



CREASEYS

CHARTERED ACCOUNTANTS

10 WAYS OF NOT PAYING 10% CAPITAL GAINS TAX

Entrepreneur Relief (ER) gives a potential 10% CGT on the first £5m of qualifying gains made by an individual during their lifetime. Otherwise the rate is 28% so ER may save an individual £900,000 of CGT provided planning is done properly – some traps are set out below:-

1. Only interests in trading companies qualify – watch investment activities and surplus cash which may prevent ER applying.
2. Shareholders must have 5% plus of shares and these must carry full voting rights.
3. Shares must be held for one year before a disposal and thus certain share option plans (e.g. EMI exercised only on a sale) may need reconsideration.
4. Recent changes may mean that Loan Notes acquired on a takeover will not qualify for ER on redemption.
5. In the absence of planning, Earn Out arrangements may give rise to 28% CGT or even 50% income tax in some cases.
6. Shareholders must have an office or employment in the one year before a sale.
7. There can be problems if the business premises are held outside the business and a rent is charged.
8. Only certain types of trust will qualify for ER so transfers out of trusts or changes in their nature may be highly beneficial.
9. Selling a company to another company under common control to crystallise ER may actually crystallise 50% income tax liabilities, not 10% CGT.
10. Watch passive or 'hobby' activities on valuable land, for example which may prevent ER applying.

We are always happy to conduct a review to ensure ER is available or could be made available with planning. If large gains are contemplated, careful spreading of business ownership around the family may extend the availability of the 10% rate as well as permit tax effective distribution of profits.