

## Capital Gains Tax – A technical note

As most people know, Capital Gains Tax changed on 22<sup>nd</sup> June 2010. Before that date, CGT was charged at 18% on all gains above the Annual Exempt Amount (£10,100 for individuals in 2001/11); after that date, some gains will still be charged at 18%, but some will be liable at 28%. Also, and very importantly, gains are treated in a rather different way.

Capital gains are now added to an individual's income to see what rate should be charged. If an individual's income plus their capital gains is more than the band for higher rate Income Tax (£37,400 in 2010/11) then that portion of the capital gain in excess of the band will be charged at 28%.

It has been suggested that any unused portion of an individual's Personal Allowance for Income Tax can also be deducted from the gross gain, further reducing the taxable gain. Please note that this is not true: capital gains and income are treated completely separately for tax purposes, apart from the interaction noted above.

Entrepreneur's Relief is now available on the first £5 million of gains on business assets. The other change is the way it is calculated – now simply at 10% on the gains, rather than the earlier, politically motivated, and unnecessarily complicated method of 18% on 5/9<sup>ths</sup> of the gain.

We also have an interesting situation in the current year, arising from the regime change in the middle of the tax year. In short, if one has gains both before and after 23<sup>rd</sup> June 2010, one can choose which gains against which to set the Annual Exempt Amount and any losses.

All of this gives rise to the need for careful planning. For example:

- When considering when to realise a capital gain, one should try to create a year of zero income in which to crystallise the gain (always assuming that one's income is as controllable as that). This takes advantage of the new ability to offset unused Income Tax Personal Allowance against Capital Gains.
- Consider splitting ownership of assets being crystallised between spouses to take advantage of both exemptions. This is much more important now because of the higher rate of tax.
- If gains are made in the 2010/11 tax year both before and after the 23<sup>rd</sup> June watershed, consider carefully where Annual Exemption will have most impact; likewise any available losses. It makes sense to minimise the proportion of the gain taxed at 28% but it will depend on individual circumstances where exemptions and losses should be applied.
- Although the opportunity for arbitrage is not as great as it was previously, 28% Capital Gains Tax is still less than 40%, and significantly less than 50%, Income Tax. If income can be turned into capital gains, consideration should be given to doing so.

**In summary, the increased rate of Capital Gains Tax makes it more important than ever that one takes expert advice, preferably before any gain is realised.**

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