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Key Capital Taxes Reliefs for GP Practices

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Entrepreneurs' Relief ("ER")

This is a relief which reduces the rate of capital gains tax payable on the disposal of a qualifying business or interest in a business or shares in a qualifying company.

The normal rate of Capital Gains Tax ("CGT") for a higher rate taxpayer will be 18% or 28% depending on the asset being disposed of. ER (in the context of tax not medicine!) reduces the rate of CGT to 10% where certain conditions are satisfied.

The key points are:-

- It must be the sale of the whole or part of a business
- Partnership shares qualify as part of a business
- If selling shares in a limited company then the holding must exceed 5% of the issued share capital

Associated disposals also qualify for relief. This would cover where there is an asset held personally and used by the business. If the asset is disposed of at the same time as a disposal of the business then ER can apply to the disposal of that asset.

The disposal can be by way of gift or sale.

Gains of up to £10million can qualify for relief.

There are targeted anti-avoidance rules which prevent a sale of a business and extraction of cash balances at a 10% tax rate where the business just restarts. It must be a genuine withdrawal from the business in order to qualify.

You can have more than one disposal which qualifies but the £10million limit applies to the sum of all the disposals.

Further conditions are:

- Must satisfy all the conditions for 12 months prior to the disposal.
- Must be a material disposal so the sale of an asset used in the business where the business continues will not qualify, eg if a property was sold by the partners to facilitate a move to new premises then the gain on the sale of the property would not qualify.
- If the business is ceasing assets can qualify if disposed of up to 3 years after date of cessation.

- If a company is being wound up following the cessation of trade, then distributions on a winding up can qualify for relief as long as the distributions are made within 3 years of the business ceasing
- Must be the whole or part of a business, not just an asset of the business as mentioned above.

A common problem for partnerships is that relief is restricted where rent is paid for the use of the practice premises, which is held outside the partnership. If the rent is not a full market rent, eg just enough to cover mortgage interest then relief will be given subject to a just and reasonable apportionment

Inheritance Tax ("IHT") – brief overview

IHT is payable on transfers of assets

- In lifetime (in some circumstances, primarily gifts into trust).
- On death

IHT broadly charged at 40% on estates over £325,000

Additional relief for the private residence

- Currently £100,000.
- Rising to £175,000 by 6 April 2020.
- Limited to gifts of property to children or other lineal descendants where the total estate value is less than £2million.
- Married couples with children will have total allowances of £1m by April 2020.
- Transfers between spouses exempt.

Business Property Relief ("BPR")

Relief from IHT at either 50% or 100%

Relief applies to the transfer of business assets by way of gift or on death by:

- Sole practitioners
- Partners in a partnership
- Shareholders

Must be a qualifying business

- Broad definition of a qualifying business is any business other than one which involves the making or holding of investments

Interaction with the spouse exemption on death

In the general overview I have mentioned that transfers of assets between spouses are exempt from IHT. Consider the situation therefore where a spouse dies owning business assets but the estate passes to the surviving spouse. There is no tax to pay because the transfer is exempt from tax.

If however the surviving spouse sells the business property which would otherwise have qualified for relief and holds cash in their estate on death, there is no business property relief available on that cash and the cash will be taxed at 40% if the estate is over the threshold. The BPR has therefore been wasted.

As an alternative, if the business assets had been left to a trust in the Will the BPR could potentially be preserved whilst still giving the surviving spouse access to funds if needed.

Other key pointes to be aware of are:

- The interest in the business must have been held for two years prior to the disposal.
- There must not be a binding contract for sale of the business at the date of the transfer of the business.
- Partnership assets can qualify for relief.
- Where a business is operated by a company, assets held outside of the company will only attract 50% relief and the shareholder must have at least 51% of the shares in order for the personally held asset to qualify.

This paper is only designed to give you a snap shot of these reliefs and should not be substituted for taking specific advice relevant to your own circumstances.

The Legal Bit…