Chapter 19

Investors' relief

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This chapter includes material originally adapted from the book *Capital Gains Tax Reliefs for SMEs and Entrepreneurs* (Bloomsbury Professional) by Satwaki Chanda and Chris Williams.

SIGNPOSTS

- **Operation of the relief** – Which disposals qualify, shareholding requirements, interests in shares (see **19.3–19.12**).
- **Comparison with other reliefs** – The differences from entrepreneurs' relief and EIS are handily summarised (see **19.3–19.4**).
- **What companies and shares qualify** – No listing at time of issue, what is an ordinary share, trading requirements (see **19.13–19.21**).
- **Who can claim the relief** – Which individuals, what sort of trusts and what connections they can have with the company, when relief is denied (**19.22–19.26**).
- **Order of disposal** – Qualifying, potentially qualifying and excluded shares, special share identification rules for IR, lifetime limit for IR (see **19.27–19.37**).
- **Share reorganisations –** Reconstructions and share exchanges (see **19.38–19.42**).
- **Overseas matters –** Remittance basis, temporary non-residents (see **19.43–19.45**).
- **Trustees** – Need for a qualifying beneficiary, what are the trust business assets, how much relief can be claimed, how to make that claim, offshore trusts (see **19.46–19.57**).

INTRODUCTION

19.1 *Finance Act 2016, Sch 14* introduced *TCGA 1992, ss 169VA–169VY* and *Sch 7ZB* which add investors' relief (IR) to the range of CGT reliefs. Announced in the 2016 Budget as an extended form of entrepreneurs' relief (ER), investors' relief (IR) shares both the 10% rate of CGT and £10 million lifetime relief limit but little else. In particular, IR only applies to company shares and the provisions are deliberately drafted to ensure that there is minimal overlap between IR and ER; it would be virtually unheard of for a person to be eligible for both IR and ER on shares in the same company.

The discrete nature of the two reliefs is something of a double-edged sword in that they do not overlap and an individual's shareholding that qualifies for IR will not also be eligible for ER and vice versa, so it is essential that the right relief be identified. But this is not all bad news, in fact the separation provides a great advantage because each is subject to a lifetime limit of £10 million, both of which may be used. Thus an individual may be able to take advantage of 10% rates on gains of up to £20 million.

IR can apply to shares:

- subscribed for by the claimant;
- issued on or after 17 March 2016; and
- disposed of on or after 6 April 2019,

subject to the qualifying conditions being met.

Every individual has a lifetime IR allowance (currently £10 million), of gains against which relief may be claimed. Trusts do not have a separate limit but may use a beneficiary's allowance. The IR allowance is separate from and additional to the individual's IR limit.

IR does not apply automatically but must be claimed (see **19.57**). This enables the taxpayer to choose whether claiming the relief is in his best interests, perhaps not to claim in order to use another roll-over or deferral relief, or to preserve the lifetime limit so it can be used for another disposal. Sometimes, a protective IR claim may be advisable, such as where the taxpayer is non-resident or non-domiciled, but there is a possibility that he may resume UK residence within five years, after the time limit for claiming IR has passed (see **19.45**).

Legislation

19.2 The IR legislation is *TCGA 1992, ss 169VA–169VY* and *Sch 7ZB*.

TCGA 1992, s 169VA acts as a contents section for the main IR provisions thus:

- *TCGA 1992, s 169VB* defines 'qualifying shares', 'potentially qualifying shares' and 'excluded shares';
- *TCGA 1992, s 169VC* creates the relief, to be known as 'investors' relief';
- *TCGA 1992, s 169VD* deals with disposals from holdings consisting partly of qualifying shares;
- *TCGA 1992, ss 169VE* to *169VG* contain rules to determine which shares remain in the holding out of which previous disposals have been made;
- *TCGA 1992, ss 169VH* and *169VI* make provision about disposals by trusts;
- *TCGA 1992, s 169VJ* makes provision about disposals of interests in shares;
- *TCGA 1992, ss 169VK* and *169VL* cap the amount of IR that can be claimed;
- *TCGA 1992, s 169VM* makes provision about claims for investors' relief;
- *TCGA 1992, ss 169VN* to *169VT* make provision for IR following a company's reorganisation of its share capital, an exchange of shares or securities or a scheme of reconstruction;
- *TCGA 1992, ss 169VU* to *169VY* contain definitions; and
- *TCGA 1992, Sch 7ZB* contains provisions about disqualification of shares where the investor receives value within the 'period of restriction'.

As at the end of June 2017, no HMRC guidance had been published beyond the Budget announcement (tinyurl.com/j9ef9pg).

COMPARISON WITH ENTREPRENEURS' RELIEF AND EIS/SEIS

Entrepreneurs' relief

19.3 Although the reliefs are superficially similar it cannot be stressed enough that they are designed to operate as separate, mutually exclusive reliefs: hence the duplication of the lifetime limits on gains qualifying for relief. There

are numerous differences between the reliefs, reflecting the fact that ER is intended to reward owner-participators whilst IR is specifically intended to act as an inducement to attract investment from participators who will not be involved in the business at all when they invest and are not expected to become involved at the time when they invest.

The table below summarises key differences

	Investors' relief	**Entrepreneurs' relief**
Type of business	Company only	Company or partnership
Qualifying activity	Any trade, must be carried on for a qualifying period of at least one year, ending on disposal or ceasing to be a trading company within three years before disposal	Any trade, must be carried on throughout a period of 12 months ending on either the date of disposal or, if the company has ceased to be a trading company, within the three years preceding disposal
Share acquisition	Subscription only: shares may not be acquired by gift except inter-spouse transfers	Any method of acquisition
Ownership period	Minimum ownership period three years Only the original subscriber (or spouse) may claim IR: the shares must be held throughout the period from issue to disposal without any break	One year
Minimum interest	No minimum shareholding requirement	Minimum shareholding 5% of voting and assets except where shares acquired through EMI
Assets used in the business	No relief for any asset other than the IR shares	Associated disposals relief available if the individual is entitled to ER
Trusts	Trustees may hold shares for benefit of any beneficiary	Trustees may hold shares for benefit of any beneficiary who holds the required minimum interest for the company to be his personal company