

## **FB2025 – Capital gains tax measures (Lecture B1473 – 23.21 minutes)**

Clause 7 sets the capital gains tax rates as follows:

- Repeal of legislation setting a separate rate for residential property;
- Setting the rates as 18% for gains falling within the basic rate band and 24% for gains falling outside of the basic rate band; and
- Setting the rate on trustees and personal representatives at 24%.

These rates do not apply to carried interest gains.

Schedule 1 contains further provisions and this legislation applies for disposals made on or after 30 October 2024.

Schedule 1B TCGA 1992 which contains the definition of residential property for the purposes of CGT is repealed in full. However, this definition is relevant, in particular for non-residents disposing of UK land where the status of the land will determine the basis of calculation of the gain. Schedule 4AA TCGA 1992 is amended with a new definition of residential property being included as Para.16A – 16H Schedule 2 FA2019. This broadly replicates the definition which was in Schedule 1B.

Clause 8 specifies that the rate of capital gains tax for gains which qualify for business asset disposal relief will increase to 14% for disposals made on or after 6 April 2025 and further to 18% for such gains for disposal made on or after 6 April 2026.

Clause 9 imposes an equivalent change in the rate of tax for gains which qualify for investors' relief. Clause 10 reduces the lifetime limit for investors' relief to £1 million (from £10 million) with effect for disposals made on or after 30 October 2024.

Schedule 2 contains further provisions relating to Clauses 7 – 9:

- Gains or losses which arise in 2024/25 where an individual falls within the temporary non-resident rules, but becomes UK resident during that year, will be treated as accruing before 30 October 2024;
- Foreign chargeable gains treated as remitted to the UK under s809J ITA2007 (which specifies the order of remittances being made to the UK following remittance of nominated income), will be treated as remitted before 30 October 2024;
- Gains which are taxable under s86 TCGA 1992, where gains of an offshore trust are attributed to the settlor, will be treated as accruing before 30 October 2024;

- Gains which are taxable under s87 or 89 TCGA 1992, where capital payments made to beneficiaries of offshore trusts are matched to gains arising in the trust, will be taxed according to when the capital payment was received. If this was between 6 April and 30 October 2024, the gain will be taxed at the old CGT rates with later payments being taxed at the new CGT rates.

Under (unchanged) basic principles, a taxpayer can allocate losses, annual exemption and basic rate band in a way which gives the best outcome. This applies where there has been a change in the rate during the year, unless specific provisions disapply those rules. Since that is not the case, there will be some flexibility for clients with multiple disposals.

#### *Example*

Angie has income of £35,000.

She disposes of shares in May 2024, generating a gain of £12,000 and then sells a buy-to-let property in November 2024 for a gain of £37,000.

She has losses brought forward of £15,000 and the normal annual exemption.

#### *Calculation of capital gains tax*

Angie has unused basic rate band of £15,270.

The rate of tax on the shares will be 10% or 20%, and on the property, it will be 18% or 24%.

It would be best to offset the losses and the annual exemption against the property gain as the relief will be at a higher rate, but to utilise the basic rate band against the gain on the shares, as this will allow the 10% rate to apply.

	Shares £	Property £	Total £
Gains	12,000	37,000	49,000
Losses		(15,000)	(15,000)
Annual exemption		(3,000)	(3,000)
Net gains	12,000	19,000	31,000

Taxed:

12,000 @ 10%	1,200	
3,270 @ 18%		588.60
15,730 @ 24%	3,775.20	
Total		<u>5,563.80</u>

Schedule 2 also contains anti-forestalling provisions relating to these CGT changes.

### *Main rates of CGT/reduction in lifetime limit for investor's relief*

The first set of provisions apply for the purposes of the change in the main rates of CGT and the reduction in the lifetime limit for investors' relief.

Where a contract was exchanged before 30 October 2024 under an unconditional contract, but not completed by that date, the date of disposal will be treated as the date of completion, rather than exchange, unless the contract is an excluded contract. S28 TCGA 1992 determines that the date of disposal would normally be exchange where the contract is unconditional.

A contract is 'excluded' if:

- Neither party entered into it with the purpose of obtaining an advantage through the operation of the normal CGT timing rules and
- Where the contract was between connected persons, the contract was entered into wholly for commercial reasons.

A claim that includes a specific statement that those conditions are met must be included as part of the reporting of the gain unless the gain on that disposal plus all other disposals made under excluded contracts does not exceed £100,000.

This claim would have to be a joint claim where business asset disposal relief or investors' relief is being made jointly with trustees.

Additionally, for the purposes of investors' relief, where a reorganisation has taken place on or after 6 April 2024, but before 30 October 2024, where the disposal would have been treated as being on a no gain/no loss basis, there is an amendment to the procedure where the reorganisation provisions can be disapplied to allow the gain to crystallise. If an election to disapply the share reorganisation provisions is made on or after 30 October 2024, the disposal of the original shares will be treated as taking place at the date of the election and not at the date of the reorganisation.

### *Increases in rate of BADR/IR*

The second set of provisions apply for the purposes of the increase in CGT rates where business asset disposal relief and investors' relief are claimed (from 6 April 2025 and then 6 April 2026).

## *General*

These rules apply where:

- an asset is transferred on or after 6 April 2025 under an unconditional contract made before 30 October 2024;
- an asset is transferred on or after 6 April 2025 under an unconditional contract made on or after 30 October 2024 but before 6 April 2025; or
- an asset is transferred on or after 6 April 2026 under an unconditional contract made at any time in 2025/26.

In each case, the disposal will be treated as taking place when the asset is transferred (rather than on exchange) unless it is an excluded contract.

Although the rules are the same as outlined above, these are repeated here. A contract is 'excluded' if:

- Neither party entered into it with the purpose of obtaining an advantage through the operation of the normal CGT timing rules; and
- Where the contract was between connected persons, the contract was entered into wholly for commercial reasons.

A claim that includes a specific statement that those conditions are met must be included as part of the reporting of the gain unless the gain on that disposal plus all other disposals made under excluded contracts does not exceed £100,000.

This claim would have to be a joint claim where business asset disposal relief or investors' relief is being made jointly with trustees.

## *Business asset disposal relief*

There are provisions relating to claims for business asset disposal relief where there has been a share reorganisation.

As with the provisions discussed above for investors' relief, where an election is made to disapply the share reorganisation provisions, the disposal of the original shares will be treated as taking place at the time of the election rather than at the time of the reorganisation.

The legislation considers two situations.

1. Reorganisation takes place on or after 6 April 2023 but before 30 October 2024 and the election to disapply the reorganisation provisions is made on or after 30 October 2024. Additionally, as at 30 October 2024 the company is the individual's personal company, is a trading company or holding company of a trading group and the individual is an officer or employee of a relevant company.
2. Reorganisation takes place on or after 30 October 2024 but before 6 April 2026 and the election to disapply the reorganisation provisions is made on or after 30 October 2024. Additionally, as at the date of the election, the company is the individual's personal company, is a trading company or holding company of a trading group and the individual is an officer or employee of a relevant company. The rules do not apply in this scenario if the reorganisation and the election occur in the same tax year. If, in this scenario and before the making of the election, the company ceases to qualify under the BADR rules (so is not the individual's personal company etc), then the disposal is treated as taking place at that point rather than at the time of the reorganisation.

These do not apply where the reorganisation falls within s135 or s136 TCGA 1992. However, there are specific provisions where a reorganisation falls within this legislation. Again, this is split into two parts.

Firstly, where the reorganisation takes place on or after 6 April 2023 but before 30 October 2024 and the election to disapply is made on or after 30 October 2024. If condition A or B is met, the disposal of the original shares takes place at the time of the election and not at the time of the original exchange.

Condition A is that the persons who hold shares (or securities) in company B immediately after the exchange are substantially the same as those who held shares (or securities) in company A before the exchange. For these purposes, connected persons are treated as the same person. Alternatively, this condition is met if the persons have control of company B after are substantially the same as those who have control of company A before. For the latter condition you do not treat connected persons as the same person.

Condition B is that for shareholders who hold shares in both company A and company B hold a greater percentage of ordinary share capital in B immediately after the exchange than they held in company A immediately before the exchange and as at 30 October 2024, B is the individual's personal company, is a trading company or holding company of a trading group and the individual is an officer or employee.

There are equivalent provisions for reorganisations which take place on or after 30 October 2024 but before 6 April 2026 where an election to disapply the exchange provisions is made

on or after 30 October 2024. Again, this second restriction does not apply if both the exchange and the election occur in the same tax year.

The wording of the legislation is slightly different but the impact is the same. If either condition A or condition B is met, then the date of disposal is the date of the election. Again, there is a modification where the company ceases to qualify under the BADR rules before the election is made, where the disposal is treated as taking place at that point rather than at the time of the reorganisation.

### *Investors' relief*

There are provisions relating to share reorganisations where investors relief is claimed in respect of the increases in tax rates from 6 April 2025 and 6 April 2026 (the provisions relating to the reduction in the lifetime allowance are discussed above).

This follows the general pattern so that where an election is made to disapply the share reorganisation provisions, the disposal of the original shares will be treated as taking place at the time of the election rather than at the time of the reorganisation.

The legislation considers two situations.

1. Reorganisation takes place on or after 6 April 2023 but before 30 October 2024 and the election to disapply the reorganisation provisions is made on or after 30 October 2024.
2. Reorganisation takes place on or after 30 October 2024 but before 6 April 2026 and the election to disapply the reorganisation provisions is made on or after 30 October 2024. If the company ceases to qualify for investors relief, the disposal is deemed to take place at the time they cease to qualify rather than at the time of the reorganisation. The rules do not apply in this scenario if the reorganisation and the election occur in the same tax year.

These do apply where the reorganisation falls within s135 or s136 TCGA 1992.

Clause 12 amends the rate of capital gains tax on carried interest for individuals and personal representatives so that it increases to 32% with effect from 6 April 2025. This applies to all gains, even if they were to fall within unused basic rate band. S11 TCGA 1992 which applies the ordering of gains within the rate bands is amended as a result of this and the other changes.