

Investor's Relief

Investor's Relief potentially saves Capital Gains Tax (CGT) of up to £1m, reducing the CGT rate by 10% on relevant gains of up to £10m. It is available for shares held for three years from 6 April 2016 providing certain conditions are met.

Qualifying conditions

One of the three main conditions is based on the issue of the shares. Shares must be subscribed for by the investor and issued for genuine commercial reasons, in cash, on or after 17 March 2016. At the date of issue the shares cannot be listed on a recognised stock exchange.

The shares must be ordinary shares throughout the whole share holding period, running from the date of issue to immediately prior to disposal. The issuing company must have been a trading company or holding company of a trading group. Shares must have been held for three years and for trustee disposals, a beneficiary must be elected to be treated as an eligible beneficiary.

Claims for relief must be made by a 'qualifying person' and a claim must be made on or before 31 January following the tax year in which the disposal occurs.

Where an investor receives value from the company between one year before the shares are issued and three years after the issue, such receipts may cause the shares to become excluded shares and thereby lose the benefit of this relief.

Trading company requirements

The rule on company reorganisations states that any new shares are treated as being subscribed for by and issued to the investor on the original issue date meaning entitlement to relief is preserved. Some circumstances mean that entitlement to relief may be lost if the company that issues the new shares is not a trading company or the holding company of a trading group. In this case it may be beneficial to elect to dis-apply for share-for-share treatment so that a claim for Investor's Relief may be made.

A trading company requires all activities, other than insignificant activities, to be trading activities. There are difficulties in applying a 20% test, taken as the measure of insignificant by HMRC, and investors should seek advice regarding status if there are any concerns. If the company is in doubt regarding its trading status an opinion from HMRC may be necessary under the non-statutory clearance service.



Detailed rules for disposal

On disposal, shares are matched based on three types of share:

- Shares held for three years which qualify for relief (Qualifying)
- Shares acquired by purchase which never qualify (Excluded)
- Shares that may qualify when three years has expired (Potentially qualifying).

On a part disposal, if no claim for relief is to be made, matching is first with excluded shares. In order to maximise the number of qualifying shares on a later disposal.

On a transfer of shares to a spouse or civil partner whilst living together, the transferee is treated as having subscribed for the original shares at the time of the original subscription by the transferor. Both parties have a separate entitlement to the £10m cap on the relief.

Interaction with Entrepreneur's Relief

There is no personal company requirement meaning the partner does not need to hold a number of shares, be an officer or be a 'relevant employee', a would be the case with Entrepreneur's Relief.

Entrepreneur's Relief can also be claimed if the officer requirement for Entrepreneur's Relief and the relevant employee exclusion for investors relief are both met. This appears unlikely but should not be overlooked and may be relevant for an unremunerated director.

Since the inception of Entrepreneur's Relief, take up has been very high with 41,000 individual claimants in 2016-17 being in relation with £22bn of gains. Investor's Relief, originally billed as an extension of Entrepreneur's Relief may prove equally popular in the future.