

Briefing document

Investors' relief

Introduction

Investors' relief is a type of Capital Gains Tax (CGT) relief that reduces the CGT rate on gains made on qualifying disposals of ordinary shares in trading companies from 20% to 10%. The 20% rate is relevant to higher and additional rate taxpayers who realise gains on disposal of shares. Investors' relief can result in a CGT reduction of up to £1million over a lifetime.

The relief is intended to apply investors in trading companies who are not actively involved in a business. Relief is available from 6 April 2019 provided various conditions are met, including the shares having been acquired on or after 17 March 2016 and having been held for at least three years before disposal. Given the length of time over which conditions must be met, investors' relief should be considered as early as possible.

A different relief, Business Asset Disposal Relief (BADR), previously called entrepreneurs' relief, may be relevant to individuals who are actively involved in a business. BADR also provides a 10% CGT rate. It can be claimed on a broader range of assets than investor's relief. In the context of companies, in addition to ordinary shares, BADR can be claimed on qualifying disposals of eligible preference shares, securities and personally owned assets used by the company in which the individual owns shares (e.g. a business premises). A separate briefing note on BADR is available on request. This briefing note sets out a high-level overview of investors' relief.

Application of Capital Gains Tax (CGT)

CGT is payable on capital gains realised by UK resident individuals. Non-UK resident individuals are not normally subject to CGT, though there are exceptions.

The CGT rate on gains made on disposal of shares is 10% for basic rate taxpayers and 20% for higher and additional rate taxpayers. CGT is payable to the extent chargeable gains exceed the annual exemption for the tax year in which the gain is made. Different rates apply to gains made on disposal of residential property or carried interest (18% and 28% for basic rate and higher/additional rate taxpayers respectively).

Conditions

The key conditions which must be met are as follows:

- The shares must be newly subscribed ordinary shares which were paid for wholly in cash. There is no minimum shareholding requirement (unlike for entrepreneurs' relief where a minimum 5% of ordinary share capital must be held, in addition to meeting other requirements).
- All of the shares and securities in the company issuing shares must be unlisted at the point shares are issued. Shares listed on the Alternative Investment Market (AIM) are regarded as unlisted.
- The company must be a trading company throughout the time from share issue to disposal.
- The individual who owns the shares can be neither a paid director nor an employee of the company during the share ownership period. There is an exception for certain individuals who become employees more than 180 days after shares were issued. This point is expanded upon below.
- The individual must not receive value from the company, other than qualifying payments. This point is also expanded on below.

Receipt of value

Investors' relief is unavailable if the investor receives value from the company in the one year before or three years following the share issue. The definition of 'value' is broad. There are exceptions where the value received is a 'qualifying payment'. Qualifying payments include:

- The company paying a reasonable commercial return on borrowed money;
- Dividends or other distributions that do not exceed a normal investment return, and;
- The company paying a reasonable commercial rent for use of any property owned by the individual.

Unremunerated directors

Unremunerated directors are eligible for investors' relief. Broadly, this includes directors who are not paid for their services, though it is generally acceptable for directors to be reimbursed for expenses that were wholly, exclusively and necessarily incurred for the performance of duties. The same exemption does not apply to office holders who are not directors, which may be relevant to, say, company secretaries.

Employees

Investors' relief is unavailable to individuals who are employees at the date shares are issued, or who become employees within the following 180 days. Individuals who become employees more than 180 days after the share issue may be eligible for relief, provided that, when the shares were issued, there was no reasonable prospect of the individual becoming an employee within the three years following the share issue. A 'reasonable prospect' is taken to mean more likely than not.

The same exemption is **not** available to individuals who subsequently become paid directors of the company, nor is it available to paid employees who are also unpaid directors of the company.

Shadow directors

Individuals who are not named directors may be classed as directors for investors' relief purposes, if; i) the named directors are accustomed to acting in accordance with the individual's directions or instructions, and/or; ii) the individual is involved in the management of the company's trade or business and owns at least 20% of the company's ordinary share capital.

Trustees of settlements

Trustees may be able to claim investors' relief if there is at least one trust beneficiary who:

- Has an interest in possession in (right to receive income from) qualifying shares owned by the trust;
- Has held this interest for a period of at least three years ending on the date of disposal, and;
- Has not been an employee or office holder of the company that issued the shares during this time, unless one of exceptions outlined above applies.

Investors' relief claims by trustees will use part or all of the eligible beneficiary's lifetime limit.

Lifetime limit

Investors' relief is available on up to £10million of qualifying gains over an individual's lifetime. The investors' relief lifetime limit is separate from the BADR lifetime limit.

Subject to enactment of the Finance Bill 2019-21, the BADR lifetime limit has reduced from £10million to £1million with immediate effect from 11 March 2020. The investors' relief lifetime limit remains unchanged.

Claiming the relief

In order to apply, investors' relief must be claimed. A claim must be made by the individual on or before the first anniversary of the 31 January following the tax year of disposal. The claim deadline for disposals made in the 2020/21 tax year, ending on 5 April 2021, is 31 January 2023.

As investors' relief claims by trustees use part or all of a beneficiary's lifetime limit, claims must be made jointly by the trustees and beneficiary. In addition, the trust beneficiary must notify the trustees that he or she wishes to elect to be treated as an eligible beneficiary of the trust for investors' relief purposes.

Find out more...

This note reflects the law in force as at 8 April 2020. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk).

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