



TAX **PLANNING**

ENTREPRENEURS RELIEF REFORM

A GUIDE TO CGT PLANNING FOR BUSINESS OWNERS

The Conservative Party committed itself to “review and reform” Entrepreneurs Relief in its 2019 General Election manifesto. The Conservatives further stated that it has not “fully delivered on [its] objectives” and so, with the Conservatives having been returned to government with a significant majority, those who currently qualify for Entrepreneurs Relief should review their options ahead of any prospective changes. Since its introduction in 2008, Entrepreneurs Relief has been criticised due to its surprisingly high cost to the Treasury and failure to meet its original policy objectives.

CURRENT RULES

Entrepreneurs Relief is currently available to those who work for their own business which they own as a sole trader, partner in a partnership or a shareholder in a company with more than 5% of the share capital. These requirements must be met for two whole years prior to disposal of the interest. Entrepreneurs Relief currently provides a reduced CGT rate of 10% on the first £10m of gains that qualify – saving up to £1m given the current headline CGT rate of 20%.

The relief is currently applicable to the disposal of the whole or part of an interest in a business or an asset used by the business. The relief must be claimed by the individual who qualifies for relief.

It remains to be seen to what extent the government will consult regarding their proposed changes to the current regime of Entrepreneurs Relief. We would hope that the government would seek to consult ahead of any changes in order to provide affected individuals and representative bodies an opportunity to comment on any proposed changes.

OPTIONS AND PLANNING OPPORTUNITIES

The Chancellor of the Exchequer will deliver his budget on 11 March 2020 which will set out any changes to tax policy for the 2020/21 tax year. It is rare for any changes to apply to existing taxation rates and policy mid-year, and so any new Entrepreneurs Relief regime would apply from 6 April 2020 at the earliest. However, the government may attempt to prevent people taking advantage of the current regime before any changes by implementing 'anti-forestalling' provisions.

OPTIONS

If a qualifying individual has no intention of disposing of their business in the foreseeable future, they will not be focused on the immediate impact of any proposed changes. There will also be those who adopt a cautious approach to tax planning and will simply await the new rules. Whether or not to act to take advantage of the current regime will be a commercial decision for each qualifying individual.

However, others may wish to capitalise on the current regime now, in the knowledge that tax rates are very unlikely to reduce further in the foreseeable future. These individuals may wish to crystallise their gains under the low tax rates that are currently available under the existing regime. In order to take advantage of current rates, the date of the disposal for CGT purposes will be critical.

TIME OF DISPOSAL FOR CGT

When an asset is sold under an unconditional contract, the date of disposal for CGT purposes is the exchange of contracts (when the contract is signed by all parties). The date of disposal is not completion (when business is transferred to buyer). If there is a conditional contract then the date of disposal will be when all the prior conditions have been fulfilled. Therefore a business owner wanting to take advantage of the current Entrepreneurs Relief regime must exchange unconditional contracts prior to any change in the law.

SALE ALREADY IN PROGRESS

If business owners are already in the process of selling their business, or are shortly to do so, then they should exchange contracts with their purchaser as soon as possible. To avoid falling foul of any anti-forestalling provisions this should be made before the budget on 11 March 2020. If this is not possible, then they should aim to exchange contracts by 5 April 2020.

NO SALE IN PROGRESS

For individuals who have not yet initiated the sale of their business there are two options:

I. INTERIM DISPOSAL FOLLOWED BY SALE

When a business owner wants to sell a business ("Tradeco") in the near future but is unable to do so before 6 April 2020, they can exchange unconditional contracts on an interim disposal to a structure ("Newco") specially set up for the purpose. This will tie in the current, more generous, Entrepreneurs Relief regime due to the deemed disposal date for CGT purposes being the date of exchange of contracts. The subsequent sale to a third party would then need to ideally take place before 31 January 2021, the date by which CGT on the interim disposal would be payable (assuming completion of that sale). This solution gives the business owner the chance to benefit from the current Entrepreneurs Relief regime provided they arrange a commercial sale within twelve months and thereby safeguards their position in the light of any change to the current regime in the budget on 11 March 2020.

If such a contract does not complete, then no disposal takes place. Having the ability to un-wind the contract means that a business owner can lock in the current advantageous Entrepreneurs Relief regime if a sale is realised, whilst at the same time eliminating any risk if the contract does not complete. The power to rescind a contract for breach of a term (e.g. a specified longstop date) is not classed as a condition and so the sale remains unconditional. The only cost to the business owner considering a sale is therefore the cost of implementing the arrangements. Specialist drafting expertise is required to ensure that the arrangements put in place are effective and to avoid any pitfalls.

2. RE-BASING

If a business owner does not wish to dispose of Tradeco but still wishes to use the current more advantageous Entrepreneurs Relief regime, then they must be content to trigger a CGT charge now and pay the tax in the absence of any sale proceeds. If the business owner can use current resources to pay the CGT liability, their interest would be 're-based' for tax purposes, meaning that only future gains would be chargeable to tax in the context of an updated Entrepreneurs Relief regime.

There are a number of different ways in which 're-basing' can be achieved, but English trusts offer a flexible way of achieving this objective. This affords business owners the opportunity to combine CGT planning with Inheritance Tax planning if they wish.

ANTI-AVOIDANCE PROVISIONS

The government introduced the General Anti-Abuse Rule ("GAAR") in 2013. This was supposed to counter abusive tax schemes. Any business owner seeking to implement the measures described above would need to take professional advice on whether the GAAR would catch their arrangements based on their specific circumstances and objectives.

NEXT STEPS

Any business wishing to take advantage of the current more generous Entrepreneurs Relief regime must act quickly to seek specialist professional advice regarding whether any of the options outlined above would be suitable for their needs. Advisers have already begun receiving enquiries and there will be a busy start to the year in the run up to the budget on 11 March 2020.

FOR MORE INFORMATION PLEASE CONTACT



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