
ENTREPRENEURS' RELIEF

Entrepreneurs' Relief provides for capital gains arising on certain assets to be taxed at a reduced rate of 10%. The amount of gains relievable for any individual is subject to a current lifetime limit of £10 million.

There are some restrictions on sales to connected parties.

The relief applies to either a 'material disposal' or, if made in connection with such a disposal, an 'associated disposal'.

Material disposal

The relief applies to gains arising on the disposal of:

- The whole or part of a business which has been owned for at least two years; or
- Assets used in a business in the two years up to the time the business was discontinued where the assets are disposed of within three years of the discontinuance; or
- Shares in a trading company or the holding company of a trading group which is the employee or officer's personal company (see following).

Other than set out under the second bullet above, the relief does not apply to the separate disposal of individual assets of a business.

The relief may also be restricted if the business holds investment assets.

If some assets are sold at a loss and some at a gain these need to be aggregated to ascertain the net gain qualifying for relief.

Further rules apply where the disposal is of shares in a "personal company", a trading company or the holding company of a trading group, as follows:

- It is the shareholder's personal company. It is the individual's personal company if:
 - a) The individual holds at least 5% of the ordinary share capital of the company,
 - b) By virtue of that holding, at least 5% of the voting rights in the company are exercisable by the individual, and
 - c) Either or both of the following conditions are met
 - i. By virtue of that holding, the individual is beneficially entitled to at least 5% of the profits available for distribution to equity holders and, on a winding up, would be beneficially entitled to at least 5% of assets so available, or

ii. In the event of a disposal of the whole of the ordinary share capital of the company, the individual would be beneficially entitled to at least 5% of the proceeds.

- The rule is modified if the shares are acquired under an EMI option where any size of shareholding now qualifies provided the option was granted at least two years before the disposal of the shares.

Shares disposed of within three years of the time when a company ceased to qualify as a trading company (or the holding company of a trading group) qualify for relief provided the company was such a company in the two-year period up to when it ceased to trade.

What is a trading company?

A company is a trading company provided it carries out no other substantial activities other than trading activities. Non-trading activities include investment activities and substantial is taken to mean more than 20% of overall activities taking into account such matters as income, expenses, time spent by employees/office holders, the assets of the company, and/or the historical context. No one factor takes precedence and the position is looked at in the round.

Associated disposal

Where an individual disposes of business or shares in a company as part of his or her withdrawal from the company's business, the relief applies where he or she also disposes of assets owned personally but used in the company's business. The assets must have been owned throughout the three years ending with their disposal and used in the business for at least two years up to the earlier of the date of disposal or the cessation of the business.

Relief is reduced:

- For periods of ownership with no business use or where only a part of the asset was used in the business;
- Where the seller did not meet the employment or shareholding tests for all of the time owned; or
- For any time after 6 April 2008 where rent is charged to the company for the use of the asset. If a market rent is charged throughout, no relief is due; where the rent charged is less than market rate, relief is due on a proportionate basis.

For disposals on or after 18 March 2015 further conditions must be met. There is a requirement that where there is a disposal of partnership interest, shares, or securities, this must represent at least 5% interest in the whole partnership assets or the company's ordinary share capital, or issued securities.

This does not mean 5% of the individual's own holding but 5% of the total.

Where the asset which is the subject of the associated disposal was acquired on or after 13 June 2016, then it must have been owned by the individual throughout the 3 years ending with the date of the disposal.

Disposals by Trustees

Gains made by trustees on the assets mentioned above may also qualify for relief where certain conditions are met. These are:

- There is a beneficiary who has an interest in possession in the property disposed of;
- With respect to the disposal of a business or business assets on a discontinuance, the beneficiary must have carried on the business for at least two years before the disposal or in the two years up to the discontinuance (as above);
- With respect to the disposal of shares in a company it must also have been the beneficiary's personal company (as above).

Any relief given with respect to disposals by trustees is counted toward the qualifying beneficiary's individual lifetime limit.

The relief is restricted if any other beneficiary has an interest in the same assets but does not meet the qualifying beneficiary conditions.

This Mercer & Hole Briefing Note is a short selection of items extracted from complex legislation. Further specific advice on any matters referred to must be taken at all times. The information is given for general guidance only and publication is without responsibility for loss occasioned to any person acting or refraining from acting as a result of the information given. No part of this publication may be reproduced without the prior permission of Mercer & Hole.

London

020 7236 2601

london@mercerhole.co.uk

St Albans

01727 869141

stalbans@mercerhole.co.uk

Rickmansworth

01923 771010

rickmansworth@mercerhole.co.uk

Milton Keynes

01908 605552

miltonkeynes@mercerhole.co.uk
