

Annual exempt amount

	2013-14	2014-15
Individuals	£10,900	£11,000

This factsheet explains the relief available on the disposal of your private residence. But it is only an introduction. If you are in doubt about your circumstances you should ask your local **abacus** accountant for advice.

The capital gains tax (CGT) exemption for gains made on the sale of your home is one of the most valuable reliefs from which many people benefit during their lifetime.

The relief is well known: CGT exemption covers the total gain made on the sale of your property provided that the property has been your main residence.

Below is a description of the main rules and regulations when calculating the exemption allowance.

Do I qualify for CGT exemption?

Normally if you dispose of an asset such as:

- a dwelling-house (which includes a house, flat, houseboat or fixed caravan)
- part of a dwelling-house which is your home
- part of the garden attached to your home

you will have to pay capital gains tax on any gain you make.

However, you will be entitled to full relief where all the following conditions are met:

- the dwelling-house has been your only or main residence throughout your period of ownership
- you have not been absent, other than for an allowed period of absence from your home during your period of ownership or through living in job-related accommodation
- the garden or grounds including the buildings on them are not greater than the permitted area
- no part of your home has been used exclusively for business purposes during your period of ownership.

If you meet all these conditions, you will not have to pay Capital Gains Tax on the disposal and you will not need to complete the Capital Gains summary pages on your tax return (assuming you have no other disposals or chargeable gains).

If not all of the conditions are met, you may still get partial relief under certain circumstances and you will have to complete the Capital Gains pages of your tax return. Your local **abacus** accountant will be able to do this for you.

What if I make a loss on the disposal instead of a gain?

If you make a loss on the disposal of your home and you would have qualified for residence relief if you had made a gain, unfortunately your loss will not be an allowable loss and you will not be able to offset it against any gains you have made.

Several Important Basic Points

Dwelling-house

Your dwelling-house may be a single building, for example, a detached house. It may be more than one building, for example, a house with a detached garage. Or it may be part of a building, for example, a flat. If

your home includes more than one building, for example, if it has several outbuildings, any relief available for your dwelling-house might not extend to all of the outbuildings.

The issue of outbuildings can get very complex. It will be best to speak to your local **abacus** accountant about this issue.

Only or main residence

If you live in, as your home, two or more houses, you can only have one, main residence at a time for private residence relief.

You can nominate which residence is to be treated as your main residence for any period. Your nomination must be made within two years of the date you first have a particular combination of residences. If there is a change in your combination of residences, a new two-year period begins. If you don't make a nomination, the question of which is your main residence will be determined on the facts.

Period of Ownership

Your period of ownership begins on the date you first acquired the dwelling-house, or on 31st March 1982 if that is later. It ends when you dispose of it.

The final 36 months of your period of ownership always qualify for relief, regardless of how you use the property in that time, as long as the dwelling-house has been your only or main residence at some point.

Period of absence

Some periods when you were not using the house as you're only or main residence will still qualify for relief. These should be treated as periods of actual occupation when you are calculating the fraction of any gain that qualifies for relief.

If you do not occupy your new home when you acquire it because you are not able to sell your old home, or you need to carry out refurbishment, you can treat the first 12 months as if the house had been your only or main residence in that period.

In exceptional circumstances, you may be allowed to treat a longer period (up to a total of 2 years) in the same way.

The same treatment applies when you buy land to build a house on.

Permitted area

The exemption includes land that is for 'occupation and enjoyment with the residence as its garden or grounds up to the permitted area'. The permitted area is half a hectare including the site of the property which equates to about 1.25 acres. Larger gardens and grounds may qualify but only if they are appropriate to the size and character of the property and are required for the reasonable enjoyment of it. This can be a difficult test. In a court case the exemption was not given on land of 7.5 hectares attaching to a property. The owner said he needed that land to enjoy the property because he was keen on horses and riding. The courts decided that the owner's subjective liking for horses was irrelevant and, applying an objective test, the land was not needed for the reasonable enjoyment of the property.

Selling Land Separately

What if you want to sell off some of your garden for someone else to build on? Will the exemption apply? In simple terms it will if you continue to own the property with the rest of the garden and the total original area was within the half a hectare limit.

Where the total area exceeds half a hectare and some is sold then you would have to show that the part sold was needed for the reasonable enjoyment of the property and this can clearly be difficult if you were prepared to sell it off.

What if on the other hand you sell your house and part of the garden and then at a later date sell the rest of the garden off separately, say for development? Then you will not get the benefit of the exemption on the second sale because the land is no longer part of your main residence at the point of sale.

Case study

Wayne, a 40% taxpayer, acquired a home in 2000 in which he lived full-time. In 2004 he bought a second home and divided his time between the two properties.

- either property may qualify for the exemption as Wayne spends time at each, i.e. they both count as 'residences'
- choosing which property should benefit is not always easy since it depends on which is the more likely to be sold and which is the more likely to show a significant gain. Some crystal ball gazing may be needed!
- the choice of property needs to be made by election to HMRC within two years of acquiring the second home. Missing this time limit means that HMRC will decide on any future sale which property was, as a question of fact, the main residence.

Wayne elects for the second home to be treated as his main residence for CGT purposes. In 2010 he sells both properties realising a gain of £100,000 on the first property and £150,000 on the second property.

The gain on the second property is CGT-free because of the election.

Part of the gain on the first property is exempt.

Namely that relating to:

- the four years before the second property was acquired (when the first property was the only residence) and
- the last three years of ownership which will always qualify providing the property has been the main residence at some time.

In other words out of the ten years of ownership, a total of seven qualify for the exemption. Therefore 3/10ths of the gain, i.e. £30,000, will be taxable. Not bad on total gains of £250,000.

Without the election, and the first property being treated as the main residence throughout, Wayne would have found the gain on the first property wholly exempt and the gain on the second property wholly chargeable. Failure to make an election can be an expensive mistake.

Business Use

More and more people work from home these days. Does working from home affect the CGT exemption on sale? The answer is simple – it may do!

Rather more helpfully the basic rule is that the exemption will be denied to the extent that part of your home is used exclusively for business purposes. In many cases of course the business use is not exclusive, your office doubling as a spare bedroom for guests for example, in which case there is not a problem.

Where there is exclusive business use then part of the gain on sale will be chargeable rather than exempt. However, it may well be that you plan to acquire a further property, also with part for business use, in which case the business use element of the gain can be deferred by 'rolling over' the gain against the cost of the new property.

Residential Letting

A further relief is given if your main residence has been let as residential accommodation during the period of ownership. The case study below best demonstrates the operation of this.

The letting exemption can be very valuable but is only available on a property that has been your main residence. It is not available on a 'buy-to-let' property in which you never live.

Case study

Frank bought a property in 1994 and lived in it as his main residence for eight years until 2002. Then he bought a second property which immediately became his main residence and the first property was let from then until its sale in 2009.

The gain on sale of the first property amounted to £210,000.

Exempt as main residence:

- 1994 – 2002 8 years (actual occupation)
- 2006 – 2009 3 years (last 3 years of ownership)
- Total Ownership 11 years
- Gain exempt: $11/15 \times £210,000 = £154,000$.

The balance of the gain (£56,000) relates to the period from 2002 to 2006. The property was let during this period and had previously been Frank's main residence so that the letting exemption is available. Although the gain relating to this period amounts to £56,000 the exemption for letting is limited to a maximum of £40,000.

Overall £194,000 of Frank's gain is exempt leaving £16,000 chargeable to tax and this is subject to the annual exemption so that any CGT bill will be minimal.

Trusts

The exemption is also available where a property is owned by trustees and occupied by one of the beneficiaries as their main residence.

Until December 2003 it was possible to transfer a property you owned but which was not eligible for CGT main residence relief into a trust for say the benefit of your adult children. Any gain could be deferred using the gift relief provisions. One of your children could then live in the property as their main residence and on sale the exemption would have covered the entire gain.

HMRC decided that this technique was being used as a mechanism to avoid CGT and so blocked the possibility of combining gift relief with the main residence exemption in these circumstances.

How abacus can help

The main residence exemption continues to be one of the most valuable CGT reliefs. However, the operation of the relief is neither straightforward nor its availability a foregone conclusion. Advance planning can help enormously in identifying potential issues and maximising the available relief. **abacus** can help with this. Please contact your local **abacus** accountant if you have any questions arising from this factsheet or would like specific advice relevant to your personal circumstances.

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