

A capital gain arises when certain capital (or 'chargeable') assets are sold at a profit. The gain is the sale proceeds (net of selling costs) less the purchase price (including acquisition costs). The taxation of capital gains was significantly revised from 6 April 2008 and then again from 23 June 2010. This factsheet deals with the current position.

What are the main features of the current system?

- For chargeable gains arising on or after 23 June 2010 capital gains tax (CGT) at the rate of 18% applies to gains (including any held over gains coming into charge on or after this date) where net total taxable gains and income is below the income tax basic rate band (2011/12 £35,000). Gains or any parts of gains above this limit will be charged at 28%. Gains that arose in 2010/11, but before 23 June 2010, were liable to CGT at 18% and were not taken into account in determining the rate(s) at which gains arising on or after 23 June 2010 were charged.
- Entrepreneurs' relief may be available on certain business disposals.

For any gains that arose between 6 April 2008 and 22 June 2010 (including held over gains coming into charge between these dates), the chargeable gain was liable to tax at 18%, after deducting allowable losses, any other reliefs and the annual exemption.

Entrepreneurs' Relief

ER may be available for certain business disposals taking place on or after 6 April 2008 and for a higher/additional rate payer has the effect of charging the first £10m (from 6 April 2011) of gains qualifying for the relief at an effective rate of 10%. The lifetime limit has previously been £5m, £2m and £1m since the introduction of the relief.

The relief will apply to gains arising on a disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership;
- shares in a trading company, or holding company of a trading group, provided that the individual owns broadly a 5% shareholding and has been an officer or employee of the company;
- assets used by a business or a company which has ceased;
- assets used in a partnership or by a company but owned by an individual, if the assets disposed of are 'associated' with the withdrawal of the individual from participation in the partnership or the company.

A trading business includes professions but only includes a property business if it is a 'furnished holiday lettings' business.

Restrictions on obtaining the relief on an "associated disposal" are likely to apply in certain specific situations. This includes the common situation where a property is currently in personal ownership, but is used in an unquoted company or partnership trade in return for a rent. Under ER the availability of relief is restricted where rent is paid from 6 April 2008 onwards.

What is clear is that careful planning will be required with ER but if you would like to discuss ER in detail and how it might affect your business, please do get in touch.

Simplification of the share identification rules

From 6 April 2008, all shares of the same class in the same company will be treated as forming a single asset, regardless of when they were originally acquired. However, 'same day' transactions will continue to be matched and the '30 day' anti-avoidance rules will remain.

Example

On 15 April 2011 Jeff sold 2000 shares in A plc from his holding of 4000 shares which he had acquired as follows:
1000 in January 1990

1500 in March 2001

1500 in July 2005

Due to significant stock market changes he decided to purchase 500 shares on 30 April 2011 in the same company.

The disposal of 2000 shares will be matched firstly with later transaction of 500 shares as it is within the following 30 days and then with 1,500/ 4000 (1000+1500+1500) of the single asset pool on an average cost basis.

CGT annual exemption

Every tax year each individual is allowed to make gains up to the annual exemption without paying any CGT. The annual exemption for 2011/12 is £10,600 and was £10,100 for 2010/11. Consideration should be given to ensuring both spouses/civil partners utilise this facility.

Other more complex areas

Capital gains can arise in many other situations. Some of these, such as gains on Enterprise Investment Scheme and Venture Capital Trust shares, and deferred gains on share for share or share for loan note exchanges, can be complex. Please talk to us before making any decisions.

Other reliefs which you may be entitled to

And finally, many existing reliefs continue to be available, such as:

- private residence relief;
- business asset roll-over relief, which enables the gain on a business asset to be deferred until a point in the future;
- business asset gift relief, which allows the gain on business assets that are given away to be held over until the assets are disposed of by the donee; and
- any unused allowable losses from previous years, which can be brought forward in order to reduce any gains.

How We Can Help

Careful planning of capital asset disposals is essential. We would be happy to discuss the options with you. Please contact us if you would like further advice.