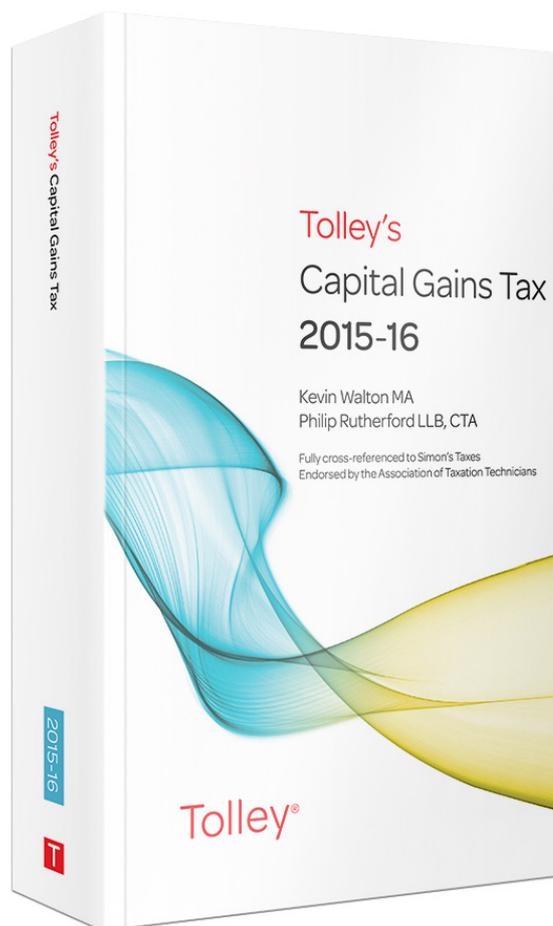


TOLLEY'S CAPITAL GAINS TAX ANNUAL 2015/16

Excerpt from Chapter 24:
Entrepreneurs' Relief



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INTRODUCTION

[24.1]

Entrepreneurs' relief can be claimed in respect of 'qualifying business disposals' made on or after 6 April 2008. The relief applies for capital gains tax purposes only and is not available to companies.

Disposals by individuals qualify for relief if they are the disposal of the whole or part of a business, the disposal of business assets when the business ceases, or the disposal of shares in a trading company of which the individual is an employee and meets a minimum shareholding requirement. For disposals on or after 6 April 2013, relief is extended to shares acquired by the exercise of an option under the enterprise management incentives scheme. A disposal by the trustees of a settlement qualifies for relief if it is a disposal of shares in a company and the company meets requirements in relation to a beneficiary which are similar to those for individuals or if it is a disposal of assets used in a business carried on by a beneficiary which has ceased. Individuals can also claim relief in respect of a disposal of an asset used by a partnership or company if the disposal is associated with a disposal of assets of the partnership or share in the company which itself qualifies for entrepreneurs' relief. See [24.2–24.5](#) below for the full conditions. For disposals on or after 3 December 2014, taxpayers no longer have to choose between entrepreneurs' relief and the [ENTERPRISE INVESTMENT SCHEME \(23.14\)](#) or [SOCIAL INVESTMENT RELIEF \(64.42\)](#) deferral reliefs. Where such a gain is deferred under either of those schemes and would otherwise have qualified for entrepreneurs' relief, it will qualify for relief when brought back into charge on the happening of a chargeable event.

The relief is given by deducting the aggregate losses arising on the disposal from the aggregate gains and treating the resulting amount as a single chargeable gain taxable at a rate of **10%**. For gains arising before 23 June 2010, the relief operated slightly differently. The amount resulting from deducting the aggregate losses from the aggregate gains was, if a positive amount, reduced by 4/9ths. This meant that the net gains were effectively charged to capital gains tax at a rate of 10% ($5/9 \times 18\% = 10\%$). See [24.6](#) below.

The relief is subject to a lifetime limit of £10 million (£5 million for disposals before 6 April 2011; £2 million for disposals before 23 June 2010; £1 million for disposals

before 6 April 2010) — see [24.6](#) below. Disposals before 6 April 2008 do not affect the limit except in the case of deferred gains on which entrepreneurs' relief is claimed under the transitional rules at [24.19A](#), [24.10](#) below.

Further restrictions on the amount of relief available are described at [24.8](#) below, and for the application of the relief to deferred gains or where there is a reorganisation of share capital see [24.9A](#), [24.10](#) below.

The rules for entrepreneurs' relief are broadly based on those for retirement relief (see [25.87 EXEMPTIONS AND RELIEFS](#)), which was abolished in 2003. Where the legislation uses terms that also appeared in the retirement relief legislation, they are intended to have the same meaning (except where the entrepreneurs' relief legislation specifically provides a different meaning). (Treasury Explanatory Notes to the 2008 Finance Bill). Although retirement relief cases are not binding precedent for entrepreneurs' relief purposes, HMRC consider that the courts are likely to consider them persuasive. (HMRC Capital Gains Manual CG64010). Accordingly, reference is made at [24.3](#) below to retirement relief cases thought to be relevant to entrepreneurs' relief.

See also HMRC Capital Gains Manual CG63950–64170, and Chartered Institute of Taxation Notice 13 February 2012 for HMRC's responses to various technical questions concerning the relief.

The Government is considering extending entrepreneurs' relief to gains made by academics on disposals of shares in spin-out companies that use intellectual property to which the academics have contributed.

QUALIFYING BUSINESS DISPOSALS

[24.2]

A 'qualifying business disposal' is:

- (a) a 'material disposal of business assets' (see [24.3](#) below);
- (b) a 'disposal of trust business assets' (see [24.4](#) below); or
- (c) a disposal associated with a material disposal (see [24.5](#) below).

For this purpose (and throughout this chapter), a '*business*' is a 'trade', profession or vocation which is conducted on a commercial basis and with a view to the realisation of profits. A '*trade*' includes a venture in the nature of trade, and any property business which consists of, or so far as it consists of, the commercial letting of [FURNISHED HOLIDAY ACCOMMODATION \(26\)](#) is treated as a trade.

[TCGA 1992, ss 169H(2), 169S(1), 241(3)(3A)].

Material disposal of business assets

[24.3]

A '*material disposal of business assets*' is a disposal by an individual of one of the following.

- (a) A disposal of the whole or part of a business owned by the individual throughout the one-year period ending with the date of disposal.

What constitutes the disposal of 'part of a business', was considered in a number of retirement relief cases, particularly relating to farming. (See the comments at [24.1](#) above about terms used in both the entrepreneurs' relief and the retirement relief legislation.) See *McGregor v Adcock* [Ch D 1977, 51 TC 692](#) where a farmer sold part of his land for which outline

planning permission had been obtained and was refused retirement relief. This decision was followed in *Atkinson v Dancer; Mannion v Johnston Ch D 1988, 61 TC 598*, and see also *Pepper v Daffurn Ch D 1993, 66 TC 68* and *Wase v Bourke Ch D 1995, 68 TC 109*. In *Jarmin v Rawlings Ch D 1994, 67 TC 130*, in which retirement relief was allowed, it was held that the taxpayer had disposed of a dairy farming business, which was 'a separate and distinguishable part' of his business. In *Barrett v Powell Ch D 1998, 70 TC 432*, it was held that a disposal of a tenancy to farm land which the taxpayer then continued to farm under a temporary licence did not qualify for retirement relief; the taxpayer had continued to carry on exactly the same business as before, albeit more precariously; see also *Purves v Harrison Ch D 2000, 73 TC 390*.

In *M Gilbert v HMRC FTT [2011] UKFTT 705 (TC)* a trader had carried on a business of selling food on commission, representing nine different suppliers. He received £285,000 from one of the suppliers under an agreement whereby he agreed to have no further contact with the supplier's customers. He claimed entrepreneurs' relief on the gain. The First-Tier Tribunal concluded that the taxpayer had sold part of his business as a going concern. Judge Radford held that 'what characterises a sale as a going concern is a sale of goodwill where it exists'. The taxpayer had sold the goodwill and had 'also sold his customer database, a crucial asset in distinguishing a sale of a going concern from a mere sale of assets'.

A disposal of Lloyd's syndicate capacity was held not be the disposal of the whole or part of a business (and did not fall within (b) below) in *Carver v HMRC FTT, [2015] UKFTT 168 (TC); 2015 STI 1794*.

See also HMRC Capital Gains Manual CG64015–64035.

- (b) A disposal of, or a disposal of an interest in, one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, where the business was owned by the individual throughout the one-year period ending with the cessation of the business. The disposal must be made within the three-year period beginning with the date of cessation.

HMRC consider that, where the effect of *TCGA 1992, s 28* (disposal deemed to occur on date contract made: see [16.4 COMPUTATION OF GAINS AND LOSSES](#)) is that the disposal of an asset precedes the cessation of the business, entrepreneurs' relief will nevertheless be available, provided that there is a genuine business disposal linked to a genuine business cessation (Chartered Institute of Taxation Notice 13 February 2012).

- (c) A disposal of, or a disposal of an interest in, shares or 'securities' of a company where the company is the individual's 'personal company' and is either a 'trading company' or the 'holding company of a trading group' and the individual is an officer or employee of the company or, where the company is a member of a trading group, of one or more companies which are members of the group. These conditions must be satisfied throughout either:
- (i) the one-year period ending with the date of disposal; or
 - (ii) the one-year period ending with the date on which the company ceases to be a trading company without continuing to be or becoming a member of a trading group or ceases to be a member

of a trading group without continuing to be or becoming a trading company.

Where (ii) above applies, the disposal must be made within the three-year period beginning with the date of cessation.

An individual's '*personal company*' is a company in which he holds at least 5% of the ordinary share capital (within *ITA 2007, s 989*) and in which he is able to exercise at least 5% of the voting rights by virtue of that holding. For this purpose, where an individual holds any shares in the company jointly or in common with one or more others, he is treated as the sole holder of so many of the shares as is proportionate to the value of his share.

The expressions '*trading company*', '*holding company*' and '*trading group*' have the same meanings as they do for the purposes of hold-over relief for gifts of business assets (see [36.3 HOLD-OVER RELIEFS](#)). For disposals on or after 18 March 2015, however, the meaning of trading company and trading group are modified as follows:

- the provisions relating to joint venture companies in *TCGA 1992, s 165A(7)(12)* do not apply (so that a company or group is not treated as carrying on a share of the activities of a joint venture company in which it has a shareholding);
- in determining whether a company which is a member of a partnership is a trading company, activities carried on by the company as a member of the partnership are treated as not being trading activities; and
- in determining whether a group of companies is a trading group, where a member of the group is a member of a partnership, activities carried on by the company as a member of the partnership are treated as not being trading activities.

For the purposes of (ii) above and (d)(ii) below, a company is not treated as ceasing to be a trading company or ceasing to be a member of a trading group where the cessation is due only to this change in the definitions.

A disposal of an interest in shares includes a deemed disposal of an interest in shares under *TCGA 1992, s 122* (capital distributions — see [62.11 SHARES AND SECURITIES](#)). '*Securities*' include debentures deemed to be securities under *TCGA 1992, s 251(6)* (see [25.5 EXEMPTIONS AND RELIEFS](#)).

Where a company has genuine doubt or difficulty as to its trading status it can seek an opinion from HMRC using the non-statutory clearance service (see [30.3 HMRC — ADMINISTRATION](#)). (HMRC Capital Gains Manual CG64100). The meanings of 'officer' and 'employee' were considered in *Hirst v HMRC FTT, [2014] UKFTT 924 (TC), 2015 STI 135*.

HMRC accept in principle that, where there has been a share exchange to which *TCGA 1992, s 127* applied, the one-year period requirement can be satisfied by reference to both the old and the new holding of shares. Both holdings must satisfy the other conditions for entrepreneurs' relief (and there must have been no election in relation to the exchange under the provisions at [24.10](#) below). (Chartered Institute of Taxation Technical Note, 27 May 2010). HMRC consider that the 5% of ordinary share capital test applies by reference to the nominal value of the shares and

not by reference to the number of shares which have been issued (Chartered Institute of Taxation Notice 13 February 2012).

- (d) A disposal of 'relevant EMI shares' on or after 6 April 2013 where the company concerned is either a trading company or the holding company of a trading group and the individual is an officer or employee of the company or, where the company is a member of a trading group, of one or more companies which are members of the group. These conditions must be satisfied throughout either:
- (i) the one-year period ending with the date of disposal; or
 - (ii) the one-year period ending with the date on which the company ceases to be a trading company without continuing to be or becoming a member of a trading group or ceases to be a member of a trading group without continuing to be or becoming a trading company. If the shares disposed of (or, where there has been a reorganisation or share exchange (see below), the original shares) were acquired after a disqualifying event within *ITEPA 2003, s 534(1)(c)* occurred in relation to the option but the option was exercised within 90 days after the event occurred (40 days for disqualifying events before 17 July 2013), the one-year period is that ending with the first day of the 90-day (or (40-day) period if that day is later than the cessation date.

Where (ii) above applies, the disposal must be made within the three-year period beginning with the date of cessation and the shares must be acquired before that date.

It is a further condition that the 'option grant date' must be on or before the first day of the one-year period ending on the date of disposal (or where (ii) above applies, the cessation date). If the shares disposed of (or, where there has been a reorganisation or share exchange, the original shares) were acquired after a disqualifying event (within *ITEPA 2003, s 533*) occurred in relation to the option but the option was exercised within 90 days after the event occurred (40 days for disqualifying events before 17 July 2013), the option grant date must be on or before the first day of the one-year period ending on the date of the disqualifying event rather than the date of disposal.

Shares are '*relevant EMI shares*' if they are acquired by an individual on or after 6 April 2013 as a result of the exercise of an enterprise management incentives qualifying option (within *ITEPA 2003, s 527(4)* — see [22.22 EMPLOYEE SHARE SCHEMES](#)) within ten years of its grant (or, where the option is a 'replacement option' (within *ITEPA 2003, Sch 5 para 41*), within ten years of the grant of the original qualifying option). Shares are excluded if a disqualifying event occurred before the exercise of the option and the option was not exercised within 90 days after the event occurred (40 days for disqualifying events before 17 July 2013).

Shares acquired in 2012/13 are also '*relevant EMI shares*' if they would have met the above definition if they had been acquired on or after 6 April 2013 and the individual makes no disposals during 2012/13 of any shares of the same class. If the individual does dispose of any other shares of the same class in 2012/13 an election can be made before 1 February 2014 to treat the shares in question as relevant EMI shares.

Shares are also '*relevant EMI shares*' if they are the new holding following a reorganisation of share capital within *TCGA 1992, s 126* (see

62.2 SHARES AND SECURITIES) or a share exchange within TCGA 1992, s 135 (see 62.5 SHARES AND SECURITIES) and the original shares were themselves relevant EMI shares. In the case of a share exchange there are additional conditions that the exchange must be a qualifying exchange of shares within ITEPA 2003, Sch 5 para 40 and that, when the exchange occurs, the EMI independence and trading requirements (within ITEPA 2003, Sch 5 paras 9, 13, 14) are met by the new company. Where shares are relevant EMI shares under this rule, the trading company/group and employee/officer conditions above must be considered at any time by reference to the company in which the individual held the shares at that time. Where (ii) above applies, the question of whether the shares were acquired before the cessation date is determined by reference to the date of acquisition of the original relevant EMI shares.

The '*option grant date*' is the date on which the qualifying option was granted or, where the option is a replacement option, the date on which the old option was granted (or, where the old option was itself a replacement option, the date on which the earlier old option was granted, and so on). During the currency of an old option the trading company/group and employee/officer conditions above must be considered by reference to the company whose shares were subject to that option.

See for special identification rules for relevant EMI shares.

Partnerships

For the purposes of the above provisions, where an individual carrying on a business enters into a partnership which is to carry on the business and, on entering into the partnership, he disposes of, or disposes of an interest in, assets used for the purposes of his business, he is treated as disposing of part of a business.

A disposal by an individual of the whole or part of his interest in the assets of a partnership is treated as a disposal by him of the whole or part of the partnership business.

At any time when a business is carried on by a partnership, the business is treated as owned by each individual who is at that time a member of the partnership.

[TCGA 1992, ss 169I, 169S(2)–(5); FA 2013, Sch 24 paras 1, 5, 6; FA 2015, s 43].

Disposal of trust business assets

[24.4]

A '*disposal of trust business assets*' is a disposal, by the trustees of a settlement, of settled property of one of the following types:

- (a) shares in, or 'securities' of, a company, or an interest in such shares or securities; or
- (b) assets or interests in assets used or previously used for the purposes of a business.

An individual (a '*qualifying beneficiary*') must, under the settlement, have an interest in possession (excluding one for a fixed term) in either the whole of the settled property or a part of it which includes the assets disposed of and the following conditions must be met.

- (i) Where the disposal is of assets within (a) above, the company must be the qualifying beneficiary's 'personal company' and be either a 'trading company' or the 'holding company' of a 'trading group', and the qualifying beneficiary must be an officer or employee of the company or, where the company is a member of a group, of one or more companies which are members of the trading group. This condition must be satisfied throughout a one-year period ending not earlier than three years before the date of the disposal.

For the meaning of 'personal company', 'trading company', 'holding company', 'trading group' and 'securities', see 24.3 above. A disposal of an interest in shares in (a) above includes a deemed disposal of an interest in shares under TCGA 1992, s 122 (capital distributions — see 62.11 SHARES AND SECURITIES).

- (ii) Where the disposal is of assets within (b) above, the assets must be used for the purposes of a business carried on by the qualifying beneficiary throughout a one-year period ending not earlier than three years before the date of the disposal, and the qualifying beneficiary must cease to carry on the business on the date of the disposal or within the three years before that date. Alternatively, the assets must be used for the purposes of a business carried on by a partnership of which the qualifying beneficiary is a member throughout a one-year period ending not earlier than three years before the date of the disposal, and the qualifying beneficiary must cease to be a member of the partnership, or the partnership must cease to carry on the business, on the date of the disposal or within the three years before that date.

[TCGA 1992, ss 169J, 169S(2)–(5)].

Disposal associated with a material disposal

[24.5]

Subject to the additional requirements below, where an individual makes a material disposal of business assets (see 24.3 above) consisting of the disposal of either all or part of his interest in the assets of a partnership or shares in or securities of a company (or an interest in such shares or securities), he makes a '*disposal associated with a material disposal*' if:

- (a) the disposal is made as part of his withdrawal from participation in the business of the partnership or company (or, where the company is a member of a trading group, the business of a member of the trading group); and
- (b) the assets which are disposed of (or the assets an interest in which are disposed of) are in use for the purposes of the business throughout the one-year period ending with the earlier of the date of the material disposal of business assets and the cessation of the business of the partnership or company.

The following further requirements apply for disposals on or after 18 March 2015.

- Where the material disposal of business assets consists of the disposal of all or part of the individual's interest in the assets of a partnership, the disposed of interest must be at least a 5% interest in the partnership's assets and there must be no 'partnership purchase arrangements' at the date of the disposal. For this purpose, '*partnership purchase arrangements*' are arrangements under which the individual or a

connected person is entitled to acquire an interest in, or an increased interest in, the partnership (including a share of its profits or assets or an interest in such a share).

- Where the material disposal of business assets consists of the disposal of shares in a company (or an interest in such shares), all or some of which are ordinary shares, the ordinary shares disposed of must constitute at least 5% of the company's ordinary share capital and at least 5% of the voting rights in the company and there must be no 'share purchase arrangements' at the date of the disposal. For this purpose, '*share purchase arrangements*' are arrangements under which the individual or a connected person is entitled to acquire shares or securities in the company or a company which is a member of the same trading group. Two companies are treated as members of the same trading group if, at the date of the disposal, arrangements exist which it is reasonable to assume will result in them becoming such members. This requirement is not met if the disposal of shares is a deemed disposal in consideration of a capital distribution within *TCGA 1992, s 122* (see [62.11 SHARES AND SECURITIES](#)) other than one made in the course of dissolving or winding up the company.
- Where the material disposal of business assets consists of the disposal of securities in a company (or an interest in such securities), the securities disposed of must constitute at least 5% of the value of the company's securities and there must be no share purchase arrangements (as above) at the date of the disposal.

For disposals on or after 18 March 2015, a disposal is not treated as part of an individual's withdrawal from participation within (a) above if there are any partnership purchase arrangements or, as appropriate, share purchase arrangements on the date of disposal.

'*Arrangements*' include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable). A person is treated as entitled to acquire anything which he is entitled to acquire at a future date or will at a future date be entitled to acquire. The assets of a Scottish partnership or a non-UK partnership the assets of which are regarded as held by the partnership as such are treated as held by the partners in the proportions in which they are entitled to share in the profits.

[*TCGA 1992, s 169K; FA 2015, s 41*].

HMRC consider that it is not necessary that the individual reduce the amount of work that he does for the partnership or company; only that the disposal be related to the required reduction of his interest in the partnership or holding of shares in the company.

As the disposal must be associated with the material disposal, HMRC consider that there should normally be no significant interval between the disposals. They accept, however, that this will not always be the case, particularly where the business of the partnership or company ceases. They will therefore accept that a disposal of an asset is associated with the material disposal if it takes place:

- within one year of the cessation of a business;
- within three years of the cessation of a business if the asset has not been leased or used for any other purpose at any time after the business ceased; or

- where the business has not ceased, within three years of the material disposal provided the asset has not been used for any purpose other than that of the business.

Where these conditions are not met, the disposal will be considered on its particular facts. If the asset has been used for any other purpose for a significant period it is unlikely that HMRC will accept that the conditions for relief are satisfied.

(HMRC Capital Gains Manual CG63995).

CLAIMS FOR RELIEF

[24.6]

Entrepreneurs' relief must be claimed on or before the first anniversary of the 31 January following the tax year in which the qualifying business disposal is made. In the case of a disposal of trust business assets (see 24.4 above), the claim must be made jointly by the trustees and the qualifying beneficiary. [TCGA 1992, s 169M(1)–(3)]. Where the taxpayer is temporarily non-resident or claims the remittance basis, so that it is not immediately clear whether or not a chargeable gain will arise in respect of the qualifying business disposal, a protective claim can be made within the time limit (Chartered Institute of Taxation Notice 13 February 2012).

ASSETS QUALIFYING FOR RELIEF

[24.6A]

Except where the qualifying business disposal is of shares or securities or an interest in shares or securities, entrepreneurs' relief is given only in respect of the disposal of the following assets, or of interests in the following assets, comprised in a qualifying business disposal.

- (a) In the case of a material disposal of business assets (see 24.3 above); assets used for the purposes of a business carried on by the individual or a partnership of which the individual is a member.
- (b) In the case of a disposal of trust business assets (see 24.4 above); assets used for the purposes of a business carried on by the qualifying beneficiary or a partnership of which he is a member.
- (c) In the case of a disposal associated with a material disposal (see 24.5 above); assets used for the purposes of a business carried on by the partnership or company.

Shares and securities, and other assets held as investments, are excluded from (a)–(c) above.

Goodwill is included in the assets within (a)–(c) above except where, for disposals on or after 3 December 2014, a person (P) disposes of goodwill to a close company (or a non-UK resident company which would be a close company if it were UK-resident) of which P is then a 'related party'. The exclusion does not, however, apply if P is a 'retiring partner'.

The exclusion of goodwill from (a)–(c) above also applies to a disposal of goodwill on or after 3 December 2014 if the person making the disposal is a party to arrangements one of the main purposes of which is to secure that the above exclusion does not apply to the goodwill or that the person is not a related party (for whatever purposes) of the company to which the goodwill is directly or indirectly transferred.

For these purposes, '*related party*' is defined as at [44.2 MARKET VALUE](#). P is a 'retiring partner' if the goodwill is in a business carried on immediately before the disposal by a partnership of which P was a member and at the time of the disposal:

- P is not, and no arrangements exist under which P could become, a participator in the company or in a company which controls or holds a major interest in the company (a '*relevant participator*');
- P is a related party of the company because P is an associate of one or more relevant participators; and
- P is only an associate of each of those participators because they are a member of the partnership.

'*Arrangements*' include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable). '*Associate*', '*control*', '*major interest*' and '*participator*' are as defined at *CTA 2009*, ss 836, 837 and 841.

[TCGA 1992, ss 169L, 169LA; FA 2015, s 42].

AMOUNT OF RELIEF

Basic computation

[24.7]

Where a qualifying business disposal is made on or after 23 June 2010, then subject to the application of the lifetime limit and the restrictions on relief at [24.8](#) below, the amount to which entrepreneurs' relief applies is computed by deducting the aggregate '*relevant losses*' from the aggregate '*relevant gains*'. If the resulting amount is positive it is then treated as a single chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim is made, chargeable at a rate of **10%**. The relevant gains and losses taken into account in computing the relief are treated as not themselves being chargeable gains or allowable losses.

For this purpose, '*relevant gains*' are, where the qualifying business disposal is of shares or securities or of interests in shares or securities, the gains on the disposal (computed under normal capital gains tax principles). In any other case, the relevant gains are the gains on the disposal of any assets qualifying for relief (as above) comprised in the qualifying business disposal (again, computed under normal capital gains tax principles). '*Relevant losses*' are losses made in circumstances in which a gain would be a relevant gain, computed under normal capital gains tax principles on the assumption that notice has been given under *TCGA 1992*, s 16(2A) (notification of capital loss — see [43.4 LOSSES](#)) in respect of them.

Disposals before 23 June 2010

For qualifying business disposals made before 23 June 2010, entrepreneurs' relief operated slightly differently. The amount to which relief applied was calculated as above for disposals on or after 23 June 2010 and relief applied subject to the application of the lifetime limit and the restrictions on relief at [24.8](#) below. Where the amount resulting after the deduction of relevant losses from relevant gains was positive, it was reduced by 4/9ths.

The reduced amount was then treated as a chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim was made.

This means that the net gains were effectively charged to capital gains tax at a rate of 10% ($5/9 \times 18\% = 10\%$).

Application of lifetime limit

Entrepreneurs' relief is subject to a lifetime limit of £10 million (£5 million for disposals before 6 April 2011; £2 million for disposals before 23 June 2010; £1 million for disposals before 6 April 2010), which applies as follows.

The amount to which relief would otherwise apply in respect of a qualifying business disposal is added to any amounts to which relief applied in respect of earlier qualifying business disposals. Where the total exceeds the limit, only so much (if any) of the amount to which relief would otherwise apply in respect of the current disposal as, together with the earlier amounts, does not exceed the limit qualifies for the 10% rate or 4/9ths reduction. Any part of the deemed gain excluded by the application of this rule is chargeable at the normal rates of CGT.

Where one of the previous lower lifetime limits was exceeded on disposals made before the increases, no further relief can be obtained for those disposals following the increases. Relief can, however, be obtained for qualifying business disposals on or after the dates of increase up to the appropriate new limit.

The earlier qualifying business disposals to be taken into account are:

- where the current qualifying business disposal is made by an individual, earlier qualifying business disposals made by him and earlier disposals of trust business assets (see [24.4](#) above) in respect of which he is the qualifying beneficiary; and
- where the current qualifying business disposal is a disposal of trust business assets in respect of which an individual is the qualifying beneficiary, earlier disposals of trust business assets in respect of which that individual is the qualifying beneficiary and earlier qualifying business disposals made by that individual.

Where there is a disposal of trust business assets in respect of which an individual is the qualifying beneficiary and a qualifying business disposal by that individual on the same day, then, in applying the lifetime limit, the disposal of trust business assets is treated as the later event.

Disposals before 6 April 2008 do not affect the lifetime limit except in the case of deferred gains on which entrepreneurs' relief is claimed under the transitional rules at [24.9A](#), [24.10](#) below.

[TCGA 1992, ss 169M(4), 169N; FA 2011, s 9].

HMRC consider that, under self-assessment, it is the taxpayer's responsibility to keep records of entrepreneurs' relief claims to enable the application of the lifetime limit (HMRC Capital Gains Manual CG63960). Where entrepreneurs' relief is claimed by a remittance basis user, it is HMRC's view that the lifetime limit to apply in respect of remittance basis gains is the limit in force when the gains arise (Chartered Institute of Taxation Notice 13 February 2012).

Example 1

In May 2015, Mr Henry sells his business, Joe's Toys, which he has owned since 1998, to an unrelated party, realising the following chargeable gains and allowable loss.

	Gain/(loss)
	£
Goodwill	700,000

Freehold shop 1	200,000
Freehold shop 2	200,000
Freehold shop 3	(150,000)

Mr Henry claims entrepreneurs' relief in respect of the sale of the business. He has made no previous claim to entrepreneurs' relief. He makes no other disposals in 2015/16.

Mr Henry's capital gains tax liability for 2015/16 is calculated as follows.

	£
Gains qualifying for entrepreneurs' relief	
Goodwill	700,000
Freehold shop 1	200,000
Freehold shop 2	<u>200,000</u>
	1,100,000
Less Loss on freehold shop 3	<u>150,000</u>
Deemed chargeable gain qualifying for entrepreneurs' relief	950,000
Annual exemption	<u>11,100</u>
Gain chargeable to tax	£938,900
Capital gains tax payable ($£938,900 \times 10\%$)	<u>£93,890</u>

Example 2

In August 2015 Mr Robertson sells his entire shareholding in Robbie Ltd, realising a gain of £10,050,000, which qualifies for entrepreneurs' relief. Mr Robertson makes no other disposals in 2015/16 and has made no previous disposals qualifying for entrepreneurs' relief. He is an additional rate income tax payer for 2015/16.

Mr Robertson's capital gains tax liability for 2015/16 is calculated as follows.

	£
Deemed chargeable gain qualifying for entrepreneurs' relief (subject to lifetime limit £10,000,000)	10,050,000
Annual exemption	<u>11,100</u>
Gain chargeable to tax	£10,038,900
Capital gains tax payable	
$£10,000,000 \times 10\%$	1,000,000
$£38,900 \times 28\%$	10,892
	<u>£1,010,892</u>

Note to the example

- (a) The annual exemption of £11,100 is allocated against the part of the gain chargeable to tax at 28% as this gives the greater tax saving.

Example 3

In May 2015, Mr Helm sells his entire shareholding in Levon Ltd for £400,000. He had acquired the shares in March 2001 for £150,000 and has been a director of the company since that time. Levon Ltd is a trading company and qualifies as Mr Helm's personal company. He makes no other disposals in 2015/16 and has made no previous claims to entrepreneurs' relief. He claims entrepreneurs' relief in respect of the gain on the shares.

Mr Helm's capital gains tax liability for 2015/16 is calculated as follows.

	£
Sale proceeds	400,000
Cost	<u>150,000</u>
Chargeable gain qualifying for entrepreneurs' relief	250,000
Annual exemption	<u>11,100</u>
Gain chargeable to tax	£238,900
Capital gains tax payable ($£238,900 \times 10\%$)	<u>£23,890</u>

Following the disposal of his shares in Levon Ltd, Mr Helm buys a 25% shareholding in Amy Ltd, another trading company, for £200,000, and starts work as a director of the company. He continues as a director of the company until May 2019 when he sells his entire shareholding for £10,100,000. He claims entrepreneurs' relief in respect of the disposal. He makes no other disposals in 2019/20, but pays income tax at the additional rate. It is assumed for the purpose of this example only that the annual exemption for 2019/20 is £12,000 and the rates of tax remain as for 2015/16.

Mr Helm's capital gains tax liability for 2019/20 is calculated as follows.

	£
Sale proceeds	10,100,000
Cost	<u>200,000</u>
Chargeable gain qualifying for entrepreneurs' relief (subject to lifetime limit £10,000,000)	9,900,000
Annual exemption	<u>12,000</u>
Gain chargeable to tax	£9,888,000
Capital gains tax payable	
£9,750,000 \times 10%	975,000
£138,000 \times 28%	38,640
	<u>£1,013,640</u>

Notes to the example

- (a) The lifetime limit applies to restrict the amount of the gain in 2019/20 which qualifies for entrepreneurs' relief as follows. Of the limit of £10,000,000, £250,000 was used in 2015/16 leaving (£10,000,000 –

£250,000 =) £9,750,000 unused. As the otherwise qualifying gain for 2019/20 is greater than the unused part of the limit, entrepreneurs' relief is restricted so that the 10% rate applies to £9,750,000.

- (b) The annual exemption of £12,000 is allocated against the part of the gain chargeable to tax at 28% as this gives the greater tax saving.

Example 4

If, in *Example 3*, Mr Helm's initial gain had been in May 2010 and had been, say, £2,500,000, his entrepreneurs' relief would have been restricted to the then lifetime limit of £2 million. Following the increases in the lifetime limit to £5 million with effect for disposals on or after 23 June 2010 and to £10 million for disposals on or after 6 April 2011, no further relief would have been due in respect of the 2010/11 gain. On the disposal in 2019/20, however, his unused lifetime limit would be £8 million (i.e. the new limit of £10 million less the £2 million in respect of which relief had previously been given).

Restriction on relief for certain trust disposals

[24.8]

Entrepreneurs' relief is restricted where, on a disposal of trust business assets (see [24.4](#) above), there is, in addition to the qualifying beneficiary, at least one other beneficiary who, at the 'material time', has an interest in possession in either the whole of the settled property or a part of it which includes the assets, or interests in the assets, disposed of.

In such circumstances, relief applies only to a proportion of the amount to which it would otherwise apply. The remainder of that amount is treated as a chargeable gain (with no 4/9ths reduction where otherwise applicable) to which the normal rate of CGT applies. The proportion is the same as the proportion which, at the material time, the qualifying beneficiary's interest in the income of the part of the settled property comprising the assets, or interests in the assets, disposed of bears to the interests in that income of all the beneficiaries, including the qualifying beneficiary, who then have interests in possession in that part of the settled property.

For this purpose, the '*material time*' is the end of the latest one-year period ending not earlier than three years before the date of the disposal throughout which:

- in the case of a disposal of shares or securities or interests in shares or securities, the condition at [24.4\(i\)](#) above is satisfied; or
- in the case of a disposal of assets, or interests in assets, used or previously used for the purposes of a business, the business is carried on by the qualifying beneficiary.

In calculating the proportion above, only the interest by virtue of which the qualifying beneficiary is the qualifying beneficiary is taken into account in calculating his interest in the income of the part of the settled property concerned (and not any other interest he may have).

[TCGA 1992, s 169O].

Restriction on relief for certain associated disposals

[24.9]

Entrepreneurs' relief is also restricted in the case of a disposal associated with a material disposal (see [24.5](#) above) where:

- (a) the assets which are disposed of (or interests in which are disposed of) are in use for the purposes of the business only for part of the period in which they are owned by the individual;
- (b) only part of those assets are in use for the purposes of the business for that period;
- (c) the individual is concerned in the carrying on of the business (personally, in partnership or as an officer or employee of his personal company) for only part of the period in which the assets are in use for the purposes of the business; or
- (d) for any part of the period for which the assets are in use for the purposes of the business, their availability is dependent on the payment of rent (which term includes any form of consideration given for the use of an asset). Any part of the period falling before 6 April 2008 is ignored for this purpose.

Where any of the above apply, relief applies only to such part of the amount to which entrepreneurs' relief would otherwise apply as is just and reasonable. The remainder of that amount is treated as a chargeable gain (with no 4/9ths reduction where appropriate) to which the normal CGT rates apply. In applying the 'just and reasonable' test, regard is to be had to the following:

- (i) where (a) above applies, the length of the period for which the assets are in use for the purposes of the business;
- (ii) where (b) above applies, the part of the assets that are in use for the purposes of the business;
- (iii) where (c) above applies, the length of the period for which the individual is concerned in the carrying on of the business; and
- (iv) where (d) above applies, the extent to which the rent paid is less than the rent which would be payable in the open market.

[TCGA 1992, ss 169P, 169S(5)].

DEFERRED GAINS

[24.9A]

Where a chargeable gain (the '*first eventual gain*') arises as result of a chargeable event under either of the [ENTERPRISE INVESTMENT SCHEME \(23.14\)](#) or [SOCIAL INVESTMENT RELIEF \(64.42\)](#) deferral reliefs, the gain will qualify for entrepreneurs' relief if:

- (a) the original disposal took place on or after 3 December 2014;
- (b) the original gain would, but for its deferral, have arisen from a material disposal of business assets (within [24.3](#) above) or a disposal associated with such a disposal (within [24.5](#) above); and
- (c) the first eventual gain is the first gain brought into charge in respect of the deferred original gain (so that if a previous chargeable event had resulted in a gain in respect of part of the original gain becoming chargeable and no claim to entrepreneurs' relief was made, no such claim may be made on a subsequent chargeable event).

Where a gain has been deferred more than once, the conditions in (a) and (b) above must be satisfied by the first gain to be deferred. For the purposes of (b) above, whether a disposal would have been a material disposal of business assets or a

disposal associated with such a disposal is determined according to the law applicable at the time of that disposal.

A claim for relief must be made on or before the first anniversary of 31 January following the tax year in which the first eventual gain arises. Where such a claim is made, the first eventual gain is treated as if it were an amount resulting from a basic computation within [24.7](#) above in respect of a qualifying business disposal made when that gain arose. The gain is then ignored for any other chargeable gains purposes. If the first eventual gain does not represent the whole of the deferred gain, any remaining part of the gain brought into charge on a subsequent chargeable event is treated in the same way (but the qualifying business disposal is treated as occurring at the time of the later gain). No further claim is required.

If the disposal in (b) above would have been a disposal associated with a material disposal, the relief for the deemed qualifying business disposal is subject to the restriction in [24.9](#) above (applied by reference to the disposal in (b) above).

[TCGA 1992, ss 169T–169V; FA 2015, s 44].

Before the above provisions took effect (but only for disposals on or after 23 June 2010), where a disposal would potentially qualify for both entrepreneurs' relief and a deferral relief the taxpayer had to choose between the reliefs. He would either pay tax immediately on the gain at 10% if he chose entrepreneurs' relief or would defer the gain and paying tax at 18% or 28% when it came back into charge. Where a gain exceeded the lifetime limit for entrepreneurs' relief it was possible to claim entrepreneurs' relief on the gain up to the limit and to defer the gain above the limit. (Treasury Explanatory Notes to the 2010 Finance Bill). For disposals before 23 June 2010 it was possible to claim entrepreneurs' relief and then defer the gain as reduced by 4/9ths.

Transitional relief for enterprise investment scheme and venture capital trust deferral reliefs

Entrepreneurs' relief can be claimed where a chargeable gain (the '*original gain*') which would have accrued before the introduction of entrepreneurs' relief (i.e. before 6 April 2008) has been deferred under either the enterprise investment scheme (see [23.14 ENTERPRISE INVESTMENT SCHEME](#)) or venture capital trusts scheme (see [70.12 VENTURE CAPITAL TRUSTS](#)) and there is a chargeable event on or after that date in relation to any of the 'relevant shares' still held by the original investor immediately before the first such chargeable event. For this purpose, the '*relevant shares*' are the shares acquired in making the investment by virtue of which EIS or VCT deferral relief applies to the original gain and, in a case where the original gain accrued at a time after the making of the investment, still held at that time.

For entrepreneurs' relief to apply in such circumstances, the 'relevant disposal' must have been such that, had the provisions of this chapter then applied, it would have been a material disposal of business assets (see [24.3](#) above). The '*relevant disposal*' is normally the disposal on which the original gain would have accrued but for the deferral. Where, however, the original gain itself arose on the occurrence of a chargeable event under the EIS or VCT deferral provisions or to give effect to a withdrawal under *TCGA 1992, s 164F* or *s 164FA* of general reinvestment relief (see [25.85 EXEMPTIONS AND RELIEFS](#)), the relevant disposal is the disposal (not being a deemed disposal on the occurrence of a chargeable event) by virtue of which the deferral provisions first had effect.

Where entrepreneurs' relief is claimed, the amount treated under the EIS or VCT deferral relief provisions as accruing on the chargeable event in respect of the original gain is the amount that would be arrived at under the rules at [24.7](#) above if

the chargeable event were a qualifying business disposal and the amount to which relief applies were the proportion of the postponed gain equal to the proportion of the relevant shares held by the investor immediately before the first chargeable event on or after 6 April 2008. Where the chargeable event in question is a chargeable event in relation only to a proportion of the relevant shares held by the investor immediately before the first chargeable event on or after 6 April 2008, however, only a corresponding proportion of that amount is taken to be the amount accruing under the deferral provisions.

A claim for entrepreneurs' relief to apply in the above circumstances must be made on or before the first anniversary of the 31 January following the tax year in which the first chargeable event on or after 6 April 2008 occurs.

[FA 2008, Sch 3 para 8].

REORGANISATIONS

[24.10]

Where a reorganisation of share capital (within *TCGA 1992, s 126* — see [62.2 SHARES AND SECURITIES](#)) takes place and *TCGA 1992, s 127* would otherwise apply to treat the 'original shares' and the 'new holding' (as defined for the purposes of that section — see [62.2 SHARES AND SECURITIES](#)) as the same asset, an election can be made to disapply that section so that entrepreneurs' relief can be claimed in respect of the disposal of the original shares. (Note that the disapplication of *s 127* takes effect only where a claim to entrepreneurs' relief is made; without such a claim, the election has no effect.)

The election must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation takes place (which date is also the time limit for making the claim for relief — see [24.6](#) above). If the reorganisation would, if treated as a disposal, involve a disposal of trust business assets (see [24.4](#) above), the election must be made jointly by the trustees and the qualifying beneficiary.

The above provision applies also to exchanges of securities within *TCGA 1992, s 135* (see [62.5 SHARES AND SECURITIES](#)) and to schemes of reconstruction within *TCGA 1992, s 136* (see [62.7 SHARES AND SECURITIES](#)) to which *TCGA 1992, s 127* applies.

[*TCGA 1992, s 169Q*].

Reorganisations involving acquisition of qualifying corporate bonds

Where there is a reorganisation of share capital involving the acquisition of qualifying corporate bonds and the calculation required as a result by *TCGA 1992, s 116(10)(a)* produces a (deferred) chargeable gain for an individual (see [53.4\(a\) QUALIFYING CORPORATE BONDS](#)), the provisions of this chapter apply as follows.

Reorganisations on or after 23 June 2010

An election can be made so that a claim for entrepreneurs' relief can in turn be made on the basis that the reorganisation involved a disposal of the 'old asset'. Where such a claim is made, *TCGA 1992, s 116(10)* is disapplied so that a gain on the old asset will arise at the time of the reorganisation and can qualify for entrepreneurs' relief (if all the conditions are satisfied).

The election must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation takes place (which date is also the time limit for making the claim for relief — see [24.6](#) above). If the reorganisation

would, if treated as a disposal, involve a disposal of trust business assets (see [24.4](#) above), the election must be made jointly by the trustees and the qualifying beneficiary.

If no election is made and the gain on the old asset is therefore deferred, it is likely that in almost all cases the gain will not qualify for entrepreneurs' relief when it comes into charge at a later date.

Reorganisations before 23 June 2010

The entrepreneurs' relief provisions apply as if the reorganisation were a disposal by the individual of business assets consisting of the 'old asset'.

Where the deemed disposal would be a material disposal of business assets (see [24.3](#) above) and entrepreneurs' relief is claimed, the amount to which the relief applies is the chargeable gain calculated under *TCGA 1992, s 116(10)(a)*. On subsequent disposal of the whole or part of the 'new asset', that gain as reduced by entrepreneurs' relief (i.e. reduced, subject to the lifetime limit, by 4/9ths), or a corresponding part of it, is deemed to accrue to the individual under *TCGA 1992, s 116(10)(b)* (see [53.4\(b\) QUALIFYING CORPORATE BONDS](#)).

This treatment applies without the need for an election.

The effect of these provisions is that, where the disposal of the new asset takes place on or after 23 June 2010, the deferred gain will be chargeable at an effective rate of 15.55% ($5/9 \times 28\%$) where the 28% rate of CGT applies.

Definitions

'Old asset' and 'new asset' are defined for this purpose as at [53.4 QUALIFYING CORPORATE BONDS](#).

[*TCGA 1992, s 169R*].

Transitional relief for reorganisations involving acquisition of qualifying corporate bonds before 6 April 2008

Relief can be available where a chargeable gain is deemed to accrue to an individual on a disposal after the introduction of entrepreneurs' relief (i.e. on or after 6 April 2008) (a 'relevant disposal') under *TCGA 1992, s 116(10)(b)* (see [53.4\(b\) QUALIFYING CORPORATE BONDS](#)) by reason of a reorganisation to which that individual was a party and which took place before that date. In such circumstances, entrepreneurs' relief can be claimed (provided that the other conditions are satisfied) as if the reorganisation were a disposal of the 'old asset' by the individual, even though the deemed disposal was made before 6 April 2008.

The amount to which entrepreneurs' relief applies is (subject to the lifetime limit (see [24.6](#) above)) the amount of the deferred chargeable gain calculated under *TCGA 1992, s 116(10)(a)* (see [53.4\(a\) QUALIFYING CORPORATE BONDS](#)) less any part of it deemed to accrue before 6 April 2008. For gains deemed to accrue on a relevant disposal under *TCGA 1992, s 116(10)(b)* before 23 June 2010, the deemed gain is therefore that amount reduced by 4/9ths. If, however, the relevant disposal is not a disposal of the whole of the 'new asset' (or, where applicable, of that part of the new asset which was not disposed of before 6 April 2008), the deemed gain is only a proportion of the amount equivalent to the proportion of the new asset (or of so much of the new asset as was not disposed of before 6 April 2008) disposed of on the relevant disposal.

'Old asset' and 'new asset' are defined for this purpose as at [53.4 QUALIFYING CORPORATE BONDS](#).

Where the above provisions apply, a claim must be made on or before the first anniversary of the 31 January following the tax year in which the first disposal on or after 6 April 2008 of the whole or part of the new asset is made.

[FA 2008, Sch 3 para 7].

KEY POINTS

[24.12]

Points to consider are as follows.

- Entrepreneurs' relief was introduced as a replacement for business asset taper relief but with limited application in terms of the amount of relief available and the assets to which it relates. The rules are partly based on those for retirement relief which ceased in 2003.
- Entrepreneur's relief is subject to a lifetime limit so it is necessary to obtain details of any previous qualifying disposals since its introduction in 2008/09. The lifetime limit has also changed three times since its introduction. The current limit is £10 million for disposals after 5 April 2011. Qualifying gains are taxed at 10%.
- The relief is aimed at gains arising on the disposal of a business (or part of a business) and can include gains arising on the disposal of shares in an individual's personal company (broadly a trading company where the individual owns at least 5%) and shares acquired under the enterprise management incentive scheme. The relief can be available to trustees in certain circumstances.
- Capital gains tax planning predominantly centres on maintaining this valuable relief. However, it is complex and easy to fall foul of the various conditions. Some common areas to watch:
 - Giving shares to a spouse or civil partner. This can originally occur for a number of reasons such as to utilise their basic rate bands. However, it is worth ensuring the spouse meets the requirements to potentially qualify for entrepreneur's relief in their own right. For example, sufficient length of ownership (12 months), qualifies as personal company (5%) and officer or employee (role of company secretary often popular).
 - Commercial property owned outside the company, e.g. business premises. When commercial property is owned outside a company it can still qualify for entrepreneurs' relief as an associated disposal (in relation to a material disposal) provided the asset was used for business purposes for the relevant period. However relief is restricted where rent is paid. This can create problems especially where the purchase of the property has been funded by a mortgage (the individual needs to fund the loan repayments). It may therefore be worth comparing individual ownership to corporate ownership and or, where possible, ownership by a self invested pension plan (SIPP).
 - Does the company/group qualify as 'trading'? If investment activity is significant can the position be improved with corporate restructuring?
 - Business property relief for IHT. Although a disposal may potentially qualify for entrepreneurs' relief, is it advantageous and possible for

the taxpayer to retain assets qualifying for BPR as on death there may be no charge to IHT and uplift to market value for capital gains tax?

- Is the sale 'part of a business' or merely a disposal of business assets? The relief applies to the disposal of part of a business but not assets unless trading has ceased. HMRC believe the 'part' sold should be separately identifiable in its own right. This is a complex area giving rise to case law such as *M Gilbert v HMRC FTT [2011] UKFTT 705 (TC)*.
- Shares and securities can qualify for entrepreneurs' relief even though they don't count towards the 'personal company' requirement. For example, non-voting shares can qualify provided the individual meets the 'personal company' condition via other shares they hold.
- A shareholder can in theory make several disposals of shares over a number of years in the same company and claim entrepreneurs' relief on all gains provided they can meet the personal company, trading, ownership period and employment tests.

The relief needs to be claimed — it is not automatic.

- Although specific circumstances are required, pension tax planning and entrepreneurs relief can be used successfully together. For example, a company makes a £50,000 contribution to a SIPP. The company obtains tax relief on the contribution. The individual sells shares to the SIPP for their market value of £50,000. The individual realises a capital gain (assume no base cost) against which he can use his 2015/16 annual exemption of £11,100 and the remaining gain (assuming meet qualifying conditions) is taxed at 10% = £3,890. Cash has therefore been extracted at a low tax rate while obtaining corporation tax relief and the shares remain effectively under the same control.

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