Entrepreneurs’ Relief (ER) – Finance Act 2016 amendments to the associated disposals rules

OMB Personal tax

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ER is available in respect of a disposal of a personally held asset that is used in a partnership or a company where the disposal of that asset is associated with a partial or full withdrawal from the business or company. The Finance Act 2016 amendments to TCGA 1992 section 169K has raised an issue around the availability of the relief where interests in property change.

Background

Originally there was no minimum requirement as to the size of the withdrawal from the partnership or company. FA 2015 s 41 modified Condition A in TCGA 1992 s 169K to require that the ER claimant must reduce their participation by disposing of a minimum of 5% of the shareholding or asset share of the partnership.

The imposition of the de minimis interest requirement had the unintended effect of denying ER in relation to succession arrangements for family partnerships where a partnership interest has been diluted within the family.

The Finance Act 2016 amendments to associated disposals reinstate ER where the 5% minimum disposal condition in section 169K(1A) and (1B) is not met provided that disposal is of the claimant’s entire participation in the business (new Condition A1A inserted by FA 2016 s 84(3)) and P holds at least a 5% interest in the partnership’s assets throughout a continuous period of at least three years in the eight years ending with the date of the disposal, and, at the date of the disposal, no partnership purchase arrangements (as defined) exist.

A further condition (new Condition D inserted by FA 2016 section 84(9)) requires that the claimant has owned the asset that constitutes the associated disposal for at least three years at the date of disposal.
In order to remove the retroactive effect of imposing a three year period of ownership on disposals before the Finance Bill 2016 was published (on 13 June 2016) when a claimant could not have known of the new Condition D requirement, Condition D has effect only in relation to a disposal of an asset which was acquired on or after 13 June 2016.

The issue

An issue that has been brought to the attention of the CIOT is the position where an interest in an asset, particularly land, is owned before 13 June 2016, and a further interest in the same asset is acquired after 13 June 2016.

By way of example, before 13 June 2016 Mr and Mrs Brown and their son jointly own a three hundred acre farm in equal shares which is provided rent free for use in a farming partnership carried on by Mr Brown and his son. The land used by the partnership is not a partnership asset.

On 14 July 2016 Mrs Brown dies and leaves her one third share in the farm to her son and daughter in equal shares thereby increasing the son’s interest in the farm to a one half share.

The farm is sold by the three joint owners (Mr Brown, his son and daughter) in July 2018 and Mr Brown and his son retire from business. At the disposal date, the son has held a one third share in the farm for more than three years but he will have held the additional one sixth share for less than three years.
Assuming all the conditions of ER are otherwise met, will the son be able to claim ER on the gain arising on his associated disposal (the one half interest in the farm) in July 2018?

CIOT requests clarification

The CIOT has written to HMRC asking for clarification of their view. The full submission can be read on the CIOT website.