

Taxation Issues in Share and Asset Transactions

Share Purchase v Asset Purchase issues

Where a company sells shares or assets held other than as trading stock (held as an investment), it is liable for corporation tax on the chargeable gain. A personal shareholder may in turn suffer income tax or capital gains tax on dividends paid out to him. This is not an issue when the target company is owned by another UK company, but the issue may arise if a dividend is paid out to a personal shareholder of that company.

Where an individual sells shares or other assets held as an investment, capital gains tax may arise. There are a number of exemptions which may be available, some of which are mentioned below. Companies and individuals may be regarded as trading in shares, in which case their sale will have corporation or income tax implications instead of capital gains tax implications.

The acquisition of shares may be attractive if the company contains valuable tax assets, such as trading losses and capital losses which may be available to mitigate future tax liabilities. Trading losses prior to sale may be carried forward against profits provided there is no change in the nature of the trade. Where assets are sold and the price achieved is greater than the tax written down value, a balancing charge is payable.

The tax advantages of an asset sale for a seller include that losses may be available on other gains. Balancing allowances may be available where the price is less than the tax written down value.

Pre-sale Reorganisations

If the target company is part of a group of companies, it is often necessary to reorganise the group or transfer assets to or from the target company before the sale

can take place. It will be often be necessary to transfer group assets or to entirely re-organise a business into a new company in order to sell.

Generally, the transfer of assets between companies in a group is exempt from tax. A tax charge will generally arise if the company leaves the sellers' group within 6 years. A de-grouping charge arises in respect of Capital Gains. It may be possible to allocate it to a group company which has a corresponding loss. Alternatively, as a group gain, it may be rolled over into the purchase of certain qualifying assets.

Companies can surrender certain types of losses and excess capital allowances to other companies within their group. If there are outstanding loans between group companies, they are usually repaid at completion.

Where target has sufficient reserves it may pay a substantial pre sale dividend to its shareholder. This can reduce the share price and the capital gain tax liability. This is particularly relevant for UK resident corporate share holders which are not liable for corporation tax on UK dividends received.

The introduction of SSE for companies and entrepreneur relief for individuals has reduced the popularity of pre-sale dividends. There is an effective capital gains tax rate of 10% only, if the relevant conditions are met.

Various Exemptions and Reliefs

A corporate shareholder may qualify for Substantial Shareholder Exemption. Gains on the sales of shares are tax exempt provided that for a period beginning more than two years before and the company seller has held a substantial shareholding of at least 10%.

Shareholders in a venture capital trust will be exempt from tax and capital gains provided the VCT has retained its status.

Prior to 5th April 2008, UK resident individuals or trustee shareholders qualified for indexation relief up to 1998. Taper relief could reduce the effective rate to 10%. The

relief has now been abolished but the general rate of Capital Gains Tax for individuals is now 18%.

Purchase arrangements in the form of share for share or debt exchanges are common. They enable a seller to postpone payment of tax (roll over relief). The consideration must be in the form the shares or debentures of the buyer. It may be advantageous to reduce or eliminate the amount of cash that needs to be raised for the acquisition.

Since 6th April 2008, all individuals, trustees and personal representatives are subject to a single rate of Capital Gains of 18%. After intense lobbying a new Entrepreneurs Relief has provided tax payers with a life time allowance of 1 million of "qualifying capital gains" of the relief. 4/9 of any qualifying Capital Gain will be exempt from Capital Gains Tax making the effective rate 10% as was the previous position with taper relief.

Qualifying Capital Gains Tax relief is available on the disposal of shares in a trading company or its holding company, if the tax payer has been an employee and holds 5% shareholding.

Stamp Duty and VAT

The buyer is liable to pay Stamp Duty or Stamp Duty Reserve Tax at 0.5%. Stamp duty on the sale of assets is taxable at 4%.

Share purchases are VAT exempt. The sale of assets is generally subject to VAT. However, no VAT is chargeable on the sale of business assets which are transferred as a going concern,

Capital Allowances

The buyer will be able to claim capital allowances for qualifying expenditure on plant and machinery. If qualifying assets including land and machinery are acquired,

chargeable gains on other disposals of qualifying assets in the previous three years may be rolled over. A buyer may be entitled to claim tax allowances for intangible assets such as goodwill and intellectual property in some cases.

Industrial buildings capital allowances are being phased out in the United Kingdom. It is currently at 3% per annum over 25 years (having formerly been 4%). Industrial buildings capital allowance is only available for buildings used in manufacturing, process, storage, transport and utilities. The rates of IBA will be reduced down to 0% annually up to 2011.

Capital allowances will be available for expenditure and plant and machinery. It is generally available at the rate of 20% on a reducing balance basis. The rate is 10% for certain assets with a useful life of at least 25 years.

A corporate seller will be liable for corporation tax on the net proceeds received over costs. The standard rate of corporate tax is 28%. Lower rates apply to a personal vendor who will be subject to income tax or capital gains tax.

A balancing charge to small companies may arise in relation to industrial buildings, plant and machinery which originally qualified for capital allowances in respect of the difference between the price received and the tax written down value. Profits on sale of goodwill, intellectual properties will be taxed as income.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.