

BUSINESS ASSET DISPOSAL RELIEF (FORMERLY ENTREPRENEURS' RELIEF)

When an individual or trust disposes of an asset at a gain, capital gains tax may be due. In most cases, capital gains tax will be charged at a rate of 20%. However, if business asset disposal relief (BADR) (known as entrepreneurs' relief prior to 6 April 2020) is available, the rate will be reduced to 10%.

BADR is available where individuals or trustees make "qualifying business disposals", and can be claimed in respect of gains up to the "lifetime limit" of £1m.

Qualifying business disposals

Set out below are the key types of disposals that can constitute qualifying business disposals, along with some of the specific conditions that must be met if the disposal is to qualify for relief.

These key disposals are all "material disposal of business assets" for the purposes of the BADR legislation. BADR can also be available where an individual makes an "associated disposal" (being a disposal of assets used in a business, which is associated with a material disposal of business assets by that individual), and on certain disposals by the trusts, but the detail relating to these are not considered further in this note.

1) Whole or part of a business

Gains made on the disposal of the whole, or a separately identifiable part, of an unincorporated business (which includes a business carried on in partnership) should be eligible for BADR where the business was owned by the individual (personally or in partnership) throughout the 24 months ending with the disposal. The business must have been a trade, profession or vocation that was carried on with a view to profit.

In many cases it will be clear whether or not the whole or part of a business is being disposed of. In other cases it will be important to examine what exactly is being sold, and to consider whether this is merely a business asset or collection of business assets, or whether it does amount to the whole or a separately identifiable part of a business.

It should be noted that BADR is specifically not available on the disposal of goodwill where an individual transfers an unincorporated business to a close company in which the individual will (broadly) have a 5% interest.

2) Assets in use for the purpose of a business

Gains made on the disposal of assets that were in use for the purpose of a business at the time the business ceased should be eligible for BADR where the business was owned by the individual throughout the 24 months ending with the cessation and where the assets are sold within three years of cessation.

3) Shares in a company

There are two main circumstances in which a gain made on the disposal of shares can qualify for BADR.

Firstly, BADR may be available where the company was the individual's "personal company", where it was a trading company or the holding company of a trading group, and where the individual was an officer or employee of the company (or if the company is in a group of at least one group member) throughout the 24 months prior to disposal.

A company will have been an individual's personal company if:

- The individual owned at least 5% of the company's ordinary share capital;
- By virtue of that holding, the individual could exercise at least 5% of the voting rights in the company; and
- Either or both of the following applies:
 - By virtue of the holding, the individual was beneficially entitled to at least 5% of both the profits available for distribution to equity holders and the assets available to equity holders on a winding-up.
 - The individual would have been entitled to 5% of sale proceeds due to the ordinary shareholders on a notional disposal of the whole company for market value at the end of the period.

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Secondly, the disposal of shares in a company can qualify where it is made within three years of the company ceasing either to trade or to be a member of trading group, and where the relevant conditions were met throughout the 24 months ending with the cessation.

Where an individual's shareholding is diluted below 5% as a result of the issue of shares for cash, an election can be made to crystallise a gain at the point of dilution. The intention would be that BADR could be claimed in respect of this gain. A second election can be made to ensure the gain does not come into charge until a subsequent disposal of the shares.

Business asset disposal relief on EMI shares

Gains made on the disposal of shares that an individual has acquired by exercising EMI options can qualify for BADR in accordance with the rules described above, subject to the following relaxations:

- There is no requirement for the company to have been the individual's personal company; and
- The individual does not need to have owned the shares for the full 24 months ending with the disposal or cessation of trade (although the options do need to have been granted at least 24 months before this date and, where there is a cessation of trade, the options need to have been exercised before the cessation date).

How can Moore Kingston Smith assist?

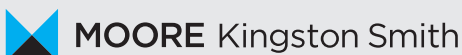
BADR can be very valuable and, to stand the best chance of qualifying, it is advisable to consider the rules well in advance of a potential disposal.

We would be pleased to discuss your particular circumstances and provide advice in relation to your eligibility for BADR. Please do contact us on 020 4582 1000 to speak to one of our tax experts.

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