

## Entrepreneurs' Relief

In response to business leaders voicing their objections to the abolition of taper relief, the Chancellor has introduced a new Entrepreneurs' Relief. The main effects of this relief are:

- the first £1m of gains qualifying for relief will be charged at an effective rate of 10%
- gains in excess of £1m will be charged at 18%
- an individual will be able to make more than one claim for relief, up to a lifetime total of £1m of gains.

The new relief is similar to Retirement Relief, which was phased out with the introduction of taper relief, but the new rules are designed to be simpler:

- there will be no minimum age limit
- relief will be available where the relevant conditions are met for a period of one year ending with the disposal / cessation.

The relief will apply to net aggregate gains arising on the disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership
- assets used in a business which has ceased
- shares in a trading company, or holding company of a trading group, provided that the individual owns at least 5% of the voting rights in the company and is an officer or employee of the company
- assets used in a partnership or by a company but owned by an individual if the assets disposed of are 'associated' with a disposal of shares or an interest in partnership assets. The individual must make the disposal as part of the withdrawal of the individual from participation in the partnership or the company
- certain disposals by trustees of business assets and company shares where a 'qualifying beneficiary' has a qualifying interest in the business / shares.

A trading business includes professions but only includes a property business if it is a 'furnished holiday lettings' business.

A trading company will have the same meaning as currently applies for taper relief.

*Comment: The introduction of Entrepreneurs' Relief goes some way to removing the problem of the 18% tax rate but the Chancellor's plan for a simple tax system has evaporated. Considerable care will be needed in planning to obtain the benefit of Entrepreneurs' Relief. For example:*

- the disposal of a property used by an unincorporated business may not qualify if it is not related to the disposal of the whole, or part, of the business
- the disposal of shares in a company may not get any Entrepreneurs' Relief if the company has 'substantial' non-trading activities at the time of the disposal of the shares
- the sale of a property used by a company but owned by an individual will only get relief if a number of detailed conditions are satisfied. In particular some shares in the company will need to be disposed of at the same time as the sale of the property
- *the conditions imposed on trustee disposals may mean that some trust structures which are attractive for IHT saving may not qualify for Entrepreneurs' Relief.*

**Entrepreneurs' Relief – transitional rules** A number of individuals have made a gain prior to 6 April 2008 and have deferred the gain until after 5 April 2008. Entrepreneurs' Relief may be available when the gain becomes chargeable if the sale of shares in a trading company or the sale of an unincorporated business would have met the conditions for Entrepreneurs' Relief if the sale had taken place after 5 April 2008.

The deferred gains eligible for relief are where:

- shares in a trading company were disposed of in exchange for loan notes in another company which are Qualifying Corporate Bonds (QCBs)
- the gains made on shares in a trading company or on the disposal of an unincorporated business were reinvested in Enterprise Investment Scheme shares or Venture Capital Trust shares.

If an individual had shares in a trading company, which were disposed of in exchange for loan notes in another company, which are not QCBs, there may be Entrepreneurs' Relief on the disposal of the loan notes after 5 April 2008. However the loan notes would need to be issued by a trading company in which the individual owns at least 5% of the voting rights in that company and the individual is an officer or employee of that company.

**Simplification of the share identification rules** The current rules for the identification of shares and securities for CGT purposes require a complex order of identification, which is dependent upon the dates when the assets were acquired.

Due to the changes to taper relief and indexation allowance, all shares of the same class in the same company will be treated as forming a single asset from 6 April 2008, regardless of when they were originally acquired. However certain anti-avoidance rules will remain.