

## ALERT: Con-Lib's forthcoming increase in Capital Gains Tax

### What has been announced?

The coalition government has announced that the Emergency Budget will take place on 22 June 2010. In its Coalition Agreement it also announced that there would be an increase in the rate of capital gains tax on non-business assets.



We now know that the current rate of 18% on non-business assets will be withdrawn and the increased rate on the same will be "similar or close to those applied to income", i.e. 40% for higher rate tax payers and 50% for those with annual income over £150,000. Furthermore, there has been no mention of the introduction of any anti-inflationary mechanisms or measures to take into account the duration an asset has been held such as taper relief or indexation. There is also a possibility that the annual allowance could be reduced from £10,100 to £2,000 as previously suggested by the Lib-Dems.

There is much debate and speculation afoot, with commentators trying to predict whether the new rate will be introduced with immediate effect on 22 June, retrospectively with effect from 6 April 2010 or at the start of the next tax year, from 6 April 2011. It is hoped that the latter will be chosen not least so that sensible investment decisions can be taken and a flood of investment asset sales can be avoided. However, nothing is guaranteed and it is not unheard of to have mid-tax year commencement dates for new UK tax rules.

### Should you try to lock in to the lower rate of capital gains tax?

We do not know what the definition of "entrepreneurial business activities" will be in the new legislation but for those intending to dispose of assets in the near future which are and will most likely remain non-business assets (e.g. shares, second homes or buy-to-let properties) there is an argument that you should take pre-emptive action now to rebase the value of such assets or to accelerate the disposal so that crystallisation of the gain takes place before 22 June 2010 and you can potentially benefit from the current lower rate of tax.



Subject to the application of the new business asset rules, private equity and hedge fund managers may also be affected by the increase if their carried interests no longer qualify for relief.

### Planning options to consider

There are various options available to those wishing to rebase assets or accelerate disposals in order to capture the current lower rate of tax:



- arm's-length third party transactions (if appropriate from an investment perspective)
- sales using unconditional contracts
- sales and buybacks of shares with a 30 day interval
- inter-spousal share purchases
- inter-family sales (outright, via companies or to family trusts)
- inter-family gifts (outright or to family trusts)
- distributions out of existing trusts

The latter is particularly relevant for offshore settlements which are subject to a supplemental charge to capital gains tax and the suggested increase could result in a rate of tax of 64% or even 80% (if the top rate of capital gains tax reaches 50%). This will apply if the beneficiary is taxed on the arising basis or chooses to remit the funds to the UK.

Other taxes will also need to be considered when planning ahead of the capital gains tax increase such as stamp duty reserve tax (payable on the sale of UK shares), stamp duty land tax (payable on the sale of property or gifts of property subject to a mortgage) and inheritance tax.

### What now?

Should you wish to discuss any of this further, please do not hesitate to contact your usual Wedlake Bell adviser, or alternatively, contact Wedlake Bell on 020 7395 3000 or [info@wedlakebell.com](mailto:info@wedlakebell.com).



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