

ENTREPRENEUR RELIEF – RETROSPECTIVE CHANGES

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HMRC SCRAP PERVERSE ENTREPRENEUR TAX RELIEF RULES

The government has announced plans to retrospectively protect tax relief for entrepreneurs whose ownership of shares in a company drop below the currently required 5%, as a result of a new share issue.

The move is designed to remove what was widely seen as a disincentive for business owners to seek investment and described as a 'perverse consequence' by Treasury officials and will allow individuals whose shareholding is 'diluted' below the 5% qualifying threshold for entrepreneurs' relief as a result of a new share issue to obtain relief for gains up to that time.

ELECTIONS:

A new section of the Finance Bill 2018-19 'will allow an election where a company has issued shares for cash consideration for genuine commercial purposes, which has caused the individual's shareholding to fall below the 5% threshold required to meet the 'personal company' definition in section 169S, in the circumstances where a disposal of the shareholding prior to the issue would result in a gain which would qualify for entrepreneurs' relief.

The election will treat the individual's holding of (or interests in) shares or securities in a company as having been disposed of and immediately reacquired at market value prior to dilution, giving rise to a chargeable gain on which they can claim entrepreneurs' relief.

'The second election in new section 169SD will be to defer the gain until an actual disposal of (or if interests in) the shares or securities. The legislation will then specify how deferred gains are treated as accruing on part disposals and in other specific circumstances,' adds the statement.

FURTHER CONSULTATION:

Consultation on the proposed legislation, which will come before parliament in the autumn, ended in May. At the time, the government said the present rules were a 'perverse consequence' of a company becoming successful and wishing to issue more shares. The plans saw widespread support from the accounting profession as they look to protect the interests of entrepreneurs and founders of businesses, the profession is calling for an

immediate implementation but it appears we shall be entering another round of consultation.

NEXT STEPS:

Whilst it is important that the election mechanism is introduced correctly, in this instance, the Government could have been bolder to introduce the new rule with immediate effect. The proposal makes complete sense and has been a longstanding issue for shareholders who find their interest fall below the 5% threshold, often beyond their control.