

# Capital Gains Tax

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A second set of recommendations  
to HM Government

# Capital Gains Tax – A second set of recommendations to HM Government

Back in November 2020 the Office of Tax Simplification (OTS) produced its first report into “simplifying by design” the UK Capital Gains Tax system. The report was unusual in seeming to present a string of policy recommendations proposing some fairly radical changes to the tax. We published our insights and perspective on that report at the time.

This month the OTS have published the second part of their report, focussed on “Simplifying practical, technical and administrative issues”. This report has a more business as usual feel to it, targeting a number of areas relating to awareness, reporting timeframes and mechanisms, and taxpayer guidance.

The OTS summary recommendations are copied in full below, and our UHY view has been added to each:

## Awareness and Administration (Chapter 1)

1. “HMRC should integrate the different ways of reporting and paying Capital Gains Tax into the Single Customer Account, making it a central hub for reporting and storing Capital Gains Tax data.”
2. “The government should formalise the administrative arrangements for the ‘real time’ Capital Gains Tax service, effectively making it a standalone Capital Gains Tax return that is usable by agents.”

3. “The government should consider extending the reporting and payment deadline for the UK Property tax return to 60 days, or mandate estate agents or conveyancers to distribute HMRC provided information to clients about these requirements.”
4. “The government should consider whether individuals holding the same share or unit in more than one portfolio should be treated as holding them in separate share pools.”

These are welcome suggestions as to how the existing CGT system in the UK could become more workable and understandable.

There continues to be widespread ignorance of the obligation to make a CGT return **within 30 days** of the sale of certain UK residential dwellings and a number of shortcomings in the reporting system have come to light since the end of the 2020/21 tax year. Most notably, year end tax returns could not accommodate overpayments via the separate 30 day reporting system.

Mandating agents to pass government produced literature to taxpayers feels a heavy handed approach, likely to lead to penalty disputes between disgruntled late filing taxpayers and those involved in the property sale transaction. Perhaps a better approach would be for HMRC to issue that guidance to the seller directly on receipt of a stamp duty land tax return?

But a principle of making tax compliance more straightforward and understandable is welcomed.

## Main homes (Chapter 2)

5. “The government should consider adjusting Private Residence Relief to cover developments in a taxpayer’s garden which the taxpayer subsequently occupies.”
6. “The government should review the practical operation of Private Residence Relief nominations, raise awareness of how the rules operate, and in time enable nominations to be captured through the Single Customer Account.”

These feel like common sense suggestions which have the scope to iron out an anomaly within the Private Residence Relief sphere. It’s hard to get excited about them, but then that’s what we ought to expect from the OTS – non controversial simplification suggestions which largely steer clear of policy setting.

## Divorce and separation (Chapter 4)

7. “The government should extend the ‘no gains no loss’ window on separation to the later of:
  - the end of the tax year at least two years after the separation event
  - any reasonable time set for the transfer of assets in accordance with a financial agreement approved by a court or equivalent processes in Scotland.”

Currently divorcing couples may only transfer assets amongst themselves free from CGT (by virtue of the spouse exemption) in the year of permanent separation, transfers after that date are potentially exposed to CGT. We regularly advise divorcing couples on CGT and it is very uncommon (almost unheard of) to see the assets dealt with within that period.

Curiously, inheritance tax operates differently to CGT in that couples are treated as married unless they are divorced, regardless of separated status. On occasion this leads to a death in circumstances where two taxpayers are married for IHT purposes and not married for CGT purposes.

The suggested extension is welcome and will make asset sharing on divorce a much simpler prospect for most divorcing couples. That said, perhaps an opportunity for alignment of IHT and CGT treatment is being missed.

## Business issue (Chapter 5)

8. “The government should consider whether Capital Gains Tax should be paid at the time the cash is received in situations where proceeds are deferred such as on the sale of a business or land, while preserving eligibility to existing reliefs.”
9. “The government should consider enabling an irrevocable provision in the documentation for a corporate bond to specify that it is subject to Capital Gains Tax, and for the absence of such a provision to mean that it is exempt.”

These are conceptual simplifications and are welcomed as such. Whilst marrying tax timing to the receipt of cash may sound simple, the reality is that the whole CGT

framework is built around an Act of Parliament which treats the date of exchange of unconditional contracts as the taxable date and then flexes that norm in a number of places.

We would prefer the status quo to a lengthy and complex change to the tax law in order to achieve what sounds like a simplification.

## Investor issues (Chapter 6)

10. “The government should review the rules for enterprise investment schemes, with a view to ensuring that procedural or administrative issues do not prevent their practical operation.”
11. “The government should consider whether gains or losses on foreign assets should be calculated in the relevant foreign currency and then converted into sterling.”

Again, we feel that simplifying EIS may be more easily said than done. The legislation is lengthy, and has grown in complexity as various activities deemed to be abusing the generous tax relief have been closed down over the years.

Gains on foreign assets is a more sensible suggestion. There is a current misnomer whereby a gain denominated in foreign currency may be a loss in sterling (or vice versa) which both surprises taxpayers and can frustrate what might be seen as the intention of double tax relief between the two countries. Whether the current rules reflect reality can often depend on whether there are (for example) local borrowings related to the asset and whether or not the sale proceeds are remitted to the UK / converted back to sterling.

## Land and property issues (Chapter 7)

12. “The government should expand the specific Rollover Relief rules which apply where land and buildings are acquired under Compulsory Purchase Orders.”
13. “The government should consider exploring ways of removing inappropriate Corporation Tax or Capital Gains Tax charges where a freeholder is in effect only extending their own lease.”

These both feel like genuine simplifications with an element of improving fairness / consistency across different iterations of the same tax reliefs. Like a number of the suggestions in this report, hard to get too excited about, but welcome nonetheless.

## HMRC guidance

14. “HMRC should improve their guidance in the following specific areas:
  - the UK Property tax return (para 1.101)
  - lodgers and people working from home (para 2.114)
  - when a debt is a debt on a security (para 5.80)
  - when a loan to a business becomes irrecoverable (para 5.81)
  - when Business Asset Disposal Relief could apply to farmers or others looking to retire over a period of time (para 5.88)
  - enterprise investment schemes (para 6.41)
  - land assembly arrangements (para 7.87)
  - flat management companies (para 7.118)”



Our main observation about this list of areas for better guidance is that they are complex and easily misunderstood areas. Simplifying the underlying rules may be preferable to improving guidance but as above, that is both easier said than done and over-simplification risks either a subjective tax code which lacks taxpayer certainty or a toothless regime open to abuse.

Improved HMRC guidance is, of course, to be encouraged. But that guidance is not a fool proof system. Firstly it is only HMRC's interpretation of the law, and not necessarily an objective representation of that law. Secondly HMRC are prone to change their guidance in certain areas from time to time, sometimes without any underlying change in statute or case law, simply because they no longer like the implications of an earlier view of the rules. Lastly, and as a handful of taxpayers find out to their cost at Tribunal, it is not unheard of for HMRC to challenge taxpayers who have acted in line with HMRC guidance (usually historic and now changed guidance, occasionally current guidance) by taking a contrary view to their own guidance. They have no problem standing in front of a Court or Tribunal and stating that their guidance was wrong, it did not carry the weight of the law and it is not a protection to the taxpayer who relied on it.

Perhaps the model for HMRC guidance might be the VAT notice model, where certain areas are put in highlighted boxes and indicated to carry the force of law. In other words, making HMRC stand by their published guidance such that taxpayers can rely on it safe in the knowledge it makes the tax position they have adopted unassailable.

### Conclusions

As noted at the start, this report feels much more like familiar OTS territory than the last report. The themes it promotes are mostly welcomed and it seems to seek to achieve the scope which was set for it – administrative simplification and harmonisation without significant straying into policy making recommendations.

Perhaps, then, the most significant thing about it is that both parts (Nov-20 and May-21) have been published. That would make the Autumn 2021 Budget a logical opportunity for the Chancellor to either adopt or rule out the proposals put forward, which could mean we have an idea of what the future of CGT for the remainder of this Parliament will look like by the end of the current year.

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