



## Entrepreneurs' Relief: associated disposals and joint venture companies

HMRC have relaxed prior changes to Entrepreneurs' Relief (ER) for certain joint venture companies and extended the availability of ER for certain associated disposals.

### Summary of legislation

#### Joint venture companies

Changes announced in the March 2015 Budget restricted the availability of ER for the shareholders of companies which hold interests in joint ventures or partnerships. The effect of this restriction was that in order to ascertain whether ER is available, the individual needed to look through their interest in the joint venture company to ascertain whether their overall interest in the trading entity was at least 5 percent. This resulted in some genuine commercial arrangements being impacted and shareholders no longer benefiting from ER.

In the March 2016 Budget it was announced that ER will be available where an individual satisfies both the shareholding and the voting test in relation to a joint venture company. Further detail has now been provided in Finance (No.2) Bill 2016. For the purposes of these tests, the total of an individual's shareholding and voting rights in the joint venture company through direct ownership as well as through an investing company must total 5 percent. For example, an individual owns 20 percent of the share capital and voting rights of company A, which holds 40 percent of the share capital and voting rights of the joint venture company, although the individual holds no direct interest in the joint venture company. Under the new legislation the individual will be treated as holding 8 percent (20 percent x 40 percent) of share capital and voting rights of the joint venture company and so would satisfy the tests.

#### Partnerships

The March 2015 Budget announced that where a company is a member of a trading partnership, in determining whether the company is a trading company for the purposes of ER the trading activities of the partnership will not be taken into account.

This was further refined in the March 2016 Budget and Finance (No.2) Bill 2016 provides that the activities of the partnership will be considered, provided the individual meets the profits and assets test as well as the voting rights test in relation to the partnership. In order to satisfy these tests the individual's direct and indirect interest in the partnership for both profits and assets as well as voting rights must total 5 percent.



## Associated disposals

A further reform in the March 2015 Budget related to the ability to claim ER on the sale of personal assets used in the business when also disposing of an interest in that business. For disposals on or after 18 March 2015, ER was only available when also disposing of a minimum 5 percent of the shares of the company carrying on the business, or (where the business is carried on in partnership) of a minimum 5 percent share in the assets of the partnership carrying on the business.

Finance (No.2) Bill 2016 amends this restriction. ER is to be available on an associated disposal when the individual is making a disposal of a partnership interest that is not material (i.e. less than 5 percent) providing they have previously held a larger stake. Provided the individual has held at least a 5 percent interest in the partnership asset for a continuous period of three years in the last eight years prior to the date of disposal and, at the date of disposal there was no partnership purchase agreement in operation, then the associated disposal will qualify for ER.

## Timing

The change to the rules takes effect from the date when the restrictions were first introduced, March 2015

## Our view

It is most welcome that the Government has listened to the representations made by the various professional bodies and other interested parties and made changes to these restrictions. Making changes effective from the date the restrictions were first introduced means that the ER rules have been allowed to continue to operate as intended rather than restrict genuine commercial transactions inadvertently affected by the 2015 changes.

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