

MILESTONE

CAPITAL GAINS PLANNING USING RESCINDABLE CONTRACTS

Issue

- UK resident Individual wishes to shelter potential capital gains on either:
 - any asset with low current value, but potentially high future value; and
 - shares in a company.
- UK capital gains tax (CGT) charged at highest marginal rate (potentially up to 28%).

Solution

- UK resident Individual sells the asset to a suitable offshore structure (SOS) at market value under a rescindable contract. The acquirer has the sole right to rescind the contract prior to completion.
- The contract completion date will be 3-5 years hence – or other agreed date.

Benefits

- CGT only payable if contract completes.
- Any gain accruing after contract date should be sheltered from CGT and may be paid to UK resident Individual “tax free”.

Capital Gains Tax Consequences

- No CGT disposal arises until contract is completed (even if the contract is not completed for several years after exchange).
- Upon completion of contract, the capital gain will be computed on the basis of market value of the asset at the date of contract. Hence any future uplift in value is not subject to CGT.
- CGT may, where appropriate, be further mitigated by sub-dividing asset and making one or more part-disposals (e.g. of minority interest in shares).
- In the event the contract is rescinded, there are no CGT consequences.

Stamp Duty

- If the asset is UK real estate, no SDLT charge arises on entering into contract.
- If the asset is UK shares, SDRT is triggered by entering into contract, but such should be manageable.

Inheritance tax

- No transfer of value on sale to SOS as market value sale basis is used.

Please note that this note does not constitute tax advice and cannot be relied upon as such. No responsibility can be accepted by Milestone for action taken as a result of information provided or opinions expressed in this note. Readers are strongly recommended to take advice on their particular situations.

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