

Technical Factsheet 164

ENTREPRENEURS' RELIEF

Entrepreneurs' Relief was introduced as part of the wholesale reform of capital gains tax introduced with effect from 6 April 2008 and is a popular topic on ACCA's Advisory helpline.

Here we consider some of the more frequently asked questions on the subject of Entrepreneurs' Relief.

One important point to highlight at the head of this factsheet is that the lifetime Entrepreneurs' Relief allowance has increased twice since 6 April 2010, and the maximum lifetime limits are as follows:

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|---|------------|
| • Disposals between 6 April 2008 and 5 April 2010 | £1,000,000 |
| • Disposals between 6 April 2010 and 22 June 2010 | £2,000,000 |
| • Disposals on or after 23 June 2010-06-23 | £5,000,000 |

Q. What is Entrepreneurs' Relief?

A. Entrepreneurs' Relief was introduced as the successor of Business Asset Taper Relief with effect from 6 April 2008. It is a valuable relief from capital gains tax for individuals disposing of qualifying business assets.

The Entrepreneurs' Relief provisions are contained within Taxation of Capital Gains Act (TCGA) 1992, ss169H-169S.

Q. Is Entrepreneurs' Relief available on disposals made by a company?

A. No. Entrepreneurs' Relief only applies for disposals by individuals and certain trustees. Companies are not eligible. Entrepreneurs' relief is therefore an important consideration in deciding whether to sell the shares in a company or the assets of a company. (TCGA 1992, s169(1)(a) and s169J(1))

Q. What kind of assets are eligible for entrepreneurs relief?

A. Entrepreneurs' Relief is available on a material disposal of business assets. These are as follows:

- A disposal of the whole or part of a business owned by the individual throughout the one-year period ending with the date of disposal.
- A disposal of, or a disposal of an interest in, an asset in use for the purposes of a business, at the time at which a business ceases to be carried on, where the business was owned by the individual throughout the one-year period ending with the cessation of the business. The disposal must be made within the three-year period beginning with the date of cessation, provided that the asset has not been used for any purpose, other than that of the business, during the intervening three year period.
- A disposal of, or a disposal of an interest in, shares or 'securities' of a company, where the company is the individual's 'personal company' and is either a 'trading company' or the 'holding company of a trading group' **and** the individual is an officer or employee of the company; or, where the company is a member of a trading group, of one or more companies which are members of the group. These conditions must be satisfied throughout either:
 - the one-year period ending with the date of disposal; or

- the one-year period ending with the date on which the company ceases to be a trading company without continuing to be or becoming a member of a trading group or ceases to be a member of a trading group without continuing to be or becoming a trading company. In this case, the disposal must be made within the three-year period beginning with the date of cessation.

An individual's personal company is a company in which he holds at least 5% of the ordinary share capital **and** in which he is able to exercise at least 5% of the voting rights by virtue of that holding. TCGA 1992, s169I.

Q. Is Entrepreneurs' Relief available to a partner in a partnership or a member of an LLP on a partner or member withdrawing from the partnership, even if there has been no cessation of all or part of the partnership business?

A. Yes. A disposal by an individual of the whole or part of his interest in the assets of a partnership is treated as a disposal by him of the whole or part of the partnership business. At any time when a business is carried on by a partnership, the business is treated as owned by each individual who is at that time a member of the partnership. (TCGA 1992, s169I(8)).

Q. Is Entrepreneurs' Relief available in respect of disposals by a trust?

A. Yes, in certain circumstances. If an individual has an interest in possession in a trust and the trust disposes of either an asset used in a trade or partnership carried on by the beneficiary, or shares in the beneficiary's personal company. In the case of disposals by a trust, the assets must have satisfied the one-year minimum holding period at any time in the ending in the three years prior to disposal of the asset. Claims for Entrepreneurs' Relief in respect of trust assets must be made jointly by the beneficiary and trustees. (TCGA 1992, s169J).

Q. What is the time limit for claiming Entrepreneurs' Relief?

A. Entrepreneurs' Relief must be claimed by the normal Self Assessment filing deadline, i.e. by 31 January following the end of the tax year to which the claim relates. (TCGA 1992, s169M(3)).

Q. How does the relief work?

A. The way in which the relief operates depends on whether the disposal occurred before or after 23 June 2010.

Pre 23 June 2010 Disposals:

For disposals before 23 June 2010, the basic rule was that entrepreneurs' relief exempted 4/9ths of the gains arising on "relevant disposals" as outlined above. In determining the amount of gain eligible for relief, any losses which may arise on "relevant disposals" must be netted off against the relevant gains. If the difference is positive, then Entrepreneurs Relief exempts 4/9ths of the net gain (TCGA 1992, s169N), e.g:

Example 1:

Mr Sousa, who is a higher rate taxpayer, has carried on a sole trade for many years, which he has built up from scratch. On 1 June 2009, he receives an offer for the business and sells the business goodwill for £230,000. The purchaser does not wish to acquire the property from which the business is run, and Mr Sousa sells it 6 months later making a capital loss of £50,000. He also makes a capital gain on the disposal of a sculpture (unconnected with his business) of £30,000. What will Mr Sousa's capital gains tax position be for 2009/10?

Capital Gains Tax Position
Year ended 5 April 2010

Relevant disposals:			£
Gain on sale of business goodwill			230,000
Loss on sale of associated disposal of trading premises			<u>-50,000</u>
Net gain on relevant disposals			180,000
Less: Entrepreneurs' Relief:			
180,000	x	4/9ths =	<u>-80,000</u>
			100,000
Other disposals:			
Gain on sale of sculpture			<u>30,000</u>
			130,000
Less: Annual exemption			<u>-10,100</u>
Net gains chargeable to tax			<u>£119,900</u>
Capital Gains Tax thereon:			
119,900	x	18% =	<u>£21,582.00</u>

Disposals on or after 23 June 2010:

For disposals on or after 23 June 2010, the 4/9ths fraction is no longer relevant. This is due to the introduction of two rates of capital gains tax in the emergency Budget in June 2010, i.e. 18% for basic rate taxpayers and 28% for higher rate taxpayers. Despite the introduction of the two rates, all gains eligible for entrepreneurs relief are chargeable to capital gains tax at 10% and the relief operates as follows:

Example 2:

Using the same facts as in Example 1, except that the disposals take place on 1 August 2010, the capital gains tax position would be as follows:

Relevant disposals:			£	£
Gain on sale of business goodwill			230,000	
Loss on sale of associated disposal of trading premises			<u>-50,000</u>	
Net gain on relevant disposals			180,000	
Other disposals:				
Gain on sale of sculpture				30,000
Less: Annual exemption				<u>-10,100</u>
Net gains chargeable to tax			<u>180,000</u>	<u>£19,900</u>
Capital Gains Tax thereon:				
180,000	x	10% =		18,000
19,900	x	28% =		<u>5,572</u>
Capital gain tax liability				<u>£23,572</u>

Q. If there are brought forward losses in respect of “relevant disposals” in earlier years, do these need to be taken into account in deciding what level of current year gains is eligible for Entrepreneurs relief?

Although this has not yet been tested, it would appear so. The legislation does not appear to distinguish between “in-year” and brought forward losses on relevant disposals; TCGA 1992, s169N(6) defining relevant losses as “any losses accruing on the disposal” of the relevant shares or business assets.

Q. Is Entrepreneurs’ Relief available on the disposal of furnished holiday lettings?

A. Yes. Furnished holiday lettings are regarded as trading assets for these purposes. The proposed abolition of the favourable tax breaks for furnished holiday lettings was removed from Finance Act 2010 on its passage through Parliament and this was confirmed in the 2010 emergency Budget. Care will still be required to ensure that the qualifying conditions are met in order for the holiday accommodation to be regarded as a relevant business asset for Entrepreneurs’ Relief purposes.

Q. Is there a maximum amount of Entrepreneurs’ Relief that can be claimed?

A. Yes. The maximum amount of gain entrepreneurs’ relief has been increased twice since its inception and the limits are as follows:

- Disposals between 6 April 2008 and 5 April 2010 £1,000,000
- Disposals between 6 April 2010 and 22 June 2010 £2,000,000
- Disposals on or after 23 June 2010-06-23 £5,000,000

An important point to bear in mind is that this limit is a **lifetime** limit. So, when considering the amount of relief available, it is necessary to consider any previous claims to Entrepreneurs’ Relief, e.g.:

Example 3:

During 2010/11, Mr Kuqi sold his sole trade, making a capital gain of £400,000 and he claimed Entrepreneurs’ Relief on the disposal. On 1 January 2011, he sells shares in his personal trading company, Monster Ltd, and realises a capital gain of £2,500,000 (eligible for Entrepreneurs’ Relief). What would be his 2010/11 capital gains tax position on the disposal of his shares in Monster Ltd?

Capital Gains Tax Position
Year Ended 5 April 2011

	£
Total gain on sale of shares in Monster Ltd	2,500,000
Gain eligible for Entrepreneurs' Relief:	
Greater of:	
Actual gain after exemption:	
£2,500,000 – 10,100	2,489,900
And:	
Lifetime ER allowance	5,000,000
Less: Used on disposal of trade in 2008/09	<u>-400,000</u>
	<u>4,600,000</u>
Annual exemption	<u>-10,100</u>
Net gains chargeable to tax	<u>£2,489,900</u>

Capital Gains Tax thereon:			
2,489,900	x	10% =	<u>£248,990</u>

Memo	
Lifetime ER limit	5,000,000
Less:	
Utilised 2008/09	-400,000
Utilised 2010/11	<u>-2,489,900</u>
Unused limit carried forward	<u>£2,110,100</u>

Q. What if my client inadvertently fails to tell me about previous claims to entrepreneurs' relief and ends up claiming too much on a subsequent disposal?

A. HMRC consider that it is the taxpayer's responsibility to keep track of their lifetime entitlement to Entrepreneurs' Relief and excessive claims could give rise to penalties for failure to take reasonable care.

Q. Is Entrepreneurs Relief available in respect of disposals such as gifts, a company being wound up under ESC C16, company purchase of own shares, etc.

A. Any kind of disposal which gives rise to a capital gain will qualify for relief if the relevant conditions are met. Such disposals include:

- a normal sale
- a gift
- a transfer (for example, at undervalue)
- company winding-up under ESC C16
- company purchase of own shares (assuming that capital gains treatment applies)
- where a capital sum is derived from the asset
- incorporation of a business.

Q. For the purposes of establishing period of ownership what are the effects of transfers between spouses and civil partners?

A. Spouses and civil partners are treated as having their own distinct periods of ownership. Note, that in contrast to the old taper relief rules, the Entrepreneurs' Relief provisions do not aggregate periods of ownership where there has been a transfer of an asset between married persons or civil partners, e.g:

Mrs Dyer has been in business since 1 April 2001. On 1 January 2010, she admits her husband into the partnership as an equal partner. On 31 March 2010, they sell the business to a third party. Mr Dyer's period of ownership would only be three months and so he would not satisfy the one year ownership requirement (not 9 years, i.e. he does not "step into Mrs Dyer's shoes" as for taper relief)

Q. What happens in the event of a share for share reorganisation?

A. Normally, where there is a share for share reorganisation and shares in one company are replaced by shares in another, TCGA 1992, s72 provides that no disposal has taken place and that the new "stand in the shoes" of the old shares. It is possible to disapply this provision and treat it as a disposal. The election must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation takes place (which date is also the time limit for making the claim for relief). Entrepreneurs' relief is available for disposals, reorganisations of share capital and reorganisations involving the acquisition of qualifying corporate bonds occurring on or after 6 April 2008. (TCGA 1992, s 169Q)

Q. What about gains on qualifying assets that have been deferred against an investment in qualifying corporate bonds, enterprise investment scheme investments?

A. It depends on whether the original gain was made pre or post 23 June 2010.

Original gain arose before 23 June 2010

Relief applied to chargeable gains on relevant business disposals which were held over against QCBs or EIS investments. This also applied in respect of gains on relevant business disposals arising before 6 April 2008 and deferred in this manner.

Original gain arose on, or after, 23 June 2010

If the original gain arose on or after 23 June 2010, the individual has the choice of either:

- claiming entrepreneurs' relief on the original gain, or
- holding over the gain against the QCB, EIS investment.

If the latter is chosen, entrepreneurs' relief will **NOT** be available when the original gain subsequently crystallises.

Q. The rules for Entrepreneurs' Relief are broadly similar to the old rules for Retirement Relief. Will Retirement Relief case law have a bearing on claims for Entrepreneurs Relief?

A. Where the legislation uses terms that also appeared in the retirement relief legislation, they are intended to have the same meaning (except where the entrepreneurs' relief legislation specifically provides a different meaning) - (Treasury Explanatory Notes to the 2008 Finance Bill). Although retirement relief cases are not a binding precedent for Entrepreneurs' Relief purposes, HMRC consider that the courts are likely to consider them persuasive.

For details of retirement relief cases, visit <http://uk.accaglobal.com/uk/members/technical/taxation/cases/capital/>

For additional guidance see HMRC Capital Gains Manual [CG64015-64035](#) at www.hmrc.gov.uk

If you have any questions on Entrepreneurs' Relief which are not covered by this guidance, please contact ACCA's Advisory Services helpline on 020 7059 5920 or email us on advisory@uk.accaglobal.com