

## EMERGENCY BUDGET 22 JUNE 2010 - CAPITAL GAINS TAX CHANGES



### **Capital gains tax, non-UK domiciled UK resident taxpayers and other UK taxpayers with offshore interests : life before and after the 22 June 2010 Emergency Budget**

As widely anticipated, the Emergency Budget announced an increase in the rate of capital gains tax which is effective from 23 June 2010. An increase in a direct tax rate effective part way through a tax year presents a raft of complexities. This technical update focuses on the implications for non-UK domiciled UK resident taxpayers, temporary non residents, UK settlors and beneficiaries of offshore settlements, and participators with attributed gains from non-UK resident close companies.

### **Budget announcement**

HMRC Budget Note BN20 summarised the following changes effective on and after 23 June 2010:

- A new 28% capital gains tax rate for gains falling into an individual taxpayer's higher rate band, and for all gains of trustees and personal representatives.
- Gains arising between 6 April and 23 June 2010 taxable at 18%

and not taken into account in determining the rate(s) at which gains arising after 22 June 2010 should be charged.

- Taxpayers allowed to deduct losses and annual exemption in way most beneficial to them, generally involving offset against post-22 June 2010 gains.
- An increase in the lifetime limit on gains qualifying for entrepreneurs' relief from £2 million to £5 million, with no increase in the 10% rate.

### **Finance Bill clarification**

Finance (No 2) Bill 2010 contains draft legislation dealing with the following specific situations:

- Non-UK domiciled UK residents who remit foreign chargeable gains to the UK in 2010/11.
- Temporary non residents returning in 2010/11 to the UK within five UK tax years of departure.
- UK domiciled and resident settlors of settlor-interested non/dual-resident settlements taxable on attributed settlement gains in 2010/11.
- Beneficiaries resident or ordinarily resident in the UK

taxable on attributed gains from non-UK resident settlements in 2010/11.

### ***Non-UK domiciled UK residents remitting foreign chargeable gains to the UK in 2010/11***

Foreign chargeable gains remitted to the UK by a non-UK domiciled UK resident are deemed to accrue in the tax year of remittance. Finance (No 2) Bill 2010 provides that gains remitted in 2010/11 will be deemed to have accrued on the date of remittance. As a result:

- Gains remitted between 6 April and 22 June 2010 will potentially be taxable at 18%.
- Gains remitted between 23 June 2010 and 5 April 2011 will be taxable at 28% to the extent that they fall into the individual's higher rate band.

### ***Temporary non residents (TNRs) returning to the UK within five UK tax years in 2010/11***

TNRs making capital gains during a period of non-UK residence which has lasted less than five complete UK tax years on assets held at departure from the UK are treated as if the gains accrue in the tax year

of return to the UK. Finance (No 2) Bill 2010 provides that such TNRs returning to the UK in 2010/11 will be treated as having realised the gains prior to 23 June 2010, such that the capital gains tax rate will be 18%. This is so even if return to the UK during 2010/11 is after 22 June 2010.

### **UK domiciled and resident settlors of settlor-interested non/dual-resident settlements**

Under section 86 of the Taxation of Chargeable Gains Act 1992, a UK domiciled and resident settlor of a settlor-interested non/dual-resident settlement is taxed as if the settlement's gains were the settlor's for the year, such gains being taxed as the highest part of his or her gains. Finance (No 2) Bill 2010 provides that the gains attributed to the settlor for 2010/11 will be treated as having accrued before 23 June 2010, irrespective of the dates on which the gains during 2010/11 are made by the non-resident trustees, such that the capital gains tax rate will be 18%.

### **Beneficiaries resident or ordinarily resident in the UK of non-UK resident settlements**

Under section 87 of the Taxation of Chargeable Gains Act 1992, gains are attributed to beneficiaries resident or ordinarily resident in the UK who receive a capital payment from a non-UK resident settlement where capital gains have been made by the settlement. The remittance basis will apply to remittance basis users. Factoring in the 10% surcharge for each year between gains being

realised and attributed to the beneficiary produces a maximum possible rate of 44.8%. Finance (No 2) Bill 2010 makes the date of the capital payment key, as follows:

- Capital gains matched in 2010/11 with a capital payment made between 6 April and 22 June 2010 will be treated as accruing before 23 June 2010, even if the gains are made on or after that date.
- Capital gains matched in 2010/11 with a capital payment made between 23 June 2010 and 5 April 2011 will be treated as accruing on or after 23 June 2010, even if the gains were made before that date.

### **UK participators in non-UK resident close companies**

Under section 13 of the Taxation of Chargeable Gains Act 1992, a gain realised by a non-UK resident company which would be close if UK resident is attributed to participators who are UK resident or ordinarily resident. Finance (No 2) Bill 2010 is silent on the timing of such attributed gains, because section 13 is already time specific, specifying that attribution occurs at the time when the gain accrues to the company.

### **Opportunities for planning pre-6 April 2011**

The rules accompanying the increase in the capital gains tax rate are largely prescriptive, leaving little room for manoeuvre in terms of planning. However, the following planning opportunities do exist:

- TNRs returning to the UK within five UK tax years of

departure from the UK could take advantage of an 18% capital gains tax rate if returning prior to 6 April 2011, as opposed to the 28% rate applicable to a return after 5 April 2011.

- Gains attributed to UK domiciled and resident settlors of settlor-interested non/dual-resident settlements will remain taxable at 18% if the gains are realised prior to 6 April 2011, rather than at 28% for gains realised after 5 April 2011.

### **Concluding remarks**

Overall, within the confines of an increase in the capital gains tax rate, the relevant transitional provisions contained in the Finance (No 2) Bill 2010 are generally helpful to the taxpayers affected. The survival of these provisions through to the Finance (No 2) Act 2010 is, of course, subject to the usual passage of the Bill through Parliament and it should not be assumed that any one provision will survive that process unscathed. Please also bear in mind that the purpose of this update is to provide a general overview, not targeted, professional advice. For such advice, you should approach your usual Dixon Wilson contact.

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