



## **Business Relief**

***by the CPA Examinations Team for Strategic Level Advanced Tax Strategy, February 2023.***

Business relief is a relief from Capital Acquisitions Tax for gifts and inheritances of relevant business property.

The relief reduces the taxable value of the relevant business property by 90%.

The relief applies to the transfer of a business (sole trader), or a share in a business (partnership), or shares of a company carrying on a business. The relief does not apply to individual assets even if these assets were used in the business. Also, investments do not qualify for this relief.

### **Relevant business property is defined as:**

1. A sole trader's business.
2. A share in a partnership which carries on a business.
3. Unquoted shares in a trading company provided the beneficiary on the valuation date and after taking the gift or inheritance will:
  - Own 25% of the voting rights; or
  - Control the company with a connected person; or
  - Own 10% of the nominal value of the issued shares and worked full time for five years up to the date of the benefit.

For business relief a connected person is:

- (a) Spouse.
- (b) Mother/father/children/uncles and aunts.
- (c) Brothers/sisters/nephews/nieces/grandchildren/great grandchildren/ first cousins and their children.
- (d) Spouses of (b) and (c).
- (e) Grandparents.

4. Quoted shares of a company carrying on a business but only if all the following conditions are met:
  - The disponent owned the shares immediately prior to the disposition.
  - The shares were unquoted at:
    - The time acquired by the disponent; or at
    - 23 May 1994.Whichever is the later date.
  - All the other conditions laid down under 3 above are satisfied.

5. Land and buildings and plant and machinery used in a business carried on by a company or a partnership, but which are owned by the disponent rather than the company or partnership will qualify for business relief provided:

- In the case of a company the company was controlled by the disponer (includes spouse/civil partner) immediately prior to the gift or inheritance.
- The land and buildings are used wholly or mainly for the business concerned for a continuous period of two years immediately prior to the date of the inheritance in the case of an inheritance taken on the death of the disponer and in all other cases for a continuous period of five years prior to the date of the gift or inheritance.
- The land, buildings, plant and machinery are transferred at the same time as the partnership interest or the shares in the company.
- The interest in the relevant business or the shares also qualified as relevant business property immediately before the gift or inheritance.
- The rules with regard to minimum period of ownership are met by both the land and buildings and the share in the partnership/shares in the company.

### **Minimum period of ownership**

To qualify for business relief the relevant business property must have been owned either by:

- The disponer alone, or by the disponer and his or her spouse; or
- By the trustees alone or by the trustees, the disponer and his or her spouse.

For a continuous period of:

- Two years immediately prior to the date of inheritance in the case of an inheritance taken on the death of the disponer or
- Five years in all other cases.

### **Agricultural property**

Agricultural property held by a company/partnership/sole trader is eligible for business relief. The relief will not be granted to agricultural property in respect of which a donee or successor has obtained agricultural relief.

The donee/successor cannot claim both agricultural relief and business relief. The donee/successor should first check for agricultural relief and if they qualify it is that relief that is claimed. If the donee/successor do not qualify for agricultural relief they can check for business relief and if all the conditions are met business relief will apply.

### **Claw back of the relief**

If the business ceases to trade within a period of six years commencing on the date of the gift or inheritance the relief will be clawed back unless the business is replaced within one year by other relevant business property.

However there will be no claw back of the relief 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 relief will also be clawed back if, within that six-year period the business or the shares are sold, redeemed or compulsorily acquired and are not replaced within one year by other business property.

However relief will not be clawed back where the person who claimed the relief dies before the event that would otherwise trigger the claw back.

### **Example 1:**

Stephen Quinn bought a 25% stake in Bond Limited in October 2002 for €180,000. The company has been very successful and owns three retail outlets and a property the company holds as an investment.

Stephen's niece Sheila has worked in the company since she left school in June 2019.

Stephen who had no children left his niece Sheila all his shares in Bond Limited on his death in January 2023. The legal fees on this inheritance are €20,000. The market value of Stephen's shares in Bond Limited on both the date of the inheritance and the valuation date were €2,000,000. The company still has the investment property which now accounts for 30% of the value of the company.

**Requirement:**

Calculate Sheila's capital acquisitions tax on her inheritance from her Uncle Stephen Quinn.

**Solution:**

As this is an inheritance no capital gains tax or stamp duty applies.

**Business relief**

Sheila will qualify for business relief because:

- The disponer Stephen owned the shares for two years prior to the inheritance.
- The benefit is shares in a trading company. Bond Limited is still considered a trading company as the trading assets exceed 50% of the total assets of the company.
- After she took the benefit Sheila owns 25% of the company.

To qualify for business relief, you do not have to work in the business. A donee/successor only needs to have worked in the business for five years up to the date of the benefit if after they received the benefit, they only hold 10% of the company's share capital. As Sheila owns 25% of the company after she took the benefit the working requirement does not apply.

Business relief only attaches to business assets. The value of the company that attaches to investments will not qualify for business relief.

**Favorite niece provision**

Sheila will not qualify for this relief as she has not worked in the company for five years up to the date of the benefit.

**Sheila's Capital Acquisitions tax computation**

Market value of the shares	€2,000,000
Less: legal fees	<u>€20,000</u>
Taxable value	€1,980,000
Business relief $1,980,000 \times 90\% \times 70\%$ (Exclude investment)	<u>€1,247,400</u>
	€732,600
Less: group threshold 2	<u>€32,500</u>
	<u>€700,100</u>
Capital acquisitions tax at 33%	€231,033

**Example 2:**

Ben Jones is aged 59 years old. He owns 100% of a trading company which he formed in May 2003. He has always been a full-time working director. Ben also owns a premises which he purchased in 2003. This premises has always been let to the company for use in their trade. On 1 May 2023 he gave both the shares and the premises to his daughter Aine.

**Requirement:**

Will Aine qualify for business relief on the shares and the premises?

**Solution:**

**Business relief on the shares**

To qualify for business relief the shares must be shares in a trading company. The disponent must have owned the shares for five years if a gift and two years if an inheritance.

Also, Aine after she has taken the benefit must:

- Own at least 25% of the voting rights; or
- Controlled the company with connected persons; or
- Own 10% of the nominal value of the issued share capital and worked full time in the company for five years up to the date of the benefit.

The shares qualify for business relief as it is a trading company. The disponent Ben owned the shares for at least five years and Aine will own at least 25% of the company after she takes the benefit.

**Business relief on the premises**

For the premises to qualify for business relief the following conditions must be met:

- The premises were owned by the disponent and used by the company for their trade for five years if a gift and two years if an inheritance.
- The disponent must be a controlling shareholder immediately before the gift or inheritance. This means that the disponent must own over 50% of the company with their spouse or civil partner.
- The premises must be transferred on the same day to the same person as the shares in the company.
- The shares in the company must also qualify for business relief.

In this situation the premises will qualify for business relief as the disponent is a controlling shareholder who has owned the premises for five years and the company has used the premises for their trade for five years. Also the premises will transfer on the same day to the same person as the shares in the company. Also finally the shares also qualified for business relief.

**Example 3:**

John McArdle owns a company in equal shares with his three brothers. John had acquired the shares for €80,000 in 2005. John has always worked full time for the company. John also owns a premises which he purchased in 2005. This property has always been let to the company which uses the premises for the purpose of their trade.

John transferred all the shares and the premises to his son James on 10 February 2023.

**Requirement:**

Does James qualify for business relief on the shares and the premises.

**Solution:**

The shares will qualify for business relief as:

- John the disponent owned the shares for five years.
- James will own at least 25% of the company after he takes the benefit.
- It's shares in a trading company.

The premises will not qualify for business relief even though it has been owned by John for five years and used by the company for the purpose of their trade for five years. Also it was transferred on the same day to the same person as shares in the company plus the shares do qualify for business relief.

The reason business relief is not available on the premises for James is the disponent John is not a controlling shareholder with his spouse/civil partner as John only owns 25% of the company. Brothers are not considered here.