

Incorrect BADR claims (Lecture P1342 – 9.57 minutes)

In FA 2020, the Chancellor changed the name of the main CGT relief for companies and unincorporated businesses to business asset disposal relief and reduced the maximum lifetime limit for qualifying disposals taking place on or after 11 March 2020 from £10,000,000 (where it had stood since 6 April 2011) to £1,000,000.

It should be emphasised that the current ceiling considers previous disposals and so an individual who had made an eligible disposal of £2,500,000 in 2019 would have no business asset disposal relief capacity remaining in 2022. However, that claim of £2,500,000 is not disturbed merely because the limit was subsequently reduced. If the individual's 2019 gain had been £350,000, he would only have relief of £650,000 still left in 2022.

HMRC are known to be checking tax returns for 2020/21 with a view to seeing whether taxpayers have exceeded their available business asset disposal relief entitlement. They are sending out two slightly different letters to affected taxpayers.

Letter 1 is aimed at people who had made claims (under what was then entrepreneurs' relief) in excess of £1,000,000 for pre-11 March 2020 disposals. It reads:

'Our records show that you have exceeded the lifetime limit of £1,000,000 prior to submitting your self-assessment return. This means that your (latest) claim is unlikely to be accepted and you will need to pay tax on the capital gain at the normal rate of CGT.'

This suggests that HMRC have checked the taxpayer's CGT records from 6 April 2008 (when entrepreneurs' relief came into being) through until 10 March 2020 and have aggregated the individual's claims during that 12-year period. However, it is quite possible that this calculation may be wrong. Indeed, Letter 1 goes on to say:

'If you think your current claim is correct and you have not exceeded your lifetime limit of £1,000,000, you can contact us using the details above.'

Letter 2 targets those whose latest claim has apparently caused them to exceed the £1,000,000 ceiling. This says:

'We are writing to you because you included a business asset disposal relief claim in your 2020/21 self-assessment return. Business asset disposal relief was previously known as entrepreneurs' relief. Our records show this claim for business asset disposal relief has taken you over the lifetime limit of £1,000,000.'

On receipt of either letter, taxpayers should amend their business asset disposal relief claims or respond to correct HMRC's figures. HMRC give them a deadline by which this must be done (normally 30 days). Interest will be charged on any additional CGT due because of the amendment to the return, but the letters imply that penalties will not be charged in these circumstances.

Of course, if the taxpayer (or their adviser) does not react to Letter 1 or Letter 2 promptly, HMRC will open a tax enquiry. If HMRC's figures are correct, this is likely to result in penalties being imposed for the tax return inaccuracies in addition to the interest which will be charged.

Contributed by Robert Jamieson