

Entrepreneurs' Relief

This Help Sheet provides information to help you decide if you are entitled to Entrepreneurs' Relief. It provides a guide to straightforward situations, but does not cover all cases. You can get help from your tax adviser. We will also be pleased to help. You can also consult our Capital Gains Manual which explains the rules in more detail through our website at www.hmrc.gov.uk

What is Entrepreneurs' Relief?

Entrepreneurs' Relief reduces the amount of the capital gain to be taxed on a disposal of qualifying business assets on or after 6 April 2008, as long as you have met the qualifying conditions throughout a one year qualifying period either up to the date of disposal or the date the business ceased. The relief is subject to a lifetime limit of £1,000,000 of qualifying capital gains for each individual.

Who can claim relief

Entrepreneurs' Relief is available to individuals and some trustees of settlements, but it is not available to companies and personal representatives of deceased persons. Page 5 gives further details of the qualifying conditions for trustees of settlements.

Claims

Entrepreneurs' Relief must be claimed, either by the individual or, in the case of trustees of settlements, jointly by the trustees and the qualifying beneficiary. You must make a claim to us in writing by 31 January, that is one year and 10 months from the end of the tax year in which the qualifying business disposal is made. For a qualifying business disposal in the tax year 2008-09 (ending on 5 April 2009) a claim for Entrepreneurs' Relief must therefore be made by 31 January 2011.

A claim to Entrepreneurs' Relief may be amended or revoked within the time limit for making a claim.

Husbands, wives, or civil partners are separate individuals and may each make a claim. They are each entitled to Entrepreneurs' Relief up to the maximum amount available for an individual (see below), provided that they each satisfy the relevant conditions for relief (see overleaf).

How to claim

Individuals

If you can you should claim Entrepreneurs' Relief in your 2008-09 Tax Return. If you cannot make your claim in your 2008-09 Tax Return then a claim may be made to us either in writing or by filling in Section A of the form at the end of this Help Sheet.

Trustees of a settlement

A claim by the trustees of a settlement must be made jointly with the qualifying beneficiary for a trustees' disposal. Joint claims may be made to us in writing or by filling in the form at the end of this Help Sheet. Section A should be completed by the qualifying beneficiary and the trustees should complete section B.

Amount of relief

If you are entitled to Entrepreneurs' Relief, the first £1,000,000 of qualifying gains (see below) will be reduced by $\frac{4}{9}$ and the net amount will be charged at the rate of Capital Gains Tax (for 2008-09 this is 18%).

If the qualifying gains exceed £1,000,000, or if the qualifying gains together with all previous gains on which Entrepreneurs' Relief has been claimed exceed £1,000,000, the $\frac{4}{9}$ relief is not due on the excess above £1,000,000, so the whole of the excess will be taxable at the rate of Capital Gains Tax.

The calculation of the relief is described in more detail on page 6.

Individuals

What can I claim relief on?

To claim Entrepreneurs' Relief you have to meet the relevant qualifying conditions throughout a period of one year. This period is referred to in this Help Sheet as the 'qualifying period'. It ends with the date when you disposed of the asset, or an interest in the asset for which you want relief, or the date when the business ceased, if that was earlier.

You can claim relief, subject to the conditions set out below, on a disposal of the following assets (including disposals of interests in these assets):

- assets used in the business (such as goodwill and business premises but excluding all shares or securities or any other assets held as investments - see Example 1) comprised in a disposal of the whole or part of your business (see below), whether you carried on the business on your own or in partnership (see Example 2)
- assets (excluding shares or securities (but see the next bullet) or any other assets of the business held as investments) that were in use for your business, or a partnership of which you were a member, and were disposed of within the period of three years after the time the business ceased
- one or more assets consisting of shares in, or securities of, your 'personal company' (see overleaf). The shares must be disposed of while the company (or, where you hold shares in a holding company of a group, the group of companies) is a trading company (or the holding company of a trading group) or within three years from the date it ceased to be either a trading company or a member of a trading group (see Example 3)
- assets owned by you personally but used in a business carried on by either a partnership of which you are a member, or by your personal trading company (or by a company in a trading group, the holding company of which is your 'personal company' (see overleaf)), as long as the disposal is associated with a disposal of your interest in the partnership or shares or securities in the company.

References above to 'business' includes any trade or profession, but do not include the letting of property unless this is furnished holiday lettings in the UK, see page UKPN 2 in the *UK property notes* for guidance on furnished holiday lettings in the UK.

Qualifying conditions

To claim relief you have to satisfy a number of conditions throughout the 'qualifying period'.

The qualifying conditions depend on the type of disposal you have made.

Disposal of the whole or part of your business

You must have owned the business directly or it must have been owned by a partnership in which you were a member. Entrepreneurs' Relief is **not** available on the disposal of assets of a continuing business unless they are comprised in a disposal of a distinct part of the business.

Disposal of assets following cessation of your business

You must have owned the business either directly, or it must have been owned by a partnership in which you were a member throughout the qualifying period that ends on the date the business ceased. Additionally the date the business ceased must be within the period of three years before the date of disposal of the asset.

If the asset in question was owned by you, but was in use by either a partnership of which you were a member or by a company at the time the business ceased, you may still claim the relief if this qualifies as an 'associated disposal' (see below).

Disposal of shares in or securities of your personal company

If the business is owned by a company in which you sell (or otherwise dispose of) the shares or securities, then throughout the qualifying period of one year the company must be:

- your 'personal company' (see below), and
- either a 'trading company', or the holding company of a 'trading group', and
- you must be either an officer or employee of that company (or an officer or employee of one or more members of the trading group).

The qualifying period ends on the date of disposal of the shares or securities, unless the company ceases to be a trading company, or to be a member of a trading group, within the period of three years before the date of disposal. If so, it ends on the date the company ceased to qualify as a trading company or a member of a trading group).

The relief continues to be available provided the qualifying conditions are all met throughout the year ending with either the disposal or the cessation of the trading qualification and the disposal is made within three years of that date, where either:

- a the company is wound up and dissolved with your shares being cancelled and a capital distribution is made in the course of that winding up, or
- b any other capital distribution is made.

A company is your 'personal company' if you hold at least 5% of the ordinary share capital and that holding gives you at least 5% of the voting rights in the company.

An 'associated disposal'

To be an 'associated disposal' a disposal must take place in association with your withdrawal from a business carried on by either:

- a partnership of which you are a member, or
- your 'personal' trading company in which you are an officer or employee.

This means that Entrepreneurs' Relief will not be due unless a disposal of an asset by you is associated with a reduction of your interest in the assets of the partnership, or a disposal of shares in your 'personal company' (this is what is meant by 'withdrawal') that itself qualifies for Entrepreneurs' Relief. It is not necessary for you to actually reduce the amount of work which you do for the business.

For instance, you personally own a shop from which you trade in partnership with your brother. You have a $\frac{3}{5}$ share in all the assets of the partnership and your brother $\frac{2}{5}$. You reduce your involvement in the business so the shares are altered to $\frac{1}{5}$ for you and $\frac{4}{5}$ for your brother. You also sell the shop to your brother. You continue to work full-time in the shop. In this case your reduction of your partnership interest represents a withdrawal from participation in the business and the disposal of the shop is associated with that withdrawal.

The 'associated' asset must have been in use for the purpose of the business

throughout the period of one year up to the date of your withdrawal, or if earlier, the cessation of the business.

The amount of gain eligible for Entrepreneurs' Relief on a disposal of an 'associated' asset may be restricted in cases where:

- the 'associated' asset was in business use for only part of the time you owned it, or
- only part of the 'associated' asset was in business use during the period you owned it, or
- you were involved in the carrying on of the business for only part of the period during which the 'associated' asset was in business use, or
- some of the period during which the 'associated' asset was in use for the business falls after 5 April 2008 and for that period after 5 April 2008 you received any form of rent for letting the business use it.

Where one or more of these circumstances apply, only a just and reasonable proportion of the gain will qualify for relief. The periods involved and the level of any rent paid will be taken into account when working out this proportion.

See Example 4.

Example 1

In February 2009 you sell your manufacturing and retail business which you had owned for the last 8 years. You make gains and losses on the business assets as follows:

Factory premises	£250,000
Goodwill	£300,000
Retail shop	(£100,000) Loss
Shares	£100,000

The gains and losses on the factory premises, the goodwill and the shop are aggregated and will together qualify for Entrepreneurs' Relief which will be due in respect of the net gain of £450,000. The gain on the shares is not aggregated with the gains or losses on the other business assets. Entrepreneurs' Relief may be due in respect of the gain on the shares if the conditions are met for shares to qualify for the relief.

Example 2

You have been a partner with three other persons in a trading business for several years. Each partner had a 25% interest in the partnership's assets. On the 31 December 2009 you retire and transfer your 25% interest in the assets of the business, which continues, to the other partners. You make gains of £125,000 on the disposals of your 25% share of the business goodwill and premises. All of your gains will qualify for Entrepreneurs' Relief because you have disposed of the whole of your interest in the assets of the partnership.

Example 3

In September 2011 you sell the shares you had owned for the last 20 years in a company of which you were a director. You owned 20% of the shares of the company that entitled you to 20% of the voting rights. You made a gain of £360,000. The company had been a trading company but its trade had ceased in August 2009 and the company then ceased to qualify as a trading company. Your gain will still qualify for Entrepreneurs' Relief because the disposal was made less than three years after the company ceased to qualify as a trading company.

Example 4

In April 2010 you leave the partnership of which you have been a member for several years and transfer your one-third interest in the partnership's assets to the remaining two partners. You make gains of £250,000 on your share of the business goodwill.

You also personally owned the premises from which the firm has traded for the 12 years you had owned it. Throughout that period the partnership had paid you a full market rent for the use of these premises. When you left the firm you sold the premises to the remaining partners making a gain on the 'associated disposal' of £100,000.

All of your gains on the disposal of your interest in the partnership's assets - £250,000 on the goodwill and £100,000 on the 'associated disposal' of the premises - would qualify for Entrepreneurs' Relief.

However, because you owned the premises personally while you were a partner, and a full market rent was paid to you for the business use of the property, a proportion of the gain relating to the premises will not attract relief.

Only the period for which rent was paid after 5 April 2008 is taken into account in restricting the amount of the £100,000 gain which qualifies for relief. This would be 2 of the 12 years the property was in use for the business. A 'just and reasonable' figure in these circumstances would be:

		Qualifying for relief
Total gain on the sale of the premises	<u>£100,000</u>	
Gain accruing for 10 years of use from 6 April 1998 to 5 April 2008 $£100,000 \times 10/12$	£83,334	£83,334
Gain accruing for two years of use from 6 April 2008 to 5 April 2010 $£100,000 \times 2/12$	£16,666	zero
Gain on premises attracting Entrepreneurs' Relief		£83,334
Plus Gains on disposal of interests in partnership assets		<u>£250,000</u>
Total gains attracting Entrepreneurs' Relief		<u>£333,334</u>

The gain not attracting relief will therefore be £16,666 (£350,000 - £333,334)

If the rent paid by the partnership to you for the use of the premises was less than a full market rent then the adjustment to the gain accruing after 5 April 2008 must take this into account, allowing a higher proportion of the gain to qualify for relief.

Trustees of settlements

What disposals can trustees of settlements claim relief on?

Entrepreneurs' Relief may be available to trustees of settlements who dispose of trust property that consists of either:

- shares in, or securities of, a qualifying beneficiary's personal trading company, or
- assets used in a qualifying beneficiary's business.

Qualifying conditions

The relief will only be available if there is an individual with a life or absolute interest in possession under the trust, or under the part of the trust which includes the property in question (a 'qualifying beneficiary'), and in regard to particular asset disposals, the conditions below are satisfied.

Disposal of shares in or securities (or interests in shares or securities) of a company

The conditions that must be satisfied are that:

- the company must have been the qualifying beneficiary's personal company, and a trading company (or holding company of a trading group) for at least one year ending either on the date of the trustees' disposal of the shares or securities or no earlier than three years before the date of the disposal, and

- throughout the same one year period the qualifying beneficiary must have been an officer or employee of that company (or an officer or employee of one or more members of the trading group).

See the section on page 3 on 'Disposal of shares in or securities of your personal company' for explanation of the term 'personal company'.

Disposal of assets (or interests in assets) used for the qualifying beneficiary's business

The following conditions must be satisfied:

- the asset must have been used for the qualifying beneficiary's business for at least one year ending within the three years up to the date of the trustees' disposal of the asset, and
- the qualifying beneficiary must have ceased to carry on that business on the date of the disposal or within the period of three years before the date of disposal.

Claims by trustees

See the section on 'Claims' on page 1 for details of how trustees must make claims to Entrepreneurs' Relief.

Other information about trusts relevant to Entrepreneurs' Relief

- Relief given to the trustees of a settlement reduces the beneficiary's lifetime entitlement to relief on up to £1,000,000 of qualifying gains.
- If there are any other beneficiaries of the trust who have interests in possession, only part of the gain will qualify for relief. That part is the proportion which the qualifying beneficiary's interest in the income of the trust (or the part of the trust which includes the property disposed of) bears to the interests in that income of all the other beneficiaries with interests in the trust (or the relevant part of the trust) at the date the qualifying period ends.

Example 5

You have a life interest in a settlement that owns a farm. But there are other beneficiaries; you are entitled to only 25% of the income arising from the farm land.

You began farming the land owned by the settlement on 6th April 1997. You ceased to farm the land on 5 April 2009. On that day the trustees of the settlement sell the land giving rise to a gain of £320,000. The trustees and you jointly claim Entrepreneurs' Relief.

The trustees' gain that is eligible for relief is restricted to £80,000 because you were entitled to only 25% of the income from the farm land -
 $£320,000 \times 25\% = £80,000$.

- If the trustees of a settlement and the qualifying beneficiary make disposals on the same day that both qualify for Entrepreneurs' Relief, the relief is given on the beneficiary's disposal in priority to the trustees' disposal. If the beneficiary's gains exhaust the £1,000,000 maximum amount for which relief is available, no relief is given on the trustees' disposal.

How the relief is calculated

Where a claim for Entrepreneurs' Relief has been made and the necessary conditions have been satisfied, the qualifying gains and qualifying losses in respect of the qualifying business disposal in question are aggregated to result in a net figure. If the aggregate net figure is a gain, this is the amount on which the relief is worked out - see Examples 1 and 6.

This 'net gain' is then reduced by $\frac{4}{9}$ and the reduced figure is chargeable at the rate of Capital Gains Tax - 18% for 2008-09 but at an effective rate of 10%.

Example 6

You have operated a ladies wear outlet for several years. On 31 December 2008 you dispose of the business and make a gain of £44,000 on the goodwill, but a loss of £8,000 on the premises. All the conditions are met for Entrepreneurs' Relief which you claim. The gain and the loss are aggregated so relief is applied to the net gain of £36,000.

The £36,000 is reduced by $\frac{4}{9}$ to £20,000 and this is the chargeable gain on the disposal.

The loss of £8,000 on the premises has been fully used in calculating the Entrepreneurs' Relief, so is not otherwise allowable to be deducted from other capital gains.

Maximum relief

The maximum qualifying net gains which may benefit from Entrepreneurs' Relief is restricted to a lifetime limit of £1,000,000 from all qualifying disposals; it is not an annual limit.

Entrepreneurs' Relief may be claimed on more than one qualifying disposal as long as the £1,000,000 limit of qualifying gains is not exceeded. Therefore, because you may be entitled to relief on more than one occasion, it is important that you keep a record of the gains against which you may have previously made a claim.

Qualifying gains exceeding £1,000,000

If your qualifying net gains exceed £1,000,000 no further relief is due and the excess over that amount is wholly chargeable at the Capital Gains Tax rate (18% for 2008-09).

Example 7

You sold your pharmacy business, which you had run for 12 years, in March 2009. You sold the business realising gains of £2,250,000. You have not previously claimed any Entrepreneurs' Relief. Your available maximum relief is on qualifying gains of £1,000,000, so you are entitled to the whole of your lifetime limit and will have that amount of your gains reduced by $\frac{4}{9}$. The balance of the gain of £1,250,000 will be liable to the rate of Capital Gains Tax (18% for 2008-09). You have no other gains or allowable losses during the year. The annual exempt amount (where due) is £9,600 for 2008-09.

Total qualifying gains	£2,250,000		
Gains reduced by maximum Entrepreneurs' Relief	<u>£1,000,000</u>	£1,000,000	
Less reduction of $\frac{4}{9}$		<u>£444,445</u>	
Chargeable gain			£555,555
Balance of gain not reduced	£1,250,000		<u>£1,250,000</u>
Total chargeable gains			£1,805,555
Less annual exempt amount			<u>£9,600</u>
Gains chargeable at 18%			<u>£1,795,955</u>

If you make a subsequent business disposal in a later year which qualifies for Entrepreneurs' Relief the total relief (for all years) is still limited to £1,000,000 of qualifying gains. Any gains exceeding that £1,000,000 limit are wholly chargeable at the rate of Capital Gains Tax (18% for 2008-09).

Example 8

The facts are as Example 7 except that you realised gains on the disposal of the pharmacy in 2008-09 of only £750,000 all of which qualified for Entrepreneurs' Relief.

In June 2007 you started another business as a travel agent which you sold in 2009-10 making gains of £600,000. You make a second claim for Entrepreneurs' Relief but only £250,000 of these gains will be eligible for the reduction as this then uses up the remaining part of your £1,000,000 lifetime limit of Entrepreneur's Relief.

Your record for 2008-09

Lifetime limit for Entrepreneurs' Relief	£1,000,000		
Gain 1 2008-09 qualifying gains	<u>£750,000</u>		
Remaining amount eligible for relief	<u>£250,000</u>		
2009-10			
Gain 2 2009-10 qualifying gains	£600,000		
Gains reduced by available Entrepreneurs' Relief	<u>£250,000</u>	<u>£250,000</u>	
Less reduction of ⁴ / ₉		<u>£111,111</u>	
'Chargeable gain' - Gain 2			£138,889
Balance of gains not reduced	£350,000		<u>£350,000</u>
Total chargeable gains - Gain 2			<u>£488,889</u>

Husband and wife, or civil partners

Husbands and wives, and civil partners, are treated separately for Entrepreneurs' Relief. Each person is entitled to relief up to the maximum lifetime limit of £1,000,000 qualifying gains, provided the relevant conditions are satisfied.

Where you hold shares jointly with another person, whether that is your husband, wife, civil partner or someone else, in deciding whether the company is your personal company you are treated as holding the appropriate proportion of the total holding and associated voting rights. For example, where a husband and wife own the entire issued ordinary share capital of a company jointly, they are each treated as holding 50% of the shares and 50% of the voting rights.

Reorganisations and exchanges

Under the Capital Gains Tax rules, if shares in one company are exchanged for shares in another company the original shares may, subject to certain conditions, be treated as equivalent to the new holding of shares. Where this treatment applies the exchange does not count as a disposal of the original shares. Any gain up to the date of exchange will be taxable only when the new holding of shares is disposed of, see Help Sheet 285 *Share reorganisations, company take-overs and Capital Gains Tax*.

You may exchange shares in your personal trading company for shares in another company. If you do this, and would have qualified for Entrepreneurs' Relief at the time of the exchange, you may elect that the rules about exchanges, outlined

above, are not to apply. You will then be treated as disposing of the shares in your personal company at the time of the exchange and Entrepreneurs' Relief may then be claimed against any gain arising on that disposal.

You must make this election in writing to us by 31 January, that is one year and 10 months from the end of the tax year in which you made the relevant business disposal. So for the tax year 2008-09 (ending on the 5 April 2009) an election must be made by 31 January 2011.

Certain deferred gains occurring before 6 April 2008 but coming into charge after that date

Where before 6 April 2008 either:

- you have exchanged shares or securities in a company for qualifying corporate bonds (QCBs) and you have calculated a gain that would have arisen at the time of the exchange, or
- a gain arising to you on disposal of an asset has been reinvested in shares qualifying for relief under the Enterprise Investment Scheme ('EIS shares'), and
- the gain in respect of the original asset is deferred and treated as arising on or after 6 April 2008,

then Entrepreneurs' Relief may be claimed in respect of that gain provided that Entrepreneurs' Relief would have been available on the original gain had that relief existed at the actual time at which that gain arose. If you want to claim relief in respect of such gains, then you must do so by reference to the first occasion after 6 April 2008 when the deferred gain is treated as arising. So, if such a gain arises in 2008-09 and you want to make a claim to Entrepreneurs' Relief you must do so by 31 January 2011. Such a claim will form part of your maximum amount of £1,000,000 of gains qualifying for relief. A detailed explanation of these rules can be found in the Capital Gains Manual which is available on our website at www.hmrc.gov.uk

Filing in the Capital gains summary pages

The *Capital gains summary notes* explain how to include chargeable gains where there has been a claim to Entrepreneurs' Relief. You should include full details of your computations, together with each claim, either in the 'Additional information' box, box 35, on page CG 2 or in your computations attached to your return.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any rights of appeal.

Claim for Entrepreneurs' Relief - Section 169M TCGA 1992

When you make a claim as an individual, this will normally be done at the time you make your Tax Return. If however you are unable to make a claim in a return you may do this by completing Section A of this form.

If a claim is made by the trustees of a settlement, then it must be made jointly by both the trustees and the qualifying beneficiary. To make the claim using this form the qualifying beneficiary should complete Section A and the trustees of the settlement Section B.

Section A Individual/qualifying beneficiary

Name

Address

Postcode

HM Revenue & Customs office

Tax reference

Total of all previous chargeable gains (net of allowable losses) on which you have claimed Entrepreneurs' Relief, either alone - on your own gains - or jointly with trustees - on the trustees' gains

Section B Trustee of settlement

Name

Address

Postcode

HM Revenue & Customs office

Tax reference

If the individual, trustees or qualifying beneficiary have no HMRC office or references, please explain why

I/We hereby claim under Section 169M TCGA 1992 in respect of the disposal of the asset(s) specified below. The particulars given in this claim are correctly stated to the best of my/our belief.

Description of asset

Date of disposal DD MM YYYY

State the name and addresses of all income beneficiaries interested in the settlement asset(s) disposed of

What is each qualifying beneficiaries' income entitlement in percentage terms of the asset(s) disposed of

Please attach your computation of the capital gain on which you are claiming Entrepreneurs' Relief and the amount of relief due.