

Rebasing - assets held at 31 March 1982

This Help Sheet explains how to calculate your capital gain or loss when you dispose of an asset which you held on 31 March 1982. But it is only an introduction. If you are in any doubt about your circumstances you should ask your tax adviser. We will also be pleased to help you and provide any forms you may require. You can also consult our Capital Gains Manual, which explains the rules in more detail, at www.hmrc.gov.uk

This Help Sheet will help you fill in the *Capital Gains Summary* pages of your Tax Return.

What is rebasing?

Capital Gains Tax was introduced in 1965 and the rules were designed so that the tax charge was effectively limited to the gain accruing from 6 April 1965 to the date of disposal. In 1988 new rules were introduced to move the base date forward to 31 March 1982.

The rebasing provisions apply where you have made a disposal:

- on or after 6 April 1988
- of an asset which you held on 31 March 1982.

The object is that only gains or losses accruing since 31 March 1982 will be brought into account.

Basic rules of rebasing

Two calculations

The rebasing legislation requires two calculations of the gain or loss accruing on the disposal to be made where:

- no election (see page 3) has been made, and
- the disposal is not a specified no gain/no loss transfer (so that the benefit of rebasing is deferred). There is more about this on page 6.

The first calculation is by reference to a deemed acquisition of the asset as at 31 March 1982 (the rebased gain or loss); the second must accord with the old rules, that is, without rebasing.

Indexation allowance

In calculating both the rebased gain and the gain on the old rules, indexation allowance is given by reference to the higher of:

- the 31 March 1982 market value, or
- the relevant allowable expenditure (cost of acquisition and other allowable costs) incurred up to 31 March 1982.

However, indexation allowance cannot be used to create or increase a loss.

If there is a gain after deducting costs from the net sale proceeds but a loss after deducting costs and indexation allowance, you are treated as making neither a gain nor a loss.

In the computation of chargeable gains accruing on or after 6 April 1998 indexation allowance has been frozen. This means that indexation allowance will be given for periods up to April 1998, but not after then.

Kink test

The rebased gain or loss is compared with the gain or loss under the old rules.

The gain or loss to be compared is:

- after indexation allowance (restricted if necessary), but
- before any reliefs like private residence relief or incorporation relief.

The comparison is known as the 'kink test' and the rules are:

- if both calculations result in a gain, select the smaller gain
- if both calculations result in a loss, select the smaller loss
- if one calculation results in a gain and the other results in a loss, the disposal is deemed to be at no gain/no loss
- if the calculation under the old rules results in no actual gain or loss, or the old rules deem there to be neither a gain nor a loss, then the disposal is deemed to be at no gain/no loss whatever the value of the rebased gain or loss.

This gives the gain or loss which, subject to any further reliefs or exemptions, is the chargeable gain or allowable loss.

Example 1 - Rebased gain exceeds the gain under the old rules

Asset cost £8,000 on 1 March 1980. On 31 March 1982 market value was £7,000. Asset sold (at arm's length) for £35,000 on 30 June 2007.

Rebased gain (new rules)

Disposal proceeds	£35,000
minus cost (value at 31 March 1982)	<u>£7,000</u>
Unindexed gain	£28,000
minus indexation $£8,000 \times 1.047^*$	<u>£8,376</u>
Gain	£19,624

Gain on old rules

Disposal proceeds	£35,000
minus cost (1 March 1980)	<u>£8,000</u>
Unindexed gain	£27,000
minus indexation $£8,000 \times 1.047^*$	<u>£8,376</u>
Gain	£18,624

Chargeable gain (the smaller) **£18,624**

* Indexation is based on the higher of relevant allowable expenditure before 31 March 1982 and the 31 March 1982 value, so that in both calculations indexation is based on the actual cost of £8,000. Indexation has been calculated to April 1998.

Example 2 - Rebased loss exceeds the loss under the old rules

Asset cost £14,000 on 6 April 1974. On 31 March 1982 market value was £20,000. Asset sold (at arm's length) for £10,000 on 31 July 2007.

Rebased loss

Disposal proceeds	£10,000
minus cost (value at 31 March 1982)	<u>£20,000</u>
Unindexed loss	£10,000
minus indexation*	<u>zero</u>
Loss	£10,000

Loss under old rules

Disposal proceeds	£10,000
minus cost	<u>£14,000</u>
Unindexed loss	£4,000
minus indexation*	<u>zero</u>
Loss	£4,000
Allowable loss (the smaller)	£4,000

* Indexation allowance is restricted to zero in both calculations as indexation cannot increase a loss.

Example 3 - No actual gain or loss under old rules

Asset cost £1,424 on 1 May 1967. On 31 March 1982 market value was £8,000. Asset sold (at arm's length) for £9,800 on 1 August 2007.

Gain under old rules

Disposal proceeds	£9,800
minus cost	<u>£1,424</u>
Unindexed gain	£8,376
minus indexation $£8,000 \times 1.047^*$	<u>£8,376</u>
	zero

As neither a gain nor a loss arises under the old rules, neither a gain nor a loss is deemed to arise following rebasing.

* Indexation is based on the higher of relevant allowable expenditure before 31 March 1982 and the 31 March 1982 value, so that indexation is based on the 31 March 1982 value of £8,000.

Indexation has been calculated to April 1998.

Rebasing elections

Where you dispose of an asset on or after 6 April 1988 that you held on 31 March 1982, you can elect to have gains and losses on all assets covered by the election calculated by reference to 31 March 1982 values alone, that is without the restrictions imposed by the kink test.

But:

- there is a time limit for making this election
- the election cannot be withdrawn
- indexation allowance is given by reference to the value of the asset at 31 March 1982 (and not by reference to the relevant allowable expenditure incurred up to 31 March 1982, even if that is greater)
- there are special rules for spouses and for civil partners
- certain assets are excluded from the election.

Example 4 - Rebasing election in force

Asset cost £8,000 on 1 March 1980. On 31 March 1982 market value was £7,000. Asset sold (at arm's length) for £35,000 on 30 June 2007. Rebasing election made.

Rebased gain

Disposal proceeds	£35,000
minus cost (value at 31 March 1982)	<u>£7,000</u>
Unindexed gain	£28,000
minus indexation £7,000 x 1.047	<u>£7,329</u>
Gain	£20,671

These are the same dates and amounts as in Example 1.

The difference is that a rebasing election has been made.

No comparison is made with the gain made by reference to the original cost of the asset. The gain is the rebased gain £20,671.

Notice of election

An election must be made by notice in writing to us:

- within 12 months from 31 January in the tax year following that in which the first relevant disposal is made. For example, if the first relevant disposal is made in 2007-08, the latest date for making an election is 31 January 2010, or
- at such later time as the Commissioners for HM Revenue & Customs may allow.

An election cannot be withdrawn. There is no special form for the election.

If, before the expiry of the time limit, you make a Return containing the *Capital Gains Summary* pages you should include the election in that Return.

First relevant disposal

The first relevant disposal is the first disposal on or after 6 April 1988 of:

- an asset held at 31 March 1982, or
- an asset treated as having been held at 31 March 1982.

In most cases it is the first disposal to which the 1982 rebasing rules apply.

Three kinds of disposal can be disregarded in deciding what counts as a first relevant disposal from which the time limit for making an election is counted.

- 1 Disposals on which the gain would not be a chargeable gain by virtue of a particular provision in the Taxes Acts. Some common examples are:
 - private cars
 - chattels worth less than the chattel exemption
 - foreign currency acquired to meet personal or family expenditure abroad
 - betting and lottery winnings.

- 2 Disposals which in practice do not give rise to a chargeable gain or allowable loss. The main examples are:
- withdrawals from building society accounts
 - the disposal of an individual's private residence where the whole of the gain would qualify for relief.
- 3 Disposals of assets excluded from a rebasing election. These are listed on page 6.

Husband, wife and civil partners

There are special rules for elections where assets have been transferred between spouses or between civil partners before a disposal.

When an asset is transferred on or after 6 April 1988 between spouses or civil partners and the transfer gives no gain/no loss, any election made by the transferee will be ignored. The asset will be covered by the election or non-election of the transferor.

Where there is a series of such transfers the asset will be covered by the election or non-election made by:

- the last person by whom the asset was acquired after 5 April 1988 (otherwise than by a no gain/no loss transfer between spouses or between civil partners), or
- if there is no such person, the person who held the asset on 5 April 1988.

Elections by subsequent transferees are ignored.

Example 5 – A transfer between husband and wife

Mr Ash bought an asset costing £14,000 on 6 April 1974. 31 March 1982 market value £20,000. Asset sold (at arm's length) for £10,000 on 31 July 2007.

The dates and amounts are the same as in Example 2, therefore the loss is to be restricted by the kink test to £4,000.

Mr Ash has not made a rebasing election and does not intend to do so.

If Mr Ash decided to transfer the asset to Mrs Ash before finalising the sale, and if Mrs Ash had already made, or could make, a rebasing election, she would realise the rebased loss of £10,000 on sale.

The special rules prevent this happening. Any election made by the transferee, Mrs Ash, will not apply. Only an election made by the transferor, Mr Ash, is recognised in these circumstances.

Therefore, in this case, an election made by Mrs Ash is ignored and the allowable loss is restricted to £4,000, the same as if Mr Ash had sold the asset himself.

In what capacity is election made?

You may be the taxpayer in several different capacities. For instance, in addition to your own personal affairs you may also be a trustee or a personal representative of a deceased person or a partner. An election you make in one of these capacities does not cover disposals made by you in another capacity.

For example, an election you make as an individual will not cover your interest in assets held as trustee or partner.

A separate election is required in respect of each settlement or partnership, therefore there will be a separate time limit for making an election for each holding of assets held by you in different capacities.

If you do hold assets in different capacities, you should indicate at the time you make an election in what capacity you are making it.

Excluded assets

An election does not apply to the disposal of the following assets:

- plant and machinery in respect of which capital allowances have, or could have, been given to the person making the disposal
- oil licences
- shares which, on 31 March 1982, were unquoted and derived the greater part of their value directly or indirectly from oil exploration assets situated in the UK or on the continental shelf (for disposals on or after 22 January 1990).

Interests in such assets are also excluded from the election.

Who should make the election: special cases

In some cases you may be personally liable to Capital Gains Tax even though you do not personally own or dispose of an asset. For example:

- gains made by certain non-resident companies
- gains made by certain non-resident settlements of which you are a beneficiary
- gains made by certain non-resident settlements of which you are a settlor
- gains made by certain UK resident settlements.

In these circumstances, the person who must make an election, if one is to be made, is the person making the actual disposal: the non-resident company, the trustees of the non-resident settlement or the trustees of the resident settlement, as appropriate.

Special rebasing rules

There are a number of rules to deal with particular situations which may arise. These are briefly described below. If you need further information, ask us.

Specified no gain/no loss disposals

Special rules apply to specified no gain/no loss disposals. These allow the transferee to benefit from rebasing. The most common specified no gain/no loss transfers are the transfers between spouses or between civil partners (see page 5).

Subject to certain conditions the transferee is deemed, for the purposes of the rebasing provisions only, to have held the asset on 31 March 1982.

Assets derived from other assets

Rebasing may apply on the disposal of an asset where the value of that asset is derived from another asset you owned on 31 March 1982. For example, if you:

- held a leasehold interest in property on 31 March 1982
- subsequently acquired the freehold reversion, and
- sold the unencumbered freehold interest on or after 6 April 1988.

Rebasing following part-disposal

Where there has been a part-disposal of an asset:

- after 31 March 1982, and
- before 6 April 1988

the allowable expenditure remaining after the part-disposal has to be recalculated by reference to the 31 March 1982 value rather than cost.

Deferred charges on gains before 31 March 1982

There are a number of provisions, apart from the no gain/no loss provisions, under which tax on capital gains on a disposal can be deferred until some later time. The most common ones are the hold-over relief provisions for gifts and roll-over relief for the replacement of business assets.

Where, as a result of gains having been rolled over or held over under certain specified provisions, the cost of an asset acquired after 31 March 1982 has been treated as reduced, a claim may be made when that asset is disposed of if the reduction in its cost is attributable, directly or indirectly, in whole or in part, to the disposal before 6 April 1988 of an asset which had been acquired before 31 March 1982. The effect of the claim is to reduce the deferred gain by half, thereby increasing the allowable expenditure. A claim has to be made within 12 months from 31 January in the tax year following that in which the disposal occurred. For example, if the disposal is in 2007-08, the claim must be made by 31 January 2010.

Relief for certain postponed charges

There are a number of provisions, apart from the no gain/no loss provisions, under which a gain can be postponed and treated as accruing at a later date. The most common are share reorganisations or company take-overs involving the acquisition of Qualifying Corporate Bonds.

The amount of the gain accruing is to be halved where:

- the charging of a gain has been postponed under certain specified provisions, and
- the gain accrues on the occurrence of an event, and
- the gain is attributable, directly or indirectly, in whole or in part, to the disposal before 6 April 1988 of an asset acquired before 31 March 1982, subject to a claim being made.

These notes are for guidance only, and reflect the position at the time of writing. They do not affect any rights of appeal.