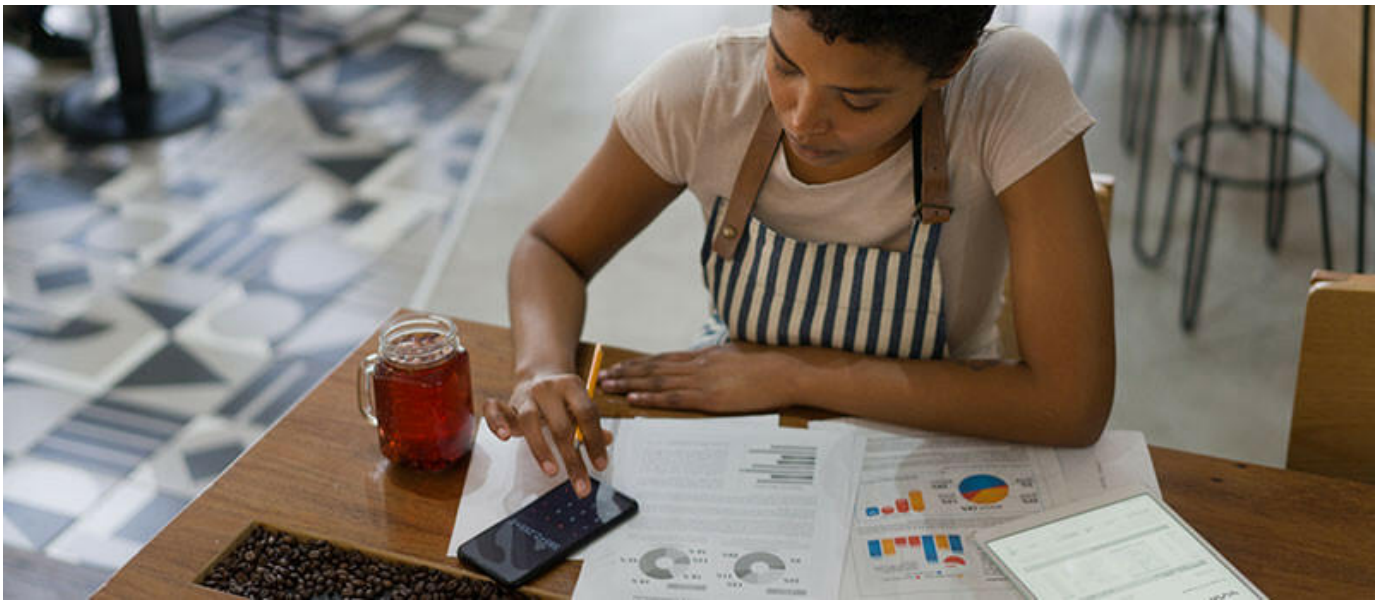
Finance (No.2) Bill 2023 clause 36: capital gains tax

Personal tax OMB



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The CIOT has responded to the draft legislation within the Finance (No.2) Bill 2023 on some of the capital gains tax proposals.

Two of the changes announced in the Autumn Statement in 2022 concerned share for share exchanges involving non-UK companies, and asset transfers and private residence relief (PRR) for separating couples. These changes are within the Finance Bill.

Clause 36 of the Bill outlines changes for share for share exchanges involving UK personal companies and when the 'target' company is non-UK resident. Under the normal share for share and scheme of reconstruction rules, the new shares are deemed to stand in the shoes of the old ones – it is a tax-neutral swap, unless there is an election to disapply that rule. By effectively transferring a latent gain in the UK shares into those located outside the UK, a UK resident but non-domiciled shareholder could utilise the remittance basis to keep that gain outside the reach of

UK capital gains tax.

The proposal is to treat offshore companies as having a UK situs for these purposes; these deeming provisions will also apply to the dividends from the offshore company such that they are not considered as relevant foreign income for remittance basis purposes. (It will remain possible for a shareholder to elect to treat the swap as a disposal of the UK shares.)

Whilst CIOT welcomes this anti-avoidance measure, we raised concerns about the application of the legislation: whether persons acting as trustees would be affected; how the change might work with offshore trustees; and how it would interact with beneficiary charges.

Clause 41 implements the change to the no-gain/no-loss treatment of transfers of assets between separating spouses. For disposals after 6 April 2023, a three-year no-gain/no-loss window following that of permanent separation will be in place – prior to this date, couples only had the remainder of the tax year of separation before they were treated as connected parties. The Office of Tax Simplification had originally recommended that there should be a two-year window after that year. At the time of the original announcement, the CIOT had suggested the inclusion of an option to backdate the 6 April 2023 transfer commencement date, but this does not appear in the draft legislation.

A further change surrounding separating couples concerns PRR. For disposals prior to 6 April 2023, when a departing spouse left the marital home, the transfer of their share in the property to the remaining spouse, pursuant to a Court Order, will qualify for PRR provided the departing spouse had no other main residence. After 6 April 2023, PRR will instead apply when the property is sold to a third party.

The benefit of PRR will also be available pursuant to deferred sales orders; e.g. the sale of the marital house cannot take place until the couple's child turns 18, but the departing spouse's share of the house is nonetheless transferred to the remaining spouse. In this instance, the benefit of PRR for the departed spouse on their interest in the property is essentially preserved until the house is sold to a third party.

Our briefing to the Public Bill Committee that is considering the Finance Bill can be read at: www.tax.org.uk/ref1140 .

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