

## CAPITAL TAXES

## Capital Gains Tax



***A capital gain arises when certain capital (or 'chargeable') assets are sold at a profit. The gain is the sale proceeds (net of selling costs) less the purchase price (including acquisition costs).***

***We consider the taxation of capital gains and outline the reliefs available. The Wise & Co Team can provide taxation advice to ensure that maximum opportunity is taken of these reliefs.***

**What are the main features of the current system?**

- Capital Gains Tax (CGT) is charged at the rate of 10% on gains (including any held over gains coming into charge) where net total taxable gains and income is below the income tax basic rate band threshold. Gains or any parts of gains above the basic tax rate band are charged at 20%, with a few exceptions, which are considered in the 'Exceptions to the CGT rates section' below.
- Business Asset Disposal Relief (formerly known as Entrepreneurs' Relief) or Investors' Relief (IR) may be available on certain business disposals. BADR is a CGT relief which reduces the rate of tax paid where the disposal proceeds are high enough to take you into the higher tax bands.

**Business Asset Disposal Relief (BADR)**

You may be able to pay less CGT when you dispose of all or part of your business using BADR but the amounts etc. have changed over the years so the calculations involved can be complex. Chargeable gains covered by BADR are taxed at the tax rate of 10%. The amount of BADR given depends on the amount of the individual's BADR Lifetime Allowance after taking previous disposals into account at the date of the disposal.

The Lifetime Allowance is:

- £1 million since 11 March 2020. So the first £1 million of chargeable gains qualifying for BADR are taxed at the rate of 10%.
- £10 million from 6 April 2011 – 11 March 2020: so the first £10 million of gains qualifying for BADR are taxed at 10%.

Gains in excess of the Lifetime Allowance are charged at the CGT rate applicable for that period.

The relief is available to individuals on disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership.
- shares in an individual's 'personal company'.
- assets used by a business or a company which has ceased trading within the last three years.

Where an individual makes a qualifying business disposal, relief may also be available on an 'associated disposal'. An 'associated disposal' is a disposal of an asset:

- used in a qualifying company or group of companies of the individual or
- used in a partnership, where the individual is a partner.

Restrictions on obtaining the relief on an 'associated disposal' are likely to apply in certain specific situations. This includes the common situation where a property is in personal ownership but is used in an unquoted company or partnership trade in return for a rent. Under BADR the availability of relief is restricted where rent is paid.

### **Ownership period of two years**

Ownership conditions apply throughout the period either up to the date of disposal or the date that the business ceased. For disposals made since 6 April 2019, the necessary qualifying period of ownership is two years.

### **The 5% rule for company shareholders**

To qualify for BADR, the company needs to be an individual's 'personal company' where the individual must:

- be a company employee or office holder
- hold at least 5% of the company's ordinary share capital and
- be able to exercise at least 5% of the voting rights.

For disposals on or after 29 October 2018, they must also satisfy one of the following tests:

- a distribution test – an individual is entitled to at least 5% of the company's profit available for distribution to equity holders and 5% of the assets available for distribution to equity holders in a winding up; or
- a proceeds test – an individual is entitled to at least 5% of the proceeds in the event of a disposal of the whole of the ordinary share capital of the company.

### **Dilution**

Since 6 April 2019, if a shareholder's holding in their company is reduced below the normal 5% qualifying level as a result of raising funds for commercial purposes (by means of an issue of new shares), they may still obtain BADR. An election can be made which allows shareholders to crystallise a gain on their shares before the dilution occurs. This would be achieved by treating the shareholding as having been sold and immediately re-purchased at the prevailing market value. The election will have to be made in their tax return for the year in which the dilution takes place. The shareholder may also elect to defer the accrued gain until their shares are actually disposed of.

Careful planning will be required with BADR but if you would like to discuss BADR in detail and how it might affect your business, please do get in touch.

## Investors' Relief (IR)

Investors' Relief reduces the amount of Capital Gains Tax on a disposal of shares in an unlisted trading company. IR is aimed at external investors (other than certain employees or officers of the company). It applies to shares that are issued on or after 17 March 2016 that are disposed of on or after 6 April 2019. To qualify for the 10% CGT rate under 'investors' relief' the following conditions need to be met:

- shares must be newly issued and subscribed for by the individual for new consideration
- be in an unlisted trading company, or an unlisted holding company of a trading group
- have been issued by the company on or after 17 March 2016 and have been held for a period of three years from 6 April 2016
- have been held continuously for a period of three years before disposal.

An individual's qualifying gains for IR are subject to a lifetime cap of £10 million.

## Share identification rules

All shares of the same class in the same company are treated as forming a single asset, regardless of when they were originally acquired. However, 'same day' transactions are matched and the '30 day' anti-avoidance rules will remain.

### Example

On 15 April 2020 Jeff sold 2000 shares in A plc from his holding of 4000 shares which he had acquired as follows:

- 1000 in January 1990
- 1500 in March 2001
- 1500 in July 2005

Due to significant stock market changes, he decided to purchase 500 shares on 30 April 2020 in the same company.

The disposal of 2000 shares will be matched firstly with the later transaction of 500 shares as it is within the following 30 days and then with 1,500/ 4000 (1000+1500+1500) of the single asset pool on an average cost basis.

## CGT annual exemption

Every tax year each individual is allowed to make gains up to the annual exemption without paying any CGT. The annual exemption for 2021/22, up to and including 2025/26 is £12,300 (it was also £12,300 in 2020/21 and was £12,000 in 2019/20). Consideration should be given to ensuring both spouses/civil partners utilise this facility.

## Exceptions to the CGT rates

The rates of CGT are generally 10% (if the amount is within your basic rate Income Tax band) and 20% (for amounts above this rate and if you're a higher rate income tax payer). However 18% and 28% rates apply respectively for carried interest and for chargeable gains on residential property that does not qualify for private residence relief.

## Disposals of UK residential property

You may have to pay Capital Gains Tax if you make a profit ('gain') when you sell (or 'dispose of') property that's not your home. For example, buy-to-let properties, land or inherited property.

In most cases you do not need to pay the tax when you sell your main home. For UK property disposals made from 6 April 2020, you have 30 days after the property's completion date to report and pay any Capital Gains Tax due on your UK property disposals. Non-residents have had this obligation since 2015.

This requirement applies to disposals made by UK resident taxpayers on or after 6 April 2020 only where tax is due. The usual rules for determining the disposal date for CGT purposes apply (normally this is the date of exchange rather than the date of completion). Disposals made before 6 April 2020 do not have to comply with this requirement, even if completion took place on or after 6 April 2020.

**Since the Autumn 2021 Budget:**

- For both UK and non-UK residents the 30-day deadline for submission and payment of tax on UK residential property disposals has been extended to **60 days** from the completion date. That is, you have 60 days if the completion date was on or after 27 October 2021.
- If you are a UK resident and dispose of a mixed-use property (part residential/part non-residential) only the residential portion of the gain should be reported to pay tax.

To report the gain, the taxpayer needs to use an HMRC digital service. You must set up a CGT UK property account even if you are appointing an agent to report the gain. The digital service is completely separate from the self-assessment system. To use the service, you'll need a Government Gateway user ID and password. If you do not have a user ID, you can create one. [Further details are on the government website.](#)

**Other more complex areas**

Capital gains can arise in many other situations. Some of these, such as gains on Enterprise Investment Scheme and Venture Capital Trust shares, and deferred gains on share-for-share or share-for-loan note exchanges, can be complex. Please talk to us before making any decisions.

**Other reliefs which you may be entitled to**

And finally, many existing reliefs continue to be available, such as:

- private residence relief;
- business asset rollover relief, which enables the gain on a business asset to be deferred until a point in the future;
- business asset gift relief, which allows the gain on business assets that are given away to be held over until the assets are disposed of by the donee; and
- any unused allowable losses from previous years, which can be brought forward in order to reduce any gains.

**How we can help**

Careful planning of capital asset disposals is essential in order to minimise Capital Gains Tax. The Wise & Co Team would be happy to discuss the options with you. Please contact us if you would like further advice.

*Last updated in February 2022.*