

Driving Facts

TAX NEWS

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Capital Gains Tax – Protecting your Position

You are probably now aware of the proposed changes to Capital Gains Tax but do you know what you are going to do about them? It is impossible for us to make generalisations concerning the best course of action, as the facts of each case must be analysed individually, however, there are certain strategies that can be implemented to “bank” some of the lost relief.

The Changes

Firstly, let us remind you of the main points of the proposals. From 6 April 2008 indexation allowance and Taper Relief for individuals will be abolished and Capital Gains will be subject to a flat tax rate of 18%. There are ongoing discussions regarding a form of retirement relief which will exempt part of any gain from tax, but even with this, these changes can mean that taxpayers owning assets with a large amount of accrued indexation and which qualify for maximum Business Asset Taper Relief (BATR), will see a substantial increase in the amount of tax they will pay on disposal.

The main way in which accrued relief can be protected is by forcing a disposal now. This can in itself have some disadvantages, as it can accelerate a tax payment in the hope that the overall tax position on sale to a third party is improved.

Disposals to Trusts

If we look at Taper Relief to begin with, a disposal of assets could, for example, be made to a family trust now for market value. The gain on sale would be subject to tax at 10% payable on 31 January 2009. This is obviously a cashflow issue, but if the sale to a third party takes place before this tax is payable, it may not be such a problem.

In normal circumstances, a rollover claim could be made which would delay the crystallisation of the CGT charge, but this would work against the purpose of the transaction which is the utilisation of BATR. This is because it is the gain after indexation but before Taper Relief which is rolled over and deducted from the allowable cost of the replacement asset. A disposal after April 2008 of the replacement asset, effectively means that the tax charge on the original asset is increased from 10% to 18%. A taxpayer does have up until the 31 January falling five years after the tax year of disposal to make a decision however; if it is evident that the replacement asset is not going to be sold for a while, it is still possible to make a claim within this timescale and receive a repayment of tax already paid.

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There are other cost considerations involved in making a disposal to a trust now. Firstly, it is possible that a Stamp Duty or Stamp Duty Land Tax (SDLT) charge will arise depending on the type of property being sold. Stamp Duty will only be charged at 0.5% but SDLT may be charged at a rate as high as 4%. Legal fees may also be incurred. If the transfer is made by way of a gift, it is possible to avoid Stamp Duty or SDLT, but the gift may be classed as a chargeable lifetime transfer for Inheritance Tax purposes and subject to an immediate IHT charge. In addition, changes to trust taxation mean that a tax charge arises on the value of the assets in the trust every 10 years.

Intra-Spouse Transfers

So far we have concentrated on protecting your Taper Relief position, but it is also possible to take steps which will protect accrued indexation in isolation. Consideration could be given to a disposal to your spouse, as intra-spouse transactions take place on a no gain/no loss basis. The acquiring spouse is deemed to acquire the asset for the allowable cost of the transferor plus any indexation. The benefit of this indexation is therefore still felt at the time of the disposal to a third party.

In conclusion, if you appear to be one of the losers under the proposed amendments to the CGT legislation, steps can be taken to protect your position if action is taken now.

Private Use of Company Vans

As you will be aware, private use of company vans gives rise to a benefit in kind charge for income tax purposes. Changes to tax legislation however, now mean that there is no benefit if the van is only used for home to work travel. This is somewhat of an anomaly in that whilst in most cases home to work travel is regarded as private; in this particular instance such mileage is given the status of business mileage. Very occasional private use is ignored for these purposes, for example, calling at the newsagents on the way home, or a trip to the tip a couple of times a year.

HMRC do however expect the employer to ensure that the vehicle is not being used for unauthorised private use and would want to see adequate records to prove no such mileage is undertaken. This could involve keeping mileage records, ensuring that you have a signed van usage agreement, or having the use of the van included in the contract of employment.

Stamp Duty Land Tax (SDLT) – The Reliefs

In the last edition of Tax News we introduced the operation of the Stamp Duty Land Tax (SDLT) system. The aim of this article is to set out some of the basic reliefs available from SDLT, where transfers are made between fellow group companies, or in the situation where a company or group is being restructured or reorganised as part of a scheme of reconstruction.

Group Relief

Assets are often moved around between members of the same group of companies. The purpose of group relief is to facilitate these movements by preventing an SDLT charge arising.

A land transaction qualifies for group relief if the vendor and the purchaser are members of the same group at the time of the transaction. One company can be a 75% subsidiary of the other or both can be 75% subsidiaries of a third company. This is broadly in line with the Group Relief requirements that apply to corporation tax.

Relief is not available if, at the date of the transaction, arrangements are in place where someone could obtain control of the purchaser, but not the vendor. The relief is also withdrawn if the purchaser and vendor cease to be members of the same group within three years, or there are arrangements to that effect.

Reconstruction Relief

There is complete exemption from SDLT on a transfer of land where one company acquires all or part of the undertaking of another company under a scheme of reconstruction, subject to the following conditions:

- The consideration must consist wholly or partly of the issue of non-redeemable shares in the acquiring company to all of the shareholders of the target company and should include nothing else, save the assumption or discharge by the acquiring company of the target company's liabilities, consideration in the form of cash is prohibited; and
- Each shareholder of the target company must be a shareholder of the acquiring company, and vice versa, and the percentage shareholdings must be identical; and
- The Scheme must be affected for bona fide commercial reasons and not for tax avoidance.

Acquisition Relief

In situations where it is not possible to satisfy all the conditions of reconstruction relief, it may be possible to benefit from acquisition relief, which has the effect of

reducing the SDLT charge to 0.5% of the value of the consideration. The conditions are similar to those of reconstruction relief, but differ in the following areas:

- The issue of non-redeemable shares does not have to be to all shareholders in the same proportion, but can simply be to some of the shareholders of the target company. This means that the relief can apply to situations where companies are partitioned between different groups of shareholders, which affords far more flexibility when restructuring companies or groups;
- Part of the consideration may consist of cash, the limit being 10% of the nominal value of the shares issued;
- The undertaking acquired by the acquiring company must have as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests.

Acquisition relief is therefore not available in certain situations where the trade and properties are being split between the shareholders.

Both reconstruction and acquisition relief are withdrawn if there is a change of control of the acquiring company within three years from the effective date of the transaction, and the acquiring company holds a chargeable interest which was previously the subject of the claim.

Without these reliefs, transferring land around a group, or including land as part of a commercially driven reconstruction, could be prohibitive. It is therefore essential to obtain advice on SDLT issues before such transactions take place. In addition, if a sale of shares is anticipated in a company that holds land and buildings, it is important to review transactions involving the land in the previous three years to avoid unearthing unexpected charges in the shape of an SDLT clawback.

National Minimum Wage

With effect from 1 October 2007 the National Minimum Wage increases to the following rates but with 16 and 17 year old apprentices being exempt from the young workers rate:

Age of Worker	Current Rate	New rate
22+	£5.35	£5.52
18-21	£4.45	£4.60
16-17	£3.30	£3.40

More information is available at www.dti.gov.uk/er/nmw or on 0845 6000 678.

If you have any queries on any of the subjects covered in this newsletter or on any tax or company secretarial matters please email us at taxteam@trevorjones.uk.com or call our helpline on 0161 475 4700.

These articles are of a general nature and specific advice should be obtained before they are acted upon.