

Tax planning up to the general election (Lecture P1292 – 16.50 minutes)

In the approximately 15 months before a General Election, tax practitioners are often asked about what they would advise regarding tax planning.

There are a number of uncertainties which make giving advice in this area particularly challenging:

1. Nobody knows the precise date of the general election. It has to be held by January 2025, but it is likely to be held before then.
2. At this stage, it is not possible to predict the result of the general election.
3. We know very little at this stage about the future tax policies if there is a change of administration.

Tax practitioners should be very wary of becoming amateur psephologists, as even professional pollsters find it difficult to predict general elections themselves. In terms of tax planning, we have been here before. In 1992 large number of owner managed businesses declared substantial dividends and bonuses in advance of the general election as they were fearful that the incoming Labour Party would raise the effective top rate of tax to 60% (including uncapped and extended NICs). In the event that did not happen, and companies had committed and paid large dividends which resulted in bumper tax receipts in that year.

The same actions happened in 2015 and to a lesser extent 2019 with the opinion polls wide of the mark in each case. It is noteworthy that in the last 11 general elections, the Labour Party has only won 3 of them which were all victories by Tony Blair. Tony Blair consistently promised not to raise the rates of Income Tax or VAT as part of his 5 pledges.

Turning to current tax policies; the policies of the opposition party are not yet formed, nor have they been communicated in any detail. We know that they would plan to impose VAT on private school fees and that they would abolish the non-UK domicile tax rules. However, they have hinted that there would be some form of replacement regime.

It is important to note that the Labour Party might have made some significantly different decisions in terms of policies as an alternative to the last two financial statements. Whereas the Conservatives froze or cut allowances but did not generally raise rates of tax, Labour might decide to raise the rates of tax or abolish reliefs, notably Capital Gains Tax breaks.

The Conservatives have also not raised the rate of Inheritance Tax (IHT) nor curbed the many reliefs available, which could again be an area where a Labour Chancellor consider the more radical changes.

Again, the options open to an incoming government may be restricted by tax pledges made in the run up, or during, a General Election campaign. One should remember that when the Conservatives announced the pledge to raise the IHT threshold to £1 million for a couple, Labour responded by allowing transferable allowances, thus saving married couples potentially large sums.

The final element of caution for any practitioner is understanding how far clients will take actions to reduce their liabilities which may impinge on their lifestyles. An obvious example is becoming non-resident; an option considered by many when the top rate of income tax went up to 50% in 2010, but actually carried out by a relatively small number of individuals.

Given that many tax planning measures such as accelerating payments or transfers of wealth are by their nature irrevocable and could lead to additional liabilities, what course of action should a practitioner advise?

At this stage, an information gathering exercise may be worthwhile; reviewing a client's income assets, appetite for risk and how important tax minimisation is to them. If one has that information and has discussed hypothetical options with a client, then it may be possible to move relatively quickly. For example, if a client is looking to sell a business, then the relatively low rate of CGT and the existence of Business Asset Disposal Relief on the first £1 million worth of gains may be a factor in accelerating the sale of a business. Again, commercial, personal and other considerations need to be taken into account.

Secondly, if one has the relevant information, one could put plans into effect in the period between the General Election and the first Budget of a new administration. The possibility that no one party will gain a majority would make the process of agreeing a Budget that much more challenging and the content of the Budget that much more unpredictable. One process that might need to be completed before the Budget is an Excluded Property Trust; holding non-UK assets by someone who is non-UK domiciled at present. Again, appointments into trusts are irrevocable and create permanent changes.

In conclusion, caution is required and the general strategy to take all the necessary information on a client rather than embarking on premature, precipitate, and irreversible actions.

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