Spring Budget 2020: Reduction in the lifetime limit for entrepreneurs' relief and a surprise change of name

Personal tax

29 April 2020

A reduction in the entrepreneurs' relief lifetime limit from £10 million to £1 million was announced at Spring Budget 2020. The CIOT has raised areas of uncertainty with HMRC on the scope and ambit of the anti-forestalling measures.

The government announced at Spring Budget 2020 that the entrepreneurs' relief (ER) lifetime limit is reduced from £10 million to £1 million, with effect for qualifying disposals made on or after 11 March 2020, together with anti-forestalling measures for certain disposals made before 11 March 2020. The anti-forestalling measures were set out in draft legislation first published on Budget Day and subsequently published (in a revised form) in the draft Finance Bill on 19 March. There are no transitional rules.

The CIOT recognises that immediate action may sometimes be needed to prevent forestalling in avoidance cases. However, the issue for ER was not generally one of avoidance rather than of design. A suitable transitional period (combined with anti-forestalling measures as appropriate) would have allowed those who have entered into transactions in good faith in reliance on existing provisions to restructure their affairs and would mitigate the element of retroaction inherent in these changes.

The anti-forestalling measures in the draft legislation apply to:

- arrangements involving uncompleted contracts (Finance Bill Sch 2 para 3); and
- elections made under TCGA 1992 s 169Q in connection with a share reorganisation or exchange of securities (Finance Bill Sch 2 paras 4 and 5).

Areas of uncertainty

Several areas of uncertainty as to the intent and scope of the draft legislation for the anti-forestalling measures have been raised with HMRC. These include:

- Is the para 3(3) anti-forestalling rule intended to apply where commercial negotiations for the sale of a business to a third party were underway in the lead up to the Spring Budget 2020 but were accelerated to ensure an unconditional contract was in place by 11 March, exchange taking place on, say, 10 March, and with completion shortly afterwards, or perhaps with completion now delayed due to COVID-19?
- What is the policy intent in relation to the timing of the making of the election under TCGA 1992 s 169Q in relation to the paras 4 and 5 anti-forestalling measures? The usual practice is to make the election at the same time as completing the tax return after the end of the tax year, in this case the 2019 /20 tax return. Consequently, at Budget Day, taxpayers would not reasonably have expected to have made a s 169Q election in respect of a reorganisation or exchange taking place between 6 April 2019 and 10 March 2020. This position would apply to a shareholder whose shareholding no longer qualifies as a result of the exchange or reorganisation.
- We also noted that the election can be made up to a year after the date for submission of the relevant tax return. This would be relevant to a shareholder whose shareholding still qualifies for ER after the transaction but might cease to qualify due to circumstances now outside the taxpayer's control (such as a 5% post-transaction holding diluted by share awards to other employees, or the vendor ceasing to be an employee or director due to ill health).
- The meaning of the phrase 'substantially the same' defined in para 5(2)(a) and (b) is unclear.
- What is the meant by 'immediately 'in para 5(2) (a) and (b)?
- Clarification is needed on the intent of para 5(6).

It is hoped that some of these issues will be addressed in HMRC's guidance.

A new name

Despite widespread pre-Budget speculation, ER has been retained; however, the Finance Bill includes an unexpected name change for this relief. ER is now to be known as 'business asset disposal relief'.