OHT Guide

CAT Business Relief

What is Business Relief?

CAT relief is given by reducing the market value of a gift or inheritance by up to 90% where the asset is “relevant business property” and the benefit meets the conditions for CAT business relief.

What is “Relevant Business Property”?

"Relevant business property" must be one of the following:

- a business or an interest in a business. "Business" is defined as an activity which is carried on for gain and it includes the exercise of a profession or vocation, as well as a trade.

  Note that a single asset used in a business, such as a factory, will not qualify for the relief if transferred to the beneficiary on its own without the business.

- unquoted shares provided that the beneficiary will own more than 25% of the voting rights after taking the gift or inheritance.

- unquoted shares provided that the beneficiary controls the company within the meaning of s 27 Capital Acquisitions Tax Consolidation Act 2003 after taking the benefit. In general the beneficiary and his family must control the company between them and the control test for S. 27 is a 50% test.

- unquoted shares provided that the beneficiary owns at least 10% or more of the aggregate nominal value of the issued share capital of the company after taking the shares and has worked full-time in the company throughout the period of 5 years ending on the date of the benefit.

- land, buildings, plant and machinery owned by the disponer and used wholly or mainly for the purposes of a business carried on by a company controlled by the disponer (with a 51% control test), or used wholly or mainly by a partnership of which the disponer was a partner.

  The asset must be taken with the shares or partnership interest (which must also be relevant business property) and must pass from the same disponer to the same beneficiary.

- quoted shares which would qualify except for the fact that they are quoted, and which were in the beneficial ownership of the disponer immediately prior to the disposition, and were unquoted at the date the disponer acquired them or at 23 May 1994 (whichever is later).

Investment and Dealing Activities

The following activities are excluded from the relief:-

1. Dealing in currencies, securities, stocks or shares, land or buildings

2. Making or holding investments.

Relief does not apply if the value of the asset is derived “wholly or mainly” from these dealing activities or investments, so if the majority of the value of a business (over 50%) comes from this type of activity the relief will not be available.

If the value of the dealing activities and investments does not amount to 50% or more of the value of the business, relief will be available but the value of these activities should be excluded when calculating the relief.

Minimum Ownership Period

To qualify for the relief the relevant business property must have been owned for a continuous period of 5 years prior to the date of the gift or inheritance. However,

Example

John became a partner in a firm of solicitors in 1990. He bought the building in which the business is carried on in 2000 and in 2014 he transferred his share in the business and the building to his son Joe. As the interest in the legal firm and the office building are being transferred at the same time the building will qualify as relevant business property.

if the inheritance is taken on the death of the disponer the relevant period is 2 years prior to the date of the inheritance. Ownership by the disponer's spouse, civil partner or by a trustee will count for the purposes of satisfying this requirement.

Where relevant business property replaced other property the minimum ownership requirement is met if the replaced property would have qualified as relevant business property, and the original and replacement assets are held for a total of 5 years out of 6 years (prior to the date of gift or inheritance), or at least 2 years out of 3 years (prior to the date of inheritance where taken on a death).

There is "quick succession" relief, so relief will be available if an asset :-

- Is inherited from a disponer,

- is relevant business property qualifying for relief (except for the fact that it does not meet the minimum ownership test), and

- the disponer (or his spouse or civil partner) had in turn taken an earlier benefit of the property which was eligible for relief as relevant business property.

Excepted Assets

An asset which has not been used wholly or mainly for the purposes of the business throughout the two years to the date of the gift or inheritance (or for the entire period of ownership if it has been owned for less than 2 years) is an excepted asset and the value of the asset will not qualify for relief.

Any asset used for the personal benefit of a company director will be excepted as it is used personally and not for the business.

Revenue Manual—Excepted Assets

In Part 12 of the CAT Manual Revenue indicate that:-

"*This provision is aimed at conspicuous and substantial assets e.g. a mansion house, penthouse flat, private yacht or collection of expensive chattels which – although represented as a business asset – are simply held by (say) a company as a device for providing private benefit to the persons in question.*

The provision should not be deployed against the non-business use of non-luxury cars".

Excluded Assets

If the benefit consists of shares and the company owns assets which are not excluded as investment assets, but which would not have qualified as relevant business property, the value of those assets will need to be deducted when calculating the relief.

Groups

If the shares passing are in a group company and the business of any company which is a member of the group is largely an investment business then (unless the investments are land and buildings occupied wholly or mainly by other companies whose activities do qualify for relief) the value of the investment company is excluded from relief.

Clawback of Relief

The relief will be clawed back if:-

- the business, or any business which replaced it, ceases to trade within a period of 6 years after the date of the gift or inheritance, unless the business is replaced within 1 year by other relevant business property. A clawback does not arise where the business ceases to trade by reason of bankruptcy or as a result of a bona fide winding-up on the grounds of insolvency,

- the business or the shares or securities, are sold, redeemed or compulsorily acquired within 6 years of the benefit and are not replaced within 1 year by other relevant business property (or replaced within 6 years if there is a CPO of the property),

If there is an initial benefit on which relief is claimed and then a subsequent inheritance of the same property within the 6 year claw back period, a future sale or other event will not trigger a clawback in relation to the initial gift or inheritance.

If land which qualified for business relief, has development value, and is disposed of in whole or in part between the 6th and 10th anniversary of the benefit the relief granted on the development value will be clawed back.

If part of the relevant business property ceases to qualify for the relief the clawback will only relate to that part.

Caveat: *These notes are intended as a general guide to CAT business relief. OHT has endeavoured to provide an accurate commentary but the notes cannot cover all circumstances so OHT strongly recommends that formal tax advice be obtained before any steps are taken that may have a tax effect.*

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