

In his first pre-budget statement yesterday, Alastair Darling announced a major change to the Capital Gains Tax (CGT) system for individuals, trustees and personal representatives. From 6 April 2008 this will involve an 18% flat-rate of CGT in place of the existing system.

**All those who are in the process of making disposals or are likely to do so in the near future need to consider whether their tax position might be significantly different if the transaction were delayed until after 6 April.**

## Details

From 6 April 2008, all capital gains (other than those accruing to companies) will be charged a flat-rate of 18% CGT. Taper relief and indexation reliefs will be abolished entirely, even for assets acquired before 6 April 2008. For assets which currently qualify for business taper relief, this will typically increase the effective rate of tax from 10% to 18%. Conversely, the rate for non-business assets will decrease from 24% (or higher) to 18%.

The annual exemption, currently £9,200, will remain as will main residence relief, rollover and holdover reliefs and EIS reliefs. Capital losses will still be available to offset against capital gains, although it is worth noting that the ability to utilise capital losses was already somewhat restricted by last year's pre-budget report.

Rebasing to March 1982 values will be compulsory for assets acquired before that date and for assets where a gain was heldover between 1982 and 1988, the current allowance of half the heldover gain will be abolished. Share pooling rules will be simplified

## Transactions before 6 April 2008

As the new rules will only apply from 6 April 2008, disposals made before that date will continue to be taxed under the existing rules. Unusually for such a major change, the government have not announced any transitional provisions. This is likely to mean that a significant number of transactions may either be

advanced ahead of 6 April or, in some cases, delayed beyond it.

Consequently, everyone who is in the process of (or considering) making disposals in the near future needs to consider their position very carefully. For assets which qualify for business taper relief, it is likely that it will be advantageous to advance a disposal. For non-business assets the reverse is likely to be the case.

The key date will, as now, be the date on which contracts are exchanged. However, where contracts are conditional, the relevant date will be the date on which the condition is fulfilled.

## Planning opportunities

A number of planning opportunities immediately appear to present themselves:

- exchange contracts ahead of 6 April 2008 to benefit from the current regime
- use conditional contracts to delay existing transactions beyond 6 April where the 18% rate will be more beneficial
- realise and use capital losses now at 40% rather than carrying them forward at 18%
- rebase assets by triggering an artificial disposal now to crystallise indexation and taper relief
- use of rollover or holdover reliefs to delay gains beyond 6 April
- consider delaying repatriation of capital from offshore trusts pending confirmation of how the 18% rate will apply
- review all earn-out transactions as a matter of urgency
- continuing to convert items which would otherwise be subject to income tax into capital transactions: in many ways this will be more attractive than at present, as there will be no need to wait 2 years to get the benefit.

What is apparent is that all those wishing to make disposals will need to take careful tax advice to establish whether they are better or worse off under the new regime.

## Comment

Ten years ago, taper relief was Gordon Brown's big announcement, promising lower rates of CGT for those who held assets for 10 years. It is therefore somewhat ironic that taper relief (which commenced on 6 April 1998) is being withdrawn on the very day (6 April 2008) when the 10 year period finally ends.

Reversing Gordon Brown's key policy in this way may seem to be a bold political move by Alastair Darling. However, in reality the change was forced upon the government by the disquiet over the 10% rate of tax paid by those in the private equity industry. The 18% rate looks to be a clear case of trying to appease those calling for higher tax for private equity, without frightening that industry offshore. Whether it succeeds in that task - and Treasury figures estimate that this should raise just £350m next year - is a matter for some debate.

What is more unusual about the proposals is the lack of any transitional provisions. We anticipate that there will be significant market-distortions particularly over the next 6 months as transactions are artificially advanced ahead of the 6 April deadline.

## Other changes

### Inheritance Tax

The Chancellor has not slashed Inheritance Tax as has been suggested in the Press, but he has announced a useful change to the use of the nil rate band, currently £300,000.

Up to now, Wills have been carefully drafted to ensure that the nil rate band of the first spouse to die is not lost, as it would be if everything were left to the surviving spouse. With immediate effect, it is now possible to use the nil rate bands of both spouses on the second death, if not used on the first. In most cases this will enable Wills to be drafted in simpler form. More complex cases will still merit careful drafting.

It appears from the Press Release that there is no need to amend existing Wills, but we await the draft legislation.

Those whose spouse or civil partner died within the last two years need to take urgent advice, however.

### Non-domiciliaries and non-residents

The pre-budget statement also announced changes affecting non domiciled and non resident individuals.

From 6 April 2008 UK non domiciled individuals who have been resident in the UK for 7 years, will forfeit the remittance

basis of taxation on their offshore income and gains unless they pay an additional tax charge of £30,000 per year.

Also from 6 April 2008 to establish an individual's tax residence in the UK, the days of arrival and departure will be counted as days of presence in the UK.

Alistair Darling also announced changes restricting techniques which currently allow tax-free remittances. The details of this are currently unclear and it is therefore too early to foresee what planning might be possible. We intend to issue a further briefing on this subject towards the end of the year.

## Conclusion

The next six months promises to be a busy time as the impact of the changes is absorbed and new planning opportunities arise.

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