
Capital Gains Tax and Stamp Duty Land Tax

Capital Gains tax is a tax on the increased value of assets that have been sold, based on the day it was bought and then sold. The Act governing Capital gains tax is Chargeable Gains Act 1992. Stamp Duty Land Tax is a tax imposed on a property owner when their property is over a certain amount of money. In this essay I will shed a light on capital gains tax and Stamp Duty Land Tax and what implications these taxes will have on Trisha.

1965 was the year Capital gains tax was first introduced. And it was made on the disposal of assets. Thus the tax is applied on the money difference from when the asset was first bought and then sold. It looks at the value of the asset in the market when it first bought then when it was sold. The expenditure that has increased the asset's value may be deducted. The person who is responsible for paying Capital Gains Tax (CGT) is the person who sold their asset. However, it is important to note that certain things are exempt from being taxed such as the main residence (in this case; the Elm cottage which is Trisha's main property); cars and motorcycles and any asset that is acquired before September 1985. The key legislation regarding Capital Gains Tax is available on the government website who provide us an example of the way Capital Gains Tax is calculated; "You bought a painting for £5,000 and sold it later for £25,000. This means you made a gain of £20,000 (£25,000 minus £5,000)" The government also gives various ways in which a property can be disposed which would mean the taxpayer would have to pay Capital Gains Tax/ this includes; gifting the asset to someone, or transferring it, swapping it for something else and getting some sort compensation for it.

Private residence relief is one of the ways in which a property owner can avoid paying Capital Gains Tax. This applies if you owned one home as a first time home owner and you spent most of the time of your ownership living there. In this case Trisha has not been living in the Elm cottage continuously as it was not her main residence. "Private residence relief allows most homeowners to sell their homes without being liable for any capital gains tax on property profits. Private residence relief may also help you reduce your capital gains tax liabilities when selling a second home or selling off part of your garden" it is important to note that there are several conditions for full entitlement of Private residence relief; "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 or because you've been living in job-related accommodation, during your period of ownership. 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" However, if not all these conditions are met a partial relief may still be granted. The courts emphasised the term 'residence' when addressing Private Residence Relief. They suggested that the term can

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include parts of the main building for instance the garden. As mentioned previously, there needs to be a degree of being an occupant of the property that might be subjected to Capital Gains Tax. Occupying in this case requires a certain level of permanence. For instance, in Trisha's case since she has only lived in Elm cottage for 2 years then rented it. She will be exempt from Private Residence relief. But she might be entitled to letting relief. However, Capital Gains Tax will apply to the property she plans on selling with the money she gets from the Elm cottage. As it will be a let property.

On the other hand, according to the most recent government publication in regards to Capital Gains Tax; letting relief is applicable where a taxpayer lets the whole of their primary residence/ former primary residence or even a part of it as a residential accommodation. Lettings Relief first came into act in 1980's due to the government encouraging people to let extra or unused rooms in their property without losing Primary Residence Relief. For instance; if "Susan purchased a house for £200,000 in 1998, selling it for £350,000 in 2018. Throughout that time she lived in the house as her only residence but let out two spare rooms amounting to 25% of the property to tenants who had exclusive use of their rooms (and their rooms only). PRR would not wholly relieve any subsequent CGT charge on the property. Lettings relief would apply as follows: Susan made a net gain of £150,000 when she sold the property and is entitled to claim PRR on 75% of the property which covers £112,500 of the gain. That part of the gain attributable to the letting and not qualifying for PRR is £37,500. As lettings relief is due on the lesser of: • The amount of PRR (£112,500), or • £40,000, or • The gain attributable to the letting (£37,500), the amount of lettings relief due is £37,500 and the whole gain is exempt from CGT". For Trisha to avoid paying the full amount of Capital Gains Tax through Letting Relief, she would need to live in The Elm Cottage for the minimum of two years before letting the property in which this case she fulfils the requirement thus Trisha will be eligible for Letting Relief.

Moreover, the other properties Trisha plans on buying she might be subjected to Stamp Duty Land Tax if it is over a certain amount. This tax can be imposed on both freeholds and leaseholds. Since Trisha is planning on purchasing flats; they are typically Leaseholds as you acquire it for a certain period of time from the freeholder; who is the person that outrightly owns the land the flats are on. "The current SDLT threshold is £125,000 for residential properties and £150,000 for non-residential land and properties" Stamp Duty Land Tax has to be paid within 14 days of purchasing the land. Having a representation such a solicitor or a conveyancer makes this process easier as they will carry this process on behalf of Trisha. As Trisha is not a first time buyer of a property she will not be entitled to having a relief when it comes Stamp Duty Land Tax. However if the lease of the flats Trisha plans on purchasing is less than 7 years and the amount it is purchased for is less than the amount specified for non- residential or residential Stamp Duty Land Tax threshold. The current amount is £125,000. The calculation of Stamp Duty Land Tax is based on the type of the existing lease (the assumption of the property being

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a leasehold is based on the nature of the typical purchase of flats) Thus a leasehold could either be assigned which already exists or it could be a new lease.

To summarise, Trisha will not be able to apply for Private Residence Relief as she has let the property and has not continuously lived in it. However she will need to apply for Letting Relief which she is eligible for. Letting Relief will not exempt Trisha from paying Capital Gains Tax; the purpose of Letting Relief is to reduce the amount of Capital Gains Tax she is liable of paying. "The relief deems that the qualifying gain is not a chargeable gain to the extent that is the lowest of: the amount of Private Residence Relief already calculated, or £40,000, or the amount of the chargeable gain relating to the letting" . Trisha will have to pay tax on the second property she is planning on letting if she decided to sell it after the price goes up. This is due to Trisha not planning on living in the second property and only using it for letting purposes. Ways for Trisha to avoid liability of not paying Capital Gains Tax and Stamp Duty Tax is to mention all her income and assets on her tax return yearly assessments. Consulting an accountant and a lawyer when purchasing homes would also be helpful to her as it will make sure she is aware of any additional costs and taxes she might be subjected to.

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