

# TAX

## Capital Gains Tax Changes - Run for Cover?



Who is likely to be affected?

What is being suggested currently?

What would be a fairer system in the circumstances?

Timing of the proposed increase

What can you do?

The new coalition Government has begun to announce changes which are likely to feature in the Emergency Budget on 22 June. An increase in the capital gains tax (CGT) rate of 18% is the most controversial, bearing in mind the Tory election manifesto made no mention of any changes. This article speculates on what might be introduced and what can be done now to minimise tax liabilities. Professional advice based on the specific circumstances should always be sought before taking any action.

Who is likely to be affected?

Individuals and trusts with assets to sell which could include second homes, buy to let investments, company shares, private assets such as antiques, paintings or even jewellery. Many people have invested in such assets due to the poor record on pensions. A further possible target could be 'carried interests' applicable mainly to the venture capital industry.

The Government is hoping to raise additional revenue to compensate for the proposed income tax cuts for the lower paid. Last year CGT raised nearly £8 billion but economists say that any increase in rates will lead to a fall in revenues as people will hold on to assets longer hoping for rates to fall. A higher rate of CGT is not new. As recently as 2008, it was 40% at the top level but with an inflation allowance and also taper relief available.

What is being suggested currently?

- Increase in the CGT rate from 18% to an unknown higher rate of upto 50%.
- Possible reduction in the annual exemption from £10,100 currently to possibly as low as £2,500.
- Business assets (not defined) to be taxed at lower rates (not specified). Entrepreneurs relief currently taxes business gains at 10% up to a lifetime limit of £2 million.

What would be a fairer system in the circumstances?

- Allowance for inflation (or an indexation allowance)
- Taper relief to benefit investors who hold assets long term.

However, the Queen's Speech made no mention of either of these two reliefs.

Timing of the proposed increase

The suggested dates for the increase to be effective from ranges as follows:

- Date of the Emergency Budget ( 22 June 2010)
- 6 April 2011 (would allow some time for people to organise their affairs before the increase but possible anti-forestalling provisions)
- 6 April 2010 (backdating the increase would be retrospective and extremely unfair)

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### What can you do?

There is of course very limited time to take action prior to the Emergency Budget but there may be some actions that could be taken to minimise the brunt of the increase, assuming the changes are not backdated.

Please speak to your usual Shipleys contact before taking any action. These are as follows (ranging from the simple to the drastic):

- Use your annual exemption of £10,100 to realise gains. The exemption cannot be rolled up to be used in the future.
- Transfer the asset to a spouse before disposal to use the spouse's annual exemption as well as your own.
- Use a 'bed-and-' strategy for shares with a view to crystallising a gain now and/or increasing the base cost for CGT purposes. But make sure there is cash to pay the CGT and bear in mind other tax implications including Stamp Duty and Inheritance Tax. The strategies include:
  - Bed and ISA (Sell the asset and buy it back in an ISA)
  - Bed and SIPP (Sell the asset and buy it back in a self invested pension plan)
  - Bed and spouse or other relative (Sell the asset and repurchase in the spouse's name or civil partner or adult children)
  - Bed and delayed breakfast (Sell and buy back after 30 days to prevent the anti-avoidance rules applying).

- Bed and spread (Sell and buy back shares in the same sector e.g. sell one oil company and buy another).
- Transfer the asset to a settlor interested trust to crystallise the gain at 18% (or 10% if qualifying for entrepreneurs relief).
- Become non-resident

There are a number of more sophisticated structures to minimise CGT liabilities and also possibilities to enter into a contract for disposal say to a trust now using conditional contracts or where a contract is not 'completed' and await the news in the Emergency Budget to decide whether to crystallise the gain pre Budget.

The decision to transfer an asset is complex with a number of potential consequences, tax and non-tax, and proper and detailed advice should be taken to lock into an 18% (or lower) rate without necessarily 'disposing' the asset to a third party or to restructure the asset to avoid the potential new higher rates.

Specific advice should be obtained before taking action, or refraining from taking action, on any of the subjects covered

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