

# Entrepreneur relief

## Part 19-06-02A

This document should be read in conjunction with section 597A Taxes Consolidation Act 1997

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## Executive summary

Entrepreneur Relief was introduced by section 45 Finance (No. 2) Act 2013, which inserted a new section (**section 597A**) into the Taxes Consolidation Act 1997. **Section 597A** was amended by section 52 Finance Act 2014 to take account of EU State Aid concerns and to make a number of additional improvements.

**Note:** A revised entrepreneur relief was introduced in **section 597AA** by section 35 Finance Act 2015 as respects disposals of chargeable business assets (within the meaning of that section) made on or after 1 January 2016 – see Tax and Duty Manual [Part 19-06-02b](#).

Amendments to address State Aid issues were:

- Relief is confined to ‘eligible undertakings’ as defined in the revised General Block Exemption Regulation (“GBER”) which came into effect on 1 July 2014.
- The total amount of ‘initial risk finance investment’, which includes equity or other investment, or both is limited to a maximum of €15 million per eligible undertaking and must be provided within 6 months of the commencement of the new business.

Other improvements

- Clarifying that an enterprise must be a micro, small or medium sized enterprise when the initial risk finance investment is made in chargeable business assets but does not have to remain a micro, small or medium sized enterprise up to disposal of chargeable business assets. The intention of the relief is that new enterprises will be successful, so it would not make sense to require them to remain a micro, small or medium sized enterprise throughout the period of new investment.
- In the case of a qualifying company a shareholder must have a shareholding equating to at least 15% of the ordinary share capital of the company (previously 50%). This will enable a number of entrepreneurs to pool their resources in a new qualifying enterprise, provided they are all full-time working directors in the company carrying on the new business.
- Clarifying that investment in “new business” can include investment in a new line of business carried on by an existing company. Relief will not be available where the new business provides substantially the same goods, products or services as previously provided.

- Amending the definition of chargeable business asset for the purposes of the relief to include shares held in a holding company owned by the investor, provided the investor is a full-time working director in the company carrying on the new business.
- Providing that where, for **bona fide** commercial reasons, a person selling a business first transfers chargeable business assets to a wholly owned company and immediately sells the shares in that company, the relief will apply to the shares.

## 2A.1 The Relief

The relief will apply from the 1<sup>st</sup> of January 2014 to individual entrepreneurs:

- Who have made disposals of assets since 1 January 2010 on which they have paid capital gains tax;
- Who invest at least €10,000, in the period from 1 January 2014 to 31 December 2018, in acquiring chargeable business assets that will be used in a new business and
- Who subsequently (after a minimum period of 3 years) dispose of those chargeable business at a gain giving rise to a capital gains tax liability.

The relief will be given on the tax due on any chargeable gain arising on the future disposal of the chargeable business assets after a minimum period of 3 years and will amount **to the lower of:**

- the full amount of capital gains tax paid on the initial disposal made since 1 January 2010 or
- 50% of the CGT payable on the disposal of the new chargeable business assets.

### Example 1

Individual disposed of assets in 2011 for a consideration of €200,000 and paid capital gains tax of €50,000.

On 1 January 2014 the individual identifies a new business opportunity and invests an amount of €150,000 (the full consideration from the 2011 disposal less CGT paid of €50,000) in acquiring chargeable business assets which are used in a new business.

In December 2017 the individual sells the business for €250,000, making a chargeable gain of €100,000 (incidental expenses and the personal exemption are ignored for the purposes of this example).

But for this relief, the capital gains tax liability on this disposal would be €100,000@33% = €33,000 (at current rate).

The relief provided under this section is the lower of:

- The CGT of €50,000 paid in 2011 and
- 50% of the CGT of €33,000 payable of on the 2017 disposal.

Accordingly, the individual would pay CGT in 2017 of €16,500 (50% of 33,000), instead of €33,000, assuming CGT rules in 2017 are the same as they were in 2014.

If an entrepreneur reinvests the proceeds of that subsequent disposal in a further new business, the relief can also apply on a subsequent disposal of the chargeable business assets of that further new business.

Where less than the full proceeds of a disposal on which capital gains tax has been paid are reinvested, only that proportion of the capital gains tax relative to the amount reinvested will qualify for relief.

#### Example 2

Individual disposed of assets in 2011 for a consideration of €200,000 and paid capital gains tax of €50,000.

On 1 January 2014 the individual identifies a new business opportunity and invests an amount of €100,000 (two-thirds of the consideration from the 2011 disposal less CGT paid of €50,000) in acquiring chargeable business assets which are used in a new business.

In December 2017 the individual sells the business for €400,000, making a chargeable gain of €300,000 (incidental expenses and the personal exemption are ignored for the purposes of this example).

But for this relief, the capital gains tax liability on this disposal would be €300,000@33% = €99,000 (at 2014 rate).

The relief provided under this section is the lower of:

- The part of the CGT paid in 2011 which is attributable to the amount reinvested viz.  $€50,000 \times 100,000/150,000 = €33,333$ , and
- 50% of the CGT of €99,000 = €49,500 payable on the 2017 disposal.

Accordingly, the individual would pay CGT in 2017 of €65,667 (99,000-33,333), instead of €99,000, assuming the CGT rules and rates in 2017 are the same as they were in 2014.

## 2A.2 Definitions

“Chargeable business assets” for the purposes of this relief are defined to include:

- assets used wholly for the purposes of a new business carried on by a qualifying enterprise, or
- new ordinary shares issued on or after 1 January 2014 in a qualifying company. In the case of investment through a company, in order to qualify for relief, a shareholder must own not less than 15% of the shares in the qualifying company carrying on the new business (or in a holding company which owns 100% of the ordinary share capital of a qualifying company carrying on new business) and must be a full-time working director in the qualifying company.

“Qualifying enterprise” is defined as an enterprise (which can be an individual or a company) and which at the time of the making of the initial risk finance investment (but not necessarily at any later time), is a micro, small or medium-sized enterprise, as defined in Article 2 of the Annex\* to Commission Recommendation 2003/361/EC of 6 May 2003 and which –

- (a) has not been carrying on any business, trade or profession, or
- (b) has been carrying on a business, trade or profession for less than 7 years.

**\* Article 2 – Meaning of SMEs**

Staff headcount and financial ceilings determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and  
  
whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

“Full-time working director” is defined as meaning a director who is required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity.

“Qualifying company” is a company that is a qualifying enterprise and which, at the time of the making of the initial risk finance investment, is not listed on the official list of any Stock Exchange;

“Holding company” is defined to mean a company that is not listed on the official list of any Stock Exchange whose business consists wholly of holding shares in a qualifying company.

“Initial risk finance investment” is defined by reference to GBER requirements. It means the funding of the qualifying enterprise for the purpose of new business which:

- (a) must not exceed a total of €15 million,
- (b) is provided in full within 6 months of the commencement of the new business, and
- (c) includes equity or investment or both.

“New business” is defined to mean relevant trading activities carried on –

- (a) by a new qualifying enterprise that were not, prior to 1 January 2014, carried on by that qualifying enterprise or by any person connected (within the meaning of section 10) with that qualifying enterprise, or
- (b) by an existing qualifying enterprise that were not, prior to 1 January 2014, carried on by that qualifying enterprise or by any person connected (within the meaning of section 10) with that qualifying enterprise.

The definition excludes products, goods or services that are substantially the same as products, goods or services previously provided by any individual claiming relief under this section or by any person connected with that individual.