Finance Bill (No. 2) Bill: Changes to entrepreneurs' relief

OMB Personal tax

01 May 2016

A summary of the changes resulting from CIOT's representations

As announced in December's autumn statement, Finance (No.2) Bill includes draft legislation to amend the unintended consequences of the FA 2015 changes to entrepreneurs' relief in order to support businesses by ensuring that it remains available on specified genuine commercial transactions.

The changes in FA 2015 were intended to prevent the relief being claimed on contrived structures that were outside the policy intent of the relief. The original changes focused on three main areas: joint ventures and partnerships, associated disposals, and goodwill on incorporation. The breadth of the changes meant that entrepreneurs' relief was denied for some business owners that were carrying out genuine commercial activities of the type that the relief was designed to promote.

The CIOT (with the ICAEW) has led stakeholder engagement with HMRC in considering the detailed technical changes that were needed to reverse the unintended consequences of the changes in Finance Act 2015.

The CIOT is pleased to have been part of a constructive and collaborative engagement with HMRC that has led to the changes announced in the March Budget. Both the stakeholder group and HMRC have worked hard to resolve the unintended consequences while ensuring that the relief is used in the way the government intends.

It is particularly helpful that the amendments to the legislation will take effect from the date(s) of the original FA 2015 measures thereby ensuring that taxpayers who were caught out by the unintended effects should no longer be adversely affected.

The changes are:

Associated disposals

The effect of the FA 2015 changes was to limit the availability of relief on a disposal of personal assets used in a business ('associated disposals') when the business was sold to members of the claimant's family under normal succession arrangements. The changes are set out in clause 73 of the Bill amending of TCGA 1992, s 169K and also in the HMRC policy paper issued on 16 March 2016.

The changes announced by this measure will be backdated to when the FA 2015 measures became effective. They will therefore apply to disposals on or after 18 March 2015.

Goodwill on incorporation

FA 2015 introduced new rules to deny entrepreneurs' relief on the gain where goodwill is disposed of to a company that is related to the selling individual. This change also resulted in relief not being due to a person selling their business to a close company in which they, or a member of their family, held any shares, however small the holding, as part of a normal family succession.

Clause 74 of the Bill provides for a gain on goodwill to be eligible for entrepreneurs' relief if the claimant holds less than 5% of the shares and less than 5% of the voting power in the acquiring company. Relief will also be due if the claimant holds 5% or more of the shares or voting power if the transfer of the business to the company is part of arrangements for the business to be sold to a new, independent owner.

HMRC's policy paper outlines the changes.

The changes come into effect for disposals of goodwill on or after 3 December 2014.

Joint ventures and partnerships

FA 2015 changed the definitions of 'trading company' and 'trading group' for the purposes of entrepreneurs' relief to prevent perceived abuse by the use of joint ventures or partnership arrangements. For example, it was intended to catch so-called 'manco' structures, whereby members of a management team that would not have 5% interests in a trading company would instead form a management company of which they hold more than 5% interest then forming a joint venture or

partnership with the owners of the main trading company. However the amendments affected all commercial joint ventures and corporate partnerships as well as those set up solely to achieve the 5% shareholding for entrepreneurs' relief purposes.

Clause 75 introduces Sch 13, which amends the meaning of 'trading company' and 'trading group' for the purposes of entrepreneurs' relief to allow a fraction of the activities of a joint venture company to be treated as carried on by a company that holds shares in the joint venture. Similarly, where the new definitions apply, trading activities of a company in its capacity as a partner in a firm will be taken into account in deciding whether the entity is a trading company for entrepreneurs' relief purposes. The new definitions apply to disposals of shares on or after 18 March 2015.

HMRC's policy paper outlines the changes to the treatment of joint ventures and partnerships.

The CIOT continues its engagement with HMRC on the detail of the clauses. We would welcome your input on clauses 73–75 of the Bill; please send these to kwillis@ciot.org.uk.