Capital gains tax (CGT)

CGT is payable by individuals on net chargeable gains made each tax year in excess of the annual exemption of £12,000. The rate payable is 10% to the extent that the sum of the individual's taxable income and gains is within the basic rate tax threshold of £37,500 and 20% above this level (all figures and rates quoted in this note relate to the 2019/20 tax year). However, the former 18% and 28% rates will apply to gains on interests in residential property.

CGT mitigation strategies

- **Transfers to spouse**

  No gains arise on a transfer of assets between spouses, so a transfer prior to disposal could mitigate the tax liability by enabling the use of the spouse's annual exemption and any remaining basic rate tax band available.

- **Use of trusts**

  Gains showing on assets transferred to most trusts (where the creator of the trust is not a beneficiary) can be held over so that they would not become chargeable until disposal by the trustees. The trustees have an annual exemption of only £6,000 and gains above this amount are taxable at 20% (or 28% on interests in residential property), so the difference in tax payable on a disposal by them in the same tax year as the taxpayer might be marginal.

  The transfer to the trustees could however be carried out in stages over more than one tax year, part without a holdover relief claim (so possibly to a trust where the creator can be a beneficiary), in order to spread the taxpayer's gain and make use of more than one of their annual exemptions and available basic rate tax bands. In addition assets could subsequently be transferred out of the trust to beneficiaries, with the gains held over again to be realised by the beneficiary on a later sale.

The above techniques can be combined to make use of as many available annual exemptions and spare basic rate tax bands as possible. In order to be effective it should be clear that the main purpose of the transactions is to pass the economic interest in the assets to the recipients and not tax avoidance, notwithstanding that the transfers are being completed in a tax efficient manner.

- **Entrepreneurs' relief**

  By claiming entrepreneurs' relief taxpayers can reduce their CGT rate to 10% on taxable gains incurred on certain qualifying business disposals they choose within a £10 million lifetime cap.

  The assets disposed of could consist, amongst other things, of all or part of a sole trader business or interest in a partnership.

  There is no definition of what constitutes "part of a business" but for the relief to apply, it appears that the business that remains after the asset disposal must be different to the one before and not simply be the same but with reduced scale.

- **Non-residence**

Although this will often not be relevant, if the taxpayer incurred a gain, other than on UK residential property, during a period in which they were non-UK resident for at least five full tax years there would be no UK CGT due. It would however be necessary to consider the taxation rules in the jurisdiction in which the taxpayer is resident to ensure that there would be a saving.

CGT deferral strategies

- **Rollover relief**

Using rollover relief, gains on the disposal of certain business assets can be deferred on reinvestment into new qualifying business assets until the disposal of the new assets.

- **Enterprise Investment Scheme (EIS)**

Gains made by individuals can be deferred on reinvestment of the proceeds into an EIS until the sale of it. An EIS must be a single investment in a small unquoted trading company and is therefore generally a relatively high risk investment.

- **Use of a company**

Where a taxpayer gifts assets to a company, hold over relief will be available so any gain on them would be deferred and arise in the hands of the company on its disposal of the asset.

The main corporation tax rate applying to a company's taxable gains on the disposal of its assets is currently 19%.

Alternatively, if the whole of a business were transferred to a company as a going concern in exchange for shares in the company, the gain could be deferred until the disposal of the shares by the taxpayer.

With both of these options there would be stamp duty land tax payable on the transfer of land to the company and there may be difficulties in extracting proceeds from the company by the taxpayer without tax charges. Although maintaining the company might have long term tax planning benefits, in view of the costs of setting up and running it, any immediate saving might therefore be marginal depending on the level of gain.

For further information please get in touch with your usual Lodders contact or via:

Stratford upon Avon office – 01789 293259
Henley in Arden office – 01564 792261
Cheltenham office – 01242 228370

© Lodders Solicitors LLP 2019

Whilst this firm believes the above information to be correct, it should not be regarded as sufficiently full, accurate or precise so as to apply to any particular situation. You must always seek legal advice concerning any situations referred to above. No responsibility for any loss suffered by any person as a result of acting in reliance upon the contents of this note can be accepted by this firm.

Lodders Solicitors is a trading name of Lodders Solicitors LLP Registered in England Partnership No OC306995 Regulated by the Solicitors Regulation Authority