

## Clause 35

### Chargeable gains - Restriction of relief on disposals to employee-ownership trust

#### Executive Summary

Clause 35 reduces the capital gains tax relief (CGT) available on the sale of a company to an employee ownership trust (EOT) from 100% to 50% with effect from 26 November 2025.

Commonly, the proceeds from the sale to an EOT are payable in instalments from the future profits of the business. While, the former owner(s) of the company can opt to pay CGT in instalments, the process is antiquated and could inhibit sales to EOTs.

We suggest that the process for agreeing and paying CGT by instalments when the sale consideration is also payable by instalments should be reviewed and updated to reduce administrative burdens. In addition, the payment dates for instalments should be revised to avoid excessive interest charges arising.

#### Overview

- 1.1. An employee ownership trust (EOT) is a form of trust that allows a company to be owned indirectly by its employees. EOT trustees must hold a controlling stake in the employer for the benefit of all employees.
- 1.2. For EOTs, when a business owner transfers a controlling shareholding of a trading limited company into such a trust, the transfer was previously treated as 'no-gain/no-loss' for the individual owner, i.e. it is a tax neutral transfer with no CGT payable. Clause 35 changes this treatment for sales taking place on or after 26 November 2025. The 100% CGT relief is replaced with a 50% relief, so that 50% of the gain that arises to the business owner on the sale of their company will now be treated as a capital gain that is subject to CGT.
- 1.3. Clause 35 also confirms that the remaining gain will be held over and deducted from the EOT trustees' base cost, effectively coming into charge on a future sale of the company by the EOT.
- 1.4. Furthermore, business asset disposal relief and investor relief (two reliefs that provide a reduced rate of CGT on the first £1m of gains on qualifying share disposals) will not be available where the EOT CGT relief applies.
- 1.5. These changes follow significant changes to the regime in Finance Act 2025, largely designed to tighten the regime, prevent misuse of the CGT benefits and discourage a practice of EOTs being used as a short-term conduit for a third-party sale.

#### CIOT comments

- 1.6. Given the rapidly rising cost of tax relief associated with EOTs it is perhaps not entirely surprising that the government is making further moves to limit the advantages of the EOT regime, by requiring some tax to be paid by the business owner (as opposed to the previous 100% relief CGT position), while retaining an incentive to sell a business into employee ownership by way of a lower CGT rate compared to other sale options.
- 1.7. While the changes might not discourage EOT sales motivated by long-term employee ownership rather than tax benefits, they are likely to deter some from pursuing the EOT option due to the impact of CGT and the interaction between significant deferred consideration and payment by way of tax instalments, especially where another form of sale is practically easier.
- 1.8. This said, even with the amendments made by clause 35, the tax rate on sales to EOTs remains significantly lower than selling through other means (12% versus 24% of the chargeable gain for higher-rate taxpayers). For business owners truly interested in the advantages of employee ownership as a succession option the revised tax relief should remain attractive.

***Paying CGT by instalments***

- 1.9. Frequently, EOTs are unable to access third party finance due to substantial lender reticence in that market. EOT transactions are therefore typically structured so that a substantial majority of the payment owed to the business owner for their shares by the EOT trustees is made in instalments over several years after the sale (known as deferred consideration), funded by the future profits of the business. Because there is no external third party ‘funder’ of the sale consideration the financial risk of the transaction effectively remains with the vendor since future instalments are dependent on future profits.
- 1.10. Due to the CGT rules that apply to deferred consideration, the relevant CGT on the full amount of consideration—including future instalments—will fall due by January 31 following the tax year in which the sale occurs. For EOT sales, this could result in ‘dry tax’ charges, where the business owner owes CGT before actually receiving all of the consideration, and also, potentially, exposure to substantial late payment interest charges (the current late payment interest rate is 7.75%) where the business owner is unable to fund the payment of CGT. Alternatively, the payment profile for the consideration must be designed to ensure that at least c.12% of the consideration is payable (and paid) before the due date for the payment of the CGT, which may not always be commercially possible.
- 1.11. Section 280 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) allows CGT to be paid in instalments if disposal consideration is paid over more than 18 months and we understand that HMRC has confirmed (see ‘HMRC Statement’ at <https://employeeownership.co.uk/Site/content/News-and-Insights/News/hmrc-clarity-capital-tax-gains-tax-changes-update.aspx>) that applications for CGT payments under section 280 will be permitted for EOT transactions. An application by the business owner in writing is required and HMRC must agree to it. Instalments can be spread over up to 8 years, or the actual payment period if shorter. Under HMRC’s current practice on section 280 the business owner is required to pay to HMRC 50% of each instalment of consideration received until the total CGT liability is settled. The 50% figure does not appear to be mandated by the legislation, which only refers to “*such instalments as the Board may allow over a period not exceeding 8 years*” and so HMRC appears to have discretion over how to apply this. Interest accrues on any instalments that are paid late in accordance with the payment schedule agreed by HMRC.

- 1.12. While the current application of section 280 is unlikely to lead to hardship – as vendors will keep at least 50% of their payments – nevertheless our members’ feedback is that this has become an influence, since the Budget change, in clients’ decision making over whether to sell into employee ownership at all, or to go to market and sell elsewhere when they will typically obtain a much higher amount of up-front consideration with no, or at least a more limited, tail of deferred consideration. We understand that there are reports that these changes will cause some owners who would otherwise sell to an EOT not to proceed. Furthermore, in practical terms, instalment applications can be cumbersome because they must be made in writing to HMRC and can take a long time to process. We believe that the application process should be reviewed and modernised.
- 1.13. Additionally, in light of the recent increase in HMRC’s interest rate charges (from 2.5% over base rate to 4% over base rate as of 6 April 2025), we would welcome a review of the instalment payment due dates. The current HMRC requirement is for the tax payment to be made on the same day the instalment of consideration is payable to the taxpayer (or at not less than six-monthly intervals in cases where the period between contractual instalments of consideration is less than this). This risks potentially significant interest charges accumulating for just a few days delay between the consideration being due, actually received and funds cleared, and payment of tax being made. However, section 280 provides that the tax may *“be paid by such instalments as the Board may allow over a period not exceeding 8 years...”*, suggesting there is some discretion for HMRC to agree instalment due dates and amounts. In particular, we note that the current HMRC requirement is not mandated by section 280, except for the provision that the due date for the final payment of tax must be the date that the final instalment of the consideration is due. We believe a fairer requirement would be for late payment interest and penalties to not apply so long as an instalment plan is agreed with HMRC, and payments are made within 7 days of instalment consideration being received.
- 1.14. We suggest that a more efficient process to apply for instalment payments could be introduced through secondary legislation or HMRC guidance. For example, by means of a change to the Self-Assessment tax return forms or an online digital process. A claim via the tax return could help avoid increasing pressures on HMRC’s work processing postal applications and aligns with the government’s commitment to HMRC becoming a digital-first organisation.
- 1.15. Additionally, we request that clear guidance on the instalment application process, specifically for EOT sales, is added to the relevant guidance on gov.uk as soon as possible, and that HMRC allocates appropriate resource to deal with EOT CGT instalments applications efficiently.
- 1.16. Crucially, business owners need comfort that the CGT can be paid in instalments before proceeding with an EOT sale to ensure they are not exposed to the risk of dry tax charges on completing the sale. Therefore, we would also welcome the introduction of an advanced agreement procedure, for example, within a digital instalment application process, to confirm HMRC will permit the CGT due to be paid in instalments, ahead of the business owner completing the sale.

***Reduced consideration***

- 1.17. A further concern arises where the deferred consideration payable is reduced by the purchaser (ie the EOT trustees) post sale, perhaps due to poor business performance. There is existing legislative provision within section 48 of TCGA 1992 that allows a seller to make a claim to reduce the CGT due (or claim a refund where the CGT has already been paid) when consideration becomes irrecoverable, in specific circumstances. While we understand that

HMRC has confirmed that taxpayers are able to apply for the CGT to be recalculated, we would welcome this also being added to the relevant guidance on gov.uk as soon as possible, including some specific examples in the context of EOT transactions.

**The Chartered Institute of Taxation**

- 1.18. The CIOT is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 1.19. The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
- 1.20. The CIOT’s 20,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’ and ‘CTA(Fellow)’, to represent the leading tax qualification.

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