ICAEW
REPRESENTATION 86/24

FINANCE BILL 2024-25, CLAUSE 7 AND SCHEDULES 1 & 2, CAPITAL GAINS TAX - RATES OF TAX

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Briefing for MPs on the Finance Bill by ICAEW Tax Faculty.

Internationally recognised as a source of expertise, ICAEW's Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's *Ten Tenets for a Better Tax System* are summarised in Appendix 1.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 169,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

ICAEW
Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
icaew.com

EXECUTIVE SUMMARY

1. The government should avoid making mid-year rate changes to capital gains tax (CGT). The changes to the rates of CGT have been made after the self assessment tax return has been finalised and will therefore require workarounds. This makes tax compliance challenging, costly, and increases substantially the risk of innocent errors being made.
2. If such changes are considered necessary, then the government must consider the practicalities of calculating the tax and reporting the details to HMRC so that taxpayers can correctly calculate their tax liabilities from the outset.

THE MEASURE

3. Clause 7 and Schs 1 and 2 make changes to the main rates of CGT that apply to individuals, trustees and personal representatives with effect for disposals made on or after 30 October 2024.

OUR CONCERN AND OUR RECOMMENDATIONS

4. For gains made by individuals, on the disposal of assets that are not residential property or carried interest gains, the rates of CGT increased for disposals made on or after 30 October 2024 (mid-way through the 2024/25 tax year). The rates increased to:
   i. 18% (from 10%) for gains that are within the taxpayer's remaining basic rate tax band; and
   ii. 24% (from 20%) for gains chargeable at the higher rate.
5. Trustees and personal representatives only pay CGT at the higher rate. From 30 October 2024, any gains they make will attract CGT at 24% (previously 20%).
6. ICAEW does not usually comment on tax rate changes which are a policy matter for government. However, for the reasons set out further below, ICAEW considers that the in-year changes to the CGT rates are contrary to two of ICAEW's ten tenets shown in Appendix 2, namely number 3 (simple) and 4 (easy to calculate and collect the tax).
7. Capital gains are reported to HMRC on self assessment form SA108, which is split into sections for each type of asset (eg, land and property, quoted shares, unquoted shares). When a tax return is filed, HMRC receives the total gains and losses for each section. In addition, taxpayers are required to enclose their computations for each gain or loss.
8. Taxpayers are generally entitled to a CGT annual exemption, which is £3,000 for the 2024/25 tax year. The legislation (s1K(5), TCGA 1992) allows the taxpayer to use this allowance in the most beneficial way against the gains they have made. In practice, this means that the allowance should be set against gains that attract the highest rate of CGT first.
9. The majority of tax agents who file self assessment tax returns on behalf of individuals, trusts and personal representatives, do so using third-party software. The software developers have to update their products each tax year to reflect any changes to tax rates and any new or amended provisions, based on technical specifications provided by HMRC.
10. HMRC has advised the software developers that it does not intend to make any changes to the technical specifications for 2024/25 self assessment returns that had been provided to developers prior to the Autumn Budget, including any validation data. ICAEW is very disappointed by this decision. This means any gains on the 2024/25 tax returns will only be taxed at either 10% or 20% and not at the increased rate for any disposals from 30 October 2024 onwards. HMRC appears to be expecting taxpayers to perform their own calculations as to how much extra tax is due on these post-Budget disposals and show this in box 51 of form SA108.

11. In particular, unrepresented taxpayers using HMRC's forms may be unaware of the rate change. If they are alerted to the change, they will need to follow guidance on how to calculate and report their gains correctly depending on the date of disposal.
12. HMRC's guidance notes in relation to box 51 (page 9) are already complicated.
13. Errors are likely to occur as taxpayers and agents will potentially leave box 51 blank, or enter their total CGT liability in instead of the uplift, etc. Although HMRC has the power to correct obvious errors in a taxpayer's return, it is doubtful whether this would happen in practice. It is more likely that errors in returns will lead to costly and time-consuming tax enquiries or amendments to tax returns.
14. For the above reasons, ICAEW recommends that the government should commit to not making future mid-year rate changes to CGT.

FURTHER INFORMATION

15. As part of ICAEW's Royal Charter, we have a duty to inform policy in the public interest.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see https://goo.gl/x6UjJ5).