

## **Finance Bill: Entrepreneurs' Relief (Lecture P1199 - 18.39 minutes)**

Entrepreneurs' Relief reduces the rate of CGT to 10% for qualifying disposals. There has always been a maximum lifetime limit of gains eligible for the relief and this is reduced from £10 million to £1 million for disposals on or after 11 March 2020. (Clause 2, introducing Sch. 22)

The relief has been renamed as 'business asset disposal relief'.

Rules will also be introduced that apply to forestalling arrangements entered into before Budget day. Disposals which fall foul of these rules will be subject to the £1m cap.

The first rules apply where transactions have been undertaken to exploit the fact that it is exchange of contracts which triggers a disposal for CGT purposes. This legislation is found at s28(1) TCGA 1992. HMRC believe that, due to extensive discussion about the likelihood of ER being removed, that some taxpayers have put in place contracts which aim to 'lock-in' the ER available before Budget day. In the past, this has been achieved by using rescindable contracts but there are other mechanisms which can be used.

If the anti-forestalling rules apply, it will be completion that will be treated as the date of disposal rather than when the contract was made. This will therefore not impact transactions which have been completely finalised before the Budget.

There are two sets of conditions.

1. If the contract is not between connected persons, the provisions will not apply if it can be shown that the contract was not entered into with a purpose of obtaining an advantage by the fact that exchange is the trigger for the CGT charge. A claim to ER on any disposal which might fall within these provisions must include a statement confirming that point.
2. If the contract is between connected persons, the parties must demonstrate not only that the contract was not entered into with a purpose of obtaining an advantage by the fact that exchange is the trigger for the CGT charge but also that the contract was entered into wholly for commercial reasons. Again, any claim to ER to which this might apply must include a statement confirming this point.

It is unclear at this stage what kind of factors that HMRC will take into account when determining whether these provisions apply but they will clearly be scrutinising any transactions which straddle the Budget date.

Clients would be well advised to consider how they would respond if any enquiries are raised by HMRC.

The second set of rules consider share exchanges. Where there is a share reorganisation which falls within s127 TCGA 1992, the legislation states that the reorganisation is to be treated as if there is no disposal of the original shares. There is an extension to this within s135 TCGA 1992 where there are share for share exchanges (often but not always when a company is sold in exchange for shares or securities in the purchaser company).

There is a provision at s169Q TCGA 1992 which allows a person to disapply the 'no disposal' rule in s127 and this is often used in order to crystallise entitlement to ER.

HMRC have seen cases where they believe that share for share exchanges have been undertaken prior to the Budget with the intention that, should changes be made to ER, that the relief can be crystallised by submitting claims within s169Q TCGA 1992.

There are two anti-forestalling rules which fall within the general umbrella of share reorganisations.

1. Where on or after 6 April 2019 (but before 11 March 2020), there has been a share reorganisation within s127 TCGA 1992. If, following the reorganisation, the relevant individual still meets the conditions for ER to apply (because the company is their personal company, it is a trading company or holding company of a trading group and they are an officer or employee), then any election under s169Q will treat the disposal as made at the time of the election and not at the time of the reorganisation.
2. Where on or after 6 April 2019 (but before 11 March 2020), there has been a share reorganisation within s135 TCGA 1992. If either of the following two conditions are met, any election under s169Q will also treat the disposal as made at the time of the election and not at the time of the exchange.

The conditions are:

- (a) The persons who hold the shares or securities in the new company immediately after the exchange are substantially the same as those who held the shares or securities in the old company immediately before the exchange or the persons who control the new company after the exchange are substantially the same as those who controlled the old company immediately before the exchange, or
- (b) The relevant shareholders, taken together, hold a greater percentage of the ordinary share capital in the new company immediately after the exchange than they held in the old company immediately before the exchange and they continue to meet the conditions for ER to apply. Relevant shareholders in this context means persons who hold shares in both the old and the new company.

Connected persons are to be treated as the same person. There is no definition of 'substantially the same' which means, presumably, it will take its ordinary meaning (and likely be the subject of course cases in future).

Since elections for 2019/20 could not be made until after 5 April 2020, this will inevitably bring the disposal within the new regime such that the £1m lifetime limit applies.

### Example

A husband and wife held 80% of the shares in a company in which they were the directors, with an employee holding 20% of the shares. They undertook a share for share exchange on 5 March 2020, inserting HoldCo above the existing trading company.

The couple hold 100% of the shares after the transaction as they bought out the employee in cash as part of the transaction. There is a commercial reason for undertaking the transaction so they obtained clearance for this to be treated as falling within s135.

If they decide to make an election under s169Q to treat the reorganisation as a disposal, they would only be able to crystallise entitlement to a 10% rate of CGT on £1 million each of the gains arising.