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ENTREPRENEURS' RELIEF

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1. Entrepreneurs' Relief (**ER**) was introduced in FA 2008 with effect from 6 April 2008. Although initially of limited value[1] successive extensions to the scope of the relief to £10 million of gains and a corresponding increase in the rate of CGT have made it a valuable and important relief.

2. This is perhaps exemplified in the changes introduced in Finance Act 2015, where under the guise of preventing abuse, the scope of the relief has been substantially reduced. In the following I consider the relief as it now applies and look at some of the cases which have made it to Tribunal.

THE RELIEF IN OUTLINE

3. ER applies in different ways to disposals by individuals and disposals by trustees. In addition it covers disposals of the whole or part of sole trader business or of a partnership as well as the disposal of shares in a company.

4. The business in question will have to qualify as a trade if carried on by a company, but otherwise need only be a business (albeit that assets held as investments will not qualify for relief).

5. To qualify for ER there must be either (i) a material disposal of business assets (section 169I TCGA 1992) (ii) a material disposal of trust business assets (section 169J TCGA 1992) or (iii) a disposal associated with a relevant material disposal (section 169K TCGA 1992).

6. The relief is also extended to certain assets which were used in a business which has ceased.

7. The relief operates by reducing the charge on a gain to 10% but is only available as to £10 million of qualifying gains in a person's lifetime.

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[1] The original terms of the relief were an effective 10% rate of tax on £1 million of gains in a person's lifetime at a time when the rate of CGT was 18% rate: a maximum tax saving of £80,000.

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MATERIAL DISPOSAL OF BUSINESS ASSETS: SHARES IN A TRADING COMPANY

8. A disposal of shares or securities in a company by an individual will qualify for relief if for the period of 1 year prior to the disposal:

8.1 it is the individual's personal company;

8.2 it is either:

8.2.1 a trading company; or

8.2.2 the holding company of a trading group;

("the trading condition")

8.3 the individual is either:

8.3.1 an officer or employee of the company; or

8.3.2 an officer or employee of one or more companies which are members of the trading group.

("the officer or employee condition").

The trading condition

9. Finance Act 2015 has introduced amendments which materially restrict the circumstances in which shares in a company will qualify for the relief.

10. A **trade** is defined in section 165A(14) TCGA 1992:

> *"trade" means (subject to section 241(3)) anything which-*
>
> *(a) is a trade, profession or vocation, within the meaning of the Income Tax Acts, and*
>
> *(b) is conducted on a commercial basis and with a view to the realisation of profits.*

11. A **trading company** is defined in section 165A(3) TCGA 1992:

> *"Trading company" means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities.*

12. A **trading group** is defined in section 165A(8) TCGA 1992:

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> *"(8) "Trading group" means a group of companies-*
>
> *(a) one or more of whose members carry on trading activities, and*
>
> *(b) the activities of whose members, taken together, do not include to a substantial extent activities other than trading activities".*

13. HMRC generally take a substantial extent to mean more than 20% (CGT Manual 64090) by reference to factors such as income from non-trading activities; the asset base of the company; expenses incurred, or time spent, by officers and employees of the company in undertaking its activities; and the company's history. Each of the factors should be balanced and a view taken in the round: see *Farmer and anor v IRC* [1999] STC (SCD) 321, and individual factors concerning the business may of particular relevance

14. HMRC accept that accept that an activity is carried on in the course of, or for the purposes of, a trade if it is carried on in the process of conducting or preparing to carry on the trade (CGT Manual 64060).

15. As a result the purpose for which assets are acquired can be relevant to whether they form part of trading or investment activities. For example, land can be acquired (i) for development (trading) (ii) with a view to becoming part of the premises of the trade (trading) or (iii) to secure a future rental income (investment). Similarly, short terms investments may be closely linked with future trading activities e.g. where they are to be used for trade purposes in the future.

16. Difficulties can arise where assets are acquired with a trading purpose but due to extraneous matters – for example a change in trading conditions - that purpose is no longer relevant.

Structures with more than one company

17. A **group of companies** is defined in section 165A(14) TCGA 1992:

> *"group of companies" means a company which has one or more 51% subsidiaries together with those subsidiaries*

18. This is likely to be of increasing importance in the future, as the rules which brought in trades of joint venture companies and partnerships have been significantly altered by FA 2015.

19. Section 169S(4A) TCGA 1992 now provides:

> *(4A)In this Chapter "trading company" and "trading group" have the same meaning as in section 165 (see section 165A), except that, for the purposes of this Chapter—*
>
> *(a)subsections (7) and (12) of section 165A are to be disregarded;*

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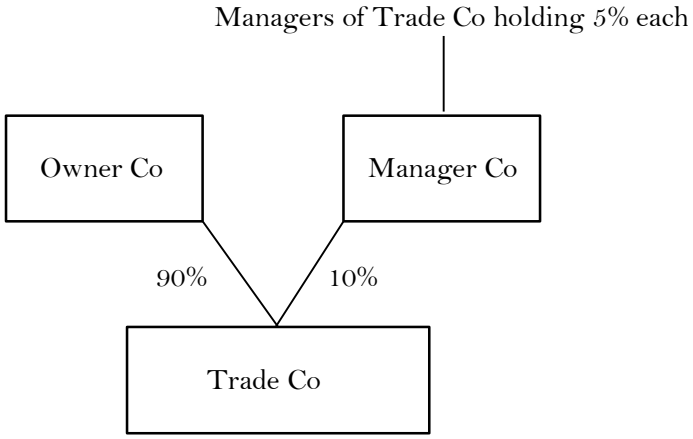
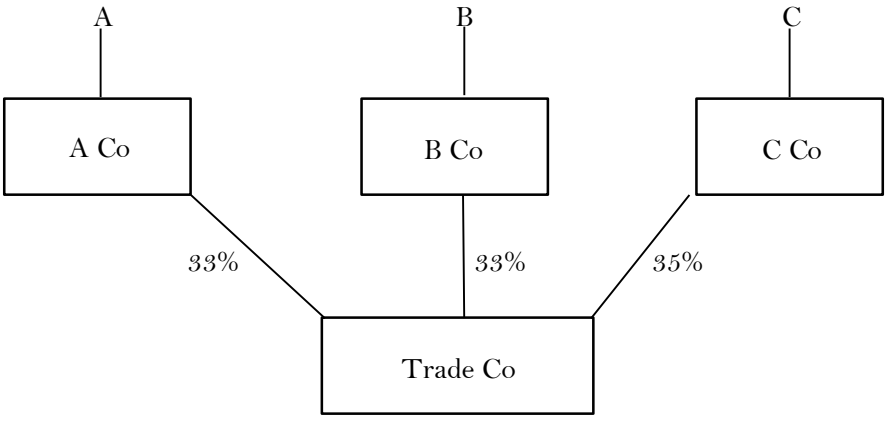
> *(b)in determining whether a company which is a member of a partnership is a trading company, activities carried on by the company as a member of that partnership are to be treated as not being trading activities (see section 165A(4)); and*
>
> *(c)in determining whether a group of companies is a trading group in a case where any one or more companies in the group is a member of a partnership, activities carried on by such a company as a member of the partnership are to be treated as not being trading activities (see section 165A(9)).*

20. Subsection (7) and (12) of section 165A TCGA 1992 applied a look through in relation to shares in companies holding an interest in joint venture companies so that such a company was treated as carrying on an appropriate portion of the joint venture company's trade.

21. This change has been stated to be aimed at arrangements which allowed the joint venture company rules to be used to give entrepreneurs relief to persons with an interest in the ultimate trade which was much smaller than 5%:



22. It also catches arrangements which might be thought to be relatively benign, for example where a company has been interposed between the shareholding in the trading company and the shareholder:



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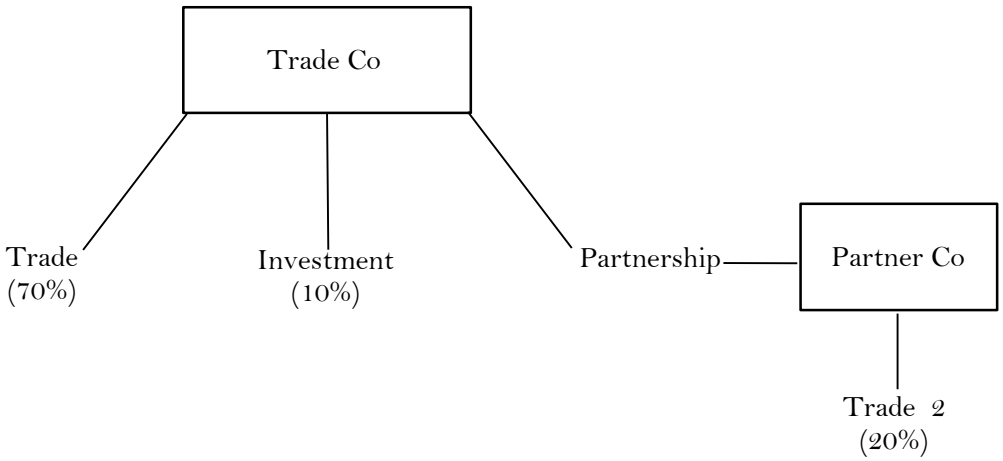
23. There is also a blanket exclusion in relation to partnership companies. The activities of any company which is a member of a partnership are not treated as trading activities regardless of what that company and/or partnership does.

24. This raises a question as to whether those activities of the partnership are necessarily treated as investment activities, as this can impact upon whether a company is a trading company at all.



25. In the above example, if partnership activities are treated as activities which are not trading activities, the company is no longer a trading company and ER has ceased to be available. By contrast if they are simply not treated as trading activities, and therefore disregarded as activities at all, ER would still be available. Although arguable, the former seems the more likely construction.

Company ceasing to be a trading company

26. Relief will continue to be available if the conditions set out in paragraph 7 were satisfied for a continuous period of one year ending on a date at some point in the three years prior to disposal and on that date the company:

> *"(a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or*
>
> *(b) ceases to be a member of a trading group without continuing to be or becoming a trading company" (section 169I(7) TCGA 1992).*

27. This does not apply to companies which have ceased to be trading companies by reason of the changes in treatment of joint venture companies and partnerships provided for in FA 2015 (section 43(4) FA 2015).

28. It would, however, seem to cover the situation where a business continues to be carried on but the company *ceases to be trading company* because it carries on investment

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activities to more than a substantial extent.

29. As a result, the relief will be available for investment companies provided that the company was a trading company for a continuous period of one year ending at a date within the three years prior to disposal. This extension of the relief may in some circumstances ease some of the difficulties which can arise around increases in investment activity.

Personal company

30. ***Personal company*** is defined in section 169S(3) TCGA 1992 in the following terms:

> *(3) For the purposes of this Chapter "personal company", in relation to an individual, means a company-*
>
> *(a) at least 5% of the ordinary share capital of which is held by the individual, and*
>
> *(b) at least 5% of the voting rights in which are exercisable by the individual by virtue of that holding.*

31. ***Ordinary share capital*** is given the same meaning as in section 989 ITA 2007 which states:

> *"ordinary share capital", in relation to a company, means all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits,*

32. Points to note:

32.1 Ordinary share capital does not include shares with a fixed dividend and no other right to share in the company's profits:

32.1.1 look to the articles of the company in determining whether there is a dividend at a fixed rate: *Tilcon Ltd v Holland* [1981] STC 365;

32.1.2 shares where the dividend rate is fixed by reference to a variable index may not qualify since the rate is variable, not fixed;

32.1.3 a right to a premium on redemption is a right to share in the company's profits, so shares carrying such a right will be ordinary share capital;

32.1.4 5% of the ordinary share capital means 5% by reference to the nominal value of the shares in issue not the actual value.

32.2 The individual must have 5% of the voting rights by virtue of his holding of ordinary share capital:

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32.2.1 Voting rights which are exercisable indirectly through control of a shareholder company will not count: *Boparan v HMRC* [2007] STC (SCD) 297

32.2.2 voting rights held exercisable under a shareholders agreement are unlikely to be sufficient (see the unresolved argument in *Gray's Timber Products Ltd v HMRC* [2010] STC 782 as to the relevance of an external agreement to share rights);

32.2.3 ordinary share capital should still qualify for ER even if it doesn't carry voting rights, provided that enough ordinary share capital does carry voting rights.

32.3 If altering share capital to come within the relief, care should be taken:

32.3.1 the shares are almost certainly going to be employment related securities so the provisions of Part 7 ITEPA 2003 need to be borne in mind;

32.3.2 there could be a value shift giving rise to a deemed disposal (section 29 TCGA 1992). Query whether that applies on a reorganisation (*Young v Phillips* [1984] STC 520).

33. Where a partnership holds shares in a trading company, they can potentially qualify for ER on a disposal if the partnership rights (e.g. income and capital rights) are sufficient to give a 5% interest in the partnership. In this respect section 169S TCGA 1992 provides:

> *(4) For the purposes of subsection (3) if the individual holds any shares in the company jointly or in common with one or more other persons, the individual is to be treated as sole holder of so many of them as is proportionate to the value of the individual's share (and as able to exercise voting rights by virtue of that holding).*

The officer or employee condition

34. What is required to qualify as an officer or employee? Guidance on the issue of whether a person is an officer or employee for purposes of entrepreneurs' relief is provided by the HMRC Capital Gains Tax manual at 64110 which states in this respect that:

> *Generally whether a person is an officer or employee of a company or not is dependent upon whether that person has an employment or holds an 'office' within the meaning of Section 4 ITEPA 2003 and Section 5(3) ITEPA 2003 - for guidance on these areas see the Employment Status Manual.*
>
> *There are no specific requirements regarding either working hours or the level of*

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> *remuneration. The condition is simply that the individual should be an officer or employee.*

35. This can create a tension between the desire to be taxed as a self-employed person where occasional consultancy services are offered, and the need to secure ER.

36. The reference to there being no specific requirements regarding working hours or level of remuneration is a contrast with previous similar provisions which required the individual to be a "full-time working officer or employee" (see for example retirement relief and the former section 163(5)(b) TCGA 1992).

37. This is in line with the stated aim of extending the relief beyond full time employees to include certain 'business angels' and other business investors (see the Statement by the Chancellor of the Exchequer on CGT reform - entrepreneurs' relief of 24 January 2008). That would seem to suggest that the relief is intended to encourage those who who regularly invest in unquoted businesses without necessarily taking a very hands on role, but whose business expertise and ability to give relevant advice can be extremely valuable (see for example VCM11070).

Officers

38. As office has been defined as a:

> *'permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders.'*
>
> per Rowlatt J in *Great Western Railway Company v Bater* 8 TC 231.

39. Subsequent cases have downplayed the importance of permanence (see *Edwards v Clinch* 56 TC 367). As such, the principle determining factor is that an office should have some sort of existence independent of the person holding it. The officers of a company will generally be its directors and company secretary (see section 12 Companies Act 2006).

40. The easiest way to secure that a person comes within the requirement that he or she be an officer or employee is to appoint him or her a director of the company since this can be objectively shown. Care should be taken, however, to ensure that the person is in fact acting as a director and that the office is not held in name only. It is likely on a purposive construction that it will be necessary to show a real connection with the business.

41. It is noted that the relief will be available if the individual is an officer of one or more companies which are members of the same trading group as the company whose shares are disposed of. It may be easier from a commercial point of view to appoint a person as a director of a subsidiary in the same trading group. It would, however, be a risk to rely on directorship of a dormant subsidiary where the director had no duties.

42. Although there is no extension in relation to meaning of officer to cover persons in

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the position of directors who have not actually been appointed as such, including shadow directors and *de facto* directors the FTT was prepared to accept in *Hirst* [2014] UKFTT 924 that such a person could in principle qualify for ER, albeit in that instance the taxpayer did not come within the definitions of either shadow director or *de facto* director.

Employees

43. Showing employment may be less of a commercial obstacle: an employee need not be involved at the higher echelons of the business in the way that a director must be, nevertheless, if employment is relied upon it must be a real one. This will be a question of fact determined by reference to the hours of work undertaken, the nature of the work undertaken and the usefulness of that work.

44. A zero hours contract under which virtually nothing of value is done may cause difficulties, whereas relatively short periods of high level involvement in the running of the business is likely to be more acceptable.

45. In circumstances where the work is of limited value to the business, an employment of at least 10 hours per week (which is the requirement of the non-active partner provisions) will almost certainly qualify. That is not a fixed requirement, however, and clearly a lesser number of hours which might not be on a regular basis can be adopted if it can be shown that an employment relationship does exist.

46. There is a considerable amount of case law concerning when a person is an employee. The issue was again considered by the Supreme Court in its recent decision *Autoclenz Ltd v Belcher* [2011] UKSC 41. There it was noted that the essential question in each case will be what were the terms of the agreement.

47. The classic description of a contract of employment is provided by MacKenna J in *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 where he stated:

> *'A contract of service exists if these three conditions are fulfilled.*
>
> *(i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.*
>
> *As to (i). There must be a wage or other remuneration. Otherwise there will be no consideration, and without consideration no contract of any kind. The servant must be obliged to provide his own work and skill. Freedom to do a job by one's own hands or by another's is inconsistent with a contract of service….'*

48. In addition "there must . . . be an irreducible minimum of obligation on each side to create a contract of service" per Stephenson LJ in *Nethermere (St Neots) Ltd v Gardiner*

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[1984] IRLR 240.

49. As such, if employment status may be questionable, it should be evidenced by a written contract requiring the individual to use his or her work and skill in the performance of a service, subject to the control of the company and in return for a wage. There must be no right of substitution and there must be real obligations created by the agreement.

50. To the extent that flexibility is desirable, the employing Company as employer should retain a sufficient degree of control that the employment relationship is not jeopardised. Performance of duties should not be left to the whim of the employee.

51. These issues will of course be less problematic the greater the involvement that the employee has with the company – there will be situations where the employment relationship is obvious.

52. It is also to be noted that the Supreme Court in *Autoclenz* stressed that the "question in every case is … what was the true agreement between the parties" (per Lord Clarke at paragraph 29) and that the court can go beyond (and indeed against) the terms of the written agreement in determining what that true agreement is:

> *"… the relative bargaining power of the parties must be taken into account in deciding whether the terms of any written agreement in truth represent what was agreed and the true agreement will often have to be gleaned from all the circumstances of the case, of which the written agreement is only a part".*

53. Normally HMRC will be arguing that a person is an employee, so it may be unexpected for them to argue to the contrary, although that was the situation in *Bell v HMRC* TC01234. The fact that the FTT was prepared to hold that the appellant was self-employed is a warning of the different approach which is likely to apply:

> *"33. In reality it is necessary for the main contractor to have overall control of the work being done, as he must build to the specification required in his own contract. However, provided the work is done to the standard required and in the position required, he exercises no other control over the manner in which it is done. The Tribunal found that the mere fact that workers were told what to do by a site foreman does not amount to control by MECL*
>
> *34. The fact that the times of work were specified by MECL does not, in the finding or the Tribunal amount to control. For health and safety reasons, it is sensible to have set site times and in the finding of the Tribunal, this does not demonstrate the sort of control necessary to demonstrate that the appellant was an employee rather than performing a contract for services.".*

54. It was crucial in that case that the taxpayer had at the relevant times represented himself as self-employed.

55. However, even where there is not a formal arrangement in place, that is not a bar to showing an employment relationship. In *Corbett* [2014] UKFTT 298 the FTT accepted that ER relief was available notwithstanding that the taxpayer had been

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removed from the payroll (because of a potential purchasers' policy not to employ directors relatives). She continued with the same duties, and although she was no longer paid, what she would have been paid was added to her husband's payroll. The FTT was satisfied that the indicia of employment was present.

The one year period

56. An issue can arise where there has been a reorganisation such that the same shares are no longer held. In such circumstances section 127 TCGA 1992 should deem the shares to be the same asset, with this deeming following through for ER purposes, so that both holdings are considered for the purposes of the one year period.

57. It is understood that HMRC accept this (at least in relatively straightforward cases).

MATERIAL DISPOSAL OF BUSINESS ASSETS: SOLE TRADER

58. A disposal of *the whole or part of a business* qualifies for relief if the business was owned by the individual for the period of one year ending on the date of the disposal.

59. There is no express restriction on a **business** requiring it to be a trade. This would suggest a wider range of activities might qualify for relief e.g. property investment (*American Leaf Blending Co Sdn Bhd v Director-General of Inland Revenue* [1978] STC 561) – although given that investments are excluded from being relevant business assets this raises issues of whether an investment business is the same as investments.

60. A distinction is drawn between assets of the business and part of the business:

    60.1 *McGregor v Adcock* 51 TC 692 – sale of farmland was a sale of assets not a sale of part of the farming business;

    60.2 *Atkinson v Dancer* 61 TC 598 – sale of farmland as part of winding down of business – it is a question of fact in each case whether there has been such an interference with the whole complex of activities and assets as could be said to amount to a disposal of the business or a part of the business;

    60.3 *Pepper v Daffurn* 66 TC 68 – change in nature of business before disposal meant that yard not necessary to carry on business in same manner, so not a sale of part of the business;

    60.4 *Jarmin v Rawlings* 67 TC 130 – actions after the disposal including subsequent disposals taken into account where there was a sufficient connection, so there could have been a disposal of a dairy business;

    60.5 *Wase v Bourke* 68 TC 109 – sale of a milk quota after cessation of dairy business only a disposal of an asset of the business;

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60.6 *Barrett v Powell* 70 TC 432 – surrender of a tenancy for a licence a disposal of an asset since business carried on;

60.7 *Purves v Harrison* 73 TC 390 – sale of premises 9 months before the sale of the rest of the business and to a different not sufficiently connected to be a sale of part of the business.

61. *Gilbert t/a United Foods* [2011] UKFTT 2011 was a case more specifically concerning the provisions on ER. The business involved sales representation selling food on commission for a number of suppliers. Sold part of customer database and goodwill to one of the suppliers (reducing customer base substantially). HMRC argued that scaling down of business was not a sale of part of the business. The FTT rejected this:

> *"What characterises a sale as a going concern is a sale of goodwill where it exists and he sold goodwill. He also sold his customer database, a crucial asset in distinguishing a sale of a going concern from a mere sale of assets."*

It was also suggested that the proper test was whether what was sold was a viable section of the business:

> *"One way of testing whether there is a viable section in Lord Walker's terms is to consider what would be the case if the transferee was an empty shell until the transfer. Would the activities of the transferee using only the assets and liabilities transferred be capable of constituting a trade or business?"*

62. Some of the issues which arose in respect of retirement relief (and the need for there to be a viable business) are removed by provision that a sale of assets will qualify for relief where:

62.1 the business has ceased;

62.2 the assets were used for the purposes of the business at the time the business ceased to be carried on;

62.3 the business was owned by the individual for one year at the time at which it ceased to be carried on (*note that this does not require the asset to be owned for a period of one year when the business ceased*);

62.4 the business ceased within three years of the date of the disposal.

MATERIAL DISPOSAL OF BUSINESS ASSETS: PARTNERSHIP

63. The relief is extended to partnerships in three important respects:

63.1 a disposal of assets used for the purposes of a business carried on by the individual on entering into a partnership which is to carry on the business is deemed to be a disposal of part of the business;

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63.2 a disposal of the whole or part of the individual's interest in the assets of a partnership deemed to be a disposal of the whole or part of the business carried on by the partnership, and

63.3 a business carried on by a partnership deemed to be owned by each individual who is at that time a member of the partnership.

64. The relief is relevant business asset restriction discussed below (section 169L TCGA 1992).

TRUST ASSETS

65. There is no relief where trustees dispose of the whole or part of a business. Relief for trustees is restricted to settled property which :

65.1 shares or securities of a company; or

65.2 assets used in a business;

65.3 assets previously used for the purposes of a business.

Query whether a disposal of a business or of part of a business would be regarded as a disposal of all of the assets used in the business?

66. For the relief to apply the settled property must be

66.1 held on interest in possession trusts

66.2 which are not for a fixed term

66.3 for the benefit of a beneficiary ("the Beneficiary")

66.4 and for a period of one year ending on a date in the three years prior to disposal:

66.4.1 the settled property is shares in a company which is (i) the Beneficiary's personal company (ii) which meets the trading condition and (iii) the Beneficiary meets the officer or employee condition;

66.4.2 the settled property is assets used for the purposes of a business carried on by the Beneficiary (alone or in partnership) which has ceased;

66.4.3 the settled property is assets used for the purposes of a business carried on by a partnership which the Beneficiary has left.

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67. Points to note:

67.1 the Beneficiary need have no interest in the capital of the trust fund;

67.2 Part 7A ITEPA 2003 may need to be borne in mind when appointing interests for employees;

67.3 for shares to qualify, the company the requirements relating to the beneficiary must be satisfied independently from the trustees' ownership – the value need not be in the shares held by the beneficiary absolutely;

67.4 this offers an opportunity for A to obtain the benefit of B's ER lifetime allowance;

67.5 short term small value partnerships with a Beneficiary may allow relief to be obtained where an asset is being sold from an ongoing business;

67.6 where settled property is held on non qualifying trusts, the relief is reduced proportionately (section 169O TCGA 1992).

68. The relief is relevant business asset restriction discussed below (section 169L TCGA 1992).

DISPOSAL ASSOCIATED WITH A RELEVANT BUSINESS DISPOSAL

69. The provisions concerning disposals associated with relevant business disposals have been subject to substantial amendment in FA 2015 to counter perceived abuse arising in relation to disposals where there was not a corresponding withdrawal from the business.

70. Although it has always been a condition that the individual withdraw from the relevant business, the rules are now more prescriptive in this regard.

71. ER is now available where an individual disposes of an asset and:

71.1 the individual makes a disposal qualifying for ER of (i) at least 5% of the ordinary shares and voting rights in a company or (ii) an interest of at least 5% in a partnership (the material disposal);

71.2 there are no arrangements in place allowing the individual or a connected person to reacquire the shares (or shares in another company in the same group) or to acquire a similar interest in the partnership;

71.3 the material disposal is part of the individual's withdrawal from the partnership or the company;

71.4 the asset was used for the business for 1 year preceding earlier of (i) the

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material disposal or (ii) the cessation of the business.

72. Relief will be reduced to reflect non-business use in the period of ownership (section 169P TCGA 1992).

73. The relief is subject to the relevant business asset restriction discussed below (section 169L TCGA 1992).

RELEVANT BUSINESS ASSETS

74. Although there is no requirement that the business carried on by the individual or the partnership need be a trade, in cases other than disposal of shares there is a restriction on the relief to disposals of relevant business assets, which has been extended in scope by FA 2015.

75. To qualify, assets (which expressly include goodwill) need to be (section 169L(3) TCGA 1992):

> *(a) in the case of a material disposal of business assets, are 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, are assets used for the purposes of a business carried on by the qualifying beneficiary or a partnership of which the qualifying beneficiary is a member, or*
>
> *(c) in the case of a disposal associated with a relevant material disposal, are assets used for the purposes of a business carried on by the partnership or company.*

76. A significant exclusion (i) shares and securities, and (ii) assets, other than shares or securities, which are held as investments. It is this latter restriction which impacts upon the scope of the relief outside trading businesses.

77. FA 2015 has introduced a major restrictions here. Relief is no longer available in respect of goodwill where it is transferred to a close company (or a company which would be close if UK resident) in circumstances where the company and the taxpayer are related parties at the time of the disposal for the purposes of section 835 CTA 2009 and the taxpayer is not a retiring partner.

78. One situation which this targets is incorporation by way of a sale qualifying for ER, with amounts sale proceeds left outstanding.

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OPERATION OF THE RELIEF

Claim

79. The relief needs to be claimed (jointly by trustees and the Beneficiary where relevant) within the first anniversary of the 31 January following the tax year in which the disposal is made i.e. for a disposal in 2009-10 by 31 January 2012.

Calculating relief

80. Losses on the qualifying business disposal must be set against gain on the qualifying disposal. That would seem to relate to the same qualifying business disposal and not disposals qualifying for ER relief generally. The resulting gain is then subject to charge at 10% provided that the individual or Beneficiary's total lifetime ER gains is less than £10 million.

Interaction with other provisions

81. FA 2015 introduces provisions (section 169T to 169V TCGA 1992) which allow the relief to be deferred where gains which would otherwise qualify for ER are held over by reason of reliefs relating to enterprise investment scheme investments and investments in social enterprises.

82. The relief will not apply in relation to other held-over gains, although it should be available when foreign chargeable gains on which relief has been claimed are remitted to the UK.

RORY MULLAN

10 April 2015