taxpayer may be in no doubt that one of two residences is their main residence, yet for tax purposes they declare the other. Clarity is needed.

4.2.3. If the government wishes taxpayers to make the assessment themselves as to which home is their main home, it needs to provide much better guidance so that taxpayers are empowered to do so. GOV.UK provides no guidance on this so far as we are aware, leaving taxpayers such as the following unsure about what to do:

"The question was aimed at establishing whether, now that I am at retiring age I will have to pay CGT on the flat I purchased in 2001 (when I sell) and which I have used and still use as my residence five days a week and which is in my sole name. I have voting rights [there] which I have exercised. When I married in 1988 my wife bought the house (which has always been in her sole name) where I still go at weekends and where the family was brought up. I have voting rights [there] too (which I have exercised) and much but not all of my correspondence goes there for convenience as the post boxes in the block of flats are vulnerable."[35]

4.2.4. Second, s222(5) continues thus: "…by notice to an officer of the Board given within 2 years from the beginning of that period…". There is therefore a 2-year time limit to make a nomination from the point of a change of a combination of residences. GOV.UK makes this clear enough, but individuals are unlikely to look at the guidance until the point they come to sell the property, by which time it may be too late.[36] The time window is disapplied where one of the residences has 'negligible market value' (s222(5A)) or for non-resident disposals (s222A). We suggest the 2-year time limit should be scrapped in all cases to prevent unrepresented taxpayers from being disadvantaged.

4.2.5. Finally, supporting the suggestions put forward in the OTS's recent *Claims and elections review*,[37] we believe the process of making a nomination would be easier if it were possible to be made by way of a form (for clarity as to the procedure), or through the Personal Tax Account, rather than informing HMRC by a letter or otherwise. Where a nomination has been made, it should also be clearly visible in the taxpayer's Personal Tax Account.

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[34] HMRC's helpsheet HS283 unhelpfully uses this phrase, stating "You can nominate which residence is to be treated as your main residence for any period".

[35] Received 30 May 2019

[36] https://www.gov.uk/tax-sell-home/nominating-a-home

[37] https://www.gov.uk/government/publications/ots-claims-and-elections-review

4.3. ***PRR and separation***

4.3.1. Particular issues arise for the departing spouse or civil partner on the breakdown of a relationship, as exemplified by the following simple query:

"My ex husband and I co own a property. He moved out two years ago. We have now sold the property. Are either of us liable for capital gains tax?"[38]

4.3.2. If a couple separates and one party remains resident in a family home that is wholly or partly owned by the other member of the couple who is no longer resident there, the departing spouse ceases to accrue private residence relief on that property other than for the final nine months of ownership.[39] In many cases (such as the one quoted above), nine months will not be sufficient. We appreciate that gains may be covered by the AEA in many cases, but not all.

4.3.3. There is an exception to the above under s225B under which the family home can continue to be treated as the main residence of the departing spouse or civil partner beyond nine months, provided there is no accrual of PRR on another residence and if it is transferred to the remaining spouse or civil partner as part of a settlement agreement. However, this does not apply where the house is sold to a third party, so its application is limited. We suggest that s225B should be extended to cover the situation where the former family home is sold on the open market.

4.3.4. Unrepresented taxpayers are not provided with any guidance on GOV.UK on either of the above points.[40] They are instead directed to contact HMRC or get professional help. However, not all taxpayers will succeed in getting the advice they need relevant to their circumstances through these routes. At the very least, the guidance on GOV.UK should make explicit reference to the common situation referenced in 4.3.2 to highlight the potential exposure to CGT.

5. Administration of CGT (for individuals)

5.1. ***30-day reporting for disposals of UK residential property by UK residents***

5.1.1. The introduction of the requirement for UK residents to report disposals of UK residential properties within 30 days has meant an extraordinary reduction in the amount of time allowed to the taxpayer to understand their CGT position when they sell UK residential

[38] Received 16 April 2019

[39] It is possible to transfer the property into trust upon the spouse or civil partner's departure and for PRR to accrue while the property is settled property under s225. However, without professional representation, this option is likely to be out of reach to the ordinary taxpayer.

[40] https://www.gov.uk/money-property-when-relationship-ends/tax

property. The communication and guidance from HMRC have been poor, leaving unrepresented taxpayers unsure of what their obligations are and how to comply. While we do appreciate the rationale behind the change (in some ways, a shorter deadline to pay the tax means it is less likely that the taxpayer will face an unexpected CGT bill up to 22 months after the disposal for which they have not budgeted properly), we feel that the 30-day period is not long enough for many unrepresented taxpayers to reasonably be expected to comply. Its extension should be considered: 90 days would seem more appropriate.

5.1.2. Awareness is a key issue. Taxpayers should be prompted to seek CGT advice as early as possible in the conveyancing process and the 30-day reporting obligation should be highlighted to them. We understand, however, that solicitors feel constrained in alerting clients to their potential tax obligations due to liability or regulatory concerns. This is disappointing, because they seem to us to be ideally placed to at least flag the issue, even if it is to state that they cannot advise on it, so that taxpayers can then do their own research or seek advice from someone suitably qualified.

5.1.3. In terms of the potential role of third parties in raising awareness, a parallel can be drawn with the draft legislation proposed for certain public sector licensing authorities who will be required to draw new licence applicants' attention to their tax obligations.[41] Would it really be so unfeasible for solicitors to be required, or at least encouraged, to do something similar in the case where the property has not been the owner's main residence throughout the entire period of ownership?

5.1.4. The question is simply: how is an unrepresented taxpayer going to be made aware of their obligations – given that those who may be ignorant of the new requirements will have no reason to look them up? If solicitors are unwilling to carry out this role because of a concern that the mere mention of 30-day reporting would expose themselves to an unacceptable risk, then HMRC needs to find another way. For example, perhaps the Land Registry could be used to notify individuals (if it were able to do so in time for the vendor to make the report within the deadline).

5.1.5. Whilst it may be clear enough that disposals of UK residential property by UK residents are in scope of the reporting, it is less clear that a taxpayer is excluded from the requirement to make a report if there is no CGT to pay. This needs to be made much clearer in GOV.UK guidance.[42] As one individual wrote to us:

"Hi I own my own home but earn less than £12,500 a year. When I initially bought the property, I rented it out for two years to earn some extra income. I then carried out some work to it and then moved into the property 8 years ago. I know the capital gains tax rules

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[41] https://www.gov.uk/government/publications/new-tax-checks-on-licence-renewal-applications

[42] It is not mentioned at all on the landing page for *Report and pay Capital Gains Tax on UK property*: https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property

have changed this month and you have to declare capital gains within a month of selling a property now, if you've rented it at any time. I've done the calculator and have worked out that the gain is nowhere near the £12,500 cgt allowance. My question is, which I can't get to the bottom of on the HMRC website is, do I still need to fill out the form within 1 month even if I know the gain is less or do I not have to fill it out at all? There doesn't seem to be a way of sending this query to HMRC and I don't want to ring them at the moment as I think they'll be busy with more pressing queries due to coronavirus."[43]

5.1.6. The fact that there is no report required if there is no tax to pay is a helpful exclusion for those who are disposing of a property which qualifies for full PRR. However, as we have already discussed, those who have not occupied their property as a main residence throughout the entire period of ownership face a complicated calculation to determine the amount of the gain which does not qualify for relief and which is potentially chargeable – and therefore whether or not they need to report the gain.

5.1.7. As can be seen from the queries we have received (see the appendix), taxpayers need help to work this out. Unrepresented taxpayers will firstly need to find someone to help them – not always an easy task as there are problems with accessibility in the tax advice market.[44] It also can be difficult to establish the facts. This is an issue which might affect older taxpayers disproportionately, as they are more likely to have owned the property for a longer period.

5.1.8. Once the gain has been calculated, it may be that it is less than the AEA and that no CGT is due. In this case, a report is not required – though the conclusion is not reached without potentially having done a significant amount of work.

5.1.9. If the gain exceeds the AEA, the CGT must then be estimated. This is generally an easy matter for higher-rate taxpayers: one deducts the AEA (and any available losses) and calculates CGT at a single rate: 28%. But basic-rate taxpayers face the extra challenge of potentially having to calculate CGT at two different rates because they have to estimate income in-year – this can be difficult enough for the self-employed but it is exacerbated by the economic instability caused by the ongoing coronavirus pandemic, with some employees surely wondering whether they will still be in the same employment by the end of the year. What if you are unsure about your income for the remainder of the tax year? Will taxpayers consistently appreciate that any coronavirus support payments they may have received should be included in their estimate of taxable income?

5.1.10. The final serious problem with 30-day reporting is that there is not a clearly publicised non-digital means of reporting and payment. The *Report and pay* system is digital by default and individuals are simply invited to contact HMRC if they 'need help accessing the service'. We

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[43] Received 15 April 2020

[44] We discuss these issues further in our response to the *Raising standards in the tax advice market* call for evidence: https://www.litrg.org.uk/latest-news/submissions/200826-raising-standards-tax-advice-market-call-evidence

understand that an individual may then be passed to the Extra Support Team and offered the opportunity to complete the return over the phone or otherwise issued with a paper form.

5.1.11. Even for those who have been able to successfully create a Government Gateway account (a feat in itself for some), there are further digital hoops through which an individual must jump – one individual resorted to writing to us for help unsure of the next steps required:

"I have a Government Gateway Account. I need a property account for capital gains tax. How do I do this?"[45]

5.1.12. In the case of a paper form, a taxpayer is at the mercy of postal delays making it very difficult to meet the 30-day deadline which we understand would still apply. However, in the case of paper reporting, we understand that the taxpayer is not required to make payment of the CGT within the same 30-day window – instead, HMRC will advise the taxpayer of the payment due date once they have processed the form. This process is not transparent, potentially causing unnecessary stress on taxpayers who are keen to meet their statutory filing and payment obligations within the 30-day window.

5.1.13. If the 30-day window is to remain (as mentioned above, we would like to see it extended perhaps to 90 days), we would urge the OTS to consider ways in which unrepresented taxpayers might be excluded from the obligation to make a report. For example, any or a combination of the following:

- where the gross proceeds from sale do not exceed a certain threshold, say, £200,000 (this option being the easiest to understand);
- where the individual is a basic-rate taxpayer (thus avoiding the dual-rate complexity, discussed at 5.1.9);
- where the gain or the CGT does not exceed a certain threshold (thus avoiding onerous reporting when the yield is small); or
- where the individual already files Self Assessment tax returns (thus avoiding duplication of effort in respect of the same disposal).

LITRG
23 October 2020

[45] Received 29 July 2020

Appendix: Queries received from individuals seeking advice on capital gains tax on the sale of a main residence

1. *"I am looking at selling a property I purchased 7 years ago after receiving an amount of money from an insurance payout when my partner died. I decided to invest this into property which would provide me and my daughters an income whilst I studied at university. Now I am looking at selling the property. I am aware I will need to pay capital gains but unsure on a few things. 1. I have read you can use your tax free yearly allowance on capital gains. Is this the case when filling out my self assessment that was taken into account when paying tax on rental income or is it a different allowance? Also if I was able to use this could I use it for every year I have been renting? I also purchased the property at a lower rate from a family member below the actual value. Will this be taken into account? I bought the property for 124000 7 years ago and it's now worth around 310000. I would like to know how much I'm looking at so I can plan on how much I have to purchase a different property when I sell. I was a student for 4 of those years living with my parents to help me out with childcare and I'm currently only working on a temp basis earning around 15000 a year. Would this matter?"*

2. *"Hello, I am a serving member of the Armed Forces. I do not own any property. Last year I got married, my wife owns a property. For work reasons we do not live in her property. I am not on the deeds of the house or the mortgage. Does this property qualify as our main and only residence and there not subject to CGT when she sells it or does it have to be in joint ownership?"*

3. *"I own a house and wondered if I sell it would I have to pay capital gains tax. I lived in the property for about 1 year then moved abroad and rented it out for about 10 years, now I am back living in the property for the last 2 years."*

4. *"What constitutes an "allowed period of absence" in taxation terms when calculating CGT on a private house. I was absent from my home for ten years due to relationship breakdown in order that my children could remain there until they were 18 years old."*

5. *"Hello, I would need help calculating my capital gains on my property that I sell in the future. I know there is a calculator on line but is there someone that can help me? Which type of professional would I contact in the Uk.?"*

6. *"I will return to the UK next year and I own a property [overseas] which I am unlikely to sell. I wish to know my CGT liability should I sell the property after my return. Additionally, what affect does renting the property out until any potential sale have on the CGT exposure? I have tried MANY sources to find an answer but unable to get any conclusive result. I would really appreciate your advice or suggestions as to where to look for answers on this subject. Many thanks in advance."*

7. *"Hi, I moved into my property in June 2014. In September 2014 I let the property out and In June 2018 I moved back into the property. I has been became my sole residence since. If I was*

to sell the property in June 2020 for approx £40 more than I payed for it in 2014, how much of that £40 would be taxable? Would it be 4/6 x £40 = £26.667?"

8. *"In 2011, I managed to buy a small bungalow. I was intending to get married and move in but I've discovered that life is not at all predictable and things have not worked out as I'd hoped! I still live with my parents and have decided I would like to sell my bungalow - so recently I have had it valued and was very surprised to find that it is worth approx £150,000 more than I've paid for it. As I have never lived there it seems that I may have to pay a large amount of capital gains if I go ahead and try to sell it. I have looked everywhere I can but cannot seem to get a definite answer as to whether this would apply to me or not."*

9. *"I am trying to find out how long I would need to go back and live in my flat (which I own and has been rented out for 7 years, in order to relieve my capital gains tax. Can you advise me please. I went [overseas] for seven years from 1997-2005 and then rented a studio in this country to live nearer my mother who needs help now. I am now wanting to sell my property in [the UK]."*

10. *"My wife & I purchased a [house] in the year 2000 for £110,000. In 2011, we purchased a bungalow for £285,000, with a view to selling the house for its then market value of £260,000. We moved into the bungalow in June 2011 & tried renting the house out as it just would not sell. It stayed empty until 2012, when we found a Tennant. It has been rented out since & it's value is still the same at £265,000. We now need to sell the house due to a divorce. In these circumstances, how do I calculate any capital gains tax owed by my current wife & I, if we sell the house for £265,000 a (£155,000) value increase."*

11. *"I am thinking of selling my main residence house [overseas] want to bring money back to uk and buy a property in uk. (To give you background, I am leaving [the overseas country] for good, I am a resident, lived here for over 12 years, but was born in uk & still have a uk passport and thinking of buying a cheap home in spain to retire to, letting out property in uk.) What tax do I need to pay on the money coming into the uk, from the profit of the sale of the [overseas] house?*

12. *"Hello I am seeking clarification that my understanding of CGT liability on my Fathers property is correct. The details are below; My Father resided in his home as his main residence from 1995 until 2019. He has resided full time and permanently in a care home since January 2019. The house constitutes my Fathers estate. When my Fathers house is sold after he dies, It is my understanding that CGT will not be payable on the gain accrued when my Father lived in his home. Is this correct? That CGT will only be payable on any gain accrued after he left the property and took up residence in the Care home. That CGT will only be payable for the gain on the property accrued after January 2022 (given the 3 year rule). Is this correct? If you are not able to answer these questions, could you please refer me to someone who can ? Thank you very much. All the other sites are unclear on these matters. This includes the HMRC site."*