



Entrepreneurs' Relief – Valuable, But Limited

Entrepreneurs' Relief was introduced following hard lobbying by the business community faced with the loss of a 10% CGT rate. Those contemplating a flat 18% rate on business disposals may take some comfort from a 10% rate on some or all of their gains.

The Relief

Entrepreneurs' Relief preserves the 10% CGT rate on the disposal of certain qualifying business interests. It applies to disposals after 6th April 2008, and on gains up to a total of £1 million. The £1 million of gains can be spread over a number of disposals during the life of the taxpayer, but gains in excess of the limit will be taxed at the non-relieved rate, currently 18%. The relief requires the taxpayer to have worked in the business for at least a year for substantially the whole of his or her time (thought to be 75% or more).

Unincorporated Trading Businesses

Relief can be claimed on the disposal of the whole or part of a trading business carried on by the taxpayer whether alone or in partnership. It is also available on disposal of assets used in the business following a cessation, up to 3 years after the date of cessation.



Incorporated Trading Businesses

Relief applies to shares in a trading company provided the taxpayer:

- owns at least 5% of the ordinary share capital;
- has at least 5% of the voting rights; and
- is an officer or employee of that company.

It is also available in respect of an 'associated disposal' – for example, on the disposal of a building from which the trading company carries on its business, the building being sold at the same time as the business. The relief on associated disposals will be reduced by a "reasonable" proportion if the asset in question was not used by the company either throughout the entire period of ownership or exclusively. It is not yet clear what a reasonable proportion might be.

Exclusions

In line with HMRC's general view that landlords are not entrepreneurs, Entrepreneurs' Relief does not apply to property letting businesses (except furnished holiday-home lettings) or, in fact, any other residential property.

Trusts

The relief can extend to assets held in trust. Availability will be assessed by reference to the beneficiary of the trust and use up part of his or her lifetime allowance. The trust asset must meet the same tests as an asset held in direct ownership, but day to day involvement in the business must be by the beneficiary not the trustees. The relief will only be available if that beneficiary has an enforceable right to the income from (or use of) the assets in question.

Summary

Entrepreneurs' Relief will be of use to all those with interests in private trading enterprises. For those with interests up to £1m in value, the old 10% CGT rate, in effect, remains. Amongst the losers will be employees who participate in share ownership incentive schemes, simply because it is unlikely they will meet the 5% ownership test. But for taxpayers who do qualify the relief could deliver tax savings of up to £80,000.



Tom de Prey
Trainee
Direct dial: 020 7591 3376