



Increase of tax on company sales

The Chancellor's Pre-Budget Report on 9 October included a surprise proposal to introduce a new single CGT rate of 18% and at the same time abolish CGT Taper Relief (including Business Asset Taper Relief). These changes will apply to the sales of assets made on or after 6 April 2008. Business owners considering a sale can make significant savings by completing the sale before 6 April 2008. This information sheet summarises the changes and provides advice on how you can respond to the changes.

The new regime

Sales

Under the new rules announced by the Chancellor, capital gains on disposals made on or after 6 April 2008 will be liable to be taxed at a new flat rate of 18% and taper relief will not be available. The annual exempt amount, currently £9,200, will, however remain in place as will certain other reliefs. This represents a dramatic simplification of the existing system. The change will, potentially, benefit individuals selling non-business assets, eg shares in quoted companies and certain categories of real property. Under the current rules, an individual has to own a non business asset for ten years to qualify for an effective 24% tax rate; but a post-6 April 2008 sale will be taxed at the new rate of 18% regardless of how long the asset has been held. The new rate may also generate tax savings for some higher rate tax payer individuals who have held business assets for less than two complete years. However, for the majority of individuals disposing of business assets, these reforms could increase CGT costs significantly, almost doubling them in some cases. This is because under the current rules they would have an effective rate of tax of 10% on a disposal of business assets held for more than two years, whilst under the new rules they will suffer tax of 18%.

Options

Although not entirely clear from the pre-Budget Report press releases, these changes are also likely to have implications for those holding options under employee share schemes. It seems that, for disposals of shares acquired on exercise of an option after 5 April 2008, taper relief will no longer be available and instead the new 18% rate will apply. The effect of this change will depend upon the individual's particular circumstances and the nature of the option held. However, it may be of some benefit to holders of options under a CSOP because the new 18% should be available even if the shares are disposed of immediately after they are required (under the current rules, a 40% tax rate would apply to an immediate disposal by a higher rate tax payer). For options under EMI schemes however, the CGT advantage available to holders, which allows them to calculate the taper relief holding period of the shares by reference to the date of grant of the option instead of the date of exercise, is unlikely to be available under the new rules. The position will be clarified when the draft legislation on these proposals is published later this year.

Note that the changes described above do not affect the tax treatment of gains realised by companies which will continue to be subject to corporation tax in the usual way. However, the rate of corporation tax is to be reduced generally to 28% from next April.

Action

- Those thinking about the sale of their business should strongly consider the potential additional CGT liability of not completing in this tax year.
- Whilst six months appears to be a comfortable amount of time before implementation of the new regime, potential sellers who are at the very early stages of considering a sale should take action immediately by instructing advisors and corporate financiers to assist in the identification of a buyer and the key terms.
- As the new regime approaches, the additional tax charge could be exploited as a negotiating tactic by buyers.
- For those holding loan notes or redeemable preference shares who have benefited from CGT rollover relief and are entitled to business asset taper relief, it will be necessary to consider the terms and timing of redemption.
- Holders of EMI share options which have been held for more than two years may want to consider exercising the options (assuming any exercise conditions have been met) and selling the shares before 6 April 2008 in order to benefit from business asset taper relief.
- For holders of non-business assets, it may be worth considering delaying any potential sale in order to benefit from the new 18% rate (note that, if contracts are exchanged before 6 April 2008, some care will be required to ensure that the contracts do not become unconditional before that date).

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