

LAW SOCIETY SUBMISSION



SUBMISSION TO THE PUBLIC CONSULTATION PAPER ON CGT ENTREPRENEUR RELIEF

DEPARTMENT OF FINANCE

MAY 2019

ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

1. Outline

- 1.1. The Law Society of Ireland makes the following submission as the educational, governing and representative body of solicitors in Ireland. Solicitors represent our citizens in their day to day business and personal affairs. This submission draws on our members' experience relevant to tax policy and tax administration with the aim of improving the system for taxpayers and to benefit the wider economy and ease of doing business.
- 1.2. We have focused on addressing the following points highlighted in the consultation paper:
 - What aspects of the current structure and design of CGT Entrepreneur Relief work effectively and why?
 - What aspects of the current structure and design of CGT Entrepreneur Relief do not work effectively and why?
 - If CGT Entrepreneur Relief were to be amended further in the future, what is the main policy and/or technical change that you would request; why would you suggest this?
- 1.3. We have also included commentary on the options for amendments to the relief.
- 1.4. It is the view of the Law Society that the relief is both relevant and critical in the encouragement of the SME sector and requires some amendment at this point.
- 1.5. **We would wish to attend the stakeholder consultation event on 6 June 2019 to address these and other issues concerning SMEs.**

2. Questions

2.1. **What aspects of the current structure and design of CGT Entrepreneur Relief work effectively and why?**

The relief is relatively free from significant complexity in its application when compared with the older retirement relief¹. This permits taxpayers and advisers to assess the availability of the relief more easily. Given that the relief is targeted at the SME sector, the lack of complexity in the conditions is appropriate and any amendments made should not change this.

2.2. **What aspects of the current structure and design of CGT Entrepreneur Relief do not work effectively and why?**

The Department of Finance acknowledges that Ireland is competing with the UK for entrepreneurs and the changes introduced were in response to a review of the UK legislation.

However, the conditions to be satisfied in Ireland and in particular the requirement to work over 50% of the time in a managerial or technical capacity in the business for 3 out of a 5 year period prior to the disposal, are very restrictive and, in the Society's view, is resulting in entrepreneurs leaving Ireland or not locating here with the resultant missed opportunity of job creation and gains for the Exchequer. We would recommend that the conditions of Entrepreneur Relief are reviewed so as to ensure Ireland can compete with the UK and attract these important employment generators.

The linkage of the Relief to the requirement to work for more than 50% of the time is also entirely misplaced in an Entrepreneur Relief as it serves to deny the relief in practice to serial entrepreneurs who will in many cases have a number of different ventures in which they will apply their capital and energy.

The requirement is also unfortunately doing nothing in encouraging entrepreneurs to invest in the SME sector as investors or mentors. This is particularly unfortunate as entrepreneurs, and particularly those with a significant track record in founding successful businesses, should be incentivised to remain in the sector.

We would also suggest that the cap on relief (a lifetime threshold of €1,000,000) is too low in light of the position with the equivalent relief in the UK. Placing a cap of this level on the Relief has already been acknowledged by the Minister for Finance publicly as something on which change is required.

2.3. **If CGT Entrepreneur Relief were to be amended further in the future, what is the main policy and/or technical change that you would request; why would you suggest this?**

Removal of the 50% working requirement: The rationale for this is set out above. To be an effective relief within the entrepreneurial sector, this condition is inappropriate in practice. This amendment is unlikely to result in any additional cost to the Exchequer for tax expenditures as it should encourage greater investment into the

¹ Section 598 TCA

SME sector by the right type of individuals which will generate additional tax revenues.

Increase in Cap: Although it is fully appreciated that an increase in the cap will lead to potentially higher tax expenditures, the increase would seek to level the playing field somewhat with the UK. The increase would also encourage greater activity and interest in the SME sector. This is particularly important where there is a need to diversify the corporate tax take and focus on developing sectors other than the multi-national sector. The increase should be substantial and be at least double the current cap in order to have an impact on investment.

Encouragement of Passive Investors: The amendments to the EII/SURE structures in recent years through the GBER have served to dissuade investment in the SME sector by passive investors. Anecdotally, the complexity of such structures and lack of certainty on tax outcomes on investment have given rise below optimal levels of investment. Investment into the SME sector from private equity or private investors is an important source of funds and the extension of entrepreneurial relief to passive investors who allow their investment to remain in the SME sector for a period of years would serve to provide a basis for increased investment in the sector.

2.4. **Other Changes?**

It is submitted that any changes to the entrepreneurial relief should not impact on retirement relief which has a different focus in practice and, for this reason, should be retained.

In relation to the relief itself, caution should be applied prior to introducing any complexity or additional conditions to the availability of the relief. The introduction of any additional conditions may serve to make the relief unattractive.

It is important to recall that this relief is a relief in the rate of tax and is predicated on a gain arising which in almost every case is not a guaranteed outcome. Accordingly, the crystallisation of gains for shareholders is revenue positive for the Exchequer in every case and any relief which encourages investment and realisation of gains must be managed carefully.

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