



CAPITAL GAINS TAX STRATEGIES

There are only a few weeks left to benefit from capital gains tax (CGT) taper relief for business assets.

From 6 April 2008, only the sale of assets that amount to the whole or part of a business will be taxed at 10% – the current maximum rate for business assets that the seller has owned for at least two years.

The new relief, to be called entrepreneurs' relief, will apply to business sales by sole traders or members of partnerships, and to sales of shares in a trading company by a director or employee who holds at least 5%.

Only the first £1 million of lifetime gains will qualify. All other gains by individuals and trustees will be taxed at 18%.

Taper relief will be lost entirely. This includes taper relief on gains that were rolled over or deferred, for example, when a taxpayer has replaced a business asset with another one or reinvested a gain in shares under the enterprise investment scheme.

If you are thinking of selling a business asset, you could save tax by making the sale before 6 April 2008. A sale takes place for CGT when the parties have entered into an unconditional contract. It does not matter if completion and payment come later, which is common with sales of land and buildings. For all transactions before 6 April 2008, the CGT is payable on 31 January 2009.

Assets that qualify for business taper relief but almost certainly not for the new entrepreneurs'

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More tax for small companies

Small companies face a 1% rise in corporation tax on 1 April 2008 to 21%. This is the second of three increases announced in the 2007 Budget. A company with profits of £100,000 in the 2008 financial year will pay corporation tax of £21,000, compared with £19,000 two years ago.

A company is taxed at the small companies' rate as long as its profits for a 12-month period are not more than £300,000 and provided it has no associated companies. If there are associated companies, then the £300,000 limit is divided equally between them. Associated companies are broadly companies under common control.

Profits above this threshold could be taxed at a higher rate – 29.75% – from 1 April 2008. So it pays to minimise the number of associated companies. For example, profits of £300,000 split equally among three companies will be taxed at 21%, the same as £300,000 in one company, although such a convenient result is unlikely. However, if the profits of the three companies are £200,000, £75,000 and £25,000, then £100,000 of the first company's profits will be taxed at 29.75%, adding £8,750 to its tax bill.

The associated companies rules exist to stop people from splitting their business into several separate companies to exploit the small companies' tax rate. However, the wide definition of 'associated' can produce unexpected results. Any company controlled by your husband, wife or civil partner is associated with your company. Also

associated are companies controlled by certain other relatives where commercial links exist between the companies.

The rules also extend to business partnerships. As a partner, your company will automatically be associated with all companies owned by your fellow partners, even if there is no commercial dependence between them. This can cause problems. In a large partnership, there could be a lot of companies controlled by individual partners, leaving each company with a very small share of the £300,000 limit. It could also be difficult to obtain the information from other partners. One solution is for any companies to be owned by the business partner's spouse or civil partner, but that can cause other difficulties.

Please get in touch if you would like advice about how the associated companies rule works and how best to structure your business.

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14 Craufurd Rise
Maidenhead
Berkshire SL6 7LX
Tel: (01628) 626333
Fax: (01628) 770340
www.haleandco.co.uk

Partners:
P W Murcott FCA, CTA (Fellow), ATT
C J Krol FCA
S M Egan BA, FCA, CTA
J A Daniell FCA
D J Cole BA, ACA

Managers:
L A Boateng BSc, FCA, CTA
J D Williams
S R Booker BSc, CTA, MAAT

Capital gains tax changes for investments and property

Many investors have welcomed the proposed replacement of capital gains tax taper relief by a flat tax rate of 18% from 6 April 2008. Taper relief, now given only on disposals up to 5 April 2008, reduces tax according to how long you have owned the asset. But even with the maximum taper relief for non-business assets – on property and other investments owned since before 17 March 1998 – a higher rate taxpayer currently still pays tax at 24%.

However, the change would leave many basic rate taxpayers worse off. As long as you have owned investments for at least five years, your effective tax rate after taper relief is currently less than 18%. You might want to sell such investments before 6 April 2008, especially assets you have held since before 17 March 1998, on which your tax rate after taper relief is currently only 12%.

Another group that would lose out from the changes in April 2008 are people who acquired valuable investments a long time ago. This is because indexation allowance is also due to be

abolished. Indexation allowance increased the cost of an asset by reference to inflation from 1982 until 1998, when it was replaced by taper relief. The indexation allowance accumulated up to 1998 was frozen and more than doubles the cost of assets acquired in April 1982 or earlier. For example, if you sell a property that you bought in 1981 for £30,000, you can deduct the cost plus £31,410 in calculating your capital gain. Even this frozen indexation allowance is set to be abolished for disposals from 6 April 2008 – another reason to think about selling assets before then.

If you are married or in a civil partnership, you might be able to preserve the frozen indexation allowance by transferring assets from one partner to the other. You would not have to pay any tax on the transfer but your partner would acquire the asset at a 'cost' that includes the indexation allowance. This 'acquired' indexation will not be lost. There is some uncertainty about whether this strategy will work for assets originally acquired before 1 April 1982, but we expect this to be resolved soon.

charge will only be worthwhile if your unremitted income is more than £75,000.

Broad details of how the annual charge is likely to operate were announced in a consultation document on 6 December 2007.

As part of the reform, people who use the remittance basis will lose entitlement to personal tax allowances, the annual capital gains tax exemption and some other reliefs. It will be possible to opt in and out of the remittance basis year by year.

You might be able to prepare for the new regime by rearranging your financial affairs, although the government has also promised to make it more difficult to avoid tax by using offshore trusts and companies. If you decide to give up the remittance basis, you will only be taxed on income and gains arising from 6 April 2008. You could therefore avoid UK tax by disposing of overseas assets before that date, provided you leave the proceeds overseas. Tax planning for non-domiciliaries can be complex and other changes in the rules are being made, so professional advice is essential.

Tax penalty for non-domiciliaries

Non-UK domiciled individuals who have lived in the UK for a long time will have to decide whether it is worthwhile continuing to claim the remittance basis of tax. From 6 April 2008, an individual who has been resident in the UK for at least seven years out of the previous ten will have to pay a £30,000 charge for each tax year they wish to use the remittance basis. Periods before April 2008 will count, so if you have already been resident in the UK for seven years, the change will affect you in the 2008/09 tax year.

Under the remittance basis, you pay UK tax on income arising overseas only when you bring it into the UK. Individuals who are not domiciled in the UK are currently taxed on the remittance basis on most types of income. The remittance basis also covers some income of individuals who are not ordinarily resident in the UK, and the new rules will also affect them.

If you have been resident in the UK for seven years and do not pay the charge, you will be subject to UK tax on all your worldwide income and capital gains as they arise. If you have no overseas capital gains, paying the

New Corporate Manslaughter Rules



UK companies and other organisations can be convicted of a new offence under the Corporate Manslaughter and Corporate Homicide Act 2007, which comes into force on 6 April 2008.

The new Act does not create new duties in law, but will make prosecutions easier. Companies and other organisations across the public and private sectors could be found guilty of the offence of corporate manslaughter (or corporate homicide in Scotland) if the way in which their activities are managed or organised causes a death and amounts to a gross breach of a duty of care to the deceased.

In the past, prosecutions have generally succeeded against companies only where the director and the company have essentially been the same. The new Act aims to focus on the way in which an organisation's activities are managed and controlled; and prosecutions will not have to rely on an individual being found guilty of gross negligence. The courts will now be able to consider the wider picture by looking collectively at the actions and failings of the organisation's senior management.

A duty of care exists, for example, in relation to the safety of equipment used by employees, the condition of worksites and the products and services supplied to customers.

Health and safety law already places a number of legal responsibilities on organisations, including an obligation to assess the risks to anyone who could be affected by their activities. The new offence is intended to complement, not replace, prosecution of individuals under health and safety legislation.

Under existing health and safety law, organisations must:

- Provide a written health and safety policy if five or more people are employed.
- Assess risks to employees, customers, partners and any other people who could be affected by their activities.
- Arrange for the effective planning, organisation, control, monitoring and review of preventative and protective measures.
- Ensure that employees have access to competent health and safety advice.
- Consult employees about their risks at work and current preventative and protective measures.

Failure to comply with these requirements can result in fines, imprisonment and disqualification.

If an offence is committed under the new Act, the penalty is an unlimited fine. In addition, the court can make a publicity order requiring the organisation to publish details of its conviction and fine.

AN END TO INCOME SHIFTING?



The government has promised to crack down on 'income shifting'. This is where someone can reduce their tax liability on business earnings by paying dividends or partnership profits to a non-working spouse or civil partner. Details of the proposed new rules were announced on 6 December 2007.

The announcement leaves a window of opportunity to save tax by paying dividends before 6 April 2008, because the new rules will not take effect until the tax year 2008/09. HM Revenue & Customs (HMRC) had challenged income shifting under existing anti-avoidance legislation in the Arctic Systems tax case. But in this case, the House

of Lords rejected the attempt to tax the husband on dividends paid to his wife, even though the husband's work generated most of the company's income.

Since the Lords' ruling in the summer, HMRC has issued guidance which confirms that where a non-working spouse holds ordinary shares with rights to the company's capital, dividends can only be taxed as the income of the spouse to whom they are paid.

You can therefore save tax by paying a dividend before 6 April 2008 up to the limit of a non-working spouse's basic rate income tax threshold. Remember though that you have to count as

CONSTRUCTION INDUSTRY – HMRC DUTY OF CARE

HM Revenue & Customs (HMRC) has no general duty of care to issue CIS certificates to businesses in the construction industry with reasonable expedition, according to the Appeal Court. However, a business can sue HMRC for negligence in some circumstances.

A small civil engineering contractor applied for CIS certificates but there was a delay in issuing them. Without a certificate, the company could not be paid and went bankrupt. The court considered that there was nothing in the CIS legislation that required HMRC to deal with applications quickly and that various administrative errors by HMRC staff did not give the applicant a right to compensation. However, in this case an unidentified HMRC employee had completed part of the application form without the authority of the contractor and had done so incorrectly. This went beyond being an administrative mistake. In assuming the authority to make the application, the employee also had a duty of care to the contractor and compensation was due.

The case underlines that taxpayers cannot necessarily expect HMRC to deal with their affairs correctly, so it is important to engage good professional agents if you cannot look after a matter yourself. It is also worth remembering that HMRC does voluntarily pay some compensation where its persistent errors have given rise to financial loss.



income the 10% tax credit as well as the cash dividend itself. You can even give your spouse shares shortly before paying the dividend, provided you make an unconditional gift of ordinary shares with full voting rights.

But there are some restrictions. The company must have enough accumulated income out of which to pay the dividend to all shareholders, or to all holders of shares of the same class. (Most family companies have only one class of share.) HMRC is likely to succeed in a challenge under the present rules where the working spouse, who holds shares, foregoes a dividend so that a larger dividend can be paid to a non-working spouse.

This could be your last chance to save tax in this way. We can advise you on making the best use of current rules and on whether you should change the way your business is set up for the future. The new rules for income shifting, together with changes to tax rates for individuals and companies, start in April 2008.



INHERITANCE TAX

Married couples and civil partners should review their wills to take advantage of the new inheritance tax (IHT) rules for transferring their unused nil-rate band.

Before 9 October 2007, the standard tax planning advice was to use the nil-rate band, currently £300,000, on the first death by leaving assets up to that amount to beneficiaries other than your spouse or civil partner. Now, leaving everything to your partner will often save more tax and give the survivor more flexibility.

The change stems from the announcement in the 2007 Pre-Budget Report. When a person has died, any unused nil-rate band can be transferred to the estate of a surviving spouse or civil partner who dies after 8 October 2007. It doesn't matter when the first death occurred.

On the second death, the nil-rate band in force at that time is increased by an amount calculated by the proportion of the nil-rate band that was left unused when the first partner died. The effect is to uplift the first partner's unused nil-rate band to its value at the second partner's death.

For example, suppose Mr Jones died in autumn 2002 when the nil-rate band was £250,000 and his will left £100,000 to his children and the remainder of his estate to his wife. Transfers to a spouse are free of IHT so £150,000 – 60% – of his nil-rate band was unused. If Mrs Jones dies at a time when the nil-rate band is £400,000 say, her nil-rate band will be uplifted by 60% of £400,000 – an increase of £240,000, compared to the £150,000 unused at Mr Jones's death.

Of course other factors will come into play. In the period between the deaths, the value of the couple's assets could grow at a faster rate than the nil-rate band. If the estate is worth more than the combined nil-rate bands, this growth could result in a higher IHT liability than if the nil-rate band had been used on the first death. But, the survivor could avoid this problem by making lifetime gifts, a more flexible option than the discretionary trust structures currently in many couples' wills.

The rules are more complicated where the survivor remarries and there are many other things to think about. If you would like us to look at IHT planning for your own circumstances, please get in touch.

Tax Calendar 2008

February

- 19 PAYE/NIC and CIS deductions due for month to 5/2/08.
- 22 PAYE/NIC and CIS electronic payments due for month to 5/2/08.
- 28 5% penalty surcharge on any 2006/07 unpaid IHT and CGT due on 31/1/07.
- 29 Accounts filing deadline at Companies House for private companies with year ended 30/4/07. Companies submit corporation tax self-assessment returns to HMRC for accounting periods ended 28/2/07.

March

- 19 PAYE/NIC and CIS deductions due for month to 5/3/08.
- 21 PAYE/NIC and CIS electronic payments due for month to 5/3/08.
- 31 Last-minute planning for tax year-end 2007/08. Make sure you use any CGT and IHT annual allowances and exemptions. Accounts filing deadline at Companies House for private companies with year ended 31/5/07. Companies submit corporation tax self-assessment returns to HMRC for accounting periods ended 31/3/07.

April

- 1 First year capital allowances replaced by annual investment allowance of £50,000.
- 5 End of 2007/08 tax year. Taper relief and indexation allowance is withdrawn for individuals.
- 6 Beginning of 2008/09 tax year. Flat rate of CGT of 18% applies to all non-corporate gains. Company car fuel benefit multiplier increases to £16,900. Accumulation and maintenance trusts created before 22/3/06 become subject to IHT under discretionary trust rules. Disposals subject to CGT cease to attract indexation and taper relief, according to announcements in the 2007 Pre-Budget report.
- 14 Due date for the CT61 return and tax payment for the quarter to 31/3/08.
- 19 PAYE/NIC and CIS deductions due for month to 5/4/08 and quarter 4 for small employers (interest will run on any unpaid PAYE/NIC for the tax year 2007/08).
- 22 PAYE/NIC and CIS electronic payments due for month/quarter to 5/4/08.
- 30 Accounts filing deadline at Companies House for private companies with year ended 30/6/07. Companies submit corporation tax self-assessment returns to HMRC for accounting periods ended 30/4/07.

May

- 3 Submission date for forms P46 (Car) for changes during the quarter ended 5/4/08 to car and fuel benefits provided to employees.
- 19 PAYE and NIC due for the month ended 5/5/08. Final submission date for employers' year-end returns (forms P35 and P14) for the year ended 5/4/08.
- 31 Employers to provide employees with form P60 (year-end summaries) for the year ended 5/4/08.

LOOK AFTER YOUR DATA

Breaches of data security can have huge repercussions, as HM Revenue & Customs found out when two disks containing the entire child benefit database went missing last autumn. The incident serves as a reminder of the measures all businesses should take to reduce the risks. Lapses not only damage your business's reputation but also contravene data protection legislation.

These are some of the things you and your staff can do to protect your business data:

- Protect computers and data with passwords that are kept secure, not shared and are changed regularly.
- Store confidential papers securely and shred all confidential waste before disposal.
- Position computer screens away from windows to prevent accidental disclosure of information.
- Encrypt information being taken out of the office or transferred electronically. All portable devices that store information should be protected with approved encryption software.
- Carry out identity checks before giving out information over the telephone and limit the amount of information given that way. Make sure staff are alert to callers who could trick them into disclosing confidential data.
- Collect only the personal information about customers and others that you really need and delete anything you no longer need.

- Take steps to prevent virus and spyware attacks on your computer systems.
- Make sure that employees working away from the office, whether at home or on the move, can access your business computer network only with secure passwords.
- Where employees work at home, their home computers should be equipped with firewalls and regularly updated virus protection software.
- Special care should be taken when using laptops in a public place where they could be overlooked.
- Most people are aware of the risk of personal identity theft but do you know that a company's identity can also be stolen? Fraudsters could set up accounts in your company's name and could even change your company's registered office address and appoint new directors.



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relief include land and buildings, and other assets that you use in your business (unless associated with a business sale), and many company shares – the rules are complex. Let commercial property can also qualify for taper relief.

Remember when accelerating the sale of any business assets that the purchaser may well take advantage of the deadline to negotiate a better price – early in the process or even at the last moment.

If you previously sold a business and received loan notes in return, you might be able to sell or

redeem them before 6 April 2008. This would release the deferred gain, which will qualify for taper relief based on the business you originally sold. If you dispose of the loan notes after 5 April 2008, you will lose the associated taper relief.

If you do not want to sell assets or cannot do so before 6 April 2008, there are other ways of crystallising a gain. For example, you could transfer assets to a family trust. However, such arrangements could accelerate the tax liability and may involve other costs. Good professional advice is essential.



Partners:
P W Murcott FCA, CTA (Fellow), ATT
C J Krol FCA
S M Egan BA, FCA, CTA
J A Daniell FCA
D J Cole BA, ACA

Managers:
L A Boateng BSc, FCA, CTA
J D Williams
S R Booker BSc, CTA, MAAT

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