FA 2015 changes to entrepreneurs' relief: CIOT makes further representations

OMB Personal tax

01 July 2015

CIOT makes further representations

In recent instalments of Technical Newsdesk we have reported on the CIOT's submissions to HMRC setting out members' concerns about changes to entrepreneurs' relief (ER) announced in part at Budget 2014, and enacted in Finance Act 2015.

Three ER measures are causing uncertainty: the denial of ER for disposals of goodwill to related companies; the restriction of ER on associated disposals (FA 2015 s 41); and the amendments to the ER rules for joint ventures (JVs) and partnerships in FA 2015 s 43. A fourth measure (FA 2015 s 44) is not controversial. This allows eligible gains that are deferred on or after 3 December 2014 into investments that qualify for enterprise investment scheme or social investment tax relief to be eligible for ER when they come back into charge.

The CIOT is represented at the Capital Taxes Liaison Group, an HMRC stakeholder forum that meets quarterly to discuss how capital gains tax, inheritance tax and the taxation of trusts works and how it might work better. At the first meeting after the Finance Bill was given royal assent, representative bodies attending the forum voiced their concerns about the ER changes. They were invited to make written submissions on the further implications of the changes as they emerge in practice.

Our submission, building on and complementing our previous submissions at the Finance Bill stage, is on the CIOT website.

The submission sets out several detailed examples of possible unintended consequences. In a wider context, it asks whether adequate consideration has been given to the uncertainty generated for joint venture commercial investment, noting a likely increase in the number of companies seeking non-statutory business clearances. There are also implications in this for HMRC resourcing. The submission notes the retroactive loss of relief for existing commercial structures in which individuals have structured participation in a joint venture through a personal holding company. The cost of restructuring for business is also a factor. The fundamental question is whether these consequences are in line with the policy intent. If the intent is narrower than the scope of the legislation, we think the better approach is to amend the legislation instead of mitigating its unintended effect through concessionary guidance.

Several new issues have arisen on the exclusion of goodwill for ER on incorporation. These include the interaction with TCGA 1992 ss 162 and 162A; the denial of ER on goodwill for a genuine retiring partner if, for example, he or she is related to a participator in the company with which they have been in partnership; and the removal of ER when a person sells their business on arm’s length terms to an independently owned company if the intention is that the person will become a minority shareholder holding less than 5%. In effect, the legislation removes the ability to ‘bank’ ER when selling to a larger concern.