

We are a team of independent Specialist Tax Advisors who work with:

- Accountants
- Solicitors
- Businesses
- Individuals

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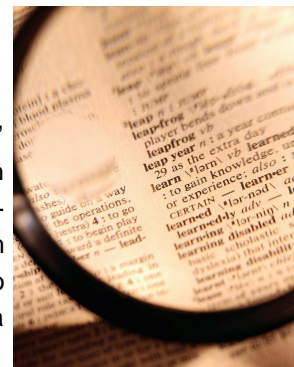
[www.eavesandco.co.uk](http://www.eavesandco.co.uk)



## Entrepreneurs' Relief

### A Closer Look

The recent changes in rules on Capital Gains Tax and Entrepreneurs' Relief (ER) mean that it is more valuable than ever. With the main rate of CGT now 28% and the rate on assets qualifying for ER remaining at 10%, the benefit of attaining ER is increased to 18% from the previous 8%. Coupled with the lifetime limit increase from £1m to £5m, the overall lifetime value of ER is a maximum of £900,000; a significant increase on the previous value of £80,000.



It is therefore more important than ever to fully consider the availability of ER on transactions and ensure that all the conditions are met. The main requirements for ER, which you are likely aware of, remain unchanged. The following points represent some of the areas which may require more detailed thought.

- Following the change in tax rate, QCB Loan Notes are no longer given ER at the date they are issued; previously the gain was reduced by 4/9ths before being held over in the QCBs. QCBs will now only receive ER if they qualify at the date they are disposed of.
- A key consideration with shareholdings is to ensure that the 5% test is met with regard to voting rights. This aspect is often overlooked and can result in an unexpectedly high tax bill if the shares do not carry voting rights. A review of the voting rights at an early stage could be beneficial.
- To ensure that companies continue to qualify as trading they should be kept lean with investments not allowed to build up in the company/group.
- It is common for employees with share option schemes to exercise their share options and sell the shares acquired immediately. These disposals will not qualify for entrepreneurs' relief because of the minimum holding period. This may affect previous EMI schemes. Therefore it may be worth considering whether it is feasible, or commercial, for underlying shareholdings of at least 5% to be owned by key employees.
- A key point for family companies is to ensure that a shareholding spouse is made an officer or employee of the company, to ensure that the employment requirement is met.
- Charging market rent on property owned personally and used by a company disqualifies the property from ER on a sale. With the increase in value of ER, further care should be given to whether ER is more beneficial than the rentals received. As ever, with changing family circumstances mixed with evolving legislation it is wise to review business structures from a strategic perspective on a regular basis.

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## Small Company Rate and Associated Companies



HM Revenue & Customs have produced a toolkit for identifying associated companies and proving whether small company rates or marginal small company relief (MSCR) is due.

Cleverly, HMRC have said that the small company rate represents a relief – the “normal”, default rate should be 28%. Hence HMRC have stated that penalties could be applied where small company rates are claimed incorrectly and have suggested that self assessing tax at small company rate whilst failing to document the justification for this will generally result in a risk of penalties. It is therefore important to ensure that the correct procedures are followed.

In order to avoid this risk, whilst still applying for a reduced rate of tax, where appropriate, the matter needs to be brought into standard compliance procedures. Possibly the easiest way of doing this would be to use the HMRC “toolkit” every time the small company rate/MSCR, is claimed with the checklist incorporated into the procedures of all accountancy firms so that the issues brought up are discussed annually with the directors of companies. Having the completed checklist on file would be an advantage, but it must also be clear that someone has appropriately considered the circumstances. The toolkit can be found at [www.hmrc.gov.uk/agents/toolkits/mscr.pdf](http://www.hmrc.gov.uk/agents/toolkits/mscr.pdf)

There are proposals to change the rules on associated companies, which are currently in consultation. The proposed new rules look at commercial interdependence, rather than the current basis looking strictly at control with many of the anti-avoidance rules leading to quite unexpected numbers of associates, once family and loan links are taken into account.



### EAC Update

Congratulations to all members of staff for their recent exam successes and in particular to David Stebbings for passing his final CTA exams.

Finally, we would like to welcome Nick Millward, a Graduate in Economics from Newcastle University, to the team.