



CURRENT TAX ISSUES

MAY 2010



THE FORTHCOMING BUDGET: CAPITAL GAINS CHANGES

The headline item from the eleven point pre Budget document published by the new government last week was the change in the rate of capital gains tax for non-business assets. Certainty over the new rate and when it will take effect will come after the Emergency Budget on 22 June.

Individuals and trustees affected by this change will be looking to advance the date of sale of assets such as stocks and shares and investment properties. If a sale is already being contemplated the solution is quite simple; ensure the sale contract is exchanged before 22 June. However more taxpayers are likely to be in the position of not planning an immediate sale but wishing to avoid a much higher tax liability when the asset is eventually disposed of to a third party. There are a number of possible strategies, as follows:

Stocks and shares

- Sell and re-purchase via a CGT free ISA. However this will only be possible to a limited degree due to the restrictions placed on ISA investments.
- Sell now and re-purchase either in the name of a spouse or a trust. Alternatively allow more than 30 days to elapse between the date of sale and re-purchase, but there is a risk of the price moving adversely during this period.
- Transfer ownership of the portfolio to a “settlor interested trust” in order to create a capital gain. However for transfers in excess of the available nil rate band (£325,000 less any chargeable transfers in the last seven years) a lifetime inheritance tax charge of 20% will arise on that excess. In addition, the individual will also have to fund the capital gains tax charge out of savings, as no proceeds will arise from the disposal.

Investment properties (buy to let, second homes etc)

- The use of a settlor interested trust as outlined above may be appropriate, bearing in mind that it may be possible to reduce the value gifted for inheritance tax purposes by the amount of any loan attaching to the property,

subject to a lender agreeing to the borrowings being held in the name of a trust.

Individuals carrying out estate planning by passing assets to the next generation should put this in place before 22 June if they were intending to meet the CGT cost on the gifted assets.

As always, no two situations will be the same so please speak to the partner dealing with your affairs if you are contemplating any CGT mitigation planning.



HM REVENUE AND CUSTOMS ENQUIRIES

With the current pressure to reduce the government’s deficit, we can expect an increase in these in the next few years, The number of years the Revenue can go back if they find an adjustment depends on whether they are able to demonstrate the taxpayer has been “careless”; if so the period will be a minimum of six years or more if the carelessness was

(Continued on page 2)



(Continued from page 1)

deliberate. What is a significant change from the previous practice is that even where the taxpayer has not been “careless” they are now able to seek tax on an adjustment arising from an enquiry over a four year period. The message is clear; even an innocent mistake will prove costly in the future in tax terms.

An area where we see this as being particularly relevant is private use adjustments. For example, our approach with motor expenses has traditionally been to encourage clients to keep a mileage log for a representative month, to form the basis of the private use adjustment. Whilst we feel the Revenue would not be able to charge a taxpayer who had not kept a complete mileage log with being careless, it is now being suggested that this may be necessary to avoid a four year adjustment. Certainly the minimum should be a representative log for a month in each tax year and if it is practical, for a couple of months to show the percentage being used is reasonable.

The other area where we envisage more problems in the future are on claims for use of home as office. Claims based on a fixed weekly

amount of anything more than £3 per week will in future have to be justified in terms of the extra costs that have been incurred as a result of working from home. An alternative basis might be claim on the number of rooms in the house that are used solely or partly for business purposes, but where there is exclusive use this will result in a capital gains tax charge if the house is sold at a profit in the future. As a result of the Revenue’s new stance we will be reviewing claims for use of home as office closely and in many cases recommending that these are reduced to the £3 per week the Revenue will permit without further evidence being required.

Taxpayers will be unhappy about these changes. However, the pressure on HMRC to increase tax revenues is greater than it has been for many years, and they have raised their thresholds in terms of record keeping accordingly. When even a non-careless mistake can give rise to a four year adjustment it is going to be necessary to keep more comprehensive information to prevent this becoming a reality.

In an environment of increased enquiries, we would again urge clients who have not already done so to take out professional fee insurance to cover our costs in

dealing with such enquiries. However, with the Revenue’s moved goal posts on what can give rise to a retrospective tax adjustment it is possible underwriters will refuse cover where inadequate records have been maintained and so it is important that better mileage logs are kept as well as the more basic points such as ensuring adequate supporting documentation for all business income and expenditure.



**EDMUND CARR LLP
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If you think this information is of use to a friend or colleague, why not forward on.

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