

Did You Know?

How Entrepreneur Relief can save you tax when you sell your business.



For many business owners selling or liquidating their business triggers Capital Gains Tax (CGT) at 33% on the gain made on exit. However, with good planning a tax relief known as “Entrepreneurial Relief” can apply to reduce the rate of CGT to 10% on the first €1m of gains on disposal of a business (including farming) assets or shares in a company, during your lifetime.

The €1 million is a lifetime limit on all disposals of chargeable business assets. The relief can apply to a company shareholder, sole trade business owner or partner in a partnership. Where the relief is available, the resulting tax saving will be up to €230,000.

In order to qualify:

- *the disposal must be made after 1 January 2016*
- *the disposal must be of chargeable business assets in a qualifying business*
- *the disponent must be a qualifying individual*

What are chargeable business assets?

Chargeable business assets are assets, including goodwill, used for a qualifying business carried on by an individual. Also, certain company shares in a company carrying on a qualifying business qualify.

Certain investment assets, development land and assets that would not have a chargeable gain are excluded from the definition of “chargeable business assets”.

What type of business qualifies?

A business other than

- *a business holding securities or assets as investments, or*
- *a business that holds development land, or*
- *a business that develops land or is letting land*

Where the assets being sold are shares in a trading company, the conditions of the relief are:

- *the company must be carrying on a qualifying trade at the date of transfer,*
- *there can be no dormant companies or non-trading companies (e.g. property rental companies) in the structure at the date of disposal.*

The relief can apply to the sale of shares in a qualifying holding company, however, the qualifying shareholding goes from 5% direct ownership in the trading company to more than 50% in a trading subsidiary owned by the holding company. This means that care must be taken at the time of putting a group structure in place to ensure that the conditions of the relief are met on a future exit. The relief does not apply to assets owned outside a company, even where those assets are used by the company for its trades.

What type of individual qualifies?

An individual who has been the beneficial owner of chargeable business assets for a continuous period of at least 3 years in the 5 years immediately prior to the disposal of the assets.

Where the assets being sold are shares in a trading company, the following conditions apply:



- the disponent must have owned at least 5% of the ordinary share capital for a continuous period of 3 years at any time before the date of the share sale;
- the disponent is (or has been) an employee or director of a company
- who must spend at least 50% of his/her working time working for the company in a managerial or technical capacity, and
- has served in that capacity for a continuous period of 3 years in the 5 year period immediately prior to the disposal of the chargeable business assets.

Is there a cap or a lifetime limit?

Yes, the 10% rate will only apply to chargeable gains on chargeable business assets up to a limit of €1,000,000. This is a lifetime limit. Any chargeable business assets in excess of €1,000,000 will be liable to the full capital gains tax rate (currently 33%).

Claiming the relief

The disponent should calculate the CGT with the reduced rate of 10% from qualifying business assets. CGT is payable on or before 15th December on disposals made from 1 January to 30 November of that year. For disposals in December, the tax is due on or before the following 31 January .

Relevant details pertaining to the transaction should be disclosed in the disponent's personal tax return (Form 11) for the year in which the disposal occurred, which is due for filing by 31 October of the year following the year of disposal.



Anti avoidance measures

There are some important anti-avoidance rules however, to restrict the application of these tax relief's in certain situations, as follows:

1. *Entrepreneur Relief will not apply to disposal by an individual of goodwill to a company with which the individual is connected immediately after the sale;*
2. *The relief will not apply to a disposal by an individual of shares / securities in a company to another company where the individual is connected to the recipient company following the disposal;*
3. *Restrictions under 1. and 2. above will also apply where an individual artificially arranges to be unconnected with the company;*
4. *A further restriction on entitlement to the relief includes cases where an individual qualifies for tax relief on the incorporation of a sole trade or partnership (i.e. on the transfer of a business to a company).*

On a positive note, these restrictions will not apply where it would be reasonable to consider that the disposal is made for bona fide commercial reasons and does not form part of any arrangement or scheme, the main purpose of which is tax avoidance.

Any questions?

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today!

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Any questions?

Get in touch
today!

