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Business Asset Disposal Relief



Business Asset Disposal Relief (BADR, formerly Entrepreneurs' Relief) currently reduces the rate of Capital Gains Tax (CGT) to 14% on gains arising on the disposal of qualifying assets up to a lifetime limit.

This briefing covers the basics of the BADR scheme, what tax relief is available and the conditions that must be met for the relief to apply, and explores some planning tips and opportunities.

How does BADR work?

BADR provides CGT relief for individuals (and some trustees) who realise gains on the disposal of qualifying assets. BADR applies a reduced CGT rate of 14% (increasing to 18% from April 2026) rather than the usual CGT rates of 18%/24%.

Qualifying capital gains for each individual are subject to a lifetime limit which is currently £1 million. The maximum tax saving that can therefore be achieved (on current law and tax rates) in an individual's life is £100,000.

A claim for BADR can be made on certain qualifying gains provided the relevant qualifying conditions are met.

Qualifying capital gains and qualifying conditions

Qualifying gains arise on the disposal of assets which fall into the following categories.

Shares and securities of a trading company

BADR will apply to a disposal of shares in or securities of a company, provided the following qualifying conditions are met throughout the two-year period immediately prior to the date of the disposal:

- the company is a trading company (or the holding company of a trading group)
- the individual making the disposal:
 - holds at least 5% of the ordinary share capital of the company and that holding gives the individual at least 5% of the voting rights in the company, and
 - is beneficially entitled to (i) at least 5% of the distributable profits and 5% of the company's assets available to equity holders on a winding-up, and/or (ii) at least 5% of the proceeds in the event of a disposal of the whole of the ordinary share capital of the company, (the 'personal company' test), and
- the individual is an employee or officer of the company (or, if the company is a member of a trading group, a group company).

Alternatively, BADR will apply where the above conditions are met throughout the two-year period immediately prior to the date that the company ceases to be a trading company, and that date of cessation is within three years of the date of the disposal. This may be relevant where, for example, a sale is structured as a sale of assets by a company, which is then liquidated to return proceeds to shareholders.

Enterprise Management Incentive (EMI) shares

Note that the above rules operate differently where a shareholder acquires shares via the exercise of a qualifying EMI option. It is not necessary for such a shareholder to meet the personal company test (so smaller stakes qualify). Nor is it necessary to have held the shares for two years before disposal. Instead, the option-holding period counts towards the required two-year period. Accordingly, where EMI options are exercised at the time of sale (or immediately before the time of sale) the resulting shareholders will in principle qualify for BADR (provided they have held their options and been officers or employees of the company for two years, and the company meets the trading condition).

The transfer of the whole or part of a business

BADR will apply to a disposal of the whole or part of a business as a going concern, provided that the business has been owned by the individual (whether as a sole trader or in partnership) throughout the two-year period immediately prior to the date of the disposal.

Assets in use on the cessation of a business

BADR will apply to a disposal of assets used for the purposes of a business at the time when it ceased to be carried on, provided the following qualifying conditions are met:

- the business has been owned by the individual (whether as a sole trader or in partnership) throughout the two-year period immediately prior to the date of cessation of the business, and
- the date of disposal of the assets is within the period of three years immediately following the date the business ceased.

Associated disposals of personally-owned assets

BADR will apply to an 'associated disposal' of a personally-owned asset used by a trading partnership or company, provided that the following qualifying conditions are met:

- the individual making the associated disposal is a member of a partnership, or is an officer or employee of a personal company
- the disposal is made as part of the individual's withdrawal from participation in the business (withdrawal entails a reduction in partnership share representing at least 5% of partnership assets or a reduction in a shareholding representing at least 5% of the relevant shares or securities, and does not relate to the number of hours worked in the business)
- the asset was used by the partnership or company for the purpose of the business throughout the period of two years up to the date of withdrawal (or, if earlier, the cessation of the business), and
- (where the asset was acquired on or after 13 June 2016), the individual has owned the asset for at least three years at the date of disposal.

How to claim BADR

BADR is not automatic and must be claimed by the individual, usually on their tax return.

A claim for relief must be made on or before the first anniversary of the 31 January following the end of the tax year in which the qualifying disposal is made. For example, for a qualifying disposal made in the tax year 2025/26 a claim for BADR must be made by 31 January 2028.



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Practical issues and planning

Impact of roll-over

The majority of transactions involving potential claims for BADR are share sales to third parties. In many such cases, the price paid for the shares may not consist solely of cash paid at completion, but may also include deferred elements (e.g. 'earn out' rights) and/or non-cash consideration (e.g. shares or loan notes in the buyer).

In certain circumstances, with careful structuring, an individual selling shares for a price that includes, in whole or in part, deferred or non-cash elements may not be subject to CGT on the full value received, but only (at least initially) on the cash paid at the point of sale. This is commonly referred to as 'rolling over' into the deferred and/or non-cash elements of the sale price. Typically, CGT falls due when the deferred price is ultimately received, or when non-cash assets are themselves disposed of.

A potential disadvantage of rolling over is the loss of BADR in respect of value 'rolled over' in this manner. The BADR regime therefore permits an election to disapply the roll-over rules and in effect ensure that the full value of the sale price (including all deferred and non-cash elements) is brought into account in the immediate CGT calculation (and hence taxed at 14% currently under BADR, rather than potentially at up to 24% later). Whether such an election should be made will depend on timing of receipt of deferred price (in particular, whether this is after the due date for payment of tax due in respect of completion price) and whether it may be possible to structure for the individual to remain entitled to BADR even after the sale.

Planning

It may be possible to structure the capital of a company so that a given individual holds less than 5% of the economic value of the company, yet still meets all the conditions for BADR. This may be valuable in the context of a seller who will continue in office or employment with a buyer, and who also has a continuing equity stake or a rolled-over gain, but equally for companies that have a number of minority shareholders with economic stakes below 5%, or where there is a prospect of existing shareholders being diluted in economic terms below 5% (e.g. on a new funding round).

Cautionary note

The conditions for BADR apply for a continual two-year period and must be met throughout that period. It is not, therefore, generally possible to structure to bring shareholders into BADR once a sale is imminent (save in the limited case of EMI options, as explained above) so advance planning is recommended.



Graham Samuel-Gibbon ... is an incredible and insightful individual who really made the difference for us.

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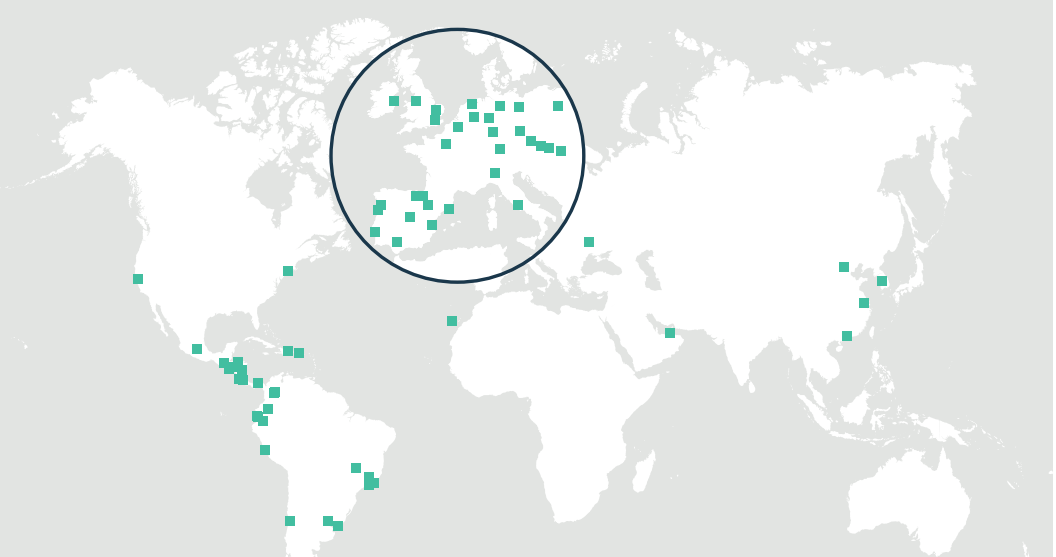


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