

Office of Tax Simplification Capital Gains Tax Review: CIOT, ATT and LITRG responses

General Features

29 September 2020

CIOT, ATT and LITRG have all participated in the first, high level, stage of the Office of Tax Simplification's call for evidence on the Capital Gains Tax Simplification Review published on 14 July.

CIOT

CIOT raised three areas of concern. First, whilst recognising the difficulty in distinguishing 'simplification' from 'policy' changes and proposals as they are inevitably interlinked, we wonder how a central line of enquiry into extending capital gains tax (CGT) to the taxation of gains on death fits within the function of the Office of Tax Simplification (OTS) as set out in Finance Act 2016 s 185(1), which states that it is to 'provide advice to the Chancellor on the simplification of the tax system'.

Second, we felt that there appeared to be inadequate appreciation of the differences between capital gains, realised on the one-off disposal of a capital asset, and income receipts, arising on an annual basis; a capital gain potentially represents two elements, an increase in value relating to inflation and a real 'profit' which has built up over time. We noted that the tax system has, at different times, recognised the inflationary element by providing an indexation allowance, a tapering of the tax rates, and lower tax rates on capital gains than on income.

Third, we stressed that the current approach whereby an asset is rebased to its market value on death has the merit of simplicity in both concept and administration. Personal representatives are spared the difficulties of establishing historic base costs in circumstances where they may have had little (if any) personal knowledge of the deceased or their affairs, and where the deceased's records may be inadequate or even non-existent. IHT is primarily charged on death and CGT is charged on lifetime disposals. Changing one element – the CGT uplift on death – to a no-gain/no-loss holdover would upset that 'balance' and should be the subject of a wider discussion on capital taxes generally. We suggested that a quid pro quo might be a general CGT holdover for all lifetime gifts to provide neutrality in the CGT treatment for gifts, whether made during life or on death. We further pointed out specific areas of complexity if it were decided to apply a CGT 'no-gain/no-loss' holdover regime only where an IHT relief or exemption applies.

ATT

The ATT's written response to the initial stage of the review focused largely on practical matters.

In response to the OTS's specific request to consider the annual exempt amount (AEA), the ATT concluded that, although the AEA has its limitations, there are a number of practical advantages. The AEA is simple, straightforward and widely understood – and consistent with the personal allowance in income tax. The ATT therefore considers that the OTS should focus their efforts on the simplification of other aspects of CGT.

The ATT highlighted private residence relief as an area which could be usefully considered by the OTS, with plenty of scope for simplifications and updating of the rules.

A large number of ATT members have expressed concerns about the new 30 day reporting requirements for residential property, highlighting a range of issues including costs, administrative burdens (especially for the digitally excluded) and lack of awareness. While CGT remains assessable on a tax year basis, in-year reporting such as this is unhelpful as it involves duplication of work and costs for taxpayers. This is very much an area that the ATT would like to see picked up in the review.

The ATT also highlighted the challenges faced by divorcing couples who only have the tax year of separation in which to transfer assets between them while still benefiting from the favourable no-gain, no-loss transfer rules. The ATT would like to see married couples and civil partners given a window of at least 12 months following the date of their separation to make transfers under the no-gain, no-loss provisions.

Other aspects covered in the ATT response included a suggestion that the OTS should review whether it was time to review rebasing. While there would potentially be some significant winners from moving rebasing from 31 March 1982 to a later date, the practical benefits would include eliminating some record keeping and making it easier to deal with assets which have been held for some time and where records are patchy.

LITRG

LITRG's comments highlighted the difficulties for unrepresented taxpayers dealing with disposals of properties which have at some point been their only or main residence. It also picks up on the fact that most CGT taxpayers either pay no income tax or only pay it at the basic rate, urging the OTS to focus on simplifications for this population and highlighting the importance of the annual exemption as a protection against onerous reporting obligations for those making small gains.

As part of its written response to the main call for evidence, LITRG will also be exploring measures to make CGT reporting easier for low-income unrepresented taxpayers. It also considers whether there may be additional exclusions from the obligation to make a 30 day report for those disposing of UK residential property and suggests how to improve taxpayer awareness, such as placing obligations on conveyancing solicitors and improved guidance on GOV.UK.

Our written contributions may be read at www.tax.org.uk/ref721 (CIOT) and www.att.org.uk/ref363 (ATT).