

Entrepreneurs' relief: reduction in lifetime limit

Summary

1. This clause and Schedule reduce the Capital Gains Tax (CGT) entrepreneurs' relief (ER) lifetime limit from £10,000,000 to £1,000,000 for qualifying disposals made on or after 11 March 2020. There are special provisions for contracts for disposals entered into before 11 March 2020 that have not been completed and for certain exchanges of shares and securities made before 11 March 2020.

Details of the clause and Schedule

2. Clause 1 introduces Schedule 1, which makes amendments about ER.

Schedule 1

Reduction in lifetime limit

3. Paragraph 1 amends the lifetime limit on gains eligible for ER at section 169N of the Taxation of Chargeable Gains Act (TCGA) 1992 by substituting £1,000,000 for £10,000,000.

Commencement

4. Paragraph 2 provides that paragraph 1 has effect for disposals made on or after 11 March 2020.

Anti-forestalling: unconditional contracts

5. Paragraph 3 provides against forestalling arrangements that aim to lock-in to the lifetime limits that existed before 11 March 2020 by making use of subsection 28(1) of TCGA 1992 (time of disposal and acquisition where asset disposed of under contract). Section 28(1) provides that where an asset is disposed of under an unconditional contract the time of disposal is the time the contract is made (and not when the asset is conveyed or transferred).
6. Subparagraphs 3(1) and 3(2) provide that, for the purposes only of determining the lifetime limit that applies, where a contract for a disposal was made before 11 March 2020 and has not been completed before then, the disposal is treated as taking place when the asset is conveyed or transferred and not when the contract was made. The date of disposal for the purpose of determining when CGT becomes due remains as determined by section 28(1). Subparagraphs 3(1) and (2) are subject to two exclusions set out in subparagraphs 3(3) and 3(4).
7. Subparagraph 3(3) applies when the parties to the contract are not connected. It applies where the person making the conveyance or transfer can show that the contract was not entered into with a purpose of obtaining an advantage by reason of

section 28(1). In such a case, the lifetime limit is that at the time the disposal was made (as determined by section 28(1)), i.e. £10,000,000, otherwise it is £1,000,000. A claim including a statement to that effect must be submitted by the person making the disposal.

8. Subparagraph 3(4) applies when the parties to the contract are connected. Broadly, it applies where the person making the conveyance or transfer demonstrates that the contract was entered into (i) wholly for commercial reasons and (ii) was not entered into with a purpose of obtaining an advantage by reason of section 28(1). If these tests are met the lifetime limit is that at the time the disposal was made (as determined by section 28(1)), i.e. £10,000,000, otherwise it is £1,000,000. The person making the disposal should make a claim including a statement that these conditions are met.
9. Subparagraph 3(5) provides that the claims made under subparagraphs 3(3) and 3(4) should be made in accordance with the rules at section 169M (relief to be claimed) TCGA.

Anti-forestalling: exchange of securities etc

10. Paragraph 4 is aimed at forestalling where there has been an exchange of shares and securities. Generally, section 135 (Exchange of securities for those in another company) TCGA 1992 treats a “paper for paper” exchange as a share reorganisation involving no disposal of the original shares or securities nor acquisition of the new shares or securities received, see section 127 (Equation of original shares and new holding) TCGA.
11. In certain cases, it is possible that a disposal of the original shares at the time of the exchange reconstruction would result in a gain that could qualify for ER, but the gain on a later disposal of the new holding may not qualify (for example, because the shareholdings after the reorganisation means the company is no longer the individual’s personal company). An election under section 169Q (Reorganisations: disapplication of section 127) TCGA disapplies the rule in section 127 that there is no disposal of the original shares with the result that a gain, in respect of which ER can be claimed, accrues at the time of the exchange. Where the rules in paragraph 4 apply, the effect is that where a section 169Q election is made ER will be calculated by reference to the new lifetime limit.
12. Subparagraph 4(1) explains that paragraph 4 applies where there has been an exchange of shares or securities for the purposes of section 135 TCGA (where securities in company A are being exchanged for those in company B) on or after 6 April 2019, but before 11 March 2020 and the conditions in subparagraphs 4(2) or (3) are met.
13. Subparagraph 4(2) applies where persons holding shares or securities in, or having control of, company A before the exchange, are substantially the same as those in company B, after the exchange has been made.
14. Subparagraph 4(3) broadly applies where:
 - immediately after the exchange the relevant shareholders holding the shares or securities in company B hold a greater percentage of the ordinary share capital in B than they did in a company A, and

- where on 11 March 2020 company B is the relevant individual's personal company, and is either (i) a trading company or (ii) the holding company of a trading group, and
- the relevant individual is an officer or employee of company B or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

This test is applied to each individual separately.

15. Subparagraph 4(4) defines the terms “relevant individual” and “relevant shareholders” as used in Subparagraph 4(3).
16. Subparagraph 4(5) provides that connected persons are to be treated as the same person for the purposes of subparagraph 4(2)(a).
17. Subparagraph 4(6) provides that in such cases where an election has been made under section 169Q TCGA on or after 11 March 2020 the disposal of the original shares is, for the purposes of paragraph 2, to be treated as taking place at the time of the election and not the exchange.
18. Subparagraph 4(7) provides that where before an exchange of shares or securities, an advance clearance notification was given by HMRC under section 138 (procedure for clearance in advance) TCGA, the companies involved in the exchange are treated as one company and the exchange is treated as a reorganisation (within the meaning of sections 126 to 131 TCGA).
19. The effect of this is that the exchange is treated as a simple share reorganisation, with the practical result that there are no circumstances in which section 137 (Restriction on the application of sections 135 and 136) TCGA can apply. Where a section 169Q TCGA election may be made, ER is only available up to the new lifetime limit of £1m.
20. Paragraph 5 explains how paragraphs 2 to 4 and various terms should be interpreted.

Background note

21. ER was introduced in 2008 to support business investment and growth of new enterprises. Claimants include self-employed small business owners and individuals who own substantial stakes in limited companies which employ them. It is subject to a lifetime limit.
22. The change in the lifetime limit from £10,000,000 to £1,000,000 improves the effectiveness and value for money of ER by reducing the lifetime limit on eligible gains. This change ensures the Government continues to encourage genuine risk takers and entrepreneurs' in a fair way, with over 80% of those using the relief unaffected.