Capital Gains Tax Retirement Relief

Capital gains tax retirement relief is a relief from capital gains tax (CGT) available to individuals who dispose of all or part of the 'qualifying assets' of their business. The qualifying assets could, for example, include business assets used in a trade (such as premises, goodwill or farming land) or family company shares.

CGT retirement relief can potentially reduce a CGT tax bill on the sale of such assets to zero, provided the sale satisfies certain conditions.

Qualifying conditions

The following qualifying conditions apply:

- The disposal must be made by an individual (and not for example by a company).
- The individual must be 55 or over. The amount of relief is restricted if the individual is older than 66.
- The disposal must be of qualifying assets (e.g. business assets or family company shares).
- The qualifying assets must have been held for a minimum period immediately prior to the disposal – normally 10 years.
- When the disposal is of family company shares the individual must have been a working director for a minimum of 10 years up to the date of disposal, 5 of which were on a full time basis.

A company is defined as a family company when an individual holds either:

- A minimum of 25% of the voting rights of the company, or
- A minimum of 10% of the voting rights and his family, including him, holds a minimum of 75% of the voting rights of the company.

It's very important to note that retirement (in the normal sense of the word) is not actually a condition of the relief.

Therefore the term “CGT retirement relief” is somewhat misleading. In fact, an individual could sell qualifying assets (e.g. the assets of his business or the shares of his family company) and claim CGT retirement relief (provided they fulfil the conditions) and then still continue to be actively involved in the business or remain a shareholder or director of the company.

An individual may sell an asset (e.g. land, machinery or plant) that is owned by him, but actually used by the family company.

In this case the sale of the asset can also qualify for CGT retirement relief provided it has been owned by the individual for the minimum period and is sold along with his shares.

The assets would need to be sold at the same time and to the same person as the shares.

An example of where this situation might arise would be where a shareholder or director rented a business premises to their company, and they are now selling their shares along with the building to a third party.

The relief

CGT retirement relief is dealt with under two sections in tax legislation:

- Disposals to a child.
- All other disposals (i.e. not to a child).

Disposals to a child

If an individual is between 55 and 66 on the date of disposal of assets to a child, they can get full CGT retirement relief if all the other qualifying conditions are met. This applies regardless of the amount paid by the child consideration or the market value.

For individuals older than 66 on the date of disposal, relief will only be given on proceeds of up to €3m.

This means that if you are planning to pass assets onto children it could be very important to do this at the right time.

There is, however, a clawback of the relief if the child disposes of the assets within 6 years.

The clawback is the CGT that would have been due in the first place if the CGT retirement relief had not been taken advantage of. The clawback has to be paid by the child who received the assets and not the parent.

If no money was exchanged on the transfer then the market value is used to calculate the CGT payable. This is because the transaction has happened between what tax legislation calls "connected parties". As connected parties have the ability to set artificially low values between themselves, tax law allows Revenue to apply a market value.

The definition of a “child” can include the child of a deceased child (i.e. a grandchild where the parent is deceased), or a niece or nephew who has worked substantially on a full time basis in the business for 5 years ending on the date of disposal.

All other disposals

This section includes two reliefs:

- Full Relief
- Marginal Relief

Full relief

If an individual is between 55 and 66 at the date of disposal then relief on proceeds of up to €750,000 is available on the disposal. So if the proceeds received are €750,000 the CGT that would normally be payable is reduced to zero and no tax needs to be paid.

For individuals older than 66 at the date of disposal, the limit for the relief available is reduced to €500,000.

Example

John, who is 60 years old, sells his family company shares for €700,000. Assume that before any relief is applied the CGT bill would be €100,000. However John qualifies for CGT retirement relief. So, because the proceeds don't exceed €750,000 he can take advantage of full CGT retirement relief and pays no tax on the sale.

Marginal relief

If the proceeds exceed the limit (€750,000 or €500,000 depending on age) an individual may still be entitled to claim partial or marginal relief. Marginal relief reduces the CGT due to an amount that is equal to half of the excess over the limit.

Example

George, who is 64 years old, sells his family company shares for €800,000. Therefore full relief, as described above, is not available. Let's assume that before considering any relief, the CGT bill would be €120,000. But, as he meets the qualifying conditions, John claims for marginal relief. The excess of the sale amount (€800,000) minus €750,000 is €50,000. As a result the CGT due would be €25,000 (half of the excess), not €120,000.

The limit is an individual lifetime limit. That means you need to consider any previous disposals when calculating what relief is available. And there can end up being a clawback of relief you have previously received.

What is helpful though is that it's a “per individual” limit. So a husband and wife that both own business assets or family company shares, could both take advantage of the CGT retirement relief limit separately. Of course, both would need to meet the normal qualifying conditions.

This may create some opportunities to transfer assets between a husband and wife when it comes to planning a disposal. But, to avoid falling foul of tax anti avoidance legislation, professional tax advice is paramount when planning to make any disposals of qualifying assets.

Call Now

To see how we could help you optimise your tax position why not call Una Beecher today on **021 431 0266**.