

Entrepreneurs' relief – time limits

(Lecture P1056 – 9.47 minutes)

Entrepreneurs' Relief (ER) must be claimed within the statutory time limit of the first anniversary of the 31 January after the tax year in which the qualifying disposal is made (TCGA 1992, s 169M).

A revocable provisional claim is allowable (CG 63970) which may be amended or revoked within the stated time limit. One example might be where a client has made a disposal of family company shares qualifying for relief, having acquired these in a piecemeal fashion over the years: some at full value, other by gift or legacy.

In this situation we may need to establish the market value of the tranches of shares acquired by gift/legacy and this could result in lengthy negotiations with HMRC. The time limit is unforgiving; there are no concessions even if delays are caused by HMRC being slow to reply so a provisional claim would be a very good idea in this situation

There are certain situations where the charge to UK tax on a capital gain may be contingent or deferred, in which case the normal time limits may not partly applied. One such situation relates to deferred gains and EIS.

S.44 FA 2015 (introducing sections 169T to 169V into TCGA 1992) contains provisions to allow gains which are eligible for ER, but instead deferred into an EIS qualifying investment, to benefit from ER at a later date when the gain is partly or wholly realised as a result of the disposal of the EIS shares.

In this case ER on what is referred to as the 'first eventual gain' must be claimed by the anniversary of 31 January next following the end of the tax year in which the gain is brought into charge. In many cases of course this may be a number of years after the shares giving rise to the original gain were disposed of

Example

Murray sells his business on 1 July 2017 and realises a gain of £1m qualifying for ER. He makes an investment of £1m in 1000 qualifying EIS shares and claims to defer the gain.

On 1 August 2020, he disposes 20 of the shares which brings into charge £200,000 of the deferred gain. The disposal takes place in the 2020/21 tax year and as a result crystallizes the 'first eventual gain' as above. An ER claim must be made by 31 January 2023

If the first disposal is not of all of the EIS shares acquired then the initial claim will also encompass all future gains on disposals of those remaining shares, and so relief will be due without the need for further claims. In the above example, when Murray comes to dispose of the remaining 80 shares he will not need to make a further claim.

(But note that if he fails to take a timely claim following the sale of the 20 shares in 2020/21 he is as a result barred from making an ER claim following the sale of any or all of the remaining 80)

Contributed by Brian Ogilvie