

Briefing document

Office of Tax Simplification second capital gains tax report

Introduction

In July 2020, Chancellor Rishi Sunak wrote to the Office of Tax Simplification (OTS) and asked it to conduct a review of how individuals and small businesses are taxed on capital gains. The OTS has done so in two stages.

The OTS' first report was published on 11 November 2020 and focused on the policy design of, and principles underpinning Capital Gains Tax (CGT). Matters considered included CGT rates, the boundaries between income tax and CGT, the annual exempt amount and capital transfers (i.e. gifts and bequests). Our briefing note on the OTS' first report is available on request or at <https://deloi.tt/3eZ8aoA>

On 20 May 2021, the OTS published their second report, which considers practical, technical and administrative issues. This note summarises the key points from the OTS' second report.

OTS recommendations and next steps

The OTS has made 14 recommendations, which comprise 3 recommendations to tackle "difficult areas", 4 standalone recommendations and 7 additional recommendations affecting large numbers of people.

Notable recommendations include extending the amount of time couples going through a divorce have to make no gain, no loss CGT transfers of assets, enabling UK resident taxpayers to nominate which of their available residences should be their main residence for CGT purposes on disposal (non-UK residents can already do this) and reviewing when deferred consideration received on disposals of businesses and land should be taxed.

The OTS is an independent adviser to the government and makes recommendations for the government to consider. It cannot implement tax changes. The government may choose to implement all, some or none of the OTS' recommendations.

Longer-term recommendations

Single Customer Account

- The government intend to introduce a 'Single Customer Account' through which taxpayers will be able to manage their tax affairs. It will replace Personal Tax Accounts. The OTS recommends that CGT reporting is integrated into this system, making it a central hub for reporting and storing CGT information, including records of losses, main residence nominations and gains deferred into Enterprise Investment Scheme (EIS) investments.

Main residence nominations

- Broadly, Private Residence Relief (PRR) provides up to 100% relief from CGT on the disposal of an individual's only or main home. Where UK residents have more than one eligible home, they can choose which home they wish to benefit from the relief by making a nomination to HMRC within two years of acquiring or disposing of an additional home. If no nomination is made they must decide which is in fact their main home, based on a number of factors such as how long they spend there or where their family lives. Non-UK residents can make a nomination on disposal.
- The OTS considers that PRR nominations should be retained, since there is no realistic alternative. Restricting PRR to factual main residences based on usage would be challenging for both taxpayers and HMRC.
- The OTS recommends that the government should review the practical operation of the rules, raise awareness of how the rules work and enable nominations to be saved in the Single Customer Account. The OTS suggests that the government consider allowing all taxpayers to make nominations on disposal and remove some counter-intuitive quirks in the rules.

CGT when proceeds are deferred

- The OTS' comments focus on sales of businesses and land and note that sale proceeds may be received over a number of years, take the form of cash and other assets, such as shares, and/or may not be capable of being determined at the point of sale, as the amount to be paid may depend on future events (e.g. based on how a business performs post-sale).
- The OTS recommends that the government consider whether CGT should be payable as and when cash is received when the proceeds from a sale are deferred. The OTS also recommends that the government consider the availability of reliefs to

future sale proceeds, including the availability of business asset disposal relief (formerly entrepreneurs' relief) on non-cash consideration to be paid at a later date.

Standalone recommendations

These are recommendations that the OTS considers to be relatively uncontroversial changes that would deliver practical benefits to taxpayers and which could be handled discretely. The recommendations are:

- **Share pooling** – Broadly, share pooling is intended to be a simplification measure which means taxpayers do not have to keep track of which of their identical assets they have sold for CGT purposes. However, in practice, it can lead to additional complexity. The OTS recommends that, where an individual has more than one investment manager, the pooling rules should be applied to each portfolio independently, instead of being applied across all shareholdings however held, as is currently the case.
- **PRR and gardens** – The OTS recommends that the government review how the PRR rules operate when taxpayers build a new home to move into in their garden. This would make self-builds more tax neutral.
- **Divorce and separation** – At present, separating couples can make no gain, no loss CGT transfers of assets between themselves until the end of the tax year of separation, and thereafter CGT can arise on such transfers. In practice, the end of the tax year deadline is too short for many separating couples to have resolved their affairs and so tax charges can arise on divorce. The OTS recommends that this issue could be reduced if no gain, no loss treatment were extended to apply to transfers made up to the end of the tax year at least two years following the date of separation, or within any reasonable time set by a financial agreement approved by a court, or by an equivalent Scottish process.
- **Debts** – Debts can be either exempt from CGT or chargeable, depending on whether or not certain clauses are included in the loan agreement. The OTS recommends that it should be possible for loan note instruments to include a simple irrevocable clause to state that the loan in question is within the scope of CGT, instead of the more complicated clauses which are currently included when this is the preferred tax position.

Additional recommendations

The OTS makes several additional recommendations intended to simplify CGT administration. These are:

- **Formalising the administrative arrangements surrounding the optional 'real-time' CGT service**, which can be used to report non-property disposals earlier than would otherwise be required. The OTS suggest that this could be made into a stand-alone return, which agents could also use, with, for example, set deadlines for HMRC to raise enquiries.
- **Extending the current 30 day deadline** to report and pay any tax due on property disposals to 60 days or **requiring estate agents or conveyancers to distribute HMRC provided information** about tax obligations on property disposals.
- EIS and Seed EIS are intended to provide financial support for growth investment into start-up and early stage companies. The rules can be complex to apply. **The OTS recommends that the EIS and Seed EIS rules should be reviewed, with a view to ensuring that procedural or administrative issues do not prevent the schemes' practical operation.**
- In order to calculate the CGT gain or loss arising on the disposal of foreign assets bought and sold for non-sterling currency, the proceeds and acquisition cost must be separately converted into sterling at the relevant dates. The OTS suggests the tax position could be simplified if the **gain or loss were calculated in the relevant foreign currency, and the resulting figure converted into sterling.**
- The OTS also recommends that the CGT position where **Compulsory Purchase Orders** are made should be reviewed. The OTS makes particular reference to farmland.
- Tax charges can arise if a lease is extended when an individual has both a leasehold and an interest in a company that owns that building's freehold. **The OTS recommend that the government consider removing inappropriate CGT and corporation tax charges when a freeholder is in effect extending his or her own lease.**
- Finally, the OTS recommends that **HMRC's guidance** is improved in a number of areas.

Find out more...

This note reflects the law in force as at 21 May 2021 and the OTS report published on 20 May 2021. The report can be viewed at <https://deloitte.tt/3vaeK2H>. Please be aware that this note does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk). For further information visit our website at www.deloitte.co.uk.

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