

Entrepreneurs' Relief



When you sell or dispose of your business, you may be able to pay capital gains tax (CGT) at a reduced rate. Entrepreneurs' Relief (ER) is a valuable CGT relief available to individuals and, in limited circumstances, to some trustees. Where a claim for ER is made, you will pay tax at a rate of 10% on all gains on qualifying assets.

Broadly, ER may be available following the "disposal" (i.e. the sale or gift) of a business, assets formerly used in a business, or shares.

Qualifying capital gains

Capital gains realised on the following disposals may qualify for ER:

- an unincorporated trading business
- a share in a trading partnership
- assets (such as land and buildings or plant and machinery) used in an unincorporated trading business or in a trading partnership, sold within three years after the trade has ceased
- shares or securities in a trading company where the individual owns:
 - at least 5% of the ordinary share capital and
 - controls at least 5% of the voting rights and *either*
 - the individual is beneficially entitled to at least 5% of the profits available to shareholders and entitled to at least 5% of the available assets on winding up
 - or
 - in the event of a disposal of the company's ordinary share capital, the individual would be entitled to at least 5% of the sale proceeds
- assets owned by an individual personally, but used in their trading partnership, or by a trading company where they meet the above 5% tests and have been an officer or employee for the minimum qualifying period
- business assets held on trust where there is a qualifying beneficiary.

ER is not given automatically and must be claimed by a taxpayer, usually in their tax return, within certain time limits.

Where ER applies, the rate of CGT charged is 10%, subject to a lifetime limit of £1 million of qualifying capital gains for disposals occurring on or after 11 March 2020.

Circumstances where ER may be denied

As with claiming many tax reliefs, "the devil is in the detail" and the unwary could fall into traps which result in formal (and potentially expensive) challenges from HM Revenue & Customs (HMRC).

For example; claims for ER may be denied by HMRC in circumstances where an individual has not owned their business for long enough, where their business undertakes non-trading activities to a substantial extent, or where shares held by the individual do not count towards the above 5% holding tests. Relief may also be denied where assets owned outside of the business, but used within the business, are disposed of and various conditions are not satisfied.

Whilst it is possible, it is relatively uncommon for trustees to qualify for ER when they dispose of business assets. HMRC examine claims for ER made by trustees very closely and claiming it incorrectly could be a very costly mistake.

Seeking advice

With this in mind, it is important you seek advice before entering into the sale of your business to ensure that you face no unfortunate surprises from a tax perspective at a later date.

At Handelsbanken Wealth Management, our team of tax advisers is able to assess whether a claim for ER is likely to be accepted by HMRC given your current circumstances and those of your business.

Where appropriate, they can also advise on sensible measures you could undertake in order to meet the qualifying conditions for ER in non-contentious ways.

If you would like to explore whether you may be entitled to claim ER, please speak with your client director or usual branch contact and they will refer your query to the Tax team.

Acceptable Tax Planning

We may provide tax planning services, tailored to a client's individual circumstances, for the purpose of mitigating their UK tax exposure through the use of effective and reliable methods, acceptable to HMRC, in a non-aggressive manner.

We provide advice about UK direct personal taxes only (income tax, national insurance, CGT and inheritance tax).

We do not:

- provide tax advice associated with UK indirect taxes (such as VAT, customs duties, stamp duty land tax or stamp duty reserve tax)
- provide UK corporation tax advice
- provide tax advice relating to any overseas tax jurisdictions
- design, promote, or condone structures or arrangements which exploit tax legislation artificially in order to obtain a tax advantage.

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