



TAX UPDATE

EXTRACTION OF CASH BY COMPANY SHAREHOLDERS - CHANGES TO THE INCOME TAX LEGISLATION FROM 6 APRIL 2016

Background

For some years now there has been a huge disparity between the rates of income tax payable when an individual shareholder extracts dividend income from a company (top effective rate currently 30.56%) compared to the rate of capital gains tax (“CGT”) payable when an individual disposes of shares or receives a capital distribution on the winding up / liquidation of a company (CGT rate 10% where Entrepreneurs’ Relief applies).

This differential between income tax and CGT rates will increase yet further on 6 April 2016 when the top rate of income tax on dividends increases to 38.1%.

In view of the differential rates it is perhaps not surprising that the Government saw fit on 9 December to announce significant extensions to the scope of what is known as the “transactions in securities” income tax anti-avoidance legislation. The new rules will apply from 6 April 2016 and will need to be considered whenever individual shareholders wish to extract capital from a company, for example, under a Members’ Voluntary Liquidation (“MVL”).

Details

The Government will introduce a Targeted Anti-Avoidance Rule (“TAAR”) that will apply to certain distributions from a winding up.

The TAAR would treat a distribution on a winding up as if it were an income distribution where

- an individual who is a shareholder in the company received a distribution in respect of shares in a winding up;
- within a period of 2 years after the winding up the individual continues to be involved in a similar trade or activity; and
- the arrangements have a main purpose, or one of the main purposes, of obtaining a tax advantage.

The TAAR is proposed to apply to distributions in a winding up made on or after 6 April 2016.

In a consultation document published on 9 December the Government made it clear that the perceived mischiefs it has in mind are “phoenixism” – where a company enters MVL and the shareholder sets up a new company to carry on the same or similar activities - and the use of Special Purpose Vehicle (“SPV”) companies where a company undertakes a single contract or project with the SPV entering MVL following completion of that particular contract or project. This could impact on companies active in the property development sector, for example. The Government are also concerned about “money box” companies which retain profits in excess of business needs and where the shareholders receive those profits as capital when the company is eventually liquidated.

As well as the TAAR the Government is introducing other changes to the transactions in securities rules to widen the scope of their application and to bring them within the Self-Assessment regime. This will place the obligation on taxpayers to comply with the rules, and remove the onus on HM Revenue & Customs to initiate counteraction proceedings against taxpayers.

Action required

The proposed changes to the tax legislation are likely to have a major impact on how shareholders extract cash / profits from their companies.

In the short term, there is likely to be an imperative for certain companies to proceed into MVL with a view to shareholders receiving capital distributions no later than 5 April 2016.

From 6 April 2016, the question as to whether shareholders will benefit from CGT treatment on a MVL will be more complex and it will be necessary for director shareholders to take advice on how they can put themselves in the best position to pay tax at CGT rates and avoid income tax at up to 38.1% when their company reaches the end of its useful life.

CONTACTS

At Albert Goodman we are well placed to advise you on the proposed changes to the tax legislation from both a Taxation and Liquidation perspective. Please contact Tax Partners Sheldon Cole and Dominic Crilly or our Insolvency Practitioner Laurence Russell.



Sheldon Cole, Tax Partner

Tel: 01823 286096 E: sheldon.cole@albertgoodman.co.uk



Dominic Crilly, Tax Partner

Tel: 01823 286096 E: dominic.crilly@albertgoodman.co.uk

www.albertgoodman.co.uk