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Steps to take ahead of capital gains tax reform?

On 13 July the Chancellor wrote to the Office of Tax simplification requesting that it reviews capital gains tax and those elements of corporation tax that relate to chargeable gains. This is not an unexpected development and it follows closely a consultation in respect of proposed inheritance tax reform.

The rate of CGT for higher rate taxpayers is 20% in respect of all gains (other than those relating to residential property or carried interest where the rate is 28%). There are also numerous reliefs available and scope to make use of losses. It is possible that any reform will tax gains at a taxpayer's marginal rate of income tax and remove the reliefs. This would make the present regime look positively generous. So are there steps you should consider ahead of any change?

Individuals

- CGT hold-over relief enables transfers from certain trusts and gifts of trading assets to be made without crystallizing any gain; instead the recipient takes on the base cost of the trust or the person making the gift. This can be used (by way of an example) to make gifts to family members without triggering a charge to tax. Now might be the time to make any transfers to take advantage of these reliefs.
- Business sales are commonly arranged as an "earn-out" whereby part of the sale price is determined by the future performance of the business. This can enable the sale proceeds to be taxed to capital gains tax rather than income tax. It is perhaps worth recording in any agreement whether increased tax following any reform should be borne by the seller or the buyer.
- Some assets are exempt from CGT – motor cars being a well-known example. It would seem unlikely that these exemptions would survive any reform and so you should think about accelerating any plans you have for disposal.

Trustees

- Trustees of offshore trusts should review their trust's UK tax profile and consider taking any capital gains related steps. Non-UK resident trustees are subject to CGT in respect of UK real estate and in any event, all offshore gains that accrue are available to match with benefits provided to UK resident beneficiaries. Trustees should review the possible benefits of crystallizing any latent gains or changing their policy of distributions to UK resident beneficiaries.

Businesses owners

- There are numerous CGT reliefs that apply to business owners that are widely understood – for example, incorporation relief, roll-over relief, disposal reliefs (that apply to certain venture capital vehicles such as EIS and VCT funds) and business asset disposal relief (that replaced but is similar to the familiar Entrepreneurs' Relief). On the basis of "better the devil you know", you might consider accelerating planned events now and have the certainty that comes from the present regime.

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Companies

- Companies already pay tax at the same rate on their chargeable gains and income profits, which may embolden the Office of Tax Simplification to recommend that the same approach is taken for individuals, trustees and other taxpayers.

Reform provides an opportunity to encourage business and long-term investment in the UK. Fladgate will be making representations in respect of this consultation; if you would like us to take into account your views, please let us know.

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