

Revised entrepreneur relief (S.597AA)

Part 19-06-02b

This document should be read together with section 597AA
of the Taxes Consolidation Act 1997

Document last reviewed August 2023



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Introduction

Section 597AA (inserted by Finance Act 2015) of the Taxes Consolidation Act 1997 (“TCA 1997”) introduced a revised relief for entrepreneurs disposing of certain business assets. It provided that a 20% rate of Capital Gains Tax (“CGT”) applied in respect of a chargeable gain or chargeable gains on a disposal or disposals of qualifying business assets on or after 1 January 2016 up to a lifetime limit of €1m. The 20% rate was reduced to 10% by **section 26 Finance Act 2016** in the case of disposals made on or after 1 January 2017. A qualifying business is a business other than the holding of securities or other assets as investments, the holding of development land or the development or letting of land. The relief applies to individuals only.

2b.1 Qualifying business assets

The qualifying business assets must have been owned by that individual for a continuous period of 3 years in the 5 years immediately prior to the disposal of those assets. Periods of ownership by spouses cannot be aggregated for the purpose of the 3-year continuous ownership condition. Neither can periods of ownership of assets before and after incorporation of a business (e.g., periods of ownership of assets of a business carried on by a sole trader or partners in a partnership and shares in a company that carries on the business previously carried on by the sole trader or partnership). The requirement for an individual to have owned a holding of at least 5% of the ordinary share capital for a continuous period of 3 years in the 5 years immediately prior to the disposal was amended by **section 24 Finance Act 2020**, so that the shares can qualify for relief if they were held for a continuous period of 3 years **at any time** prior to the disposal of those shares. The amendment applies to disposals of chargeable business assets made on or after 1 January 2021.

2b.2 Non-qualifying business assets

The relief does not apply to the following assets:

- (i) shares, securities or other assets held as investments
- (ii) development land
- (iii) assets on the disposal of which no chargeable gain would arise
- (iv) assets personally owned outside a company, even where such assets are used by the company
- (v) goodwill which is disposed of to a connected company
- (vi) shares or securities in a company where the individual remains connected with the company following the disposal

2b.3 Connected company restrictions

Where an individual enters into arrangements to secure that they are not connected with a company for the purpose of the connected company restrictions at (v) and (vi) above, relief is not available. In addition, goodwill, shares or securities mentioned in (v) and (vi) will not be excluded from the definition of 'chargeable business assets' where a disposal of such assets is made for bona fide commercial reasons and does not form part of a tax avoidance arrangement.

2b.4 Shareholding requirements

Where a business is carried on by a company, individuals seeking to qualify for the relief must own not less than 5% of the ordinary shares in the qualifying company or 5% of the ordinary shares in a holding company of a qualifying group. A holding company means a company whose business consists wholly or mainly of the holding of shares of all companies which are its 51% subsidiaries. A qualifying group means a group where the business of each 51% subsidiary (other than a holding company) consists wholly or mainly of carrying on a qualifying business. This means that relief would not apply where there is a dormant company in a group or where one of the subsidiaries is not a trading company.

In determining whether an individual meets the minimum shareholding requirement for the purposes of relief under **section 597AA TCA 1997**, it can be accepted that it is the nominal value of the ordinary shares issued rather than the number of such shares that is relevant.

2b.5 Director or employee condition

The individual must have been a director or employee of the qualifying company (or companies in a qualifying group) who is or was required to spend not less than 50% of his or her time in the service of the company or companies in a managerial or technical capacity and has served in that capacity for a continuous period of 3 years in the 5 years immediately prior to the disposal of the chargeable business assets.

2b.6 S586 and S587 and revised entrepreneur relief

Any period during which an individual owned shares in, or was a director or employee of, a company that qualified for relief under **section 586 or 587 TCA 1997** will be taken into account for the purpose of the 3-year continuous ownership requirement and for the purpose of determining whether an individual was a director or employee of a company for the relevant period.

2b.7 Entrepreneur relief and revised entrepreneur relief

The revised relief in **section 597AA TCA 1997** supersedes the relief in **section 597A TCA 1997**, which was the relief that applied before the introduction of the revised relief in Finance Act 2015, as regards disposals made on or after 1 January 2016. However, relief under **section 597A TCA 1997** will apply where the amount of relief available under that section would be greater than the amount of relief available under **section 597AA TCA 1997**.

2b.8 Situations where the relief can apply

Subject to the conditions attaching to the relief being met, the relief can apply in the following situations:

Share buybacks

Relief can apply where the share buyback is within the charge to CGT.

Company liquidations

Relief can apply on the liquidation of a company, provided the company was carrying on a qualifying business up to the time the liquidator was appointed, and the liquidation was completed within a reasonable period of time. For this purpose, Revenue will regard a period of 2 years as being reasonable.

Double holding company structures

Relief can apply in a double holding company structure where a holding company holds another holding company which, in turn, holds a trading company. In this regard, **section 9(1)(a) TCA 1997**, which provides that a company shall be a 51 per cent subsidiary of another company if more than 50% of the ordinary share capital of that company is owned directly or indirectly by another company, applies.

Partnership assets

Relief can apply to the interest of an individual in the assets of a partnership in which he or she is a partner, where those assets were used for the purposes of a qualifying business carried on by the partnership and the individual was actively involved in the business.

2b.9 Transfer a business to a company restriction

Relief may be restricted where an individual transfers a business to a company pursuant to **section 600 TCA 1997**. Relief will not be available in respect of the proportion of the gain which relates to non-share consideration received out of the assets of the company in respect of the disposal. However, the restriction does not apply in relation to bona fide commercial disposals which do not form part of a tax avoidance arrangement.