

Capital Gains Tax Reliefs 2016

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Thursday 15 September 2016

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CGT low yield

- Annual exemption - £10,900 2013/14
-£11,000 for 2014/15,£11,100 for 2015/16 &17
- Matrimonial Property – Lawson case
- Small numbers – high error rate
- Rates at 18 per cent (TCGA 1992, s. 4(2)) if basic rate : 10% in 2016/17*
- 28 % if higher rate s4(4) 20% in 2016/17*
- *except 2nd homes remain 18% & 28%
- 10% if entrepreneur relief s169N(3)



Introduction and Outline

- Only or main Residence Relief – s222
- Gift relief – s165
- Entrepreneurs' relief –s169H et seq
- Planning must now Carry health warning!!
- Amin error was careless but...unfair?



Principal Private Residence CGT

- Permitted area
- Election under self assessment?
- Time of occupation test
- Quality of occupation more important
- Occupation as a residence time apportionment
- Case law illustrations and caution



PPR cases

- Sale of garden plots (Varty v Lynes and Henke v R&C)
- Caravan could be dwelling (Makins v Elson contrast Moore v Thompson)
- Permitted Area –(Wakeling v Pearce, Batey v Wakefield, Markey v Sanders, Willaims v Merrylees , Henke again)
- Safe haven 0.5 hectare (roughly 1.2 acres)



Quality of Occupation

- Henke
- Goodwin v Curtis (HMIT) [1998] BTC 176
- Michelina Woods v Revenue & Customs [2011] UKFTT 663
- D J Thresh v HMRC 2010 UK FTT 29,
- Moore v HMRC 2010 UKFTT 445
- Metcalfe v R & C
- Clarke v Revenue & Customs [2011] UKFTT 619



OMR letting exemption

- The chargeable gain otherwise arising as a result of the letting is reduced by the lesser of (TCGA 1992, s. 223(4)):
 - (1) an amount equal to the exemption of the gain in respect of occupation by the owner (or by the occupier under the terms of a settlement as his main residence), and
 - (2) £40,000
- Each individual in a couple has entitlement

OMR Letting example

- Mike and Sue lived in a large house using all as their OMR but letting half. It sold at a gain of £176,000
- Half exempt = £88,000
- Mike s223 = £40,000
- Sue s 223 = £40,000
- Chargeable remainder £8,000 covered by annual exemption of each



Gift relief



Gift relief - the basics

- Type of disposal
- Assets disposed
- The relief - deferred amount
- Restrictions on deferral
- Claim



Type of disposal – s165(1)

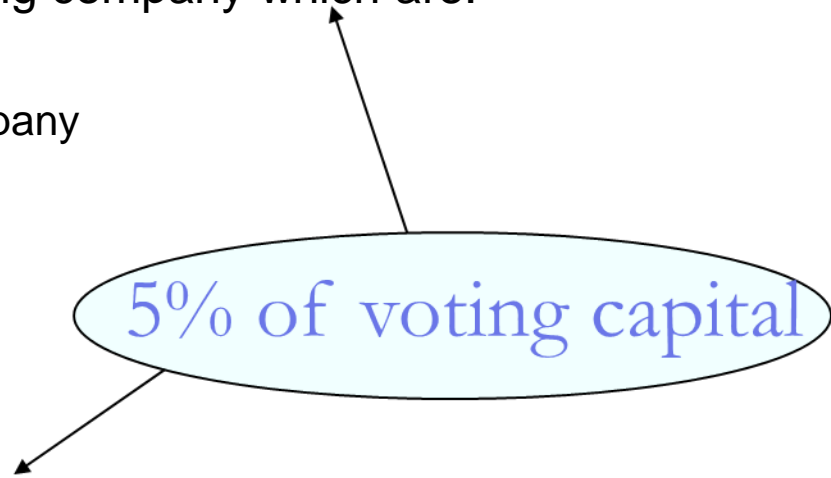
- An individual makes a disposal otherwise than under a bargain at arm's length of a qualifying asset; and
- A claim is made.

Claim – s165(1)(b)TCGA/s43 TMA

- Joint election is required between the transferor and the transferee (giver and receiver); unless
- The recipient is a trust in which case the claim only needs to be made by the transferor.
- Claim needs to be made within 4 years following the fiscal year of the disposal. So a disposal in 2015/16 needs to be claimed on or before 5 April 2020

Eligible assets – s165(2)

- Asset used in the trade of the:
 - transferor;
 - his personal company; or
 - a member of a trading group of which the holding company is his personal company.
- Shares or securities of a trading company which are:
 - unquoted
 - transferor's personal company





Eligible assets – s260

- any assets upon which there is an immediate charge to IHT;
- still applies on certain exempt transfers for IHT purposes;
 - to a political party;
 - to a maintenance fund for historic buildings;
 - of designated heritage property.



Eligible assets – Sch 7 para 1 - APR

- Where the whole of the agricultural asset would qualify for either 50% or 100% APR.
- Transferor does not need to be using the land for trading purposes ie it could be on a tenancy.



The relief

- Calculate the gain arising on the disposal of the chargeable asset(s), using market value as the proceeds.
- The whole amount of the gain is deducted from the deemed acquisition cost (MV) of the transferee where:
 - no consideration is given in return for the gift;
 - the actual consideration given is less than the allowable expenditure (cost).



The relief – effect on transferee

- The heldover gain will lead to an increased gain on the disposal by the recipient.
- Clawback of relief if transferee emigrates within 6 years of the end of the year of transfer



Restrictions

- Consideration exceeds allowable expenditure;
- Asset not used throughout the period of ownership for trading purposes;
- Transfer of personal company shares in a company which has assets that are not wholly business related.

Restrictions – consideration exceeds cost

- Excess of consideration over allowable expenditure cannot be deferred.
- Gain above this 'profit' can still be deferred.
- If the 'profit' amount exceeds the gain, no deferral is permitted.

Restrictions – non-business use (sch7 p5)

- If asset not used for business purposes for entire period of ownership, apportion gain on a time basis:

Period of business use

Period of ownership



Restrictions – building partly business

- If an individual owns at least 5% of the shares and the company whose shares are being transferred has non-business chargeable assets in its B/S, gift relief is restricted.
- A chargeable asset is an asset which would give rise to a chargeable gain in the company if disposed.



Restrictions – personal company shares

- If an individual owns at least 5% of the shares and the company whose shares are being transferred has non-business chargeable assets in its B/S, gift relief is restricted.
- A chargeable asset is an asset which would give rise to a chargeable gain in the company if disposed.



Restrictions – personal company shares

- Gain remaining eligible for relief:
CBA/CA
- CBA = chargeable business assets
- CA = all chargeable assets
- See example on slides 37 and 38 for mechanics.



Entrepreneurs' Relief



Entrepreneurs' relief

- Eligible disposals
 - Material disposal of business assets: s169I
 - Disposal of trust business assets: s169J
 - Disposal associated with a relevant material disposal: s169K
 - Subject to restrictions in certain cases:
s169L (non-trading assets such as investments where disposal not of shares or securities of a company)



Entrepreneurs' relief – s169I

- Disposal of the whole or part of a business;
 - must have owned for a year prior to disposal
 - part of a business – see retirement relief case law (CG64020-64035)
- Disposal of business assets following the cessation of trade;
 - must have been owned for a year prior to cessation; and
 - disposal takes place within 3 years of cessation



Entrepreneurs' relief – s169I

- Disposal of the shares:
 - must work for company (no need to be full time (CG64110));
 - own at least 5% of the share capital of company
- Both must be satisfied for one year prior to disposal
 - also applies within 3 years of the cessation of the company's trade



Associated disposal – s169K

- Individual owns an asset which is used either by their personal trading company or partnership eg a building
- Disposal must be part of process of withdrawing from partnership or disposal of shares (no need to make an ER claim on this disposal for associated disposal to qualify for ER – CG63995)
- Must have owned asset for 12 months prior to the disposal



Associated disposal – s169K

Interval between material disposal and associated disposal (CG 63995):

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

Associated disposal – s169P - restrictions

- If associated asset (say a building) is rented, then this could restrict the ER available – investment asset?
- Also applies where the asset is not being used for business purposes
- The whole life of the building is looked at, not just the last 12 months for business v non-business use
- Only look at period from 6 April 2008 for the purpose of the rent restriction – Sch 3 para FA 2008



Rent restrictions

- If a full market rent is charged then ER is not available on that gain
- If rent is charged but at below market rent, then ER is restricted but not wholly for that period of time
- See examples at the end



Entrepreneurs' relief

- 10% tax rate for relief from 23 June 2010
- Claim required by a year after the final filing date for the fiscal year of the disposal
- 2015/16 disposal claim relief by 31/01/2018
- Lifetime limit £10million



Entrepreneurs' relief - changes

- Lifetime relief £1m pre 2010/11, £2m from 6 April 2010, £5m from 23 June 2010 and £10m from 6 April 2011.
- Additional relief is not backdated



Examples

Example – non-business use - GR

- C gives his daughter D property comprising a shop with a flat above. The shop was used for trade purposes immediately before the gift but had been so used for only five out of the ten years of ownership.
- At the time of the gift, HMRC agrees that the shop is worth £80,000 while the whole of the building has a market value of £120,000.
- The cost of the whole building to C was £60,000, giving rise to a gain of £60,000 on the entire building.
- A joint claim is made for relief under Section 165.

Example (cont'd) – non-business use

- Non-business use restriction applied first ie gain eligible for deferral is $£60,000 \times 5/10 = £30,000$
- Next restrict for flat element:
- Gain eligible for deferral = $£30,000 \times 80/120 = £20,000$.
- Therefore taxable gain = $£40,000$
- Deferred gain = $£20,000$
- Value of property = $£120,000 - £20,000 = £100k$.

Example – profit and shares restriction

- A sells to his son B for £130,000 shares in an unquoted family company which cost him £50,000 and which HMRC agree are worth £300,000 at the time of disposal. At the date of disposal, company has a market value of chargeable assets of £100,000 of which £80,000 are trade related.
- A joint claim is made for relief under Section 165.
- $\text{Gain} = £300,000 - £50,000 = £250,000$

Example – profit and shares restriction

- Restrict by profit made first ie gain ineligible for relief would be: £130,000 - £50,000 = £80,000.
- Remaining eligible for relief = £250,000 - £80,000 = £170,000.
- Next restrict by CBA/CA:
- £170,000 x 80/100 = £136,000 eligible for relief
- Value of shares = £300,000 - £136,000 = £164,000
- Taxable gain = £250,000 - £136,000 = £114,000

Rent restrictions - CG64145

- On 5th April 2016 M, leaves the partnership of which he has been a member for 12 years and sells his one-third partnership interest, to the remaining two partners, making a gain of £250,000. Throughout that 12 years M has personally owned the property from which the firm has traded.
- For the last 6 of those years (since 6th April 2010), the partnership paid him a full market rent for its use. At the time he leaves the business he also sells the property to the remaining partners, making an 'associated' gain of £100,000. He claims Entrepreneurs' Relief - all the conditions are met and there has been no previous claim.



Rent restrictions - CG64145

However because for 6 of the total 12 years he was a partner a full market rent was paid to M for the business use of the property a proportion of the gain relating to the premises will not attract relief.



Rent restrictions - CG64145

Qualifying for ER

Gain on sale of property	100,000	50,000
Partnership share gain	250,000	250,000
Total qualifying for ER		300,000



Planning for Er

- Bill, his wife Mary and son Ben own 40%, 40% and 20% of the shares in the trading company Widgets Ltd
- Bill and Mary work full time. Ben is not employed by the company
- Sale of company planned to realise £5m gain in 2016/2017



Do Nothing Ben pays tax on £1m

- Ben gifts his shares to his mother and father claiming gift hold over relief under s165
- Bill and Mary can sell all their shares and the gain will be taxed at 10%
- Tax saving £1m at 18% but..
- HMRC may challenge if PET to Ben
- Works better for spouse transfers s58



Thank you

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