



## Budget 2024

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# When is the latest clients can sell assets prior to June 25?

Given several complicating factors, waiting until the last minute is a bad idea, tax experts say

By: Melissa Shin | May 17, 2024 | 11:27



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Melissa Shin

Clients hoping to sell assets ahead of the June 25 implementation date for the new capital gains regime technically have until 11:59 p.m. local time on June 24 to do so.

But waiting until the last minute is a bad idea.

“The recommendation would be: don’t fall into that kind of scenario where you’re hours away from the deadline, and the time zone where the contract happens might be an issue,” said Christopher Ellett, tax lawyer with Moodys Tax Law in Vancouver.

The government has proposed increasing the capital gains inclusion rate on June 25 to two-thirds from one-half for all corporations and trusts, and any individuals whose capital gains exceed \$250,000 in one year. As a result, some clients may wish to sell assets prior to June 25 so that they’re subject to the 50% inclusion rate.

Regarding the timing of a sale, Ellett said commercial sale agreements tend to specify a closing time and date to avoid ambiguity.

“In that case, you can try to set [closing] in a certain jurisdiction, place and time, which is usually respected,” he said. “But there are factual situations where it’s left up to interpretation as to exactly where the actual closing took place.”

Kenneth Keung, director of Canadian tax advisory with Moodys Tax in Calgary, said a written contract is not required, however, for a sale to be effective.

“A contract can be oral. The key is when the beneficial ownership of the property transferred,” Keung said, explaining that possession, use and risk must be transferred. Critically, the buyer must also pay for the property, he said — known as paying consideration.

“In that case, I am able to document our agreement afterward, saying what happened on June 24. What I can’t do is on July 1 say, ‘I want to sell you this pen. Let’s pretend I sold it to you on June 24,’” Keung said.

Ellett warned that in many provinces, land transfers require a written agreement, “so you have to look at how each province interprets that.”

Ellett also acknowledged that some taxpayers might report a more favourable disposition date than actually occurred, which would be misguided. They may think, “Is the Canada Revenue Agency really going to examine all of these gains that get reported in 2024 to figure out what’s before and after June 25?” Regardless, he said, “it’s a big administrative issue for the CRA.”

As for publicly traded securities, Canada and the U.S. will move to next-day trade settlement on May 27 and 28, respectively. As a result, the last trading day for settlement on Monday, June 24, is Friday, June 21.

Keung said the CRA generally deems a sale to have occurred on the settlement date, not the trade date. “That’s because a disposition doesn’t take place until a seller is entitled to proceeds, [which is] settlement,” he said.

Keung recommends not waiting until the last minute. The settlement date “is not up to you,” he said, since unexpected events can delay the process, especially if financial institutions are inundated with transaction requests.

For example, many financial institutions recommend placing orders a few days before the RRSP contribution deadline for the same reason.

June 24 also is Saint-Jean-Baptiste Day, a statutory holiday in Quebec. Banks and other institutions will be closed in the province, so taxpayers must plan accordingly.

If a taxpayer enters an agreement to sell property before June 25, but the closing happens on or after June 25, Keung and Ellett said the government is likely to deem the closing date as the transaction date.

“Because Finance gave us a 10-week delayed implementation timeline, I doubt they ... will extend the whole regime” for contracts signed but not closed before June 25, Keung said. “That’s my guess.”

Until draft legislation is tabled, taxpayers and their advisors must rely entirely on the 425-word statement about the capital gains inclusion rate in the 2024 federal budget. Draft legislation may also change as it is debated in the House and Senate.

“This would not be the first example of draft legislation that is proposed to already be in effect, and that has not been enacted,” Keung said.

Earlier this month, the Canadian Bar Association and Chartered Professional Accountants of Canada asked the government to allow taxpayers to trigger capital gains without having to sell property, known as a deemed disposition.

## Key dates

### Friday, June 21:

- Last trading day on Canadian and U.S. markets for settlement on June 24.
- Last scheduled sitting day for the House of Commons before summer recess, and a possible sitting day for the Senate. This is the last day when both chambers of Parliament could sit prior to the June 25 effective date. (The Senate is not scheduled to sit on June 24.)

### Monday, June 24:

- Saint-Jean-Baptiste Day, which is a holiday in Quebec. Banks and other institutions are closed in the province.
- Canadian and U.S. markets are open.
- Last day of Period 1 (which covers capital gains and losses realized before the inclusion rate increases).

### Tuesday, June 25:

- The inclusion rate rises to two-thirds from one-half on capital gains above \$250,000 realized annually by individuals, and on all capital gains realized by corporations and trusts.
- Period 2 begins, which covers capital gains and losses realized on or after the day the inclusion rate increases.