



# 2020 Changes To Entrepreneurs' Relief

Entrepreneurs' relief was introduced from 6 April 2008 as part of a package of significant reforms to capital gains tax (CGT).

In recent years, the relief has been subject to a number of reforms, the effect of which is to restrict or remove its availability.

The changes to entrepreneurs' relief have included:

- increasing the time that business assets must be held in order to qualify
- removing the relief where certain conditions are met (such as a personally owned commercial property let to the business in exchange for a market value rent)
- limits on the application of entrepreneurs' relief to goodwill
- the introduction of a targeted anti-avoidance rule to stop so-called phoenixing

These changes to entrepreneurs' relief have culminated in Rishi Sunak's announcement that the lifetime allowance or qualifying gains would be reduced from £10m to £1m.

The net effect of the most recent change is a £900,000 tax increase, for individuals who dispose of qualifying businesses or business assets who realise gains of £10m or more in their lifetime.

The Office for Budget Responsibility estimates that although the initial impact will be modest, this change will increase government revenue by £1.8bn a year by 2024/25.

The changes to entrepreneurs' relief takes effect from 11 March 2020, however, like many significant changes to tax law, the legislation includes anti-forestalling provisions that apply to transactions entered into before this date.

For the purposes of CGT, an asset is disposed of when the obligation to sell becomes unconditional (i.e. when the contract is entered into) rather than the date that the asset is conveyed or transferred. However, the new anti-forestalling conditions provide that where a contract was entered into before the changes, but the asset was not conveyed or transferred until on or after 11 March 2020, the parties to the contract must demonstrate that:

1. They did not enter into the contract for the purpose of obtaining a tax advantage by reason of triggering a gain under the timing rules.
2. Where the parties are connected, that the contract was entered into for wholly commercial reasons.

The initial arbiters of any claims to disapply the anti-forestalling measures will be

HMRC. It is therefore likely that we will see a raft of cases progressing through the tribunals in the coming few years in order to determine the purposes for which various parties entered into contracts of sale.

## **The Future of Entrepreneurs Relief**

In view of the changes to entrepreneur's relief, many individuals (who do not wish to become non-UK resident for five years) will now need to consider alternate methods of extracting value from a company, over and above simply disposing of their interest.

There are a range of alternatives. At the simplest end of the scale individuals may simply wish to maximise their pension contributions over time - this allows a tax-free extraction from the company of, potentially, up to £40k per annum. Unused allowance can also be rolled forward for three years, although care is required to ensure that sufficient contributions are made to utilise the oldest allowances before they expire. The lifetime allowance for pension contributions will obviously impact the availability of this method.

Where family members work in the business, it is possible to transfer a portion of an individual's shareholding to them. For individuals other than one's spouse this will give rise to a deemed disposal at market value, however provided the company carries on a trade, the gain can be deferred by making a joint election for holdover relief. Obviously, this has some drawbacks - all shareholders are entitled to dividends and the recipients of the shares would not only receive these dividends but would be taxable on them as well. In addition, care is required to ensure that the children meet the conditions for entrepreneurs' relief. However, this may simplify matters where an individual's children work in a family business and after the sale that individual intends to make cash gifts to those children.

At the more complex end, it is possible to create a group structure whereby a

holding company (HoldCo) is inserted above the original trading company. Over time the trading company would pay dividends up to the HoldCo – there would not ordinarily be charge to corporation tax in respect of these dividends. HoldCo could then incorporate and fund a new subsidiary which either undertakes a new trade or acquires investments. In time (and subject to careful planning) it would be possible to demerge the companies in advance of any sale. This effectively allows an individual to accumulate investments without incurring income tax on the extraction of profits to fund those investments.

There are many alternative methods of extracting profits and there is no one-size-fits-all solution. However, with careful planning it will be possible to significantly reduce the impact of these changes.

**To discuss matters relating to this or any of our articles you can email, call or chat.**

[info@edge-tax.com](mailto:info@edge-tax.com)

[03332 074404](tel:03332074404)

[Chat with Edge now](#)

#### Article Key Points Content

- From 11 March 2020 the lifetime limit for Entrepreneurs' Relief has been reduced from £10m to £1m.
- For an individual realising qualifying gains of £10m or more this is, broadly, a tax increase of £900,000.
- Anti-forestalling provisions have been introduced that apply the new limits to contracts entered into before the changes if the asset was not transferred until 11 March 2020 or later.
- In view of the changes, it will be necessary to consider alternative methods of extracting value from companies.

Featured Image Alt Text changes to entrepreneurs' relief

Featured Image Title Text changes to entrepreneurs' relief



eododge

THE TAX  
SPECIALISTS