Forsters

Tax

An update on corporate and property taxes

UK Autumn Budget 2024

The Chancellor introduced a number of measures that impact businesses and business owners. The following are some of the key points that may need immediate consideration.

Unusually direct tax and indirect tax measures have been introduced effective from Budget Day.

Capital Gains Tax (CGT)

The main rates of CGT that apply to assets other than residential property and carried interest have changed from 10% and 20% to 18% and 24% respectively, for disposals made on or after 30 October 2024. The rate of CGT that applies to Business Asset Disposal Relief (BADR) and Investors' Relief will increase from 10% to 14% for disposals made on or after 6 April 2025, and from 14% to 18% for disposals made on or after 6 April 2026.

Many taxpayers have been racing to exchange contracts before Budget Day and HMRC is aware of this as it is noted in the Budget press releases that the change in rates are accompanied by forestalling rules to apply to: unconditional but uncompleted contracts before 30 October 2024, and for Business Asset Disposal Relief and Investors' Relief, where a contract is made from 30 October 2024 to 5 April 2026 and completed from 6 April 2025. In such cases disposals will be subject to the new rates of Capital Gains Tax unless:

- The parties to the contract can demonstrate that they did not enter into the contract with a purpose of obtaining a tax advantage by reason of the timing rule in section 28 of the Taxation of Chargeable Gains Act 1992 (this provision provides that the date of disposal of an unconditional contract is the date of exchange rather than completion)
- Where the parties to the contract are connected, that the contract was entered into for wholly commercial reasons

Where these apply a statement must also be made where the gain exceeds £100,000.

Action point

Taxpayers will need to be able to demonstrate that there was a commercial reason for the exhanged contract.

Carried interest

An increase in rates from April 2025 and more radical change from April 2026. For further details read our briefing on Carried Interest.

Action point

Review the terms of any current arrangements and take advice before entering into new arrangements.

Sale to an employee ownership trust (EOT)

There is a total exemption from CGT where a qualifying disposal is made to an EOT.

Before Budget day there were five broad requirements which may have been summarised as follows:

1. **The trading requirement:** most easily satisfied by the target company being a trading company.
2. **The all-employee benefit requirement:** the EOT must provide that all eligible employees/ directors are beneficiaries who benefit on the same terms (subject to objective criteria such as time reserved).
3. **The controlling interest requirement:** the EOT must hold more than 50% of the ordinary issued share capital, voting and economic rights in the company.
4. **The limited participation requirement:** any seller (or persons connected with him) who continues to own 5% or more of the shares in the company should not make up 40% or more of the employees/office holders in the company.
5. **The no related disposal requirement:** the person claiming relief (and persons connected with him) should not have claimed this relief in respect of the target company (or is group companies) in earlier years.

Disposals to EOTs have become a standard method of achieving a tax-free exit and to limit perceived abuse various measures have been introduced and these include the following which have effect for disposals on or after 30 October 2024:

- To ensure that the principle behind (3), the controlling interest, is not subverted by ensuring that the seller cannot indirectly control the company by controlling the EOT
- To ensure that the EOT is tax compliant by requiring the trustees to be UK tax resident (particularly relevant as there is a CGT charge for the trustees, if the relief is clawed back)
- To ensure that only the current market value of the company comes within the exemption and not that anticipated future growth in value of the shares: by requiring that the trustees only pay market value for the shares. Although well advised trustees who have wanted to ensure that they were acting within their fiduciary powers would normally have insisted on an independent market value valuation of the shares
- The clawback increases from one to four years

Action point

For recent purchasers by EOTs it will be prudent to obtain a valuation report if one had not been commissioned.

Loans to participators – close companies

Generally, if a close company makes a loan to a participator (otherwise than in the ordinary course of a banking business) and that loan is left outstanding 9 months after the end of the accounting period in which that loan was made the company has a tax charge of 33.75% of the amount of the loan. A new targeted anti avoidance rule (TAAR) will be introduced to combat the making of short-term repayments to prevent the tax charge becoming due and payable, very shortly followed by a withdrawal of a 'new' loan on similar terms (known as 'bed and breakfasting').

Action point

Review all loans made by close companies.

SDLT

From 31 October 2024 the Higher Rates for Additional Dwellings (HRAD) surcharge on Stamp Duty Land Tax (SDLT) will be increased by 2 percentage points from 3% to 5%. Assuming that the non-resident SDLT surcharge doesn't apply, the top rate of SDLT is now 17%. Despite a manifesto commitment to increase it to 3%, it seems that the non-resident surcharge will remain at 2%.

The flat rate of SDLT that is charged on the purchase of dwellings costing more than £500,000 by corporate bodies will also be increased by 2 percentage points from 15% to 17% (for those companies that cannot claim a business use exemption such as renting to independent third parties).

If the contract was exchanged before 31 October 2024, then it will be grandfathered and protected from these new rates provided that:

- There is no variation of the contract, or assignment of rights under the contract, on or after 31 October 2024
- The transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
- On or after that date, there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance

Action point

Ensure that no pre-31 October 2024 contracts are taken out of the grandfathering provisions.

Contact us

Please get in touch with your usual Forsters contact to find out more or contact enquiries@forsters.co.uk.

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