Draft FB 2023: capital gains tax and separating married couples

Personal tax

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The CIOT has responded to the draft legislation that proposes changes which will extend the ‘no gain/no loss’ capital gains tax window beyond the tax year of separation for married couples.

When assets are transferred between married couples (or those in a civil partnership) who are living together as such, the capital gains tax (CGT) treatment is that the ‘no gain/no loss’ rule applies; that is to say it is essentially a tax neutral event with the recipient inheriting the other spouse’s base cost. However, besides their being married, the other criterion is that ‘in any year of assessment’ the donor is ‘living with his spouse or civil partner’ (per TCGA 1992 s 58). This means that the no gain/no loss treatment will only last up to the 5 April in the tax year of any separation (which is deemed to happen per a court order, a formal Deed of Separation or when the separation is likely to be permanent). After this tax year and until they are legally divorced, the couple are merely ‘connected persons’, meaning that any asset transferred between them will be assessed to CGT at its market value. Given how long it can take for separations and divorces to be settled, with marital assets (especially land and buildings) being divided up between them, it is likely that some couples will face the possibility of (dry) CGT charges to worry about in addition to the distress of the separation itself.

In their second CGT report published in May 2021, the Office of Tax Simplification recommended that the no gain/no loss window should be extended for a further two years beyond that of separation. However, the draft Finance Bill 2023 goes further and extends it to three years, but only for assets transferred after 6 April 2023.

The CIOT welcomed the proposed change, though questioned why it only applies to those transfers which take place in 2023/24 onwards. Whilst many couples will

benefit from the extension of the no gain/no loss window, many would have already transferred assets prior to this. Others will have to refrain from doing so until April 2023, which may not be practical. It was suggested that this start date for qualifying transfers could be backdated to April 2022, or potentially even further, upon election. Clarification was also sought regarding situations where assets are transferred into bare trust for the recipient spouse, and whether the transfer of the value of assets, rather than assets themselves, would qualify under the change.

The full CIOT response is available here: www.tax.org.uk/ref999

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