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Capital Gains Tax

A capital gain arises when certain capital (or 'chargeable') assets are sold at a profit. The gain is the sale proceeds (net of selling costs) less the purchase price (including acquisition costs).

What are the main features of the current system?

- Capital gains tax (CGT) is charged at the rate of 10% on gains (including any held over gains coming into charge) where net total taxable gains and income is below the income tax basic rate band threshold. Gains or any parts of gains above the basic rate band are charged at 20% with a few exceptions which are considered in the 'Exceptions to the CGT rates section' below.
- Business asset disposal relief (formerly known as Entrepreneurs' Relief) or Investors' Relief (IR) may be available on certain business disposals.

Business asset disposal relief (BADR)

BADR may be available for certain business disposals and has the effect of charging the first £1 million of gains qualifying for the relief at an effective rate of 10%.

The relief is available to individuals on the disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership
- shares in an individual's 'personal company'
- assets used by a business or a company which has ceased within the last three years.

Where an individual makes a qualifying business disposal, relief may also be available on an 'associated disposal'. An 'associated disposal' is a disposal of an asset:

- used in a qualifying company or group of companies of the individual or
- used in a partnership, where the individual is a partner.

Restrictions on obtaining the relief on an 'associated disposal' are likely to apply in certain specific situations. This includes the common situation where a property is in personal ownership but is used in an unquoted company or partnership trade in return for a rent. Under BADR the availability of relief is restricted where rent is paid.

Ownership period of two years

Ownership conditions apply throughout the period up to the date of disposal. For disposals on or after 6 April 2019, the necessary qualifying period of ownership is two years.

The 5% rule for company shareholders

To qualify for BADR, the company needs to be an individual's 'personal company' where the individual must:

- be a company employee or office holder
- hold at least 5% of the company's ordinary share capital and
- be able to exercise at least 5% of the voting rights.

For disposals on or after 29 October 2018, they must also satisfy one of the following tests:

- a distribution test – an individual is entitled to at least 5% of the company's profit available for distribution to equity holders and 5% of the assets available for distribution to equity holders in a winding up; or
- a proceeds test – an individual is entitled to at least 5% of the proceeds in the event of a disposal of the whole of the ordinary share capital of the company.

Dilution

From 6 April 2019 those shareholders whose holding in their company is reduced below the normal 5% qualifying level as a result of raising funds for commercial purposes by means of an issue of new shares may still obtain BADR. An election can be made which allows shareholders to crystallise a gain on their shares before the dilution occurs. This would be achieved by treating the shareholding as having been sold and immediately re-purchased at the prevailing market value. The election will have to be made in their tax return for the year in which the dilution takes place. The shareholder may also elect to defer the accrued gain until their shares are actually disposed of.

Careful planning will be required with BADR but if you would like to discuss BADR in detail and how it might affect your business, please do get in touch.

Investors' Relief (IR)

IR is aimed at external investors (other than certain employees or officers of the company) in unlisted trading companies. To qualify for the 10% CGT rate under 'investors' relief' the following conditions need to be met:

- shares must be newly issued and subscribed for by the individual for new consideration
- be in an unlisted trading company, or an unlisted holding company of a trading group
- have been issued by the company on or after 17 March 2016 and have been held for a period of three years from 6 April 2016
- have been held continuously for a period of three years before disposal.

An individual's qualifying gains for IR are subject to a lifetime cap of £10 million.

Share identification rules

All shares of the same class in the same company are treated as forming a single asset, regardless of when they were originally acquired. However, 'same day' transactions are matched and there are '30 day' anti-avoidance rules.

Example

On 15 April 2023 Jeff sold 2000 shares in A plc from his holding of 4,000 shares which he had acquired as follows:

1,000 in January 1990
1,500 in March 2001
1,500 in July 2005

Due to significant stock market changes, he decided to purchase 500 shares on 30 April 2023 in the same company.

The disposal of 2,000 shares will be matched firstly with the later transaction of 500 shares as it is within the following 30 days and then with 1,500/4,000 (1,000+1,500+1,500) of the single asset pool on an average cost basis.

CGT annual exemption

Every tax year each individual is allowed to make gains up to the annual exemption without paying any CGT. The annual exemption for 2023/24 is £6,000 (£12,300 in 2022/23). Consideration should be given to ensuring both spouses/civil partners utilise this facility.

Exceptions to the CGT rates

The rates of CGT are generally 10% and 20%. However 18% and 28% rates apply for carried interest and for chargeable gains on residential property that does not qualify for private residence relief.

Other more complex areas

Capital gains can arise in many other situations. Some of these, such as gains on Enterprise Investment Scheme and Venture Capital Trust shares, and deferred gains on share for share or share for loan note exchanges, can be complex. Please talk to us before making any decisions.

Other reliefs which you may be entitled to

And finally, many existing reliefs continue to be available, such as:

- private residence relief;
- business asset rollover relief, which enables the gain on a business asset to be deferred until a point in the future;
- business asset gift relief, which allows the gain on business assets that are given away to be held over until the assets are disposed of by the donee; and
- any unused allowable losses from previous years, which can be brought forward in order to reduce any gains.

How we can help

Careful planning of capital asset disposals is essential. We would be happy to discuss the options with you. Please contact us if you would like further advice.

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