

UK CAPITAL GAINS TAX CHANGES

The emergency UK Budget on 22 June 2010 introduced a new increased rate of UK Capital Gains Tax (CGT). This was not a surprise. However what was unexpected to many was the introduction of the increased rate from 23 June 2010, part way through the tax year. This gives rise to complexities and to some transitional provisions which we have summarised in this article.

This note relates to the tax implications for UK resident tax payers, in particular those with offshore structures.

THE RATES

For individuals, Trustees and Deceased Estates the rate of CGT on disposals from 6 April 2010 to 22 June 2010 is 18%. This is not linked with a tax-payer's rate of income tax.

The new rate of CGT for disposals on or after 23 June 2010 is increased to 28% for higher rate taxpayers, for all trusts, and estates of deceased persons.

Where gains of offshore trusts are attributed to UK beneficiaries who receive capital payments after 22 June 2010 the rate of CGT payable by them will be at rates between 18% and 44.8%. The new maximum rate 44.8% compares to the top rate of 28.8% on distributions from offshore trusts prior to 23 June 2010.

The crucial question is how the new rate will apply where CGT is assessed, as it is in some cases, with reference to the tax year as a whole. This is significant for the settlor-interested trusts and for beneficiaries of offshore trusts and participators in non-resident close companies.

THE RULES

The new CGT rate of 28% does not apply to gains accruing before 23 June 2010.

Temporary non-UK residence

An individual who makes capital gains during a period of temporary non-UK residence (for a period less than five years), on assets held at the time of becoming non-UK resident, is treated as if the gains accrued in the year of return to the UK. For a taxpayer who in such circumstances returns to the UK in the current tax year (2010/2011) the gains will be treated as accruing before 23 June 2010 and therefore at the old rate of 18 per cent. Therefore a person returning to the UK this tax year, after less than five years abroad, will not be subject to the higher rate of CGT even if they return to the UK after 22 June 2010.

UK resident non-domiciled individual remitting foreign gains

The gain is deemed to have accrued in the year it is remitted to the UK. Gains remitted this tax year (2010/2011) are deemed to have accrued on the day the gain is remitted. Gains remitted before 23 June 2010 will therefore be taxed at the 18 per cent rate.

If the UK resident non-domiciled tax-payer pays the £30,000 "remittance basis charge", then they are deemed to have used up their full lower rate allowance, i.e. the 18% CGT rate, and therefore any foreign gains actually remitted will be taxed at 28%.

UK resident and domiciled settlor of an offshore trust – settlor interested trusts

A UK resident and domiciled settlor of an offshore trust is taxed on the trust's gains for the tax year and this is treated as the highest part of the settlor's gains. Settlers should not be concerned about the rate of tax on gains realised after 23 June 2010 as they are treated as having accrued before 23 June 2010! There is therefore an opportunity for such trusts to realise gains taxable on the settlor at the old 18 per cent rate until 5 April 2011.

UK resident and domiciled beneficiaries of an offshore trust

Gains are attributed to UK beneficiaries if the beneficiary receives a capital payment matched with trustees' gains.

Both these elements are required before a matching and consequent attribution occurs. Capital gains which are matched in the current tax year (2010/2011) with a capital payment received before 23 June 2010 are to be treated as accruing before that date, even if the gains themselves are made by the trustees on or after that date. On the other hand where a capital payment is received on or after 23 June 2010 the gain will be treated as accruing then even if the capital gains with which the payment is matched were realised before 23 June 2010.

UK resident shareholders of a non-resident close company

The new rules do not mention the timing of gains attributed to a "participator" in a non-resident close company. However current legislation specifies a chargeable gain made by such a company is treated as if it had accrued to the participators in the company at the time when the chargeable gain accrues. A gain made by a non-resident close company prior to 23 June 2010 which is attributed to the participators should therefore be a pre-23 June 2010 gain, liable to CGT at 18%.

Annual Exemption

The £10,100 annual CGT exemption, and any capital losses, may be set against either pre-23 June 2010 gains or post 23 June 2010 gains, whichever is the most beneficial to the tax payer. For a higher rate tax payer it would be more tax efficient to offset the annual exemption against gains realised on or after 23 June 2010.

OTHER POINTS

To compensate for the effective increase in the rate of CGT on the disposal of a business asset, the "Entrepreneurs' Relief" lifetime limit has been increased from £2m to £5m from 23 June 2010. The effective rate of CGT is 10% on qualifying gains. This means a maximum lifetime tax saving of £900,000 now compared with £80,000 when the relief was first introduced from 6 April 2008.

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