

Recommendations under consideration (Lecture P1318 – 19.53 minutes)

The Office of Tax Simplification (OTS) made 14 recommendations in their second report on CGT – subtitled ‘Simplifying practical, technical and administrative issues’ – which was published in May 2021.

On 30 November 2021, the Financial Secretary to the Treasury wrote to the Chair of the OTS (Kathryn Cearnns) and the Tax Director (Bill Dodwell) to respond to their reviews into IHT and CGT and to update them on various Government decisions in relation to the 14 recommendations referred to above.

Out of these 14 recommendations, five were accepted, four were rejected and the remaining five were stated to be ‘under consideration’. This short article highlights the five topics which may, hopefully, be the subject of future legislative modification.

Reporting and paying CGT

One of the concerns outlined by the OTS was that only a very small number of taxpayers choose to report their capital gains early using the voluntary ‘real time’ transaction CGT service which was introduced in 2016. This medium ensures that people do not have to register for self-assessment to notify HMRC of their gains (or losses) if they would not otherwise be required to submit a tax return. It is typically used to inform HMRC about gains on shares or personal possessions such as paintings and antiques.

Unfortunately, at the present time, the ‘real time’ service cannot be used by agents (probably because the idea was originally targeted at unrepresented taxpayers). It is therefore necessary for the taxpayer to set up his own HMRC Government Gateway details and to provide the relevant disposal information in a PDF document, along with a computation of the gain and the accompanying CGT liability.

The OTS recommended that the Government should formalise the administrative arrangements for the ‘real time’ transaction CGT service, effectively making it a standalone CGT return which would be usable by agents. In response, the Government have said that they will consider implementing this idea as part of their delivery of the Single Customer Account.

Share pooling

Listed share holdings of a particular type are normally grouped together (or ‘pooled’) for CGT purposes when all or some of the shares are sold. This is intended to operate as a simplification measure which means that taxpayers do not have to keep track of which of a collection of identical assets have been disposed of. However, this rule can give rise to greater complexity in some scenarios such as where an individual has several investment managers to look after their overall investment portfolio.

The OTS recommended that the Government consider whether individuals holding the same share in more than one portfolio should be treated as holding them in separate share pools. The Government reply to this suggestion is that they fully understand the scope of the recommendation but that they need to give the matter further thought in order to determine the full implications of the proposal. The speaker feels that this idea is unlikely to be implemented, given the relatively small number of (mainly wealthy) taxpayers who have multiple portfolios. Indeed, it seems probable that virtually all such individuals will anyway have an adviser to look after their tax affairs.

Main residence relief nominations

It is well known that, where someone occupies two or more residences, it is possible to make a nomination under S222(5) TCGA 1992 as to which home that person wishes main residence relief to apply. This written nomination must normally be submitted to HMRC within two years of the date on which the additional property was acquired. The nomination can then be amended at any time in the future. As the OTS remark:

‘The nomination does not need to follow the reality of how the homeowner splits their life between their homes and no account needs to be made of how much time is spent in each home, as long as each home is a residence.’

If the taxpayer, in these circumstances, does not nominate a particular property, the relief will apply to the property which is de facto the person’s main residence. This is based on a range of factors such as how long they spend there or where their family live. Of course, a nomination overrides this rule.

The OTS recommended that the Government should review the practical operation of the main residence relief nomination and raise awareness of how the legislation works. In particular, they put forward the idea that nominations could be made on disposal rather than under the present two-year arrangements and that the whole process would be improved by the introduction of a standard nomination form or letter template. The Government have merely promised to review the position with regard to nominations, taking into account existing guidance, the concerns raised and the recent changes brought in by FA 2020.

Tax status of corporate bonds

‘Corporate bond’ is a generic term for debts or securities issued by a company in order to raise finance. The tax status of a bond depends on whether it is classified as:

- a qualifying corporate bond (QCB); or
- a non-qualifying corporate bond (non-QCB).

A QCB is defined in S117 TCGA 1992. It can be described as a debt:

- which is issued on normal commercial terms (note that HMRC indicate that most interest-free lending counts as a normal commercial loan);
- which is denominated in sterling; and
- where there is no provision for conversion into, or redemption in, another currency.

Any corporate bond which is not a QCB is a non-QCB. QCBs are exempt from CGT, whereas non-QCBs are taxable.

The OTS recommended that it should be possible to insert a permanent irrevocable upfront provision in the legal documentation for a bond, specifying that it is subject to CGT. In the absence of this statement, a bond would automatically be regarded as a QCB and therefore exempt from tax. This proposal would avoid the need for the inclusion of complex clauses in the bond documentation which serve no purpose other than to determine the tax status of the bond and which frequently make it difficult for the parties involved to know which type of corporate bond they hold.

In her reply to the OTS, the Financial Secretary to the Treasury wrote that the bond market and the tax rules have changed considerably since the introduction of the blanket CGT exemptions for QCBs and gilt-edged securities. The Government therefore intend to consider this point further within the context of a wider review into the purpose and functioning of these CGT exemptions.

Investment incentives

The Enterprise Investment Scheme and the Seed Enterprise Investment Scheme are intended to provide financial support for growth investment in start-up and early-stage companies. In the latest year for which statistical information is available, it is reckoned that more than 40,000 taxpayers use one or other of the two schemes every year.

Both reliefs have what the OTS describe as 'restrictive eligibility criteria' which require a specific clearance from HMRC, but they provide a complete exemption from CGT as well as an upfront income tax relief. The OTS have heard from several respondents to their evidence-gathering campaign that the legislation is overly limiting and can cause practical problems for genuine applicants. In addition, they have identified a number of specific areas which, if properly addressed, could better enable the reliefs to achieve their policy objectives, including:

- the short deadline for issuing shares;
- the interaction with business asset disposal relief;
- the cumbersome application process; and
- the link between the income tax relief and the CGT exemption.

The OTS recommended that the Government should re-evaluate the rules for these two schemes with a view to ensuring that procedural or administrative issues do not impede their successful operation. In their reply, the Government say that they accept the desirability of reviewing these schemes, but they will do so in the context of a reappraisal of appropriate income tax and CGT rates.

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