Year end planning

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Patricia Mock discusses some practical tax points to consider before 5 April 2019 to utilise available tax allowances and exemptions

Key Points

What is the issue?

The 5 April deadline is rapidly approaching, and there are a variety of reliefs and exemptions to consider for your clients.

What does it mean to me?

Advisers should consider whether their clients are eligible for these so that they don’t miss out.

What can I take away?

This article is a useful reminder about reliefs and exemptions for income tax, pensions, CGT and how to go about claiming.

Income tax

Individuals with total income in excess of £150,000 pay the additional rate of income tax, currently 45% (46% in Scotland), though certain individuals with income between £100,000 and £123,700 (in 2018 /19) are subject to an effective 60% tax rate (61.5% for Scottish residents) due to the phased removal of the personal allowance. Some options to consider are:

Transferring assets to spouse or civil partner

If one spouse or civil partner does not have sufficient income to utilise their personal allowance (£12,500 for 2019 /20) or their nil, basic or higher rate tax bands, it may be sensible for the other to give sufficient income producing assets to them to enable them to do so.

Calculating the effect of the transfer of income producing assets can be complex, due to the interaction of the savings rate of tax, the savings allowance, the dividend allowance and the withdrawal of the personal allowance from those with income of over £100,000. Furthermore, different tax rates apply to non-savings income of Scottish resident taxpayers, which would also need to be taken into account if relevant. The wider implications of making gifts to a spouse or civil partner must also be considered.

Preserving your personal allowance

Taxable income can be reduced if appropriate through pension contributions (subject to the following restrictions) and charitable donations.

Charitable donations

Tax relief is available for cash gifts to UK registered charities, and certain charitable organisations in the EU, Norway, Iceland and Liechtenstein, although non-UK charitable organisations have to satisfy certain conditions.

If a 45% taxpayer makes a cash donation to a charity of £20,000 under the ‘Gift Aid’ scheme, the charity may reclaim £5,000 from HM Revenue & Customs (HMRC) and the donor will obtain tax relief of £6,250 via their tax return. The overall effect is that the charity receives a £25,000 donation at a net cost to the donor of £13,750.

Tax relief may also be available for certain charitable donations not made in cash form.

Pensions

Fully utilising annual pension contributions

The amount of tax-deductible pension savings that can be made for each individual is limited to the ‘annual allowance’ of £40,000. Since 6 April 2016 the annual allowance for individuals with income of more than £150,000 has been reduced by £1 for every additional £2 of income between £150,000 and £210,000, resulting in an annual allowance of £10,000 for those with taxable income (as defined) of £210,000 or more.

Where pension savings for the last three years have been lower than the annual allowance for the relevant year, there may be scope for catching up on pension savings in the current year. Therefore in 2018/19 unused allowances from 2015/16 onwards could be utilised. The allowances will be available if the individual was a member of a UK registered scheme in the relevant tax year (this may be extended to membership of overseas pension schemes in some cases).

Lifetime allowance protections

The ‘lifetime allowance’ (i.e. the total savings that can be accumulated in registered pensions without incurring a tax charge) should also be considered. This is currently £1,030,000 (2018 /19) increasing to £1,055,000 in 2019 /20. If savings are over the lifetime allowance and there is a tax charge, this normally arises at the point that benefits are drawn from a scheme, or on the individual’s 75th birthday if later. The excess over the lifetime allowance is taxed at 55% if it is taken as a lump sum or 25% if it is taken as pension. Following reductions in the lifetime allowance over recent years some protections are available allowing larger sums in some circumstances.

Those with defined benefit schemes should take separate advice, as the way in which the limits apply to those schemes is complex.

Capital Gains Tax (CGT)

Claiming tax relief for capital losses

Capital losses must be claimed within four years of the end of the tax year in which the loss is realised, so by 5 April 2019 for 2014 /15 losses. This would generally be done as part of the tax return, but it is important to consider whether or not there may be losses to claim which have not been claimed previously. It may be possible to claim a capital loss on assets or investments held which have fallen in value and are now worthless, or on loans to a UK trading company (or other UK trader) which have become irrecoverable.

Where a capital loss relates to shares in an unquoted trading company, it may be possible to offset the loss against income which would otherwise be taxable at up to 45% income tax. The loss that can be set off in this way is typically capped at the higher of £50,000 or 25% adjusted total income.

Entrepreneurs' relief

The CGT rate for higher and additional rate taxpayers is 20% for assets other than residential property and carried interest where the rate is 28%. However, a 10% CGT rate can apply to qualifying capital gains up to a lifetime limit of £10 million where entrepreneurs' relief is available.

If a business asset or shares or loan notes in a trading company are expected to be sold, a review should be undertaken as soon as possible to determine whether the conditions for entrepreneurs' relief are met. The conditions in respect of interests in companies were tightened for disposals on or after 29 October 2018. Advance attention is key as the relevant conditions need to be satisfied for a period of at least 12 months leading up to a disposal. This period will be extended to 24 months for disposals on or after 6 April 2019, so action before that date may be appropriate in some circumstances.

Investors' relief

Similarly to entrepreneurs' relief, investors' relief results in a 10% CGT rate on up to a lifetime limit of £10 million of qualifying gains. Individuals who subscribe for ordinary shares in an unlisted trading company, in cash, on or after 17 March 2016 may be eligible to claim investors' relief on shares held for at least three years following 6 April 2016. Investors' relief will therefore be available on qualifying disposals from 6 April 2019. It is important to be aware of the conditions and the holding period so that relief can be claimed on disposals from 6 April 2019 where appropriate.

Use the CGT annual exemption

An unused CGT annual exemption (£11,700 in 2018 /19) cannot be carried forward and is lost. Consideration could be given to selling assets to realise gains if this is consistent with the overall investment strategy. However, anti-avoidance rules mean that if shares and securities are sold and repurchased within the following 30 days, the disposal will be matched with the later acquisition when the gain is calculated.

Gift to spouse or civil partner prior to a disposal

Assets can normally be given to a spouse or civil partner free of tax. If the spouse or civil partner were to then sell the asset, the resulting gain may be covered by their CGT annual exemption or their capital losses, and may attract a lower rate of tax in their hands. In order for this to be effective, any gift of assets must be absolute and unconditional and any practical considerations should be taken into account. Other tax implications should be considered, including the anti-avoidance provisions which could restrict the offset of losses. If the spouse or civil partner is non-UK domiciled, the inheritance tax implications of any gift should be considered.

Main residence relief

Where a property is used as the owner's only or main residence throughout the ownership period, any gain on disposal is exempt from CGT. Married couples and civil partners can only have one main residence between them. If more than one property is used as a residence by an individual or couple, it is possible to elect which one should be treated as the main residence for CGT purposes. The election must be made within two years of the residences available to an individual changing (e.g. within two years of a new property being acquired).

Since 6 April 2015 additional rules have applied if the property is located in a different country to that in which the taxpayer resides. Broadly, taxpayers must occupy the elected property as a residence for at least 90 days in the tax year in order for it to qualify for relief in respect of that year.

For disposals on or after 6 April 2020 further restrictions are intended to apply to private residence relief. At present the period relating to the final 18 months of ownership of a property which has been a taxpayer's main residence is exempt from CGT. This exemption will be cut to nine months. The second change is to 'lettings relief', which currently exempts from CGT up to £40,000 of gains accruing in a period when a property which has been used as a main residence is let. This relief will now be restricted to apply only to periods where the owner jointly occupies the property with the tenant. These changes could increase the tax due on affected disposals and a review of the situation prior to April 2020 may be appropriate.

Non-Resident Capital Gains Tax (NRCGT)

Since 6 April 2015, any gains realised by non-UK residents (including individuals, trustees and companies) who dispose of UK residential property are within the scope of CGT. Rebasing to 5 April 2015 value may apply. Each disposal needs to be reported on a NRCGT return within 30 days of the date of disposal, which is usually treated as completion for these purposes. In addition, any CGT due may need to be paid within the same 30 day time period.

The scope of NRCGT will be extended from 6 April 2019. It will also apply to disposals of directly owned UK non-residential property, such as commercial buildings and farmland, and, in certain circumstances, to disposals of assets which primarily derive their value from UK property including, for example, shares in companies that own a high-proportion of UK land, whether residential or non-residential. Some existing CGT exemptions for non-UK residents on UK residential property gains will be abolished, such as the exemption for 'diversely-held' companies. Rebasing will be available to 5 April 2019. Those potentially affected by these complex rules should seek advice as a matter of urgency.

Using current year exemptions and allowances

The main exemptions and allowances for individuals not already mentioned are:

Inheritance Tax (IHT) annual exemption of £3,000 per annum

This is the amount individuals can give each tax year, without any IHT implications. If the previous tax year's (2017 /18) £3,000 annual exemption was unused, £6,000 can be given away tax-free in 2018 /19. Other reliefs and exemptions may also be relevant.

Stakeholder pensions of £3,600 per annum (gross)

Any UK resident individual under the age of 75 can contribute up to £2,880 (net) into a stakeholder pension each year, irrespective of their earnings or whether or not they are employed, so can be funded for non-working spouses and children. The pension provider will reclaim 20% tax relief direct from HMRC, and therefore the policy will be credited with a gross contribution of £3,600. It is important to note that the funds will not be accessible until pension age (currently 55).

Individual Savings Accounts (ISAs)

The annual overall subscription limit for an ISA for 2018 /19 remains at £20,000, which can be invested in cash, UK stocks and shares, foreign shares, corporate bonds and other permitted investments. ISAs are available to UK resident individuals aged 18 or over (age 16 or over for cash ISAs). The investment return from ISAs is free from income tax and CGT. There are various types of ISA available although the investment limit applies across all ISAs in total.

Junior ISAs may also be worth considering for children under 18, with an annual subscription limit in 2018 /19 of £4,260, which can be split between stocks and shares and/or cash. Ordinarily, when a parent gives money to a child, if the income arising from the gift exceeds £100, the whole of the income is taxable on the parent (whilst the child is under 18) but this provision does not apply to a Junior ISA.

Tax efficient investments

There are a number of statutorily provided tax efficient investments available, including some National Savings products, the Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS), Social Investment Tax Relief (SITR), and Venture Capital Trusts (VCTs).

EIS, SEIS, SITR and VCT investments all have annual limits, as follows:

- EIS: £1,000,000 with income tax relief of 30%, or up to £2,000,000 provided the additional £1,000,000 is invested in ‘knowledge-intensive’ companies
- SEIS: £100,000 with income tax relief of 50%
- SITR: £1,000,000 with income tax relief of 30%
- VCT: £200,000 with income tax relief of 30%

Any gains realised on disposal of shares in the above four tax efficient investments, and loans in the case of SITR, may be exempt from CGT. In addition, it may be possible to defer gains on disposal of other assets into EIS or (for gains made before 6 April 2019 only) SITR investments. For certain SEIS investments, part of the gain on the disposal of other assets can be exempted from CGT rather than deferred.

Non-UK domiciled individuals

Changes to the regime relating to non-UK domiciled individuals were introduced from 6 April 2017. The changes are detailed and complex and in some cases action may need to be taken before the end of the current tax year (i.e. by 5 April 2019). Professional advice is recommended for those affected.

Tax administration

Common Reporting Standard and trusts

The Common Reporting Standard (CRS) requires Financial Institutions (as defined) to report financial account information relating to residents of participating jurisdictions so that this can be exchanged between the relevant jurisdictions. Professionally managed trusts which derive income primarily from financial assets are likely to come within the definition of Financial Institution. UK resident trusts which are Financial Institutions will need to review their Account Holders (mainly the settlor and beneficiaries of the trust) and report the necessary information to HMRC by 31 May 2019.

Time limits

A number of claims and elections relating to the 2014 /15 tax year have a time limit of 5 April 2019. In particular relief for tax overpaid in 2014 /15 must be claimed by 5

April 2019. The most likely scenario in which this could occur is for those taxed under PAYE, where the PAYE deductions are excessive, although overpayments could arise in other circumstances.

This note reflects the law in force as at 8 February 2019 and proposals contained in the Finance (No.3) Bill 2017-19. Changes may be made prior to enactment of the Bill.

Individuals should of course take full professional advice relevant to their own circumstances before any action is taken.