

Entrepreneurs' relief – what do the Budget changes mean?

Ahead of the 2018 Budget there was some speculation that entrepreneurs' relief may be scrapped. In the event, this did not happen. However, the relief made an appearance with the announcement of changes to the personal company test, applying from Budget day, and of a doubling of the qualifying period throughout which the conditions must be met for two years from 6 April 2019.

Nature of the relief

Entrepreneurs' relief reduces the rate of capital gains tax on disposals of qualifying assets to 10%. This is subject to a lifetime limit of £10 million. Spouses and civil partners have their own limit.

The relief is available where there is:

- a material disposal of business assets;
- a disposal associated with a material disposal; or
- a disposal of trust business assets.

Availability of entrepreneurs' relief is contingent on the qualifying conditions being met. The qualifying conditions depend on the type of disposal.

The relief is complex, and a detailed discussion of the relief is beyond the scope of this article. However, guidance is available in HMRC's Capital Gains Tax Manual at CG63950ff.

Shares in a personal company

Entrepreneurs' relief is available for disposals of shares or securities in a personal company. To qualify, throughout the 'qualifying period' the company must be a personal company and either a trading company or the holding company of a trading group. The taxpayer must either be an officer or an employee of that company or of one or more members of the trading group.

The definition of a 'personal company' changed from 29 October 2018 (Budget day). Prior to that date, a personal company was one in which the individual held at least 5% of the ordinary share capital and that holding gave the holder at least 5% of the voting rights in the company.

From 29 October 2018 two further conditions must be met. The holding must also provide entitlement to at least 5% of the company's distributable profits and 5% of the assets available for distribution to equity holders in a winding up.

Qualifying period

Entrepreneurs' relief is only available if the conditions are met throughout the 'qualifying period'. This is currently set at one year. However, it was announced in the Budget that the qualifying period will be doubled to two years from 6 April 2019 (except in relation to disposals where the business ceased prior to 29 October 2018).

Securing the relief

The timing of the disposal is important in securing the relief. If the disposal is one of shares in a personal company, and the new definition is not met, the qualifying period clock cannot start to run until the date when all conditions are met. To secure relief, the shares should not be disposed of until at least two years from the date on all of the conditions are first met.

Where the conditions have already been met for one year but will not have been met for two years by 6 April 2019, it may be preferable to dispose of the shares prior to 6 April 2019 to secure the relief. Alternatively, if the disposal is to take place after that date, it will make sense to wait until conditions have been met for two years in order to benefit from the relief.