Reduction in the rate of capital gains tax

OMB Personal tax

01 August 2016

ATT provides comments to HMRC on F(no2)B 2016, cl 72, Schs 11 and 12

Clause 72 and accompanying Schs 11 and 12 deal with the legislation to enact a reduction in the rate of CGT from 6 April 2016 from 18% and 28% to 10% and 20% respectively.

The ATT's response noted the complexity now added to the process of calculating a person's CGT liability since the reduction in the rate does not apply to disposals of residential property and carried interest. In both cases, the rates of 18% and 28% will continue to apply. As such, Schs 11 and 12 introduce 13 pages of new legislation required to correctly identify the gains that should remain chargeable at 18% and 28%.

The response also noted that the explanatory note and the policy paper on GOV.UK both state only that the 18% and 28% rates will not apply to residential properties that qualify for principal private residence (PPR) relief since they are clearly exempt from CGT.

However, the legislation itself does not easily clarify the rate of CGT to be charged on a disposal that is left after making only a partial claim to PPR relief. HMRC has confirmed to the ATT that any gain remaining after a partial claim to PPR will be assessed at the 18% and 28% rates and this will be made clear in guidance.

However, as we pointed out in our response, this guidance needs to be made available sooner rather than later so that taxpayers can correctly calculate and budget for the CGT due.

The ATT response also pointed out that new s 4BA(4) currently has no effect. This section provides that, if a taxpayer has an unused amount of basic rate band left (after deducting any entrepreneurs' relief or investors' relief gains) and has a mixture of non-residential and residential property gains, they can choose how to allocate the unused basic rate band. However, in reality, it makes no difference to which category of gain the unused basic rate band is first allocated – both permutations result in the same CGT due. Perhaps this is just an example of 'future-proofing' the legislation but, while the differential between the two lower rates and two upper rates is the same (both 10%), no comparison needs to be carried out. HMRC accepts our point but does not intend to change the legislation; instead the point will be explained in guidance. Exactly how HMRC will word this guidance – to explain that a section of legislation is in fact currently pointless – will be interesting to see.

To read the ATT response in full on the ATT website.