

Entrepreneurs' Relief

Contacts

Please phone:

- the number printed on page TR 1 of your tax return
- the SA Helpline on **0845 9000 444**
- the SA Orderline on **0845 9000 404** for helpsheets

or go to

www.hmrc.gov.uk

This helpsheet provides information to help you decide if you are entitled to Entrepreneurs' Relief. It provides a guide to straightforward situations, but does not cover all cases. You can get help from your tax adviser. We will also be pleased to help. You can also consult our Capital Gains Manual which explains the rules in more detail. Go to **www.hmrc.gov.uk**

What is Entrepreneurs' Relief?

Entrepreneurs' Relief reduces the amount of the Capital Gains Tax on a disposal of qualifying business assets on or after 6 April 2008, as long as you have met the qualifying conditions throughout a one-year qualifying period either up to the date of disposal or the date the business ceased. Qualifying capital gains for each individual are subject to a lifetime limit as follows:

- for disposals on or after 6 April 2008 to 5 April 2010, £1 million
- for disposals on or after 6 April 2010 to 22 June 2010, £2 million, and
- for disposals on or after 23 June 2010, £5 million.

Who can claim relief?

Entrepreneurs' Relief is available to individuals and some trustees of settlements, but it is not available to companies and personal representatives of deceased persons. Page 6 gives further details of the qualifying conditions for trustees of settlements.

Claims

Entrepreneurs' Relief must be claimed, either by the individual or, in the case of trustees of settlements, jointly by the trustees and the qualifying beneficiary. You must make a claim to us in writing by the first anniversary of the 31 January following the end of the tax year in which the qualifying disposal takes place, that is one year and 10 months from the end of the tax year in which the qualifying business disposal is made. For a qualifying business disposal in the tax year 2010–11 (ending on 5 April 2011) a claim for Entrepreneurs' Relief must therefore be made by 31 January 2013.

A claim to Entrepreneurs' Relief may be amended or revoked within the time limit for making a claim.

Husbands, wives, or civil partners are separate individuals and may each make a claim. They are each entitled to Entrepreneurs' Relief up to the maximum amount available for an individual (see page 2), provided that they each satisfy the relevant conditions for relief (see page 3).

How to claim

Individuals

If you can you should claim Entrepreneurs' Relief in your 2010–11 tax return. If you cannot make your claim in your 2010–11 tax return then a claim may be made to us either in writing or by filling in Section A of the form at the end of this helpsheet.

Trustees of a settlement

A claim by the trustees of a settlement must be made jointly with the qualifying beneficiary for a trustees' disposal. Joint claims may be made to us in writing or by filling in the form at the end of this helpsheet. Section A should be completed by the qualifying beneficiary and the trustees should complete Section B.

Amount of relief

If you are entitled to Entrepreneurs' Relief, qualifying gains (see below) up to the lifetime limit applying at the time you make your disposal, will

- for disposals made on or before 22 June 2010, be reduced by $\frac{1}{3}$ and the net amount charged to Capital Gains Tax at the rate of 18%, or
- for disposals made on or after 23 June 2010, be charged to Capital Gains Tax at the rate of 10%.

If the qualifying gains together with all previous gains on which Entrepreneurs' Relief has been claimed, exceed the lifetime limit applying at the time you make your disposal, the whole of the excess will be taxable at the normal rate of Capital Gains Tax at the time your gains accrue.

The calculation of the relief is described in more detail on page 7.

Individuals

What can I claim relief on?

To claim Entrepreneurs' Relief you have to meet the relevant qualifying conditions throughout a period of one year. This period is referred to in this helpsheet as the 'qualifying period'. It ends with the date when you disposed of the asset, or an interest in the asset for which you want relief, or the date when the business ceased, if that was earlier.

You can claim relief, subject to the conditions set out below, on a disposal of the following assets (including disposals of interests in these assets):

- assets used in the business (such as goodwill and business premises but excluding all shares or securities (but see the third bullet of this list below) or any other assets held as investments – see Example 1 on page 5) comprised in a disposal of the whole or part of your business (see below), whether you carried on the business on your own or in partnership (see Example 2 on page 5)
- assets (excluding shares or securities (but see the next bullet) or any other assets of the business held as investments) that were in use for your business, or a partnership of which you were a member, and were disposed of within the period of three years after the time the business ceased
- one or more assets consisting of shares in, or securities of, your 'personal company' (see page 3). The shares must be disposed of while the company (or, where you hold shares in a holding company of a group, the group of companies) is a trading company (or the holding company of a trading

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group) or within three years from the date it ceased to be either a trading company or a member of a trading group (see Example 3 on page 5)

- assets owned by you personally but used in a business carried on by either a partnership of which you are a member, or by your personal trading company (or by a company in a trading group, the holding company of which is your ‘personal company’ (see below)), as long as the disposal is associated with a disposal of your interest in the partnership or shares or securities in the company.

References above to ‘business’ includes any trade or profession, but do not include the letting of property unless this is furnished holiday lettings in the UK or European Economic Area (EEA). See page UKPN 2 in the *UK property notes* for guidance on furnished holiday lettings in the UK or EEA.

Qualifying conditions

To claim relief you have to satisfy a number of conditions throughout the ‘qualifying period’.

The qualifying conditions depend on the type of disposal you have made.

Disposal of the whole or part of your business

You must have owned the business directly **or** it must have been owned by a partnership in which you were a member. Entrepreneurs’ Relief is **not** available on the disposal of assets of a continuing business unless they are comprised in a disposal of a distinct part of the business.

Disposal of assets following cessation of your business

You must have owned the business directly or it must have been owned by a partnership in which you were a member throughout the qualifying period that ends on the date the business ceased. Additionally the date the business ceased must be within the period of three years before the date of disposal of the asset.

If the asset in question was owned by you, but was in use by either a partnership of which you were a member or by a company at the time the business ceased, you may still claim the relief if this qualifies as an ‘associated disposal’ (see page 4).

Disposal of shares in or securities of your personal company

If the business is owned by a company in which you dispose of the shares or securities, then throughout the qualifying period of one year the company must be:

- your personal company (see below), and
- either a ‘trading company’, or the holding company of a ‘trading group’, and
- you must be either an officer or employee of that company (or an officer or employee of one or more members of the trading group).

The qualifying period ends on the date of disposal of the shares or securities, unless the company ceases to be a trading company, or to be a member of a trading group, within the period of three years before the date of disposal. If so, it ends on the date the company ceased to qualify as a trading company or a member of a trading group.

The relief continues to be available provided the qualifying conditions are all met throughout the year ending with either the disposal or the cessation of the trading qualification and the disposal is made within three years of that date, where either:

- a the company is wound up and dissolved with your shares being cancelled and a capital distribution is made in the course of that winding up, or
- b any other capital distribution is made.

A company is your personal company if you hold at least 5% of the ordinary share capital and that holding gives you at least 5% of the voting rights in the company.

An 'associated disposal'

To be an 'associated disposal' a disposal must take place in association with your withdrawal from a business carried on by either:

- a partnership of which you are a member, or
- your 'personal' trading company in which you are an officer or employee.

This means that Entrepreneurs' Relief will not be due unless a disposal of an asset by you is associated with a reduction of your interest in the assets of the partnership, or a disposal of shares in your personal company (this is what is meant by 'withdrawal') that itself qualifies for Entrepreneurs' Relief. It is not necessary for you to actually reduce the amount of work which you do for the business.

For instance, you personally own a shop from which you trade in partnership with your brother. You have a $\frac{3}{5}$ interest in the assets of the partnership and your brother $\frac{2}{5}$. You reduce your involvement in the business so the interest is altered to $\frac{1}{5}$ for you and $\frac{4}{5}$ for your brother. You also sell the shop to your brother. You continue to work full-time in the shop. In this case your reduction of your partnership interest represents a withdrawal from participation in the business and the disposal of the shop is associated with that withdrawal.

The 'associated' asset must have been in use for the purpose of the business throughout the period of one year up to the date of your withdrawal, or if earlier, the cessation of the business.

The amount of gain eligible for Entrepreneurs' Relief on a disposal of an 'associated' asset may be restricted in cases where:

- the associated asset was in business use for only part of the time you owned it, or
- only part of the associated asset was in business use during the period you owned it, or
- you were involved in the carrying on of the business for only part of the period during which the associated asset was in business use, or
- some of the period during which the associated asset was in use for the business falls after 5 April 2008 and for that period after 5 April 2008 you received any form of rent for letting the business use it.

Where one or more of these circumstances apply, only a just and reasonable proportion of the gain will qualify for relief. The periods involved and the level of any rent paid will be taken into account when working out this proportion. See Example 4 on page 6.

Please note: In the following Examples 1 to 4 assume that you have no other gains eligible for Entrepreneurs' Relief.

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Example 1

In February 2011 you dispose of your manufacturing and retail business which you had owned for the last eight years. You make gains and losses on the business assets as follows:

Factory premises	£1,250,000
Goodwill	£1,300,000
Retail shop	(£500,000) Loss
Shares	£800,000

The gains and losses on the factory premises, the goodwill and the shop are aggregated and will together qualify for Entrepreneurs' Relief which will be due in respect of the net gain of £2,050,000. The gain on the shares is not aggregated with the gains or losses on the other business assets. Entrepreneurs' Relief may be due in respect of the gain on the shares if the conditions are met for shares to qualify for the relief.

Example 2

You have been a partner with three other persons in a trading business for several years. Each partner had a 25% interest in the partnership's assets. On 31 December 2010 you retire and dispose of your 25% interest in the assets of the business, which continues, to the other partners. You make gains of £125,000 on the disposals of your 25% share of the business goodwill and premises. All of your gains will qualify for Entrepreneurs' Relief because you have disposed of the whole of your interest in the assets of the partnership.

Example 3

In September 2012 you dispose of the shares you had owned for the last 20 years in a company of which you were a director. You owned 20% of the shares of the company that entitled you to 20% of the voting rights. You made a gain of £860,000. The company had been a trading company but its trade ceased in August 2010 and the company then ceased to qualify as a trading company. Your gain will still qualify for Entrepreneurs' Relief because the disposal was made less than three years after the company ceased to qualify as a trading company.

Example 4

On 1 April 2011 you leave the partnership of which you have been a member for several years and transfer your $\frac{1}{3}$ interest in the partnership's assets to the remaining two partners. You make gains of £2,250,000 on your share of the business goodwill.

You also personally owned the premises from which the firm has traded for the 13 years you had owned it. Throughout that period the partnership paid you a full market rent for the use of these premises. When you left the firm you disposed of the premises to the remaining partners making a gain on the 'associated disposal' of £1,300,000.

All of your gains on the disposal of your interest in the partnership's assets – £2,250,000 on the goodwill and £1,300,000 on the associated disposal of the premises – qualify for relief.

However, because you owned the premises personally while you were a partner, and a full market rent was paid to you for the business use of the property, a proportion of the gain relating to the premises will not attract relief. Only the period for which rent was paid after 5 April 2008 is taken into account in restricting the amount of the £1,300,000 gain which qualifies for relief. This would be 3 of the 13 years the property was in use for the business. A 'just and reasonable' figure in these circumstances would be.

Total gain on the sale of the premises	£1,300,000	
Gain accruing for 10 years of use from 6 April 1998 to 5 April 2008	$£1,300,000 \times \frac{10}{13}$	£1,000,000
Gain accruing for three years of use from 6 April 2008 to 5 April 2011	$£1,300,000 \times \frac{3}{13}$	£300,000
Gain on premises attracting Entrepreneurs' Relief		£1,000,000
plus gains on disposal of interests in partnership assets		£2,250,000
Total gains attracting Entrepreneurs' Relief		£3,250,000

The gain not attracting relief will therefore be £300,000 (£3,550,000 minus £3,250,000)

If the rent paid by the partnership to you for the use of the premises was less than a full market rent then the adjustment to the gain accruing after 5 April 2008 must take this into account, allowing a higher proportion of the gain to qualify for relief.

Trustees of settlements

What disposals can trustees of settlements claim relief on?

Entrepreneurs' Relief may be available to trustees of settlements who dispose of trust property that consists of either:

- shares in, or securities of, a qualifying beneficiary's personal trading company, or
- assets used in a qualifying beneficiary's business.

Qualifying conditions

The relief will only be available if there is an individual with a life or absolute interest in possession under the trust, or under the part of the trust which includes the property in question (a 'qualifying beneficiary'), and in regard to particular asset disposals, the conditions below are satisfied.

Disposal of shares in or securities (or interests in shares or securities) of a company

The conditions that must be satisfied are that:

- the company must have been the qualifying beneficiary's personal company, and a trading company (or holding company of a trading group) for at least one year ending either on the date of the trustees' disposal of the shares or securities or no earlier than three years before the date of the disposal, and

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- throughout the same one-year period the qualifying beneficiary must have been an officer or employee of that company (or an officer or employee of one or more members of the trading group).

See the section on page 3 on 'Disposal of shares in or securities of your personal company' for explanation of the term 'personal company'.

Disposal of assets (or interests in assets) used for the qualifying beneficiary's business

The following conditions must be satisfied:

- the asset must have been used for the qualifying beneficiary's business for at least one year ending within the three years up to the date of the trustees' disposal of the asset, and
- the qualifying beneficiary must have ceased to carry on that business on the date of the disposal or within the period of three years before the date of disposal.

Claims by trustees

See the section on 'Claims' on page 1 for details of how trustees must make claims to Entrepreneurs' Relief.

Other information about trusts relevant to Entrepreneurs' Relief

- Relief given to the trustees of a settlement will reduce the beneficiary's entitlement to relief up to his lifetime limit of qualifying gains applying at the time of the disposal.
- If there are any other beneficiaries of the trust who have interests in possession, only part of the gain will qualify for relief. That part is the proportion which is the qualifying beneficiary's interest in the income of the trust (or the part of the trust which includes the property disposed of) bears to the interests in that income of all the other beneficiaries with interests in the trust (or the relevant part of the trust) at the date the qualifying period ends.

Example 5

You have a life interest in a settlement that owns a farm. There are other beneficiaries and you are entitled to only 25% of the income arising from the farmland.

You began farming the land owned by the settlement on 6 April 1997. You ceased to farm the land on 5 April 2011. On that day the trustees of the settlement sell the land giving rise to a gain of £320,000. The trustees and you jointly claim Entrepreneurs' Relief.

The trustees' gain that is eligible for relief is restricted to £80,000 because you were entitled to only 25% of the income from the farmland - $£320,000 \times 25\% = £80,000$.

- If the trustees of a settlement and the qualifying beneficiary make disposals on the same day that both qualify for Entrepreneurs' Relief, the relief is given on the beneficiary's disposal in priority to the trustees' disposal. If the beneficiary's gains exhaust the maximum lifetime limit applicable at that time for which relief is available, no relief is given on the trustees' disposal.

How the relief is calculated

Where a claim for Entrepreneurs' Relief has been made and the necessary conditions have been satisfied, the qualifying gains and qualifying losses in respect of the qualifying business disposal in question are aggregated to result in a net figure. If the aggregate net figure is a gain, this is the amount on which the relief is worked out – see Examples 1 and 6.

For 2010–11 this ‘net gain’, up to the lifetime limit, is then:

- for disposals from 6 April 2010 to 22 June 2010 – reduced by $\frac{1}{3}$ and the reduced figure is chargeable at the rate of Capital Gains Tax – 18% for this period resulting in an effective rate of 10%.
- for disposals made on or after 23 June 2010 – the ‘net gain’ is chargeable at the Entrepreneurs’ Relief rate of Capital Gains Tax of 10%.

Example 6

You have operated two separate businesses for some years and decide to sell up. You dispose of the first business on 31 May 2010. You make a gain of £440,000 on the disposal of goodwill, but a loss of £80,000 on the disposal of the premises. All the conditions are met for Entrepreneurs’ Relief which you claim. The gain and the loss are aggregated so relief is applied to the net gain of £360,000.

The £360,000 is reduced by $\frac{1}{3}$ to £240,000. That chargeable gain on this qualifying disposal is subject to Capital Gains Tax at 18%. The loss of £80,000 on the premises has been fully used in calculating the Entrepreneurs’ Relief, so is not otherwise allowable to be deducted from other capital gains.

You then dispose of your second business on 31 December 2011. You make gains of £100,000 on the disposals of goodwill, £580,000 on a factory premises but a loss of £50,000 on a small warehouse. All the conditions are met for Entrepreneurs’ Relief which you claim. Again the gain and the loss are aggregated so relief is applied to the net gain of £630,000.

This net chargeable gain of £630,000 is charged at the Entrepreneurs’ Relief rate of Capital Gains Tax of 10%. Again the loss of £50,000 on the warehouse has been fully used in calculating the Entrepreneurs’ Relief, so is not otherwise allowable to be deducted from other capital gains.

Maximum relief

The maximum qualifying net gains which may benefit from Entrepreneurs’ Relief is restricted to a lifetime limit from all qualifying disposals – see page 1; it is not an annual limit.

Entrepreneurs’ Relief may be claimed on more than one qualifying disposal as long as the lifetime limit of qualifying gains, applicable at the time you make the disposal, is not exceeded. Therefore, because you may be entitled to relief on more than one occasion, it is important that you keep a record of the gains against which you may have previously made a claim.

Qualifying gains exceeding the lifetime limit

If your qualifying net gains exceed the lifetime limit applicable to the time you make that disposal, no further relief is due and the excess over that amount is wholly chargeable at the Capital Gains Tax rate (18% for disposals made from 6 April 2010 to 22 June 2010: 18% or 28% for disposals made on or after 23 June 2010 to 5 April 2011).

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Example 7

In May 2010 you sold your pharmacy business, which you had run for 12 years. You realised gains of £3,250,000. You have not previously claimed any Entrepreneurs' Relief. Your available maximum relief is on qualifying gains of £2,000,000, so you are entitled to the whole of your lifetime limit and will have that amount of your gains reduced by $\frac{4}{9}$. The balance of the gain of £1,250,000 will be liable to the rate of Capital Gains Tax (18%). You have no other gains or allowable losses during the year. The Annual Exempt Amount (where due) is £10,100 for 2010-11.

Total qualifying gains	£3,250,000	
Gains reduced by maximum Entrepreneurs' Relief	£2,000,000	£2,000,000
Minus reduction of $\frac{4}{9}$		£888,889
Chargeable gain		£1,111,111
Balance of gain not reduced	£1,250,000	£1,250,000
Total chargeable gains		£2,361,111
Minus Annual Exempt Amount		£10,100
Gains chargeable at 18%		£2,351,011

If, instead of May 2010, you made your disposal in December 2010 and realised gains of £6,250,000 your available maximum relief is on qualifying gains of £5,000,000, so again you are entitled to the whole of your lifetime limit. But that amount is not reduced by $\frac{4}{9}$, instead it is charged at the Entrepreneurs' Relief rate of Capital Gains Tax of 10%. The balance of the gain of £1,250,000 will be liable to the normal rates of Capital Gains Tax (18% or 28% as relevant to your circumstances).

Total qualifying gains	£6,250,000	
Gains reduced by maximum		
Charged at Entrepreneurs' Relief rate of 10% (£5,000,000)	£5,000,000	£5,000,000
Balance of gain not reduced	£1,250,000	£1,250,000
Minus Annual Exempt Amount		£10,100
Gains chargeable at Capital Gains Tax rate of 18% or 28%		£1,239,900

The Annual Exempt Amount is allocated in the most beneficial way, so is set first against gains having the highest rate of Capital Gains Tax.

If you make a subsequent business disposal in a later year which qualifies for Entrepreneurs' Relief, the total relief (for all years) is still limited to your lifetime limit. Any gains exceeding that limit are wholly chargeable at the normal rate of Capital Gains Tax.

Example 8

The facts are as Example 7, with the disposal being made in May 2010, except that you realised gains on the disposal of the pharmacy of only £1,750,000 all of which qualified for Entrepreneurs' Relief.

You have also been running another very successful business as a travel agent for over 20 years, which you sold in 2011-12 making gains of £4,600,000. You make a second claim for Entrepreneurs' Relief but only £3,250,000 of these gains will be eligible for the relief as this then uses up the remaining part of your lifetime limit of Entrepreneur's Relief which is, at this time, £5,000,000.

Your record for 2010-11

Lifetime limit (at May 2010)	£2,000,000
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Gain 1 2010-11 qualifying gains	£1,750,000
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Remaining amount eligible for relief	£250,000
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Increase in lifetime limit for disposals made on or after 23 June 2010

Now	£5,000,000
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Earlier qualifying gain	£1,750,000
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Lifetime limit remaining	£3,250,000
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2011-12

Gain 2 2011-12 qualifying gains	£4,600,000
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Entrepreneurs' Relief on	£3,250,000 charged at 10% £3,250,000
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Lifetime limit remaining	£0
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Balance of gains charged at 'normal'

Capital Gains Tax rates	£1,350,000
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	£4,600,000
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Husband and wife, or civil partners

Husbands and wives, and civil partners, are treated separately for Entrepreneurs' Relief. Each person is entitled to relief up to the maximum lifetime limit of qualifying gains, provided the relevant conditions are satisfied.

Where you hold shares jointly with another person, whether that is your husband, wife, civil partner or someone else, in deciding whether the company is your personal company you are treated as holding the appropriate proportion of the total holding and associated voting rights. For example, where a husband and wife own the entire issued ordinary share capital of a company jointly, they are each treated as holding 50% of the shares and 50% of the voting rights.

Reorganisations and exchanges

Under the Capital Gains Tax rules, if shares in one company are exchanged for shares in another company the original shares may, subject to certain conditions, be treated as equivalent to the new holding of shares. Where this treatment applies the exchange does not count as a disposal of the original shares. Any gain up to the date of exchange will be taxable only when the new holding of shares is disposed of, see *Helpsheet 285 Share reorganisations, company takeovers and Capital Gains Tax*.

You may exchange shares in your personal trading company for shares in another company. If you do this, and would have qualified for Entrepreneurs' Relief at the time of the exchange, you may elect that the rules about exchanges, outlined above, are not to apply. You will then be treated as disposing of the shares in your personal company at the time of

the exchange and Entrepreneurs' Relief may then be claimed against any gain arising on that disposal.

You must make this election in writing to us by the first anniversary of the 31 January following the end of the tax year in which the qualifying disposal takes place. So for the tax year 2010–11 (ending on 5 April 2011) an election must be made by 31 January 2013.

Deferred gains

The Capital Gains Tax rate(s) on a gain you made in an earlier year, including gains which have been reduced by $\frac{1}{3}$ for Entrepreneurs' Relief, where the charge on that gain has been deferred to 2010–11 will be the rates(s) at the time the deferral ends and the gain becomes liable to tax. Gains on disposals before 23 June 2010 which are deferred until 23 June 2010 or later will therefore be liable to CGT at the 18% or 28% rates, in the same way as gains arising on disposals on or after that date.

Where you have exchanged shares or securities in a company for qualifying corporate bonds (QCBs) and you have calculated a gain that would have arisen at the time of the exchange, or a gain arising to you on disposal of an asset has been reinvested in shares qualifying for relief under the Enterprise Investment scheme ('EIS shares'), Entrepreneurs' Relief may still be due on any gain attached to the original shares. However the way in which Entrepreneurs' Relief applies to such gain has changed with effect from 23 June 2010. If you require detailed guidance on this particular area, this is available in the Capital Gains Manual at www.hmrc.gov.uk

Deferred gains occurring before 6 April 2008 but coming into charge after that date

Where before 6 April 2008 you either have a gain calculated at the time of the exchange of shares or securities in a company for qualifying corporate bonds, or a gain arising on the disposal of an asset which has been reinvested in shares qualifying for relief under the Enterprise Investment Scheme, the gain in respect of the original asset will have been deferred.

If that deferred gain is then treated as arising on or after 6 April 2008, Entrepreneurs' Relief may be claimed in respect of that gain provided that Entrepreneurs' Relief would have been available on the original gain had that relief existed at the actual time at which that gain arose. If you want to claim relief in respect of such gains, then you must do so by reference to the first occasion after 6 April 2008 when the deferred gain is treated as arising. So, if such a gain arises in 2010–11 and you want to make a claim to Entrepreneurs' Relief you must do so by 31 January 2013.

Such a claim will form part of your maximum lifetime limit of gains qualifying for relief. A detailed explanation of these rules can be found in the Capital Gains Manual which is available on our website at www.hmrc.gov.uk

Filling in the *Capital gains summary* pages

The *Capital gains summary notes* explain how to include chargeable gains where there has been a claim to Entrepreneurs' Relief. You should include full details of your computations, together with each claim, either in the 'Any other information' box, box 36, on page CG 2 or in your computations attached to your return.

When you make a claim as an individual, this will normally be done at the time you make your tax return. If however you are unable to make a claim in a return, you may do this by completing Section A of this form. If a claim is made by the trustees of a settlement, then it must be made jointly by both the trustees and the qualifying beneficiary. To make the claim using this form the qualifying beneficiary should complete Section A and the trustees of the settlement Section B.

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