

## Finance Bill 2023 - CGT changes (Lecture P1373 - 14.47 minutes)

### Share exchanges

Legislation is introduced ensure that UK resident but non-domiciled individuals are taxed on gains and distributions received after value has been built up in a UK business in which they have a 'material interest'. Clause 36 amends the existing legislation by introducing new s138ZB into TCGA 1992.

Where a share-for-share exchange takes place and the original company is a UK incorporated close company and the new company is a non-UK incorporated company (that would be close if it were a UK company), the securities in the new company are treated as if they are situated in the UK, where they are held by the original participator or their spouse (unless the transfer to the spouse was not on a no gain / no loss basis). Thus, remittance will not be available for dividends paid by the non-resident company, nor for capital gains made on disposal of the new securities.

It will only apply where the participator (taking into account their associates) had a material interest in the company, being more than 5% of the ordinary share capital or entitlement to more than 5% of the assets available for distribution to participators on a winding up. If the company does not have share capital, you would consider the interests of the members in determining if this condition is met.

The securities which are affected by this measure include:

- The exchanged shares or securities
- Any security in the new company acquired by the participator on or after the day of the exchange
- Securities held under stock lending arrangements, where the exchange security is part of those arrangements
- Any shares or securities subsequently issued in exchange for any security within these provisions, which fall within s135 or s136.

The new rules will only apply where an individual obtains non-UK securities in exchange for UK securities, with either section 135 or 136 TCGA 1992 applying; this means that HMRC have accepted that the share exchange is for commercial reasons.

The application of these provisions can be avoided by electing to disapply s135 or s136 TCGA 1992, so that the gain on the original transaction crystallises. The election is within new s138ZC TCGA 1992 and has to be made on or before the first anniversary of the 31 January following the tax year in which the exchange took place.

The legislation applies to shares or securities issued on or after **17 November 2022**.

The remittance basis provisions are also amended to show that assets falling within these provisions will not give rise to relevant foreign income.

## **Payments under the lump sum exit scheme**

Farmers in England could apply for the Lump Sum Exit Scheme up until 30 September 2022 if they wished to retire from or otherwise leave farming. The farmer had to be in receipt of payments under the Basic Payment Scheme (BPS) in 2018 or earlier or have inherited agricultural land or succeeded to an Agricultural Holdings Act 1986 tenancy after 15 May 2018. The rights to agricultural land had to be transferred or planted under a woodland creation scheme. Payments began to be made in November 2022 and will continue until 31 May 2024.

Clause 39 clarifies that amounts paid to a person under the lump sum exit scheme is to be treated as a capital payment which gives rise to a chargeable gain accruing on a disposal of an asset assuming they satisfy the relevant eligibility conditions. Otherwise it is to be treated as an income payment.

Some farmers will claim under the BPS in case they did not qualify under the lump sum scheme (perhaps because they could not give up their rights to land within the necessary time-limit) and the legislation provides that if they did receive payments under the BPS and then subsequently receives money under the lump sum scheme, the BPS payment is also to be treated as a capital payment for the disposal of an asset. If they do not subsequently meet the necessary eligibility criteria, the payment under the BPS will be treated as revenue in nature as would have been the normal position.

This applies regardless of when such payments are received.

## **Contracts completed after notification period**

Under normal provisions, the date of disposal for CGT purposes is the date of exchange where the contract is unconditional. This is found in s28 TCGA 1992. The date of conveyance or completion is not relevant other than where residential property is sold in which case that is the trigger date for the submission of any 60-day return. However, it is important to note that s28 only comes into operation if the contract is completed, so if the disposal actually takes place. This was confirmed in the House of Lords decision in *Jerome v Kelly*.

HMRC have four years from the end of the tax year (for individuals) or accounting period (for companies) to raise assessments and the taxpayers has the same period to claim any loss relating to the disposal. HMRC believe that their ability to raise assessments is prejudiced where there is a long delay between exchange and completion as they may not have sufficient time to react.

Clause 40 modifies the assessing time limits where an asset is conveyed or transferred after 'the ordinary notification period'. If this applies, the assessing time-limit operates by reference to the year in which the contract is completed, rather than the earlier exchange date. It also links claiming loss relief and the obligation to notify chargeability to the same periods. The tax will still be due in relation to the earlier period, as this is a purely administrative measure.

The 'ordinary notification period' is the period of 6 months from the end of the tax year for capital gains tax in which the disposal is treated as taking place and the period of 12 months from the end of the accounting period for corporation tax purposes.

This applies for contracts entered into on or after 1 April 2023 for corporation tax or on or after 6 April 2023 for all other purposes.

## ***Example***

A contract is exchanged for the disposal of an asset on 1 June 2023. There is a long completion period meaning that the sale is not completed until 31 October 2025.

The gain arises in 2023/24 and under normal rules (assuming no carelessness or deliberate behaviour) HMRC would have until 5 April 2028 to raise an assessment if they are not otherwise notified.

However, under the new provisions, as conveyance happens outside of the ordinary notification period (which would end on 5 October 2024), the assessing time-limit operates by reference to the 2025/26 tax year so that HMRC have until 5 April 2030 to raise an assessment. The same time-limit would apply for claiming of a loss which arose on the disposal.

### **Separated spouses and civil partners**

Clause 41 introduces legislation relating to the capital gains tax issues for separating spouses and civil partners. This legislation has been published in draft form previously. These provisions take effect from 6 April 2023.

S58 TCGA 1992 is amended to extend the period when individuals can transfer assets on a no gain no loss basis. Under previous rules, the period ended at the end of the year of assessment in which separation occurred.

The basic period is now extended to the earlier of:

- The last day of the third tax year after the tax year in which the separation occurred; or
- The day on which a court grants an order or decree for divorce, annulment, dissolution of civil partnership, judicial separation or separation in accordance with a separation order.

In addition, a disposal will be on a no gain no loss basis whenever it occurs if the disposal is subject to an agreement or order in connection with the divorce or dissolution of the civil partnership under the provisions at s225B(2)(a) or (b) TCGA 1992.

#### *Example*

Anne and Kate are married but separated permanently on 26 October 2021; they are trying to split their assets as fairly as possible.

- Any asset transfers up to 5 April 2022 will have been NG/NL but any in 2022/23 will be at MV.
- However, for disposals after 5 April 2023, the new rules apply, so transfers in 2023/24 and 2024/25 (which are within three years of the end of the tax year of separation) will once again be NG/NL, unless the couple divorce earlier.

S225B TCGA 1992 is itself amended. Previously this legislation allowed an extension of the private residence relief period when an individual ceased to live in a house which had been their only or main residence and then subsequently disposes of that property to the spouse or civil partner. As long as the conditions were met, the period when the departing spouse was not occupying the property could be covered by private residence relief. This assumes that no other property had been subject to an election to be treated as the main residence (e.g. after separating, they moved

into rental accommodation). The wording is amended such that this will now apply where the property is sold to someone other than the spouse or civil partner. The other conditions remain the same.

A claim has to be made for this to apply and that continues to be the case.

Finally, new s225BA TCGA 1992 is inserted so that where an interest in a property is sold from a departing spouse to the remaining spouse, and there is a deferred sale order, the gain on the deferred element of the consideration can be covered by private residence relief to the extent that the initial gain would have been covered.

#### *Example*

Richard and Liz married in June 2016 and moved into a house they had bought jointly for £200,000.

In June 2024 the couple separated and Richard moved into a flat he had owned before the marriage and which had been let in the meantime. He did not elect for the family home to continue to be his only or main residence.

In June 2026 Richard and Liz were divorced and as part of the divorce settlement, Richard transferred his 50% interest in the family home to Liz on the condition that Richard would be entitled to 50% of the eventual proceeds of disposal. The house was worth £400,000 in June 2026 and was sold in June 2028 for £500,000.

#### *CGT implications:*

The marital house ceases to be Richard's qualifying residence in June 2024.

Richard's disposal of his 50% interest in the house in June 2026 takes place at no-gain / no-loss (being a transfer on divorce after April 2023). Liz therefore acquires her additional 50% interest at Richard's original base cost giving her a 100% interest in the house with a base cost of £200,000.

In June 2026, Richard acquires a separate asset being the right to receive future consideration. As this is acquired as part of a no-gain / no-loss transaction, the asset has a base cost of nil.

In June 2028, Richard receives future consideration of  $£500,000 \times 50\% = £250,000$  thereby making a gain of £250,000 on the disposal of the intangible right.

This gain will qualify for the same private residence relief as would have applied at the time of the disposal of the 50% interest in June 2026.

The PRR up to June 2026 is the period of Richard's actual occupation (June 2016 to June 2024 being 8 years), plus the final 9 months (giving 105 months out of a total period of ownership of 120 months).

Richard's chargeable gain in June 2028 will therefore be:

|                       |                           |           |
|-----------------------|---------------------------|-----------|
|                       |                           | £         |
| Gain on sale of right |                           | 250,000   |
| Less: PRR             | $£250,000 \times 105/120$ | (218,750) |

Chargeable gain

31,250

Note that if Richard had claimed for the marital home to continue to be his qualifying residence after the date of separation (which he can from April 2023), PRR would have continued to be available until the date of the disposal of his interest on divorce. The subsequent gain on the disposal of his right in 2028 would therefore be fully covered by PRR and would be nil. However, the flat would not then be eligible for PRR between separation and divorce.

Liz will make a gain of £50,000 (being 50% of the £500,000 sales proceeds, less her CGT base cost of £200,000). This will be fully covered by PRR.

### **Carried interest**

Carried interest is a performance related reward for investment managers, typically working within PE houses and similar. Subject to extensive anti-avoidance provisions, carried interest arises as a chargeable gain accruing to the manager. It is therefore not taxable until received.

Clause 42 introduces legislation which will enable an individual to make an election to have the carried interest taxed on an arising basis. The election is irrevocable. It must state the first tax year for which it is to have effect and must be made by 31 January following the end of that tax year. The gain under this provision remains a carried interest gain and so will be taxed at 18% or 28%.

Where there are associated investment schemes (as defined within s809FZZ ITA2007) the election will apply to all of those schemes.

If the carried interest subsequently becomes taxable, then a claim can be made so that it is not taxed twice. Additionally, where tax has been paid under the election but the scheme ends with no further carried interest expecting to be received, then a loss may be claimed on the difference between the amount taxed and the amount actually received.

There is an anti-avoidance provisions which prevents the recognition of a loss where an election has been made and the main purpose, or one of the main purposes, of making the election was to cause a loss to be created.

These provisions are being introduced to align the UK provisions with provisions in other jurisdictions to make it easier for relevant individuals to claim double tax relief.

### **Relief on disposal of joint interests in land**

Amendments are made to s248B and s248E (exchange of joint interests in land) to clarify that these will apply where land is held by Scottish partnerships or Limited Liability Partnerships, assuming the relevant conditions are met. These provisions enable a modified roll-over relief to apply where there is exchange of joint interests in land subject to various conditions being met.

This is found in Clause 43 and applies for disposals made on or after 15 March 2023.