CURRENT CAPITAL GAINS TAX PLANNING OPTIONS:

A LECTURE DELIVERED TO PANNELL KERR FOSTER

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Simon McKie

MA (Oxon), Barrister, FCA, CTA (Fellow), APFS, TEP

McKie & Co (Advisory Services) LLP
Rudge Hill House
Rudge
Somersetshire
BA11 2QG

Tel: 01373 830956 Fax: 01373 830326
Email: simon@mckieandco.com
Website: www.mckieandco.com

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SECTION I

INTRODUCTION

THE CHANGES IN CONTEXT

1.1.1 I am honoured to be asked to speak to you today and I am grateful to Graham Yeatman for the opportunity to do so.

The Changes in Context

1.1.2 These are interesting times in capital taxation planning. The proposed changes to Capital Gains Tax which you have been hearing about this morning, are introduced in a wider context of revolutionary change in the tax system. In order to raise revenue without raising headline rates of tax or introducing new taxes, the Government has attempted to squeeze more revenue out of essentially the same taxes and tax rates. In order to do that it has created ever more complex taxing provisions and has responded to the resultant development of tax planning techniques with a ferocious attack on tax planning. That has seen the introduction of the disclosure provisions, a campaign of vilification by senior civil servants and ministers of those who advise in this area and forms of artificial tax collection, such as the decision to pursue family businesses by taking the *Artic Systems* case and subsequently producing the draft income shifting legislation, which makes a mockery of HMRC's own criticism of artificial tax avoidance. It has been particularly disturbing to see HMRC introducing legislation which is so poorly and widely drafted that it can only be made to work by the use of what are, in reality, extra statutory concessions masquerading as Revenue guidance.

1.1.3 Finally, HMRC are now making an attempt to introduce selective, purposive tax legislation under the guise of "principles based anti-avoidance legislation."

IRONY UPON IRONY

1.2.1 The package of Capital Gains Tax measures which the Government proposes to introduce, as we know, was not introduced because the Government wanted to reform Capital Gains Tax. It was the result of newspaper agitation on the taxation of private equity firms and of proposals emanating from the Conservative party.

1.2.2 As such, it is rich in irony.

1.2.3 Over the last ten years the Labour Government has been conservative, with a small c, in resisting pressure to reform the remittance basis on the pragmatic grounds that it has worked to the economy's advantage. The Conservative party, manoeuvred them into a position where they had to be seen to be taking action. Having done so, however, they have not taken a minimalist route. As you will be hearing later today, they have taken the opportunity to launch yet another attack on offshore trust and companies and, in line with their modern practice, have produced legislation of extraordinary breadth which inevitably contains many anomalies some of which will only emerge over the coming months.

1.2.4 In a final irony, it appears that one result of the proposals will be to stimulate the use of offshore companies by resident and domiciled individuals.

SECTION II

PROSPECTS FOR CHANGE OR DEFERRAL

THE RESPONSES TO THE PROPOSALS

2.1.1 The abolition of Taper Relief on business assets, as we all know, created a storm of protest which the Chancellor attempted to answer by introducing what he called "Entrepreneurs' Relief". As an aside, it is amusing to see how the same labels become affixed to totally different, tax reliefs. Entrepreneurs' Relief was the popular name for Reinvestment Relief when it was first introduced in 1993.

2.1.2 STEP has been leading the charge on the criticism of the Remittance Relief changes and has recently produced research evidence to suggest that, as everybody thought, the net result will be a loss both to the UK economy and to the UK exchequer. The CIOT is about to make very substantial criticisms of the draft remittance legislation and we are meeting next week to consider the legislation repealing Taper Relief and other more minor reliefs. Your own firm has made trenchant public criticisms of this legislation.

PROSPECTS FOR CHANGE OR DEFERRAL

2.2.1 What are the chances of major changes being made to the legislation, or at least of its introduction being deferred by a year so that its true effect may be identified and its grosser faults corrected?

2.2.2 In my view, the answer is: "very little indeed". The proposal to introduce an "Entrepreneurs' Relief" has taken the sting out of the criticism levied at the effects of the Capital Gains Tax reform on small businesses. There is almost no political sympathy to be found for rich non-domicillaries and the natural protector of that class of person, the Conservative Party, was itself the first proposer of the remittance charge. Most tellingly, at the time of the PBR, the changes were estimated to raise seven hundred million pounds in their first full year for the Government. Once a Government has included an item of revenue in its budgetary calculations, it is always highly reluctant to give it up. The expected yield has already been reduced by £200,000,000 by the promise of Entrepreneurs' Relief. The Government can be expected to defend the remaining half a billion tenaciously.

2.2.3 That is not to say that there will not be changes in response to the representations of the professional bodies and it may be that some of the effects of the legislation will be mitigated, in the deleterious modern manner, by extra statutory concessions masquerading as guidance. But I expect the draft legislation to be enacted largely unchanged and to the Government's original schedule.

2.2.4 So the question for this morning is, what are these changes likely to do to Capital Gains Tax planning?

SECTION III

SHORT TERM AND LONG TERM PLANNING

INTRODUCTION

3.1.1 As always with major legislative change one needs to look at what one has to do in the short term to see if one can gain advantages by anticipating the introduction of the new rules and in the long term.

LONG TERM PLANNING

3.2.1 The first thing to say is that the best advice on long term planning in relation to this legislation is to do nothing yet. The legislation on the abolition of Taper Relief and related changes and the remittance basis is as yet only in draft and will undoubtedly change in detail before it is enacted. We do not, as yet, even have draft legislation for the Entrepreneurs' Relief. Even if we had all of this legislation in its final form, much of it is extremely complex and its full implications will only emerge over the coming months. So anything we say this morning in relation to longer term planning can only be provisional.

3.2.2 For short term planning, however, we obviously do not have the luxury of delay. PKF has already pointed out the gross injustice suffered by those faced with deciding whether to make elections under s.138A in respect of earn out rights obtained in 2005/2006 in exchange for securities without knowing how the Entrepreneurs' Relief will apply to such reliefs. Even in relation to short term

planning, however, one shouldn't be over hasty. The Entrepreneurs' legislation is expected to be published shortly and the professional bodies will continue to engage in discussions with the Revenue. Such discussions often result in proposals for minor changes in the legislation and HMRC's practice becoming known as the process continues. There is less than two months to the end of the tax year so there is very little time to plan anticipatory transactions but, in general, it would be foolhardy to implement them now rather than, say, in March.

SECTION IV

MOVING THE TIME OF DISPOSAL

ACCELERATION AND DEFERRAL

4.1.1 PKF has produced a paper for its clients entitled "Saving Capital Gains Tax" which contains a useful table of the tax rates applicable on disposals taking place in this year and in next year, on various classes of assets. It neatly illustrates the point that some taxpayers will be advantaged by accelerating their disposals to this fiscal year and others by postponing their disposals to the next fiscal year.

ACCELERATION

Timing of Commercial Transactions

4.2.1 Of course, the easiest way of doing that is simply by entering into third party transactions at the correct time. If one is selling 'buy to let' properties, for example, it may not be difficult to defer making a sale until the new tax year. Often, however, commercial considerations will dictate the timing. Where that is the case, how can the disposal point for Capital Gains Tax be accelerated or deferred without unduly affecting the commercial elements of the deal?

Outright Gifts

4.2.2 The first and simplest option is a gift to a family member. A gift to a spouse will not do because that will be a no-gain-no-loss transfer. It will often be

possible to make a gift to a child of the owner but there is a limit to the generosity of our clients.

Settlements

4.2.3 One might, therefore, consider a settlement of the assets on a trust from which the taxpayer can benefit. That trust cannot be a bare trust or there will be no disposal for Capital Gains Tax purposes.

4.2.4 The difficulty lies in Inheritance Tax. Although the transfer into trust will be a gift with reservation it will also be a potentially exempt transfer as a transfer to a relevant property settlement. As the reason for the transfer is likely to be to preserve Business Asset Taper Relief it is likely that the property will qualify for one hundred per cent Business Property Relief from Inheritance Tax. But that may not always be the case. The rate of relief may be fifty per cent and not one hundred per cent if the asset is, for example, not a business interest but an asset used in a business. The asset may not qualify for Inheritance Tax Business Property Relief at all if, for example, it is a commercial property let to an unconnected trading company.

4.2.5 Assuming that the property does qualify in the transferors' hands for one hundred per cent Business Property Relief, if it, or the proceeds of its sale, are advanced back to the settlor within three months of the settlement being made, there will be no charge to Inheritance Tax (although one might worry about the application of the *Ramsay* Principle). If, however, the property is kept in the settlement for more than three months there will be an Inheritance Tax charge

on the exit because the hypothetical transfer by reference to which the rate of tax on the exit is calculated does not take count of Business Property Relief (or Agricultural Property Relief) on the settled property. If the property is kept in the settlement for two years, it may itself qualify for Business Property Relief so that the tax rate is applied to a nil value but if the transferor was not anticipating a sale of the asset concerned it is unlikely that he would want to realise his gain before the 6th April 2008. That is because the effect of doing so is that one will actually be chargeable to Capital Gains Tax at ten per cent (assuming one is a higher rate taxpayer and the asset is eligible for seventy five per cent Business Asset Taper Relief).

4.2.6 If one knows that an asset will, in any event, be the subject of a disposal within the next fiscal year, it will probably be worthwhile accelerating one's tax liability for one year in order to reduce it from eighteen per cent to ten per cent. But in that case, if by the time the tax is payable one has not made ones disposal and received the disposal proceeds, one will have to fund the payment of the tax on the 31st January 2009 from other resources and there is, of course, the risk that the disposal may not actually take place.

4.2.7 It is possible to pay this tax liability by instalments by making an election under TCGA 1992 s.281 which is available where an asset is disposed of by way of gift. If the assets are either land, unquoted shares or a controlling holding of shares or securities the election allows the tax liability to be paid over ten years

but it bears interest at the normal rate of interest on tax paid late; that is currently 7.5% and it is not deductible.

TRANSFER TO COMPANY

4.3.1 An alternative to using a transfer to a trust is to transfer an asset to a company. The obvious disadvantage of that route is that if the transfer is made by gift it creates the potential for a double gain. If the transfer is for consideration, including if the transfer is made by way of a subscription for shares in specie and the asset is an interest in land, there will be a Stamp Duty Land Tax charge and if it is shares, there will be a Stamp Duty or Stamp Duty Reserve Tax charge.

4.3.2 There will probably not be an Inheritance Tax charge because the transfer will not result in a loss to the donor’s estate. There is a small risk of an Inheritance Tax charge arising. It may be that the value of the shares in the company with the asset in it is not exactly the same as the value of the asset held directly by the taxpayer. In practice, this point is unlikely to be taken.

Sales

4.3.3 The problem with gifts, of course, is that they transfer value which may not be what the taxpayer wants to do and which may create Inheritance Tax charges.

4.3.4 The alternative is to make a sale but sales of land will result in Stamp Duty Land Tax charges and sales of shares in Stamp Duty or Stamp Duty Reserve Tax charges. They also result in permanent differences to property rights which

the vendor may not want. So, for example, if one is anticipating a sale of an asset and one sells it to a company which one wholly owns, that may be perfectly satisfactory if the sale of the asset to a third party proceeds in a relatively short period of time. One will have succeeded in accelerating one's disposal for Capital Gains Tax purposes. If the sale does not proceed or is delayed, however, any changes in the value of the asset will inure for the benefit or disadvantage of the company. If the asset falls in value, one may trap a loss within the company. If it increases in value, the gain will be subject to Corporation Tax rates rather than the new rate of Capital Gains Tax at eighteen per cent. An answer to some of these problems may be found by rescission of the sale contract by mutual agreement.

4.3.5 TCGA 1992 s.28 provides that where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred). That does not mean, however, that the disposal is constituted by the contract. In *Jerome v Kelly* [2004] UK HL 25 the House of Lords held that s.28 was a deeming provision as to the time of a disposal. It did not operate to identify the disposal. In the case of contract providing for completion at a subsequent date, it was the completion of the contract which constituted the disposal and not its formation. Therefore, where a contract is made and later rescinded by mutual agreement of the parties, there is no disposal for Capital Gains Tax purposes. So one possibility, would be to enter into a contract for sale in this tax year with completion in the next tax year.

4.3.6 If the asset concerned is an interest in land there would be no Stamp Duty Land Tax charge. That is because where a contract for the sale of land is made which is to be completed by conveyance at a later time, the vendor is not treated as entering into a land transaction by reason of the contract but rather Stamp Duty Land Tax becomes payable on the earlier of completion and substantial performance. In this case the contract will not have been substantially performed. If the asset concerned is shares, however, there will be a charge. There will be no charge to Stamp Duty because the shares which are the subject of the contract will not have been transferred. However, there will be a charge to Stamp Duty Reserve Tax because there will have been a contract for the sale of shares and the liability to Stamp Duty Reserve Tax will not have been franked by a later transfer.

4.3.7 There will be other issues to consider as well. First, if the asset arises in value between the contract being performed and rescinded there will be a benefit in kind charge assuming that the shareholder is either a director or a shadow director of the company.

4.3.8 If the asset has decreased in value, there are unlikely to be any tax consequences as the effect of the rescission will be to increase the net assets of the company. In particular, there will be no charge under IHTA 1984 s.94 (charge on participators). The direct decrease in the value of the taxpayer's estate by reason of his rescission of a favourable contract will be matched by an increase in the value of his shares in the company.

EIS Holdover

4.3.9 Gains rolled over into acquisitions OF EIS investments are placed in suspension, with the attributable Taper Relief. They come back into charge on various events, including a disposal of the company at any time and on a return of value by the company within three years of the investment. Where a disposal of an EIS company is anticipated after the 5th April 2008, therefore, it may be worthwhile to bring the suspended gains into charge if the rate of Taper Relief on those gains, will give an effective rate of tax of under eighteen per cent.

4.3.10 The gains could be brought into charge by engineering a disposal of the shares but it may be easier if all or most of the relevant investments have been made within the last three years simply to create a return of value. Returns of value are very easily made and they are not subject to de minimis provisions. So, for example, if the company sells an asset to an EIS investor at an under value, however small the undervaluation, or the investor sells an asset to the company at an overvalue, however small the overvaluation, there will be a return of value leading to a clawback of all of the gains rolled over in the previous three years.

DEFERRING THE GAIN

4.4.1 Of course, in many circumstances one would wish to defer the realisation of a gain until the next tax year.

4.4.2 One way of doing that is to create a contingent contract. But the contingency is one which is highly likely to be fulfilled the Courts may ignore it, either on a

purposive construction in accordance with *BMBF*[1] or alternatively on the basis that it is a condition subsequent rather than a condition precedent of the contract. There is a basic contradiction here. If the contingency has some practical possibility the commercial nature of the contract becomes significantly different to that of a simple contract. To the extent that it does not have a practical possibility, there is a danger that the contingency will be ignored and the date of the contract will be the date of disposal.

4.4.3 An alternative, therefore, is the use of cross options. That is an arrangement under which the person who would otherwise be the vendor is given a put option and the person who would otherwise be the purchaser is given a call option. If the terms of the options match each other then one can assume that whatever happens to the value of the asset, one or other of the two option holders will exercise their option. The Revenue have, at times, tried to assert that cross options together constitute a single binding contract for sales but they were unsuccessful in the only case in which they advanced that argument is *Sainsburys Plc v O'Connor* CA 1991 64 TC 208.[2] Perhaps, after *BMBF* a Court might be more inclined to view of the effects of the two options together but even so it must surely recognise that options do not have the same effect as a contract. Under the doctrine of the estate contract the formation of a contract for a sale of land vests an equitable interest in the land in the purchaser. Options do not.

[1] *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UK HL 51

[2] Although HMRC were successful in *Scottish Provident Institution v CIR* [2004] UK HL 52 which concerned two symmetrical *call* options

SECTION V

OFFSHORE TRUSTS AND COMPANIES

OFFSHORE COMPANIES

5.1.1 As, I am sure, Philip Dearden will explain in more detail later, the attribution of the gains of non-resident companies under s.13 to participators in those companies is extended to participators who are not domiciled in the United Kingdom. Previously, gains were only attributed under that section to participators who were resident or ordinarily resident and domiciled in the United Kingdom.

5.1.2 A new s.14A applies where:-

(a) By virtue of s.13 part of a chargeable gain that accrues to a company on the disposal of an asset is treated as accruing to an individual in a tax year; and

(b) The individual is not domiciled in the United Kingdom in that year.

5.1.3 Where those conditions are satisfied the part of the chargeable gain treated as accruing to the individual is a foreign chargeable gain and can therefore be taxable on the remittance basis. For the purposes of the new remittance rules any consideration obtained by the company on the disposal of the asset is treated as deriving from the deemed chargeable gain and if the consideration so obtained is not equal to the market value of the asset, the asset is to be treated as deriving from the deemed chargeable gains.

5.1.4 So these provisions aim to reproduce the effect of the new remittance basis rules in relation to the gains of non-resident companies.

5.1.5 Although this may be bad news for non-domicillaries, s.13 companies could continue to be useful investment holding vehicles for those who have either not opted for the remittance basis or, alternatively, have done so but will remit significant capital gains. That is because the gains of non-resident companies are calculated under Corporation Tax rules which will give an allowance for indexation but the rate of tax applicable to those gains will be the individual's rate of eighteen per cent. Thus, holding investments through a non-resident company neatly combines Corporation Tax Indexation Relief with the individual's rate of Capital Gains Tax.

5.1.6 As we shall see, this advantage does not depend upon the participator being a non-domiciliary. It applies as well to UK domicillaries. The advantage also applies where gains arise within a non-resident company held in an offshore trust.

5.1.7 Where gains are treated under s.13 as accruing to an individual who is not domiciled in the United Kingdom there are two restrictions on reliefs which would otherwise be provided by s.13. Section 13(8) allows losses arising in a non-resident company to be apportioned to participators for the purposes of reducing gains allocated under s.13 in respect of the same fiscal year. Where, however, a gain becomes chargeable by virtue of being remitted in a year later

than the year in which it arises, losses arising in the offshore company in the year of remittance cannot be set off. Nor will any losses arising in the year of the disposal to be set off in determining the amount of the gain. That is because s.13(8) works not by setting the loss off against the gains of the company in determining the amount of a gain which is allocated to the individual, but rather by allocating the loss to the individual as well as the gain and allowing the set off at the level of the individual.

5.1.8 TCGA 1992 s.12(2) deems chargeable gains in respect of foreign chargeable gains where the remittance basis applies to accrue at the time of remittance and not at the time of the disposal which gives rise to them.[3]

5.1.9 That is a very significant disadvantage in comparing the effects of the application of the remittance basis with being taxed on an arising basis. It shows, that a decision to make the remittance election will never be a simple one and will require detailed predictions of future events to be made.

5.1.10 The second disadvantage under s.13 applies where the participator is not domiciled in the United Kingdom even if he is fully taxable on an arising basis. Were it not for the provisions of ss.13(5) and 13(7) the s.13 charge would lead to double taxation; a charge on the attribution of the gain to the participator and a charge on the participator when he disposes of the shares in the offshore company. That of course mirrors the situation of a UK resident holding assets through a UK resident company but at the time that s.13 was enacted it was

[3] At least, that seems to be the intention of the legislation, although read literally it actually seems to give rise to a double charge

thought inappropriate. Section 13(5), as subsequently amended, provides a credit for the tax suffered under s.13 against the UK tax charged on a subsequent distribution in respect of the capital gain made within three years of the end of the period in which the gain is made.

5.1.11 To the extent that the tax has not been credited in this way, s.13(7) allows the tax to be treated as a deduction in the computation of a gain accruing on the disposal by the participator of any asset representing his interest in the company.

5.1.12 Section 13(5A) can apply to gains allocated under s.13 to non-domicillaries but s.13(7) can not. It is difficult to understand why it should not but it is particularly outrageous that it should not apply to a non-domiciliary fully taxable on the arising basis.

OFFSHORE TRUSTS

5.2.1 The offshore settlor charge imposed by TCGA 1992 s.86 currently does not apply if the settlor is not domiciled in a country of the United Kingdom in the fiscal year concerned. As from next year, that exclusion will no longer exist. Similarly, under the capital payments charge imposed by TCGA 1992 s.87 a beneficiary is excluded from the charge to tax on gains treated as accruing to him under the provisions of that charge if he is not UK domiciled. That exclusion is also removed with effect from 2008/2009 onwards.

5.2.2 Where a settlor has elected for the remittance basis to apply, provisions exist to allow a form of the remittance basis to apply to gains attributed to settlors under s.86.

5.2.3 The net effect of all these rules and their interaction has been much criticised primarily because, events taking place on or after the 6th April 2008, can bring into charge gains realised many years ago. The reason for that is that s.87(7) which currently provides an exemption for non-domicillaries under the Capital Payments Charge does not operate by deeming gains not to accrue to a non-domiciliary but rather by providing that gains which do accrue to a non-domiciliary under s.87 should not be chargeable. Thus, capital payments made from the 6th April 2008 onwards can be matched with gains realised in previous years and lead to a charge, whereas if the capital payments had been made in a previous year the gains treated as accruing would not have led to a charge to tax.

5.2.4 The legislation also provides provisions which are aimed to prevent a charge arising on the same gain under both ss. 86 and 87 but they do not prevent charges under both sections arising by reference to the same capital payment.

5.2.5 These provisions are of the greatest complexity, particularly when you begin to take account of groups of companies held by trustees. It is highly likely that detailed arithmetical anomalies will continue to emerge over the coming months. But even now what are, at the least, odd results, are emerging.

5.2.6 I am sure that Phillip Dearden will be providing more detailed examples this afternoon but an example here might suffice.

5.2.7 **Example**

Mr A is not domiciled in the United Kingdom. He made an election for the remittance basis to apply in 2008/2009 and all succeeding years. He had settled a non-resident trust of which he was a beneficiary in 1999/2000 and the trustees had made a gain of £1,000,000 in that year. No other transactions took place until 2008/2009 when the trustees made a further gain on a foreign situs asset. In 2009/2010 the trustees made a capital advance of £1,000,000 to Mr A in the UK.

The gains realised in 1999/2000 were not treated as accruing under s.86 but they were trust gains for the purposes of s.87.

An amount equal to the gains realised in 2008/2009 were deemed accrue to Mr A in that year under s.86. That amount of deemed chargeable gains were foreign chargeable gains and so, not having been remitted in 2008/2009, Mr A was not chargeable in respect of them.

The trust gains in that year would, under s.87(2), have included the gains of previous years of £2,000,000 (£1,000,000 – £1,000,000) except that s.87(2) excluded the gain of 2008/2009 from being included in trust gains.

In that year, Schedule 5 para 5B would have added back an amount to the trust gains for 2008/2009 equal to the unremitted deemed chargeable gains.

In 2009/2010 the foreign chargeable gains which had been treated as accruing to him under s.86 were deemed to have been remitted by Mr A and so were chargeable on him.

For s.87 purposes, no addback was made to trust gains because the gains were remitted in that year. So trust gains in 2009/2010 were £1,000,000. The result was that the trust gains of £1,000,000 were matched with the advance in 2009/2010 which was a capital payment and gains of that amount accrued to Mr A under s.87.

So it is at least arguable that the interaction of ss.86 and 87 has not resulted in double taxation. The assessment under s.86 brought into charge in 2009/2010 the gain realised by the trustees in 2008/2009. The assessment under s.87 brought into charge in 2009/2010 the gain made by the trustees in 1999/2000. But it should be noted that a single payment of £1,000,000 has caused to be brought into charge gains of £2,000,000. This, in spite of the fact that some eight years had passed between the realisation of the first gain and the publication of the draft legislation which, when enacted, brought it into charge. What is more, the tax on the gain assessed under s.87 will be increased by the supplementary charge by sixty per cent because over six years has passed between its realisation and the capital payment of which it is matched.

The CIOT intends to say that it assumes that this cannot be HMRC's intention but I think that it is highly unlikely that it is not. It should be noted, however, that if the trustees had accelerated the disposal in 2008/2009 and the advance in 2009/2010 to 2007/2008 the problem would largely have been avoided. The gain in 2007/2008 would not have been a gain within s.86 and although the advance to Mr A would have resulted in gains accruing to him under s.87 because of the exemption which currently exists in s.87(7) that gain would not have been chargeable. The situation would have been less favourable, had there been a transfer of value by trustees linked to a trustee borrowing within TCGA 1992 Schedule 4B.

SECTION VI

OTHER ISSUES

ENTREPRENEURS' RELIEF

6.1.1 Until the draft legislation is published it would be imprudent to take action in relation to Entrepreneurs' Relief. A few points, however, are of interest.

6.1.2 First, although the press have presented the relief as providing a ten per cent rate of tax on the first £1,000,000 of gains, in fact it appears that it will operate as a deduction of four ninths from the gain. Again, it appears from the information put out by the Revenue that losses will be deductible after the relief. In contrast to Taper Relief, therefore, losses will continue to have a value of eighteen per cent of their amount even where Entrepreneurs' Relief is available on the gains against which the losses are to be set off. Under Taper Relief, losses reduce the gross gains before Taper relief which means that the effective value of the losses depends upon the rate of Taper Relief.

6.1.3 The second thing to notice is that even where a disposal will have an effective rate of tax at ten per cent after the 5th April 2008, it may still be advantageous to trigger a disposal in 2007/2008 where there is a significant amount of Indexation Relief available. This will often apply to disposals of farm land held at March 1982. Agricultural land probably had an average value of about £2,000 per acre in 1982 and of about £5,000 now. Indexation Relief on that amount would be just under one hundred and five per cent so it would reduce

the chargeable gain to just thirty per cent of the amount it would otherwise be. Realising a gain in 2008/2009 rather than 2007/2008, therefore, would increase the tax charge by three hundred and thirty per cent even if the effective Capital Gains Tax rate was ten per cent in both years.

6.1.4 The third thing to note is that for clients with larger gains the correct strategy is likely to be to create part disposals in 2007/2008 so as to leave in charge in 2008/2009 or later years a gain of just £1,000,000.

6.1.5 It is likely that tax planning associated with the relief will involve the rules relating to trust interests and the requirement, on disposals of shares or securities, that the disponer should have been an officer or employee of the company concerned.

THE KINK TEST, HALVING RELIEF AND THE SHARE IDENTIFICATION RULES

6.2.1 In many cases the effect of the abolition of these rules has been minimal. In some, however, they will be very significant. Unfortunately there will be no substitute for doing the arithmetical calculations to decide whether or not the abolition of these rules coupled with the other changes to Capital Gains Tax will be advantageous or disadvantageous. No doubt your firm will be reviewing its clients and writing to them to suggest a review of their assets.

INVESTMENT HOLDING FOR UK RESIDENT AND DOMICILED INDIVIDUALS

6.3.1 It is an ironic feature of these changes that they appear to provide an incentive for UK resident and domiciled individuals to hold their investment portfolios for offshore companies.