HM Revenue
& Customs

Capital Gains Tax for Land and Buildings Toolkit

2018-19 Self Assessment Tax Returns

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Introduction

Tax agents and advisers play an important role in helping their clients to get their tax returns correct. This toolkit is aimed at helping and supporting tax agents and advisers by providing guidance on the errors we find commonly occur in relation to Capital Gains Tax for land and buildings. It may also be helpful to anyone who is completing an Income Tax Self Assessment tax return.

This toolkit is applicable for the tax year commencing 6 April 2018 for Income Tax Self Assessment tax returns. Its use is entirely voluntary.

The content of this toolkit is based on our view of how tax law should be applied. Its application to specific cases will depend on the law at the relevant time and on the precise facts.

This version of the Toolkit was published during April 2019. The risks in this toolkit have been reviewed and updated where necessary for 2018-2019.For further information on using this toolkit and reasonable care under our penalty system see
Tax agents toolkits.

For guidance on matters not dealt with in this toolkit you should refer to our **Capital Gains Manual (CG)**.

For non-residents who must pay Capital Gains Tax there is guidance at:
Pay Capital Gains Tax for non-residents

Areas of risk within Capital Gains Tax for Land and Buildings

Capital Gains Tax is charged on capital gains arising on the disposal of assets. A capital gain may arise when a 'chargeable person' (**CG10700c**) disposes of a 'chargeable asset' (**CG11700c**) on a 'chargeable occasion' (**CG12700c**).

It is important to note that any charge to income tax will take priority over a capital gains charge, for example an income tax liability will arise on the disposal of land and buildings held as stock as part of a trading activity. For further guidance see **CG10260**.

The relevant Capital Gains Tax legislation is contained in the Taxation of Chargeable Gains Act 1992. The main source of guidance is contained in the **Capital Gains Manual** although there are several useful links to Capital Gains Tax guides and help sheets on the **Capital Gains Tax Pages** of the HMRC internet.

The Simplification of Capital Gains Tax in 2008 included the withdrawal of indexation allowance, taper relief and the abolition of the 'kink test' for assets held at 31 March 1982.

Capital Gains Tax is charged at 10 per cent and 20 per cent on gains that are not ‘upper rate gains’. The rates are 18 per cent and 28 per cent where the gains are ‘upper rate gains’. Gains on the disposals of interests in residential property are upper rate gains. The rate paid by individuals depends upon the amount of their total taxable income. Gains of trustees or personal representatives of deceased persons are charged at 20 per cent on gains that are not ‘upper rate gains’ and 28 per cent on ’upper rate gains’. Gains qualifying for Entrepreneurs' Relief are taxed at a rate of 10 per cent. The lifetime limit of gains qualifying for Entrepreneurs' Relief is £10 million - see Q29. Allowable losses may be deducted from gains in whatever way is most beneficial to the individual. For further guidance on rates of tax - see **CG10246**, and on set-off of losses **CG21600**.

This toolkit aims to identify risks for Capital Gains Tax on land and buildings only. Capital Gains Tax may be due on gains arising from other types of asset. For further guidance on the types of asset on which Capital Gains Tax may be due see **Capital Gains Tax pages**.

For any other questions or advice please refer to the **Capital Gains Tax Pages** and/or **Capital Gains Manual**.

The main areas of risk for Capital Gains Tax on land and buildings broadly fall into five categories.

Record keeping

Good record keeping is essential. Poorly kept records can mean that information provided is not accurate and may result in expenditure or reliefs being claimed incorrectly. Conversely allowable expenses or reliefs may not be claimed.

The nature of Capital Gains Tax means that relevant events may have occurred in the distant past yet still affect the current transaction, for example, a previous part disposal. Having access to detailed histories of assets also makes it easier to gather the relevant information when disposals occur and help complete the form correctly and in full.

For Self Assessment tax return purposes, for 2018-19 tax returns filed by the filing date, records should normally be kept until 31 January 2021, or until 31 January 2025 for self-employed businesses or partnerships. Records will need to be kept longer for tax returns filed late or where HMRC have started a check into the return.

Records connected with the acquisition of land and buildings will need to be retained until the land and buildings are disposed of. After disposal, these records will need to be retained for the further period in line with general record-keeping requirements.

In the case of a part disposal of land and buildings, records will need to be retained until the remainder of the asset is disposed of, and then the further period.

For further guidance on record keeping see **Record keeping and Capital Gains Tax**.

Disposals

Disposals include the sale, exchange or gift of all or part of an asset. It can also include the loss or destruction of an asset and the receipt of capital sums derived from assets.

It is important to establish the date of disposal to ensure that Capital Gains Tax is calculated for the correct tax year. Often the date of disposal will be clear such as when the disposal is made under an unconditional contract where the date of disposal is the date of the contract. However, there are occasions when this will not be straightforward, for example when a contract is conditional.

A contract is only conditional if particular conditions have to be satisfied before the contract becomes legally binding. The date on which these conditions are met and the contract becomes legally binding is the date of disposal.

Often, for disposals of land and buildings, this means that the date of disposal is the date on which contracts are exchanged, rather than the date of completion.

Valuations

In respect of land and buildings, valuations are the biggest single area of risk, accounting for a large part of our compliance checks. This is particularly so where the valuation is not referred to a qualified independent valuer and it is important to make sure the valuation is made for the purposes of relevant legislation and meets Royal Institution of Chartered Surveyors or equivalent standards in appropriate cases.

Issues that are sometimes overlooked when instructions are given to a valuer include:

- the potential for development of land
- the existence of tenancies
- the inclusion of intangible or other assets
- the existence of restricted covenants over the land.

Where we are satisfied that all the relevant information has been fully considered by an independent valuer, the valuation is less likely to be challenged.

It is often necessary to establish a market value for assets held at 31 March 1982 or which have been transferred as part of an estate, but there are other occasions when it may also be required. Such occasions can be overlooked.

Expenditure

Certain expenditure is allowed against the disposal proceeds in calculating the chargeable gain. The main rules are contained in S38 Taxation of Chargeable Gains Act 1992 and cover:

- acquisition costs
- enhancement expenditure
- incidental costs of acquisition and disposal.

The expenditure should be capital and not allowable elsewhere against income. There are specific rules for apportioning the allowable expenditure on a part disposal.

Not all capital expenditure will be allowable as a deduction; it must meet the requirements of S38. To be allowable, enhancement expenditure must be incurred for the purpose of enhancing the value of the asset and reflected in the state or nature of the asset at the time of disposal alongside the other requirements of S38.

For further guidance see **CG15150+**.

Reliefs

There are several reliefs that may apply to a chargeable gain. There are certain conditions that must be met before each relief is due. If these conditions are not met the relief may not be available.

There are some reliefs which require specific associated documentation without which the claim for relief is invalid. It is important to ensure that all necessary documentation is available and complete before making a claim for relief.
There are occasions when certain reliefs that are only available for business assets are claimed incorrectly when the activities may not amount to a business, for example the holding of investment property will not normally amount to a business.

Using links within this document

Blue underlined text are links within this document.

Green bold text are hyperlinks to external documents on the internet (access to the internet is necessary to view these).

We have a range of services for people with disabilities, including guidance in Braille, audio and large print. Most of our forms are also available in large print. Please contact any of our helplines if you need these services.

Dealing with HMRC if you have additional needs

Giving HMRC feedback on toolkits

HMRC would like to hear about your experience of using the toolkits to help develop and prioritise future changes and improvements. HMRC is also interested in your views of any recent interactions you may have had with the department.

Send HMRC your feedback

Client Name:	Period Ended:

Checklist for Capital Gains Tax for land and buildings

		Yes	No	N/A	N/K
	Computations				
1	Have the correct figures been entered on the capital gains tax summary pages SA108 and any computations submitted with the return?	☐	☐	☐	☐
	Disposals				
2	Has the correct date of disposal been established?	☐	☐	☐	☐
3	Has market value been used instead of actual disposal proceeds, where appropriate?	☐	☐	☐	☐
4	Did anyone else have an interest in the asset disposed of?	☐	☐	☐	☐
5	Where a valuation is necessary, has the asset disposed of been valued by a properly instructed qualified independent valuer?	☐	☐	☐	☐
6	Where any of the consideration is deferred has the correct treatment been identified?	☐	☐	☐	☐

Allowable costs

7 Is all of the expenditure deducted in working out the chargeable gain allowable?

☐ ☐ ☐ ☐

8 If there has been any enhancement expenditure since the asset was acquired, is the expenditure all allowable?

☐ ☐ ☐ ☐

9 Has there been a disposal of part of an asset, and if so, have the part disposal rules been applied?

☐ ☐ ☐ ☐

10 If there has been a previous part disposal have you checked how much of the remaining allowable cost is available?

☐ ☐ ☐ ☐

11 Where the cost of the asset was reduced as a result of an earlier claim to Roll-over Relief or Gift Relief, has the reduced cost been used in computing the gain?

☐ ☐ ☐ ☐

12 Where land and buildings have been disposed of that were inherited, has the correct acquisition cost been used for their disposal?

☐ ☐ ☐ ☐

Reliefs

Private Residence Relief

13 Has there been a disposal of an individual's only or main residence?

☐ ☐ ☐ ☐

Private Residence Relief continued

14 Has the entity of the dwelling house been correctly identified?

☐ ☐ ☐ ☐

15 Have the garden and grounds of the dwelling house been correctly identified?

☐ ☐ ☐ ☐

16 Where the garden and grounds inclusive of the site of the dwelling house exceed the permitted area of 0.5 hectares, is relief available for the larger area?

☐ ☐ ☐ ☐

17 If there has been a nomination under S222 (5) Taxation of Chargeable Gains Act 1992 has private residence relief only been applied to the gain accruing on the nominated property?

☐ ☐ ☐ ☐

18 Has any part of the dwelling house been used exclusively for non residential purposes?

☐ ☐ ☐ ☐

19 Was the dwelling house let as residential accommodation at any stage during the period of ownership?

☐ ☐ ☐ ☐

20 Has the individual occupied the dwelling house as his or her only or main residence throughout the period of ownership?

☐ ☐ ☐ ☐

Gift Relief

21 Have all of the conditions been met on a claim for Gift Relief on a gift of a business asset, and the claim made on the specified form?

☐ ☐ ☐ ☐

22 Has it been established whether the transfer on which Gift Relief is claimed is an outright or partial gift?

☐ ☐ ☐ ☐

Roll-over Relief

23 If Roll-over Relief has been claimed on the disposal of a business asset, have the relevant conditions for relief been satisfied?

☐ ☐ ☐ ☐

24 Has a qualifying replacement been acquired within the time limits?

☐ ☐ ☐ ☐

25 Has the Roll-over Relief claimed been restricted where all of the disposal proceeds have not been reinvested in new qualifying assets?

☐ ☐ ☐ ☐

Incorporation Relief

26 Have all the conditions been met in order for Incorporation Relief to apply?

☐ ☐ ☐ ☐

Incorporation Relief continued

27 Has guidance been sought from a valuer for the market value of the shares acquired and the valuation of the assets transferred?

☐ ☐ ☐ ☐

Entrepreneurs' Relief

28 Have all the conditions been met for a claim to Entrepreneurs' Relief?

☐ ☐ ☐ ☐

Reinvestment Relief

29 Is capital gains reinvestment relief being claimed for gains invested under the Seed Enterprise Investment Scheme (SEIS)?

☐ ☐ ☐ ☐

Explanation and mitigation of risks

Computations

1. Have the correct figures been entered in the capital gains summary pages SA108 and any computations submitted with the return?

Risk
Problems with unattached and/or incorrect computations can cause delays and extra costs for both agents and their clients and HMRC. Eighty per cent of paper returns which cannot be processed have to be sent back due to there being no computation attached. Other common problems arise where the total gains are shown net of the annual exempt amount (AEA) on the SA108, losses have been carried or brought forward incorrectly, and where the estimates or valuations boxes have not been ticked when they should have been.

Mitigation
- Use the toolkit to ensure reliefs etc. are claimed correctly
- Although not mandatory, it may be helpful to use the computation working sheet provided at page CGN 20 in the SA108 notes for straightforward computations
- If the disposal is of foreign property or land it should be remembered that capital gains computations must be made in sterling.

Explanation
We see a significant proportion of returns where basic computational errors have been made or no computation has been attached. The most common error is where the AEA has been deducted in the computation and the figure which is then entered on the return is provided net of the AEA. The AEA is automatically applied when a return is processed.

If a property was acquired overseas and sold for amounts in a foreign currency, at each stage in the computation the proceeds or any costs must be separately converted to sterling and the correct prevailing exchange rate used for each element of the transaction. If, unusually, the transaction was carried out in cash rather than through a foreign currency bank account, this can give rise to foreign exchange gains or losses. Any such gains or losses should be included in the computation separately from any gain or loss arising from the property disposal. A loss of a deposit on a property development is not an allowable loss.

From 6 April 2012 gains arising on withdrawals of money in foreign currency bank accounts on or after 6 April 2012 will not be liable to Capital Gains Tax.

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Disposals

2. Has the correct date of disposal been established?

Risk
Proceeds for the disposal of an asset may be received in a later tax year to that in which the disposal arises for capital gains purposes. A gain may be returned in the wrong tax year if the date of disposal for Capital Gains Tax purposes is not properly identified. Where the date of disposal is not correctly identified and the gain arises in an earlier or later year, there may be significant tax consequences. For example, the rate of tax charged could be affected, as could the availability of reliefs or losses.

Mitigation
Ensure that the correct date of disposal has been identified. This will normally be easily identifiable but there are specific rules which determine the date of disposal in particular circumstances as explained below.

Explanation
Where an asset is disposed of other than under a contract, the date of disposal will depend on the nature of the transaction. For further guidance on the specific rules see **CG14260**.

Where an asset is disposed of under a contract, the date of disposal will depend on whether the contract is unconditional or conditional. Where the contract is unconditional, the date of disposal will be the date of the contract. However where the contract is conditional, the date of disposal will be the date on which the conditions are satisfied.

A contract is conditional only if particular conditions have to be satisfied before the contract becomes legally binding.

For example, where a property is sold, contracts are exchanged before they are later completed. The date of disposal will usually be the date the contracts are exchanged rather than at completion unless the contract exchanged was conditional.

For further guidance see **CG14270+**.

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3. Has market value been used instead of actual disposal proceeds, where appropriate?

Risk
In a number of circumstances market value must be used instead of the actual disposal proceeds. If market value is not used the consideration may be incorrect resulting in an under or overstatement of a capital gain.

Mitigation
Establish whether the disposal involves any of the criteria for using market value. Ensure market value is used in place of the actual disposal proceeds when calculating any chargeable gain or loss.

Explanation
Market value is the price which the assets disposed of might reasonably be expected to fetch on a sale in the open market. There are many circumstances in which a valuation of an asset may be needed for Capital Gains Tax. The most common are:

- where an asset is disposed of otherwise than by way of a bargain made at arm's length, S17 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG14530**
- where an asset is disposed of to a connected person, S17 and S18 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG14530**
- where only part of an asset is disposed of and a valuation is needed of the part retained, S42 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG12730+**
- where rebasing to 31 March 1982 applies, S35 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG16700c**
- where an asset is inherited, S62 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG32230+**.

Where an asset is disposed of for consideration in money's worth rather than in cash, any assets which are received in exchange for the asset disposed of will need to be valued. Where the money's worth consideration is in another form the value of the consideration will need to be established. For further guidance see **CG14500**.

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4. Did anyone else have an interest in the asset disposed of?

Risk
If all persons with an interest in the asset are not identified, then the chargeable gain may be calculated incorrectly.

Mitigation
Identify whether any other person had an interest in the asset at the time of disposal and apportion the chargeable gain between the interested parties where necessary. As appropriate, engage a qualified, independent valuer to ensure the apportioned interest is correctly valued. Also ensure that only the relevant part of the acquisition cost and expenditure is used in calculating the chargeable gain.

Explanation
Where the asset is jointly owned and the whole asset is disposed of, you may need to apportion the chargeable gain between the interested parties. However, if an interested owner disposes of his part of the asset, ensure only the relevant part of the acquisition cost and expenditure is used in calculating the chargeable gain. For further guidance see Q9 relating to part disposals.

back to checklist

5. Where a valuation is necessary, has the asset disposed of been valued by a properly instructed, qualified independent valuer?

Risk
Valuation of land and buildings is an area of high risk. This is particularly so where the valuation is not referred to a qualified, independent valuer. However, it is not sufficient simply to refer a valuation to a valuer. In the absence of proper instructions the valuer will not understand the context nor have all the necessary details on which to make a proper valuation.

For land and buildings, areas that are frequently overlooked include:

- tenancies
- development potential (even where this has not been pursued)
- inclusion of other assets in the transaction, such as goodwill or farm machinery
- covenants over the land that restrict it in some way.

Mitigation
Valuations are not a precise science and lengthy correspondence may be avoided if it is demonstrated that all the relevant factors have been taken into consideration. It is important to:

- engage an independent valuer qualified to Royal Institute of Chartered Surveyors or equivalent standards
- explain the context, for example, a valuation for the purposes of rebasing to 31 March 1982 (S35 Taxation of Chargeable Gains Act 1992)
- draw attention to the definition of market value for Capital Gains Tax purposes
- provide all relevant details concerning the asset, in particular any points mentioned in the bullets points under Risk.

For further information on the valuation of land and buildings - see **Valuation of Assets**.

Explanation
There are a number of occasions when a valuation may be required in order to establish the correct figure to be used in a capital gains computation, as well as a variety of types of asset which may need to be valued.

For further guidance on valuation of land and buildings see **CG74000+**.

You may also consider using the CG34 procedure (post transaction valuation check) to agree the valuation prior to submitting the return. For further guidance see **CG16600+**.

If you use the CG34 procedure ensure you enclose a Capital Gains computation for the Self Assessment year, clearly state which reliefs are being claimed or are due and provide an explanation of how the value was arrived at. You must ensure that the CG34 is submitted at least two months prior to filing the relevant Self Assessment tax return or we may be unable to complete the check in time.

Forms CG34 and any relevant additional information should be sent directly to the appropriate office, as indicated on the form, and not to our Shares and Assets Valuation (SAV) office.

back to checklist

6. Where any of the consideration is deferred, has the correct treatment been identified?

Risk
There are occasions when the proceeds of disposal are not received immediately and some or all of the consideration is deferred. Depending on the nature of the deferred consideration it may need to be taken into account immediately when computing the gain or loss for this disposal even if it is not received until sometime after the disposal. Broadly where the amount of the deferred consideration is ascertainable, the full amount is included when calculating the gain or loss.

Mitigation
Check the disposal agreement or contract fully to identify any deferred consideration. Where there appears to be deferred consideration establish the terms of the future payments e.g. whether the amount of the deferred consideration is known at the date of disposal, or whether the amount will be established by a future event(s) - see **CG14881**.

The Capital Gains Tax treatment depends on whether deferred consideration is ascertainable or not and not on whether the deferred amount is contingent - see **CG14883**.

Explanation
Where the deferred amount is known or ascertainable by calculation, for example if the consideration consists of an immediate payment followed by a number of known annual instalments, the whole amount is ascertainable in the year of disposal and should all be included in the consideration.

Where the deferred amount is contingent it may still be known or ascertainable, for example where a fixed and known amount is payable but only if future profits from the development of land reach a specified level. In this case the amount is ascertainable and should be included in the consideration in the year of disposal.

Where the deferred amount is not ascertainable, for example, because future amounts payable are dependent on future events (such as being a percentage based on future profits from developing the land), the right to that part of the consideration is itself an asset. The value of

this asset i.e. the right to receive future payments is included in the consideration for the disposal of the land and so will have to be valued - see **CG14950**.

When that part of the consideration is eventually received it is treated as consideration for disposal or part disposal of the right, not the original asset. There is a separate chargeable occasion when each instalment of the future payment is received (in respect of unascertainable deferred consideration) and further Capital Gains Tax calculations will be needed. For further guidance see **CG14970**.

For further guidance on deferred consideration see **CG14850+**.

Where the consideration for an asset is ascertainable and payable by instalments, the vendor may, in certain circumstances, ask to pay the tax due on its disposal by instalments.

This relief is available where the instalments of consideration specified in the contract for sale of the asset meets all of the following conditions:

- the instalments begin no earlier than the date of disposal of the asset
- the instalments extend over a period exceeding 18 months
- the instalments continue beyond the date on which the tax would otherwise be due and payable.

Where these requirements are satisfied, the calculation of the instalments of tax which the vendor should pay is to be made in accordance with **CG14910**.

back to checklist

Allowable costs

7. Is all of the expenditure deducted in working out the chargeable gain allowable?

Risk
For expenditure to be allowed it must be incurred wholly and exclusively in one of the four categories set out in the explanation below. Expenditure not within these categories or which is allowed elsewhere, for example against property income will not be allowed against the chargeable gain.

Mitigation
Check each item of expenditure to confirm that it falls within one of the four allowable categories (see below) and that it is not relievable against income.

Explanation
Expenditure is allowable only if it was incurred wholly and exclusively in one of the following four categories:

- acquiring or creating the asset
- enhancing its value
- establishing or defending title to or rights over the asset
- incidental costs of acquisition and disposal.

Allowable incidental costs are limited to:

- fees, commission or remuneration paid for the professional services of any surveyor, valuer or auctioneer, accountant, agent or legal adviser
- costs of transfer or conveyance (including Stamp Duty)
- costs of advertising to find a buyer or seller

- costs reasonably incurred in making any valuation or apportionment required for the purposes of the Capital Gains Tax computation.

For further guidance see **CG15160+**.

back to checklist

8. If there has been any enhancement expenditure since the asset was acquired, is the expenditure all allowable?

Risk
Not all enhancement expenditure is allowable, for example if the enhancement is not reflected in the state or nature of the asset at the time of disposal.

Mitigation
Obtain a full history of the asset and details of the expenditure. Ensure that the expenditure meets the conditions detailed below.

Explanation
In order to qualify as enhancement expenditure, expenditure must satisfy all the following conditions. It must be:

- incurred on the asset
- incurred for the purpose of enhancing the value of the asset
- reflected in the state or nature of the asset at the date of disposal.

Enhancement expenditure incurred prior to March 1982 will already be reflected in the March 1982 valuation and should not be deducted separately in calculating the chargeable gain or loss.

Example 1
An individual buys some land and at a later date has a house built on it to enhance the value of the asset. The building of the house is an enhancement. It is still standing in its entirety at the time of disposal so all the expenditure is allowable.

Example 2
An individual buys some land and at a later date has a single garage built on it to enhance the value of the asset. The building of the garage is an enhancement. A few years later a double garage is built but the original building is knocked down to make way for it. The original garage is not reflected in the state or nature of the asset at the time of the disposal so expenditure attributable to its construction in the first place is not allowable.

For further guidance see **CG15180+**.

back to checklist

9. Has there been a disposal of part of an asset, and if so, have the part disposal rules been applied?

Risk
It is not always obvious that a disposal is of only part of the asset originally acquired. If this is the case but the part disposal rules are not applied, or are applied incorrectly, then the incorrect amount of allowable expenditure may be deducted in computing the gain.

For example, a 60 year lease is granted at a premium on a shop unit. The disposer retains the freehold (reversionary interest), which itself has value. The right to receive rental income also

has value. Both of these values are used in apportioning allowable expenditure in order to compute the gain on the grant of the lease.

Mitigation
Check the history of the asset and disposal contract to identify the part of the asset disposed of. Where there has been a part disposal ensure the part disposal rules have been applied.

Explanation
The allowable acquisition cost (or March 1982 market value where appropriate) and any enhancement expenditure or incidental costs of acquisition should normally be apportioned using a statutory formula - see **CG12731**. The part retained must be correctly determined and valued.

Example
A part of an asset which originally cost £40,000 in total is sold for £50,000 and the value of the remainder is £45,000. Using the formula below the adjusted cost would be £21,053.

$$\text{Original cost} \times \frac{\text{Consideration for part disposal}}{\text{Consideration for part disposal + value of remainder}} = \text{Adjusted cost}$$

$$£40{,}000 \times \frac{£50{,}000}{£50{,}000 + £45{,}000} = £21{,}053$$

The strict part disposal formula may not apply in the case of certain disposals of land - as detailed in **Statement of Practice D1** and **CG71850P**. This can only apply where the subject of the part-disposal is the entire interest in an identifiable part of the holding of land. Where the non-statutory method is used then the cost of the part remaining should be calculated and recorded.

back to checklist

10. If there has been a previous part disposal have you checked how much of the remaining allowable cost is available?

Risk
If a previous part disposal is not identified, the calculation of the allowable cost on the current disposal may not be correct. For instance, a piece of land is split into two parts and one part is disposed of. On the disposal of the remaining land, only the balance of the base cost is available to be deducted in the Capital Gains Tax computation.

Mitigation
Check the history of the asset and confirm the details of any previous part disposal.

Explanation
Where there has been a previous part disposal, only the balance of the original cost less the adjusted cost from the previous part disposal, see Q9, is available as allowable expenditure. The same costs cannot be used twice and any allowable costs used in the previous part disposal are not available on this occasion.

back to checklist

11. Where the cost of the asset was reduced as a result of an earlier claim to Roll-over Relief or Gift Relief, has the reduced cost been used in computing the gain?

Risk
It may not always be obvious that the cost of an asset has been reduced as a result of a claim to Roll-over or Gift Relief. If the reduced cost is not used this can result in the calculation of the chargeable gain being incorrect.

Mitigation
Check whether there has been an earlier Roll-over Relief or Gift Relief claim.
Ensure that the cost figure taken into account when computing the gain reflects the reduced amount resulting from the earlier claim.

Explanation
If the acquisition cost was reduced following a claim for Roll-over Relief or Gift Relief, the base cost for the purposes of this disposal is reduced.

It is necessary to retain records of the reduction of the acquisition cost of an asset following a Gift Relief claim or a Roll-over Relief claim on an earlier disposal of the 'old' asset together with the other records relating to the asset to ensure that the capital gain can be calculated correctly on a disposal of the 'new' asset.

For further guidance on Business Asset Roll-Over Relief see **CG60250+** and **Helpsheet 290**.

For further guidance on relief for gifts and similar transactions (Holdover Relief) see **CG66450+**.

back to checklist

12. Where land and buildings have been disposed of that were inherited, has the correct acquisition cost been used for their disposal?

Risk
It is sometimes assumed that a value provided to us for Inheritance Tax purposes has been 'ascertained' and that the same value is acceptable for Capital Gains Tax purposes. This is not always the case and so the market value of the asset at the date of death may still have to be established.

For the meaning of 'ascertained' in this context see **CG32224**.

Mitigation
Check whether the value of the land and buildings has been 'ascertained' for Inheritance Tax purposes. For further guidance see **CG16251**.

If it has not been 'ascertained', ensure that an appropriate market value of the land and buildings at the date of death is established see **CG32230**.

For further information about valuations see Q4.

Explanation
When a person dies, the value of his or her estate may need to be considered by HMRC's Inheritance Tax Office to determine any liability to Inheritance Tax. Where the values of the assets making up that estate have been 'ascertained' for the purpose of Inheritance Tax the same values must be used for Capital Gains Tax.

However, there are occasions when a value has been returned to HMRC's Inheritance Tax Office, for Inheritance Tax purposes but has not been considered by them and so has not been 'ascertained'. These include:

- the whole estate may be clearly below the Inheritance Tax threshold
- the estate may be transferred to the deceased's spouse or civil partner so that InheritanceTax is not due.

Where the value has not been 'ascertained' for the purposes of Inheritance Tax, the value must be determined for Capital Gains Tax purposes. For further guidance see **CG32230+**.

In particular, for valuation purposes, a partial interest in a piece of land is often worth less than the same proportion of the total value of the land; this is because the part interest is encumbered by the other interests. If a partner therefore inherits a half interest in land and its value was not ascertained, a valuation of the half interest will be required, even if the land is sold to a third party the following day.

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Reliefs

Private Residence Relief

13. Has there been a disposal of an individual's only or main residence?

Risk
Private residence relief is sometimes considered to be due in error resulting in the omission of chargeable gains. Private residence relief may not be available, or may be restricted where the dwelling house was not the only or main residence of the individual (and, where applicable, their spouse or civil partner) throughout the period of ownership.

Mitigation
Check that the dwelling house has been the individual's only or main residence at some time during his or her period of ownership.

If so, check whether the dwelling house was the individual's only residence during his or her period of ownership. If it was not, establish whether it was the main residence by virtue of a nomination under S222 (5) Taxation of Chargeable Gains Act 1992. If no nomination has been made, establish whether it was the main residence as a matter of fact.

Explanation
Relief is available on the disposal of, or of an interest in a dwelling house which is, or has at any time during their period of ownership been, the individual's only or main residence. Where the dwelling house has been the individual's only or main residence throughout their period of ownership, they will be entitled to full relief. Where there have been periods of non-residence during their period of ownership, relief may be restricted. Periods of non-residence are covered in Q20.

Where an individual has two or more residences relief is available for their main residence. The individual may nominate which of their residences is to be treated as the main residence; alternatively relief will be available for the residence which is the main residence as a matter of fact.

Whether a dwelling house is a residence of the individual is a question of fact. The nature, length, quality and circumstances of the occupation should be considered particularly where the dwelling house has been occupied for a short period - see **CG64435**.

Where a property is acquired or developed principally for the realisation of a gain, or where it has never been occupied by the vendor as his only or main residence, Private Residence Relief is not available (s224(3) and s222(1)(a) TCGA 1992) - see **CG65200+**.

For further guidance see **CG64420+**.

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14. Has the entity of the dwelling house been correctly identified?

Risk
A dwelling house can consist of more than one building and can include an ancillary building which is in itself a dwelling house. A dwelling house may also be a building or other structure which does not fall within the ordinary description of a dwelling house. If the entity of the dwelling house is not correctly identified, this can also lead to the incorrect garden and grounds being identified and relief may be applied to the incorrect amount of gain.

Mitigation
Where there are one or more ancillary buildings, ensure you correctly identify whether those buildings are included within the entity of the dwelling house.

Explanation
The entity of the dwelling house may be:

- More than one building - see **CG64236**
- Only part of a building, for example a flat - see **CG64305+**
- Within a building or other structure which does not fall within the ordinary description of a dwelling house - see **CG64320**.

It is important to correctly identify the entity making up the dwelling house because the permitted area of garden and grounds (see Q15) must be one area of land, i.e. it cannot be made up of islands of land. So if a distant ancillary building is included in the entity making up the dwelling house, all the land between the main house and the distant building will be included in the permitted area. Also the size and character of the dwelling house determines whether a larger permitted area may be allowed.

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15. Have the garden and grounds of the dwelling house been correctly identified?

Risk
If the garden and grounds of the dwelling house are not identified correctly, the incorrect amount of relief might be applied.

Mitigation
After identifying the entity making up the dwelling house you should then ensure that you have correctly identified the garden and grounds of the dwelling house making sure that any land that is let or used for a business activity is not treated as the garden and grounds of the residence.

Explanation
It is necessary to identify the area of garden and grounds in order that you can then go on to correctly identify the permitted area of the garden and grounds (see Q16). If the garden and grounds are not correctly identified this may result in consequential errors in identifying the permitted area, the effect of which might be that too much or too little relief is applied.

For these purposes garden and grounds do not include land which is used for a trading activity.

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16. Where the garden and grounds inclusive of the site of the dwelling house exceed the permitted area of 0.5 hectares, is relief available for the larger area?

Risk
Where the total area of the dwelling house, garden and grounds exceeds the maximum permitted area of 0.5 hectares, private residence relief might be applied in error to the larger area where the larger area is not required for the reasonable enjoyment of the dwelling house.

Mitigation
Where the garden and grounds of the dwelling house exceed 0.5 hectares, ensure that private residence relief is only applied to an area of 0.5 hectares.

Where you consider that the size and character of the dwelling house is such that a permitted area of greater than 0.5 hectares is required, ensure that you are able to demonstrate why this is the case.

Explanation
The area of garden or grounds which qualifies for relief is referred to as the permitted area. The permitted area is up to a maximum of 0.5 hectares. For further guidance see **CG64800**.

If the garden or grounds inclusive of the site of the dwelling house do not exceed an area of more than half a hectare, relief for the whole area is automatically due. For further guidance see **CG64815**.

Relief may be available for a larger area of garden and grounds if, having regard to the size and character of the dwelling house, it is required for the reasonable enjoyment of the dwelling house - see **CG64818**. For example, if the entity of the dwelling house includes numerous ancillary buildings, it may be arguable that the permitted area should be larger.

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17. If there has been a nomination under S222 (5) Taxation of Chargeable Gains Act 1992 has private residence relief only been applied to the gain accruing on the nominated property?

Risk
Where an individual has more than one residence and a nomination has been made under S222 (5) Taxation of Chargeable Gains Act 1992 relief might be applied in error to the gain accruing on the disposal of the dwelling house with no nomination.

Alternatively, if no nomination is made, relief is available on the dwelling house which is factually the main residence. Where this is the case, relief might be applied in error to the gain accruing on the disposal of the dwelling house which is factually the second home.

Mitigation
Where the individual owns more than one residence, check whether a valid nomination has been made under S222 (5) Taxation of Chargeable Gains Act 1992.

Where no nomination has been made check that relief is applied to the gain accruing on the dwelling house that was factually the main residence - see **CG64545**.

Explanation
Where an individual has two or more dwelling houses that are occupied and used as residences they may make a nomination under S222 (5) Taxation of Chargeable Gains Act 1992 to specify which is to be treated as their main residence. This does not have to be the dwelling house which is factually the main residence; they may nominate what is in fact the ‘second home’. A

nomination can be varied at any time. Spouses and civil partners may only have relief for one residence between them and therefore their nomination must be made jointly.

It is not mandatory to make a nomination, however where no nomination is made, relief will be available in respect of the dwelling house which was factually the main residence.

Where a nomination is not made within the required time limit, ESC D21 extends the time limit in certain circumstances - see **CG64500**.

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18. Has any part of the dwelling house been used exclusively for non-residential purposes?

Risk
Where all or part of the dwelling house has been used for non-residential purposes relief could be applied when it is either not due or should be restricted. In these circumstances the gain should be apportioned and only the gain attributable to the residential part will attract relief. If the gain is not apportioned correctly the computed gain or loss may not be correct.

Mitigation
Check whether any part of the dwelling house has been used for anything other than a residential purpose. If it has, ensure that relief is only claimed against the gain attributable to the residential part.

Explanation
If part or all of the dwelling house has been used for non-residential purposes during the period of ownership, for example letting, the carrying on of a trade or where it has been unused, the relief may be restricted. Where there is mixed use of the dwelling house, a valuation will normally be required to establish the proportion of the dwelling house that can be considered to be the residence. Private residence relief is then calculated by reference to the residential part(s).

For further guidance see **CG64650+**.

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19. Was the dwelling house let as residential accommodation at any stage during the period of ownership?

Risk
When a dwelling house that qualifies for private residence relief has been wholly or partly let as residential accommodation during the period of ownership private residence relief will normally be restricted. If the relief is not restricted correctly any chargeable gain which arises could be overlooked.

Mitigation
Check whether the dwelling house has ever been let as residential accommodation during the period of ownership. If so, ensure private residence relief is restricted and check whether your client is entitled to relief under S223 (4) Taxation of Chargeable Gains Act 1992.

Explanation
Where private residence relief is restricted because the dwelling house has been let as residential accommodation during the period of ownership relief may be due under S223 (4) Taxation of Chargeable Gains Act 1992

Relief under S223 (4) Taxation of Chargeable Gains Act 1992 is available where the dwelling house has been wholly or partly let as residential accommodation. It operates by relieving the gain relating to the letting up to the lower of:

- the amount of the private residence relief due on the part of the dwelling house that is the only or main residence (including the final 18 months)
- £40,000
- the amount of the chargeable gain arising by reason of the letting.

For further guidance see **CG64710** and **CG64721**.

Example
Mrs A sells her dwelling house on which a gain of £200,000 arises. She had lived there throughout her period of ownership but had continuously let 75 per cent of it as residential accommodation.

Gain		£200,000
Private residence relief (25%)		£ 50,000
Gain before S223 (4)		£150,000
Less S223 (4) relief - lowest of:		
Private residence relief	£ 50,000	
S223 (4)(b) maximum	£ 40,000	
Gain arising by reason of letting	£150,000	
S223 (4) relief is therefore		£ 40,000
Chargeable gain		£110,000

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20. Has the individual occupied the dwelling house as his or her only or main residence throughout the period of ownership?

Risk
Excessive private residence relief may be claimed in error when the dwelling house is not occupied as the only or main residence throughout the period of ownership.

Mitigation
Identify the period of ownership and the period(s) of occupation as the only or main residence and apportion the gain applying the relief only to the qualifying periods.

Explanation
Where the dwelling house has not been the only or main residence throughout the period of ownership, relief is only available for the period in which the dwelling house was the only or main residence, including the final 18 months of ownership in any event.

There are occasions where periods of absence from the dwelling house may still be treated as periods of occupation and therefore still qualify for relief. For example where the individual has been required to reside in job related accommodation, or has been required to work outside the UK.

For further guidance see **CG65030+** and specifically **CG64985** for the Final Period Exemption.

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Gift Relief

21. Have all of the conditions been met on a claim for Gift Relief on a gift of a business asset, and the claim made on the specified form?

Risk
Incorrect claims are sometimes made when the particular conditions for the relief are not satisfied.

Mitigation
Check that all of the conditions are met as shown below and that claims are submitted in the correct format within the time limit. The claim should be made on the form at the end of **Helpsheet 295**.

Conditions for relief are:

- there has been a gift by an individual, or trustees, of a Business Asset to a UK Resident, i.e. resident individuals and settlements and UK controlled companies
- a valid claim has been made.

Explanation
A gift is a disposal otherwise than by way of a bargain made at arm's length.

S165 Taxation of Chargeable Gains Act 1992 allows a claim for the capital gain on a business asset that is given away to be deferred or held over until the recipient of the asset disposes of it. Unless the gift is only a partial gift (see Q22), the effect of the claim is that the recipient takes over the transferor's Capital Gains Tax acquisition cost. When the recipient disposes of the asset their chargeable gain will be calculated using this cost.

For further guidance see **CG66450+**.

Relief is not available on gifts to a settlor interested settlement or where there is an arrangement under which the settlement will or may become a settlor interested settlement.

For further guidance see **CG66918+**.

There are also special rules that apply for gifts on which Inheritance Tax is chargeable. Certain gifts to settlements are chargeable to Inheritance Tax and will qualify for relief under S260 Taxation of Chargeable Gains Act 1992. This relief must be claimed in priority to relief under S165 Taxation of Chargeable Gains Act 1992 and is not restricted to gifts of business assets. It is also subject to the restriction on gifts to settlor interested settlements.

For further guidance see **CG67030+**.

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22. Has it been established whether the transfer on which Gift Relief is claimed is an outright or partial gift?

Risk
If a partial gift is treated as an outright gift the relief claimed may be excessive. A partial gift is a gift in which the recipient gives some consideration for the disposal but this is less than the market value of the asset. An outright gift is a gift in which no consideration is given.

Mitigation
Identify whether any consideration was received in respect of the land and buildings gifted to another person and where necessary restrict the amount of Gift Relief claimed appropriately (see explanation below).

For further guidance on how to calculate the amount of relief due see **CG66982**.

Explanation
If there is a partial gift, the relief should be restricted when the consideration given exceeds the costs that are allowed in calculating the transferor's gain on making the disposal (ie the cost of the acquisition and the incidental costs of acquisition and disposal). Relief cannot be claimed on the amount of the excess.

The claim should be made on the form at the end of **Helpsheet 295** and submitted with the return.

Example
Mr C and Mrs D are connected.

Mr C disposes of a business property to Mrs D where the facts are as follows:

Market value		£150,000
Cost of property in 1998	£40,000	
Incidental costs of transfer	£ 3,150	£ 43,150
Gain based on market value		£106,850

Mrs D agrees to pay Mr C £100,000 for the property. As the parties are connected this is not an arm's length disposal and therefore a claim under S165 Taxation of Chargeable Gains Act 1992 can be made. This is a partial gift in which the consideration of £100,000 exceeds the costs of £43,150 that Mr C is allowed in calculating the gain on the disposal.

Relief cannot be claimed on the excess of the consideration received over the costs.

Mr C therefore has a chargeable gain of £56,850 (sale proceeds £100,000 less costs £43,150) and a further £50,000 of the gain is held over. Mrs D is treated as acquiring the property at a cost of £100,000, that is a market value of £150,000 less the amount of the held over gain.

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Roll-over Relief

23. If Roll-over Relief has been claimed on the disposal of a business asset, have the relevant conditions for relief been satisfied?

Risk
A claim for Business Asset Roll-over Relief comprises several conditions, all of which must be satisfied for the relief to be granted. Incorrect claims are sometimes made where all of the conditions for relief are not satisfied.

Mitigation
Check that all of the conditions for relief as shown below are satisfied and that claims are submitted with the correct information within the time limit. The form at the end of **Helpsheet 290** can be used to assist with making a claim.

Conditions for relief are:

- the relief must be claimed

- the person claiming relief must be carrying on a trade (for further guidance on some exceptions to this condition, see **CG60260**)
- the old asset disposed of must have been used in the trade
- the new asset acquired must be taken into immediate use in the trade
- assets disposed of or acquired must be within one of the classes in S155 Taxation of Chargeable Gains Act 1992, see **CG60410**
- the new assets must be acquired in the period between 12 months before and 36 months after the disposal of the old assets (these time limits can only be extended at HMRC's discretion see Q24).

Special rules apply where the new asset is a depreciating asset and relief in respect of depreciating assets is computed differently. For further guidance see **CG60360+**.

A depreciating asset is:

- any fixed plant or machinery
- any other asset that will have a life of 60 years or less from the date it is acquired (for example a leasehold interest in property where the lease has less than 60 years to run).

Where not all the disposal proceeds have been applied on the new asset see Q25.

Explanation
Relief is available where all the conditions listed above are met and where all or part of the consideration obtained for the disposal of the old asset is applied in acquiring the new asset(s).

If the old assets were not used for the purposes of the trade throughout their period of ownership an apportionment is required on a just and reasonable basis.

Land and buildings are treated as separate assets for the purposes of roll-over relief. Therefore separate claims can be made for each asset, i.e. a claim for the land and a claim for the building on that land.

Land and buildings must be occupied as well as used solely for the purposes of the trade in order to be eligible for relief.

Where land and buildings are let by the owner upon terms that give the tenant the right to occupy to the exclusion of all others, they are not normally qualifying assets of the owner for the purposes of the owner's trade.

For further guidance on Business Asset Roll-over Relief see **CG60250+** and **Helpsheet 290**.

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24. Has a qualifying replacement been acquired within the time limits?

Risk
Where the new asset is not acquired and taken into use in the trade, or an unconditional contract is not entered into to acquire the new asset, within the time limits, you cannot normally claim roll-over relief.

Mitigation
Ensure the replacement qualifying asset was acquired and taken into use in the trade, or an unconditional contract to acquire the new asset was entered into, within the time limits detailed below.

Explanation
The new asset must be acquired in the period beginning 12 months before and ending three years after the date of disposal of the old asset - see **CG60620**.

Time limits can only be extended at HMRC's discretion and will only be considered if it can be demonstrated that all of the following conditions apply:

- the person making the claim had a firm intention to acquire replacement assets within the time limit
- they were prevented by some fact or circumstance beyond their control from acquiring the replacement assets, or any assets, within the time limit
- they acted as soon as they reasonably could after ceasing to be so prevented.

For further guidance on Business Asset Roll-over Relief - see **CG60250+**, and **Helpsheet 290**.

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25. Has the Roll-over Relief claimed been restricted where all of the disposal proceeds have not been reinvested in new qualifying assets?

Risk
Where the new asset costs less than the consideration received for the old asset the roll-over relief will be restricted. The full amount of the consideration has not been reinvested and therefore the full amount of the gain will not be covered by roll-over relief.

Mitigation
Compare the cost of the new asset with the consideration received for the old asset. Where the cost of the new asset is less than the consideration received for the old asset ensure roll-over relief is restricted appropriately.

Explanation
The amount of roll-over relief available is reduced if only part of the proceeds from the disposal of the old asset is reinvested in the new asset. Only partial relief will be due if the amount not so invested is less than the gain made on the disposal of the old asset. This is because only part of the gain has been used in the reinvestment.

Example
Mr F sells his factory for £100,000 making a gain of £60,000. Within the statutory time limit he acquires a new factory for £80,000.

The amount not reinvested is £20,000, which is less than the gain.

The amount of the gain reinvested is £40,000 (£60,000 less £20,000).

As a result the chargeable gain assessable on the disposal of the old asset is £20,000 and the base cost of the new asset is £40,000 (£80,000 less £40,000).

For further guidance on Business Asset Roll-over Relief - see **CG60250+** and **Helpsheet 290**.

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Incorporation Relief

26. Have all the conditions been met in order for Incorporation Relief to apply?

Risk
Incorporation Relief reduces the amount of the capital gain on a disposal of all business assets to a company which is taking over the business formerly carried on by the client either as a sole proprietor or in partnership.

The relief is only due where the whole of a business, and all its assets other than cash, is transferred as a going concern to a company wholly or partly for shares. Relief is not due if something other than shares is received in exchange.

Mitigation
Check that the conditions in the explanation below have been met.

Where the consideration received is not wholly in exchange for shares, apply the relevant formula (see explanation below) to identify the proportion of the gain that can be rolled over and the proportion that should be charged to Capital Gains Tax immediately.

Explanation
Incorporation Relief is due where all of the conditions below are satisfied:

- the whole of an unincorporated business and all its assets (other than cash)
- is transferred as a going concern to a company
- in exchange wholly or partly for shares.

Incorporation Relief defers some or all of the gain which arises on the disposal of the business assets until such time as the 'new assets' (the shares) are disposed of.

This is achieved by reducing the base cost of the shares by the amount of the gain. Part of the gain may be chargeable to Capital Gains Tax if the transfer is only partly for shares – see **CG65755** for an example.

The formula to establish the part of the gain which can be rolled over as Incorporation Relief is:

$$\text{Gain not charged} = \text{Capital Gain} \times \frac{A}{B}$$

Where A = value of the new shares issued
B = value of whole consideration received for the business

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27. Has guidance been sought from a valuer for the market value of the shares acquired and the valuation of the assets transferred?

Risk
The market value of the business assets disposed of and the shares acquired may not have been used when computing the gains on disposal and the Incorporation Relief available.

Mitigation
Valuations are not a precise science - lengthy correspondence may be avoided if we are satisfied that all the relevant circumstances have been taken into consideration. It is important to:

- engage a qualified, independent valuer
- explain the context
- provide all relevant details concerning the asset.

Explanation
Where an individual incorporates his or her business by transferring all the assets to a new or existing company in exchange for shares, this will be a transaction between connected parties and the individual will be treated as if he or she had disposed of the business assets and acquired the shares at their market values.

Please also refer to valuation guidance at **Valuation Office Agency - GOV.UK**.

For further guidance on Incorporation Relief please see **Helpsheet 276** and **CG65700c+**.

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Entrepreneurs' Relief

28. Have all of the conditions been met for a claim to Entrepreneurs' Relief?

Risk

Entrepreneurs' Relief can reduce the amount of Capital Gains Tax for individuals in business, and some trustees, when they dispose of qualifying business assets if qualifying conditions have been met throughout a one-year qualifying period. The risk arises where Entrepreneurs' Relief is claimed but is not due because all of the conditions are not satisfied or the asset is not a relevant business asset.

A claim is required by the anniversary of the 31 January following the tax year when the disposal took place. For a qualifying business disposal in the tax year 2018-19 a claim must be made by 31 January 2021.

For disposals on or after 6 April 2011, relief is subject to a lifetime limit of £10 million qualifying gains per individual.

Mitigation

Check that the asset disposed of is a qualifying business asset. Qualifying business assets are:

- assets that were used in the whole or part of a business carried on by the individual or by a partnership the individual was a member of and includes goodwill (except where sold to a close company which is a related party – see **CG64006**) and business premises but not shares and securities which are held as an investment (see bullet three) when the whole or part of that business was disposed of. Relief is not available on the disposal of assets in a continuing business unless they comprised part of a disposal of a distinct part of a business - see **CG64015+**
- assets that were in use in a business carried on by the individual or a partnership the individual was a member of, and were disposed of within the period of three years after the time the business ceased
- certain shares in and securities of a trading company or holding company of a trading group
- assets owned by an individual but used for the purposes of a business carried on by either a partnership in which the individual is a partner or a company in which the individual held a certain amount of shares where there is also a disposal of whole or part of the business, shares or securities (an associated disposal).

For further guidance see **CG63975**.

The qualifying conditions and date the qualifying period ends depend on the type of disposal. Check that all the qualifying conditions have been met throughout a one-year qualifying period:

- For disposals of whole or part of a business the business must have been owned directly by the individual or by a partnership of which they were a member. The qualifying period ends on the date of disposal
- For disposals of assets following a cessation of a business, the business must have been owned directly by the individual or by a partnership of which they were a member. The qualifying period ends on the date the business ceased and the disposal of the asset must be within three years of the date the business ceased
- For further information on disposals of shares in and securities of your 'personal' company see **Helpsheet 275** or guidance at **CG63950+**

- For associated disposals the individual must make a disposal of the asset and a disposal of the individual's interest in the partnership or company. The individual must have disposed of at least a 5 per cent interest in either the assets of a partnership, the company's ordinary share capital (which carry at least 5 per cent of the voting rights - see **CG64050**), or of the securities of a personal company. The company must have been a trading company or the holding company of a trading group throughout the period of 1 year ending with the date of disposal - see **CG64055** and the individual must also be an officer or employee of that company (or of one or more members of a trading group) - see **CG64110**. The asset associated with the relevant material disposal must have been in use for the purposes of the business throughout the period of 1 year ending with the earlier of the date of the material disposal or the date of cessation of the business. The disposals must be made as part of the individual's withdrawal from participation in the business. No partnership or share purchase arrangements must exist. Further conditions apply to limit relief where arrangements are in place - see **CG63995**.

References to 'Business' above does not include where the business is a rental business involving the letting of property unless the business is concerned with furnished holiday lettings in the UK or European Economic Area - see **CG63965**.

The rules around Furnished Holiday Lets (FHL) can be complex. For further guidance see **CG73500+** and **PIM4113**.

Explanation
Relief will be due as long as the qualifying conditions have been met throughout a one year qualifying period either up to the date of disposal or the date the business ceased.

Spouses and civil partners are treated separately for Entrepreneurs' Relief. Each person is entitled to relief up to the maximum lifetime limit provided the relevant conditions are met.

Qualifying chargeable gains are charged to Capital Gains Tax at the Entrepreneurs' Relief rate of 10 per cent. The total lifetime qualifying gains must not exceed £10 million. If the claimant to Entrepreneurs' Relief is also the beneficiary of a qualifying trust, ensure that account has been taken of any claims that have already been made in that capacity.

Check that adequate records are kept to accurately determine the level of lifetime limit used and remaining for each year.

The excess above £10 million will be taxable at the appropriate Capital Gains Tax rate.

For further details on Entrepreneurs' Relief see **Helpsheet 275**.

For further guidance see **CG63950+**.

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Capital Gains Reinvestment Relief

29. Is capital gains reinvestment relief being claimed for gains under the Seed Enterprise Investment Scheme (SEIS)?

Risk
The exemption from Capital Gains Tax for gains reinvested under SEIS can apply only if the investor has qualified for and claimed SEIS Income Tax relief. Where the SEIS Income Tax relief is withdrawn or reduced, there is a corresponding removal or reduction of re-investment relief.

Box 40 is included on the SA108 - Capital Gains Summary to record the amount of gains invested under SEIS and qualifying for exemption. A maximum of £50,000 should be entered here.

If more capital is invested in SEIS shares than the gains made, a loss cannot be created.

Mitigation
Capital gains reinvestment relief for gains invested under SEIS must be claimed by completing box 40 on the SA108 - Capital Gains Summary. A SEIS3 certificate must have been received from the SEIS company and the claim form attached to the certificate must be completed and attached to the SA108 - Capital Gains Summary. Also, the relevant code must be entered in box 36 and details of the claim provided in box 54 or in the computation, providing a clear statement that SEIS reinvestment relief is being claimed. See **Helpsheet 293** for more information.

Any part of a gain not exempted through reinvestment in SEIS shares remains chargeable and must be declared. Any part of a gain which is claimed to be exempt due to capital gains reinvestment relief should not be included in the totals for gains in the various sections of the return.

Explanation
SEIS reinvestment relief was introduced for 2012-13 and was originally intended to be for one tax year only. It was extended to 2013-14 and then made permanent but at half the rate applicable for the previous year. If an asset has been disposed of in 2018-19 which would give rise to a chargeable gain in 2018-19, and an amount equal to all or part of the gain is reinvested in subscribing for shares which also qualify for SEIS income tax relief, half of the amount reinvested will be exempt from Capital Gains Tax. The asset does not have to be disposed of first and the investment in SEIS shares can take place before disposal of the asset, providing the SEIS shares were still held at the time of the disposal.

A £100,000 investment limit applies for SEIS Income Tax relief. Therefore the exempt part of gains reinvested in SEIS shares may not exceed £50,000 because you cannot claim more than 50% of the amount on which you receive SEIS Income Tax relief.

For further guidance see Venture Capital Manual **VCM45000+**.

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