Entrepreneurs Relief—The 10% Capital Gains Tax Rate

An Evolution CBS White Paper

Special points of interest:

- *How is ER Claimed?*
- *The main conditions*
- *What's included*

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Does a 10% tax rate on the sale of your company's shares sound too good to be true? In fact, it is possible if you claim Capital Gains Tax Entrepreneurs' Relief (ER).

Higher rate taxpayers' capital gains are usually charged at 28%, so ER is a valuable relief for share owners.

Relief is available on an individual's first £10 million worth of lifetime capital gains, giving a potential tax saving per individual of £1.8 million.

So how is ER claimed? Well, unsurprisingly there are several hurdles that the Government has decided need to be jumped first.

Expert planning can maximise the chances that your shares will qualify for ER.

The main conditions

There Are A Number Of Hurdles You Must Clear In Order To Qualify For Entrepreneurs Relief

Hurdle number 1 – Are you an officer or employee?

To claim the relief you must be either a company officer (e.g. a director etc.) or employee of the company concerned. There is no requirement that minimum specified hours are worked.

Hurdle number 2 – Do you hold at least 5% of the company's share capital and at least 5% of the voting rights?

The 5% thresholds are key and care is needed to ensure this hurdle is cleared, particularly as situations such as employees with share options can cause an unexpected fall below the 5% requirement. The terms and conditions attaching to each class of shares in the company's Articles need to be examined to ensure that this test is passed.

Hurdle number 3 – Is the company (or group) trading?

The shares being disposed of must be in a trading company (or group). HMRC define a trading company as *'a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities'.* Any company assets such as investments or rental properties won't qualify and could mean that the 10% rate is not available.

Hurdle number 4 – Have conditions 1 -3 been met throughout the 12 months prior to sale?

This is the final hurdle to clear. The 12-month condition precludes last-minute planning.

Not just shares

If you hold any assets personally that are used by the company then these may also qualify for the 10% tax rate if they are sold along with the shares.

Preparation, preparation, preparation

The key to maximising your chances of securing the 10% rate is: preparation.

It is crucial to ensure that ER's requirements are carefully examined in the light of your particular circumstances well before any anticipated sale. You can then work on maximising the relief available; perhaps by altering shareholdings or transferring shares to family members. This can bring some risks, but these can usually be mitigated.

Contact one of our award-winning tax team to ensure that you are maximising your chances of claiming the 10% tax rate.

About the Author

Giles Hutchings specialises in corporate advisory, strategy and planning, performance measurement, accounting and dealing with strategies to minimise corporate and personal tax liabilities.
He has an in-depth understanding of commercial issues and specialises in assisting companies with their planning and strategic decision making.

He manages a substantial portfolio of owner managed businesses, including major groups of companies, and uses his experience in the business advisory and tax fields to help clients achieve their long term goals.

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