



Entrepreneurs' Relief

For individuals, from 6 April 2008, taper relief and indexation allowance were abolished and replaced by Entrepreneurs' Relief.

Entrepreneurs' Relief provides each individual with a lifetime allowance of £10m. Chargeable capital gains arising from the disposal of certain assets after 5 April 2008 that fall within this allowance are subject to an effective 10% rate of capital gains tax, reduced from the standard rate of 28%. Once an individual has used this full £10m lifetime allowance, all other chargeable capital gains will be subject to the 28% standard rate of capital gains tax.

Entrepreneurs' Relief is available in respect of the following disposals:

- The disposal of the whole or part of a business (this will usually apply to disposals by sole traders and partnerships)
- The disposal of shares in a personal trading company where the shareholder controls at least 5% of the voting rights

- A disposal of one or more assets in use at the time at which a business ceases to be carried on for the purposes of the trading business

A personal company, for these purposes, is a company for which the individual works, owns more than 5% of the voting share capital and has owned the shares for more than twelve months.



Operation of the Relief

At first glance Entrepreneurs' Relief appears straightforward and it should be relatively simple to establish whether a disposal falls within the terms of the Relief. However, there are certain areas where particular care needs to be taken.

arose under the old "Retirement Relief" provisions that may provide guidance in this area; however care and advice should be taken to ensure disposals fall within the requirements of the relief.

There are further complexities revolving around those individuals who may have exchanged shares for loan notes (qualifying and non-qualifying corporate bonds) under earn-out arrangements. Again, taxpayers should proceed with caution and seek advice as to the application of Entrepreneurs' Relief.



For example, the Relief is available on disposal of "part" of a business. As these provisions are still relatively new and untried, establishing what amounts to "part" of a business and whether the relief applies

may not be that easy. There are a number of cases that



Many employee share schemes will not award employees in excess of 5% of the share capital or voting rights of the company, and therefore after the exercise of the options, on a subsequent disposal of a shareholding of less than 5%, any gains arising will be charged to capital gains tax at 28%. Also,

often the “trigger” which permits an exercise of the options is a sale of the company in which case the required ownership period is not met.

In some cases where a business or shares are disposed of and there is a subsequent disposal of assets used in the business (for example a property), as long as the assets are disposed of within three years of the business/share disposal Entrepreneurs' Relief may be available on the disposal of the assets, subject to the lifetime allowance of £10m. Many individuals hold the property from which their company trades personally and charge the business rent for the use of the premises. If rent is charged for the property, on a disposal of the property, following a disposal of the shares, Entrepreneurs' Relief will not be available on the property disposal. It may therefore be the case that depending on the rent paid for the use of the property and

whether that rent is to be used to fund borrowings to purchase the property, an individual may decide to sacrifice their Entrepreneurs'



Relief on the property disposal to receive the rent. This is a balancing act and all factors need to be taken into account.

These are just some of the issues that may arise from the operation of Entrepreneurs' Relief and therefore taxpayers are strongly recommended to seek advice prior to making any disposals to ascertain the rate of capital gains tax arising.



Further Information

For more information please contact **Dominic Bourquin** who will be pleased to help on **01225 472800** or e-mail dominic.bourquin@monahans.co.uk