Sibbalds
CHARTERED ACCOUNTANTS

PayLessTax
2023 Capital Gains Tax **Special**

A Relief for Rollover

What do land, buildings, furnished holiday lets, goodwill, fixed plant and machinery, fish, milk and ewe and suckler cow premium quotas, farmers income support payment entitlements, Lloyds underwriters rights and assets, ships, aircraft, hovercrafts, satellites, spacecraft and space stations have in common?

If businesses use any these assets in their trade and subsequently dispose of them and make a gain chargeable either to capital gains tax or corporation tax, it may be possible to defer that gain.

How so? By being 'deemed' to have reinvested all or some proceeds from the disposal into acquiring something of similar ilk which will also be used for the trade.

Example 1

► Rudge Ltd sold land which they had used for part of their trading activity for £300,000 in May 2022, having originally bought it for £100,000. The gain of £200,000 is potentially liable to corporation tax.

► The company buys a factory for £400,000 in June 2024, which it will occupy and use for its business.

► **As the factory costs are greater than the land sale proceeds and both assets have been used in the trade, Rudge Ltd can make a rollover relief election to defer the £200,000 gain until the subsequent sale of the factory**.

► Rudge Ltd sells the factory in October 2029 for £700,000.

► The chargeable gain would then be £700K minus (£400K less the rolled over gain £200K) = £500K. This assumes that the £700K proceeds are not reinvested.

► **If the factory had cost £95,000, no relief could be claimed as the proceeds are deemed not to have been reinvested (i.e. £300K - £95K = £205K), is greater than the gain of £200,000**.

► If the new premises had cost £175,000, part of the gain(i.e.£300K - £175K = £75K) could be deferred. The remaining £125,000 would still be liable to corporation tax for the accounting period in which the land was sold.

Worth noting:

a) If the asset is stock or the business is involved in dealing in or developing land or provides services to a third party occupying land which the business has an interest in, then, except in certain circumstances, rollover relief can't be claimed.

b) Companies cannot normally claim rollover relief as regards intangible assets such as goodwill.

c) Normally the new asset needs to be acquired either within one year prior or three years post the disposal of the old one.

d) A provisional rollover relief election can be made at the time of the disposal of the first asset as long as there is an intention to reinvest the proceeds within the required legislative time frame. Once done then a finalised claim must be made, otherwise the tax comes back into play on the first disposal along with interest charges.

If the new asset is deemed to be a depreciating one, relief happens in a different way. Instead of the tax being deferred until you dispose of the new asset, **it will be postponed until the earliest of**:

a) When you dispose of the new asset.

b) When you stop using the new asset within your trade.

c) 10 years from when you acquired the new asset.

TIP...

Please talk to us if you have or are contemplating disposing of an asset where rollover relief could possibly be claimed.

Property Think Ahead

If you are contemplating disposing of a residential property, either in the short term or medium term, it is wise to pause and think about the capital gains tax consequences of doing so.

Where a capital gains tax (CGT) liability could arise there may be timely obligations to adhere to so as to avoid HMRC's wrath. Equally if planning is done in advance of the disposal, in some cases tax can be mitigated or even wiped out altogether.

What are the obligations?

► If you are a UK resident taxpayer and have a tax liability then you need to submit a CGT return and pay over the tax within 60 days of the completion date otherwise penalties could be imposed. A non-UK resident taxpayer would have to complete one irrespective of whether there is a tax liability arising from the disposal.

If the circumstances fit, what things ought to be considered pre disposal?

Married couple/civil partnership

► Should you transfer the ownership of the property in part or in whole to the other partner:

a) To make use of their £6,000 CGT annual exemption.

b) If they are a basic rate taxpayer and you are not, to ensure some or all of the gain is taxed at 18% as opposed to 28%.

c) To utilise any capital losses they may have.

Anybody.

► **If the property was once your home but you have been absent from it since, consider whether to reoccupy the property as a main residence as this may throw up more CGT reliefs.** This cannot be a 'temporary' residence to obtain this CGT break.

► **Do you have more than one residence? If so, are you within the time limit to elect for this property to be your main residence for CGT purposes?** If the other property is rented accommodation, do you need to make an election to state that it is of nominal capital value to you to ensure that CGT main residence relief is given against the house you are selling?

► **Had you been in job related accommodation (JRA) for part of the time you owned this property?** If so, is JRA relief available?

► **Are you or your partner disabled or moved into a care home and not occupied the property for the last 3 years?** Will you be eligible to claim CGT main residence relief for that period of absence?

Furnished Holiday Let (FHL)

► **Could you reduce the tax liability on the gain to 10% as opposed to 18%/28%** on the grounds that it is a business asset disposal?

► **Have you bought another business asset/FHL in the previous 12 months or are you intending to do so within the next 3 years? Are you able to defer the gain and therefore the tax until the disposal of the new asset?**

► Have you gifted the FHL away (e.g. to your daughter)? If so you could avoid the CGT liability by making a holdover election.

TIP...

There are many other circumstances where CGT can potentially be avoided or mitigated if planning is done pre disposal. Come and have a conversation with us to see if any apply.

Don't miss out on the 10% rate

If you are self-employed and sell your business after 2 years or more, the gain arising on that disposal may only suffer capital gains tax at 10% rather than 20%. The same could apply where a person gets rid of shares in their personal trading company. This is known as business asset disposal relief (BADR). There is a lifetime limit of £1 million for which the 10% rate applies. However, if it can be claimed that is a potential overall tax saving of up to £100,000.

The conditions relating to BADR can be very complex as a result of which it is possible people may miss out on claiming the relief in the following circumstances:

► **Gains arising on furnished holiday lets.**

► **The sale of business assets within 3 years of the cessation of the business.**

► **When only part of the business is sold off.**

► **Trust gains on a business asset.**

► **Where you are a non-UK domiciled taxpayer who is remitting gains to the UK which may be eligible for BADR.**

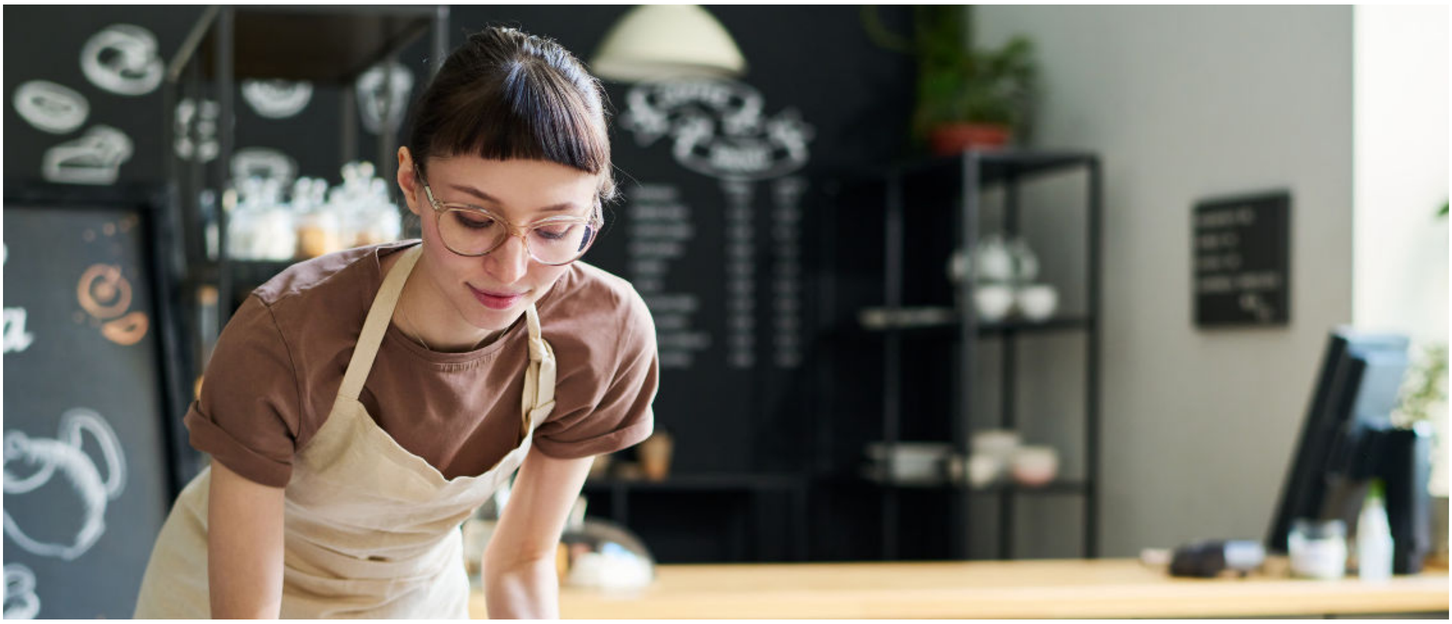
► **As a result of a share for share exchange**, for example a company takeover. Upon the sale of the new shares, the person finds that, for BADR purposes, it is not deemed to be their personal company but it was at the time of the share reorganisation. An election can be made resulting in the gain accruing up to the time of change attracting the 10% tax rate. If the sale of the new shares are in a different tax year to when the share for share exchange took place, you can actually make a further election to defer tax on the accrued gain until you have disposed of the new shares.

► **Gains from disposals of shares you acquired through the government approved Enterprise Management Incentive share option scheme**. In this scenario it doesn't have to be your personal company nor do you need to have held on to the shares for at least 2 years prior to the sale, as is normally the case, to obtain this capital gains tax break.

► **An associated disposal**. This is where an individual sells their partnership interest or shares in their personal company whilst around the same time they dispose of an asset owned personally by them which had been used in that business.

TIP...

The legislation surrounding BADR is convoluted and can easily catch people out so it is always wise to seek professional advice preferably prior to sale to see if the relief is available. Please do not hesitate to contact us if you would like advice on this matter.



Pay More Tax to Save Tax

Unless you are feeling altruistic you would probably think it mad to make an election to pay more tax. However, in one particular case, doing so may result in you saving more tax, and sometimes national insurance, in the long run!

An employer may give an employee shares in their company either free or at under value.To protect the employer there are likely to be restrictions placed on those shares. For example, if the employee decides to leave the company they may have to forfeit the shares or can only sell them back to the employer at a certain price.

If this is not through a government approved incentive share scheme arrangement **there is likely to be an income tax charge, through PAYE, based upon the actual market value (AMV) of the shares at the time the employee receives them. The AMV will take account of the fact that there are restrictions placed on those shares so will be less than the unrestricted market value (UMV) where no constraints would be imposed**. If there was a recognized stock market available to be able to sell those shares a national insurance (NI) charge would also be applied based upon the AMV.

However, you can make an election within 14 days of receiving the shares to be taxed on the UMV as opposed to the AMV. This will result in a higher upfront income tax liability (possibly NI too).

Why make that election?

If you don't make it and further on down the line the company is sold and the restrictions have washed away, a proportion of the gain you make from the sale of your shares will be liable to a further income tax hit (possibly NI too) as opposed to a capital gains tax charge. Worst case scenario a tax and NI liability of up to 62% (64% in Scotland) in comparison to as low as a 10% capital gains tax rate.

Example

► Sarfraz, a higher rate taxpayer, has been given shares, with restrictions, by his employer, Hamil Ltd.

► At the time the AMV of his shares is £4,000. The UMV is £10,000.

► With an election his tax liability is £4,000 (£4,200 Scotland) in comparison to £1,600 (£1,680 Scotland) without one.

► The company is sold 2 years later and he receives £75,000 for his shares.

► With the election he pays CGT of £12,400. Without it, Sarfraz would pay income tax of £17,040 (£17,892 Scotland) and capital gains tax of £5,080.

► Total tax saved by making the election is £7,320 (£8,052 Scotland).

This assumes the present known income tax and CGT rates apply and the CGT exemption is £3,000.

The risk with making the election is that the value of the shares go down rather than up.

TIP... If you are being offered shares by your employer speak to us as soon as possible to see if an election can and should be made.

We are here to help

We can help you by ensuring that you're aware of the changes that will affect you, your family and your business. To find out more about the ways that we can help you, do not hesitate to contact us.

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