Entrepreneurs’ Relief

OMB Personal tax

01 May 2018

HMT and HMRC are consulting on changes to Entrepreneurs’ Relief to ensure that the conditions do not discourage entrepreneurs from seeking external finance for their companies

The consultation ‘*Financing growth in innovative firms: allowing Entrepreneurs’ Relief on gains made before dilution*’ seeks views on a proposed solution to situations where an individual owner loses entitlement to Entrepreneurs’ Relief because their shareholding is diluted below the 5% (of ordinary share capital and voting rights) as a consequence of raising funds through the issue of funds to new or existing shareholders.

Entrepreneurs’ Relief will be denied on a later disposal of the shares unless more shares are acquired and retained for the qualifying twelve-month period. The concern is that individuals may be choosing to exit early to retain relief rather than supporting and growing the business.

One of the points made by the CIOT in the response to the 2017 ‘Patient Capital’ consultation was that the policy objective for Entrepreneurs’ Relief should be more closely articulated (and legislated for as necessary) to provide greater clarity and certainty on the nature of entrepreneurial activity that is within its scope. It is noteworthy that the consultation paper states that the objective of Entrepreneurs’ Relief is ‘*to promote enterprise by offering a reduced rate of tax to individuals who, with significant initiative and risk, have contributed to the creation and growth of a business*’.

The proposed solution to the problem of dilution is to allow shareholders to preserve the Entrepreneurs’ Relief via an election that treats the individual as selling and immediately reacquiring their shares at the then-market value. The individual can defer the resulting gain until actual disposal of the shares effectively banking the Entrepreneurs’ Relief until that point.

Relief will only be available where the new investment takes place on or after 6 April 2019. It will be a condition for election that the issue of shares by the company is part of a commercial scheme or arrangement which has its main purpose, or one of its main purposes, the obtaining of capital.

The government does not propose extending the new elective disposal and reacquisition to trustees – mainly on the grounds of complexity.

The consultation runs until 15 May so there is still just time for members to provide the CIOT and ATT technical teams with views to feed into this consultation. We would welcome your views on the proposed new mechanism.