

Entrepreneurs' relief checklist

When you sell or transfer all or part of your business you might be entitled to claim entrepreneurs' relief in respect of any capital gain you make. This means that the maximum rate of tax that will apply will be 10%. However, to qualify there are conditions that you and your business must meet

When is relief available?

Entrepreneurs' relief (ER) is available for qualifying business disposals. The relief imposes a lower rate of capital gains tax (10%) than the top standard rate of 18%, and is subject to a lifetime limit of £10 million of gains. The relief applies to disposals of a business, but can also apply to disposals of assets which are associated with your withdrawal from a business. For example, if you own a warehouse that your partnership uses and you leave the partnership, ER might apply if you sold the warehouse to the other partners.



Conditions

ER is only available where there is a qualifying disposal of business assets, which includes selling all (or a part, if that part can operate as a business in its own right) of them, or selling shares in your

personal company. While it sounds simple, a number of traps in the legislation can mean ER won't apply.

Use our checklist ahead of a disposal. It won't guarantee you ER, but it can help you avoid missing out for want of taking a few simple steps.

Using the checklist

The checklist contains a number of questions designed to be answered "Yes", "No" or "Not applicable". If you are considering selling your business or shares, run through the list. If you answer "No" to any of the questions, ER won't apply and you should try to rectify the issue before the sale.

Example.

Acom Ltd has five shareholders. One shareholder, John, was only recently made a director and bought in with a 10% shareholding.

Acom has been approached by a competitor with an offer to buy all of the shares, which the members have voted to accept. The finer details are being sorted out; however, by using the checklist it becomes apparent that John's gain will not qualify for ER as he will have only held his shares for eleven months prior to the proposed sale date. To help John the company could negotiate the sale of his shares a month later than the main sale to ensure he will qualify for ER.

FACT FILE

Check	Yes/No/NA	Why is it important?
Have you made disposals since April 2008 for which you have claimed for entrepreneurs' relief (ER)?		ER is subject to a lifetime limit of £10 million - you need to take into account previous qualifying disposals to budget correctly.
Is the disposal a "qualifying business disposal"?		<p>ER is only available if there is a material disposal of business assets (for example shares in a personal company), or assets associated with a relevant disposal. Sales of business assets generally can't qualify. Qualifying disposals of business assets are:</p> <p>(a) a disposal of the whole or part of a business that the individual has owned for at least a year, ending with the date of disposal</p> <p>(b) a disposal of assets that were in use for the business when the business ceased, if the individual owned the business for at least a year up to the date of cessation and the disposal takes place within three years; or</p> <p>(c) a disposal of shares or securities of a company</p>
Was the business or company trading?		ER is not applicable to non-trading businesses, e.g. a company that just owns assets.
If the disposal is of shares, will the personal company test be met up to the date of disposal?		<p>ER only applies to share sales if before the sale you held at least 5% of the ordinary share capital (by reference to nominal value), and you worked for the company. Both requirements must be met for at least twelve months to the date of the disposal.</p> <p>If a director shareholder resigns before the share sale date, they won't be able to claim ER.</p> <p>If shares were acquired through the enterprise management incentive, you can count the option holding period toward this.</p>

FACT FILE

<p>If the disposal is of part of a business, is that part capable of being carried on as a going concern in its own right?</p>		<p>ER can apply to the sale of part of your business, The key is establishing that the part you are selling is distinct from the remainder of the business and capable of being run as a business in its own right. For example, if you own ten fields, five of which are used to operate a campsite, and five are used to grow vegetables to sell, you have two distinct activities. If you sold all the fields used for the camp site, that activity will have ceased and ER could apply to the sale. By contrast, if you sold only three of the fields, which rely on facilities located in the other two fields, and carry on running a site in those other two, you haven't disposed of a business and you won't be entitled to ER.</p>
<p>If the disposal is of business assets, rather than of a business, can it be said that the disposal is associated with a disposal of a business?</p>		<p>If assets which were used in a partnership or company are sold, ER can apply if the sale is part of the process of your withdrawal - specifically a significant reduction in your participation. This means you have given up a minimum of 5% of the overall share capital of a company, or a minimum 5% share in the assets of a partnership. The assets must have been used in the business for at least twelve months prior to the date of the material disposal (of the business). ER is not available on associated disposals of assets if you are a sole trader.</p>
<p>Were the associated assets acquired on or after 13 June 2016?</p>		<p>A new condition was added so that assets acquired on or after this date need to have been held for at least three years before they are disposed.</p>