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## Getting the best out of Business Asset Disposal Relief

# Business Asset Disposal Relief (BADR), formerly known as Entrepreneurs' Relief, has long provided a valuable Capital Gains Tax (CGT) relief on the disposal of eligible business assets.

Access to BADR is not automatic, however. Strict conditions apply, and careful attention to detail is required to ensure eligibility.

## Why it's important now

Autumn Budget 2024 announced a two-stage increase in the CGT rate applying where BADR is available. For disposals made on or after 6 April 2025, the rate of CGT is now 14%, rather than 10%. It will rise again to 18% for disposals made on or after 6 April 2026. There are also anti-forestalling rules designed to counter arrangements locking in lower CGT rates.

## Action to consider now

The period to 5 April 2026 is a particularly critical time to take stock, giving a potential last chance opportunity to take advantage of the 14% rate of CGT applying to disposals – so long as all the relevant conditions are met. In view of this, you might want to consider whether you want to accelerate any plans you have for business disposal or restructuring.

But regardless of whether business exit sits on your immediate planning horizon, or is very much further down the line, we recommend that you take the opportunity now to make sure that you are set up to take advantage of what continues to be a very important relief.

## Why BADR matters

BADR means that the rate of CGT paid on qualifying gains is generally less than the standard rate of CGT. For disposals made from 6 April 2025 to 5 April 2026, the contrast is between a 14% rate, where BADR is available, compared with up to 24% - unless gains fall entirely in the basic rate band, in which case an 18% rate applies.

The relief is capped, with a lifetime limit of £1 million of qualifying gains. Using the full lifetime allowance can thus potentially save up to £100,000 in tax in 2025/26.

## Tip: Optimise business structure

The BADR lifetime limit is a per person limit. Structuring business interests so that ownership is shared with a spouse, civil partner or family members, can multiply access to this limit – assuming that relevant conditions are met for each party.

## Who can use BADR

BADR can be used where there is a qualifying business disposal by sole traders, individual partners in a partnership business, and by company office holders and employees. It can also be available to trustees in certain circumstances.

A qualifying business disposal includes the disposal of:

- the whole, or part of a trading business carried on by the individual, either alone or in partnership
- shares in an individual's 'personal company'
- assets used by a business or company which has ceased within the last three years.

Where a qualifying business disposal is made, relief may also be available on what is called an 'associated' disposal. This is the disposal of an asset:

- used in a qualifying company or group of companies of the individual, or
- used in a partnership, in which the individual is a partner.

There are however restrictions to obtaining relief on associated disposals in some circumstances, such as where a property is in personal ownership, but used by an unquoted company or partnership trade, and rent is received in return.

Various conditions also apply, such as the requirement for the associated disposal to form part of your withdrawal from participation in the business of the company.

## Company shareholders

In this publication, we focus on company shareholders disposing of shares or securities, including those selling shares acquired through an Enterprise Management Incentive (EMI) option.

### Meeting the conditions

There are conditions for eligibility, and the importance of making sure that your affairs are organised so that you qualify for relief cannot be overstated.

#### Two-year period

To qualify for BADR on the disposal of shares and securities in a trading company, or holding company of a trading group, qualifying conditions apply throughout a period of two years, ending with the date of disposal.

These mean you must:

- be a company employee or office holder throughout this period
- the company in which shares or securities are held must be your 'personal company', a requirement involving your:
- holding at least 5% of the company's ordinary share capital, and
- being able to exercise at least 5% of the voting rights.

In addition to the above, you must also be able to meet one of two tests:

- either you must be beneficially entitled to at least 5% of the company's profits available for distribution to equity holders, and 5% of the assets available to equity holders in a winding up; or
- you must be entitled to at least 5% of the proceeds in the event of a disposal of the whole of the ordinary share capital of the company.

#### Tip: Working arrangements

There is no requirement for an employee or office holder to work a minimum number of hours. This means that you are potentially eligible regardless of whether you work full time or part time in the company.

**Shares acquired under an EMI option** can qualify for BADR where the 'personal company' requirement is not met. In overview, you must have bought the shares after 6 April 2012 (special rules for shares acquired in 2012/13) and been given the option to buy them at least two years before sale. In addition, throughout the two-year period ending with disposal, the company must have been a trading company, or the holding company of a trading group; and you must have been an employee or officer of the company, or another company in the same group.

**Where there is a liquidation:** BADR can be available where there is a delay between the end of trading and disposal of shares. All 5% and officer/employee conditions must be met in the 24 months leading up to cessation, and disposal of shares must take place within three years of cessation. This means that distributions in a liquidation may qualify for BADR as the distributions are treated as part disposals of the shares.

### Take care with shareholding

It can be all too easy to jeopardise relief and fall at the final fence, as the many cases that have been taken to the Tax Tribunal over the years demonstrate. One recent case had a particularly nasty sting in the tail. It involved taxpayers who had initially been advised that they qualified for BADR, but then rearranged their shareholding at the last minute. When the claim for BADR was submitted, they no longer qualified for relief, and in fact were penalised for 'carelessness' in submitting the claim.

The Tribunal held that the carelessness lay in 'not taking professional advice after having been told that they qualify for Entrepreneurs' Relief (the previous name for BADR) and then changing their shareholdings. . . They completed their tax returns based on previous advice based on different facts'.

**Where shareholding is diluted:** Since 6 April 2019, it has been possible to access BADR in certain situations where shareholding is 'diluted' – in other words, it falls below the 5% level, meaning that the company no longer qualifies as being your 'personal company'. But this only applies where new shares are issued for cash to raise funds for genuine

commercial reasons, and not simply to gain a tax advantage. The process involves making an election which allows you to crystallise a gain on your shares before the dilution takes place. The shareholding is treated as if it is sold, and then bought back immediately at the prevailing market value. The election is made in the tax return for the year in which the dilution takes place. To avoid an immediate CGT bill on the deemed disposal, an additional election, allowing you to defer the accrued gain until the shares are actually sold, can also be made.

### **Tip: Always monitor shareholding**

Whenever shares are allocated, check the position carefully, making sure that shares are of the type, class and percentage that qualify for BADR. Note that it's the nominal value of share capital that is relevant, rather than the number of shares.

## **Tick the box as a trading company**

BADR applies to the sale of shares in trading companies and groups: the emphasis on trading is important. A trading company is one which 'carries on trading activities and does not carry on other activities to a substantial extent'. Non-trading activities, such as investment, and property businesses, for example, do not qualify for relief.

## **Manage cash reserves**

Trading companies can sometimes accumulate a large cash reserve - when the sale of a business is under consideration, for example. In these circumstances, HMRC may put the forward the argument that the holding of cash has itself become a business activity. The question of whether this fails the 'substantial' test would then also need consideration.

**The 'substantial' test:** What is meant by 'substantial' is not defined in the legislation. HMRC's long term view has been that it means 20%, with a range of indicators being taken into account, such as income from non-trading

activities as against trading activities; the asset base of the company; the company's history; and how time spent by officers and employees or expenses incurred are balanced between trading and non-trading activities.

HMRC has recently met some challenge over the 20% figure, with the Tax Tribunal noting on one occasion: 'there is no sanction in the legislation for the application of a strict numerical threshold'. Whilst that particular decision is not binding, it is always helpful to know how the courts are handling BADR cases.

## **Evidence officer or employee status**

Make sure that the public record at Companies House accurately reflects your status, and that any resignation shown here is the same as the date of disposal of shares. If you are an employee, make sure that you have adequate documentation.

## **Think at least two years ahead**

In view of the two-year qualifying conditions, the minimum window to plan efficiently for business exit is two years in advance.

In fact, we recommend planning from the outset, and structuring the ownership of shares and involvement of family members to optimise access to BADR. Once a company is up and running, take stock periodically, and work out what the maximum relief available would be if the company were to be sold immediately: unexpected offers can come along on the basis of a quick sale, so it is always best to be prepared.

## **We can help**

Careful planning is essential to dispose of business interests tax efficiently. Please do contact us to review your position as regards BADR at any time, but especially if you have an eye to disposal before April 2026. We should be delighted to help.