
1 Entrepreneurs' relief: company ceasing to be individual's personal company

- (1) In Part 5 of TCGA 1992 (transfers of business assets), after Chapter 3 (entrepreneurs' relief) insert—

“CHAPTER 3A**ENTREPRENEURS' RELIEF WHERE COMPANY CEASES TO BE INDIVIDUAL'S PERSONAL COMPANY****169SB Overview of Chapter**

This Chapter makes provision about an individual claiming entrepreneurs' relief in certain cases where relief would otherwise become unavailable because of a company ceasing to be the individual's personal company.

169SC Election by individual where company ceases to be personal company

- (1) If the following conditions are met, an individual may elect for this section to have effect.
- (2) The first condition is that, as a result of a relevant share issue, the company ceases to be the individual's personal company.
- (3) The second condition is that—
- (a) if the individual had made a disposal immediately before the relevant share issue of all assets consisting of (or of interests in) shares in or securities of the company, the disposal would have been a material disposal of business assets, and
 - (b) if a claim for entrepreneurs' relief had been made in respect of that disposal, a chargeable gain would have been treated by section 169N(2) as accruing to the individual.
- (4) Where this section has effect, the individual is to be treated for the purposes of this Act—
- (a) as having made a disposal immediately before the relevant share issue of all assets consisting of (or of interests in) shares in or securities of the company, and
 - (b) immediately after that event, as having reacquired those assets, at their relevant value.
- (5) The relevant value is—
- (a) in relation to an asset consisting of (or of interests in) shares, an amount equal to the consideration that would be apportioned to the asset if, immediately before the relevant share issue, the whole of the issued share capital of the company were sold for a consideration equal to its market value at that time, or
 - (b) in relation to any other asset, its market value at the time of the relevant share issue.
- (6) “Relevant share issue” means an issue of shares by the company where—
- (a) the shares are issued by the company for consideration consisting wholly of cash, and
 - (b) the shares are subscribed, and issued, for genuine commercial reasons and not as part of arrangements the main purpose, or

one of the main purposes, of which is to secure a tax advantage to any person.

- (7) In subsection (6) –
 “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and
 “tax advantage” means –
- (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,
 - (c) the avoidance or reduction of a charge to tax or an assessment to tax, or
 - (d) the avoidance of a possible assessment to tax,
- and for the purposes of this definition “tax” means capital gains tax, corporation tax or income tax.
- (8) In this section “material disposal of business assets” and “personal company” have the same meanings as in Chapter 3 (see section 169S).
- (9) In this Chapter –
- (a) references to “the notional disposal” are references to the disposal mentioned in subsection (4)(a), and
 - (b) references to “the notional gain” are references to the chargeable gain mentioned in subsection (3)(b).

169SD Supplementary election to defer gains until subsequent disposal

- (1) An individual who makes an election under section 169SC may also elect that, for the purposes of this Act –
- (a) no chargeable gain or allowable loss is to be treated as accruing to the individual on the notional disposal, but
 - (b) a chargeable gain calculated in accordance with this section is to be treated as accruing to the individual on any subsequent disposal by the individual of one or more assets consisting of (or of interests in) shares in or securities of the company (in addition to any gain or loss that actually accrues on that disposal).
- (2) The chargeable gain treated as accruing to the individual on a subsequent disposal is the amount resulting from the following steps –

Step 1

Attribute the notional gain to each of the classes of shares in or securities of the company which are (or interests in which are) the subject of the notional disposal. The attribution must be made, in relation to each class, by reference to the proportion that –

- (a) the relevant gains (see section 169N(5)) accruing on the notional disposal in respect of (or in respect of interests in) shares or securities within each class bears to
- (b) the total amount of relevant gains accruing on the notional disposal.

Step 2

Apportion the amount attributed to each class under Step 1 to so many of the shares or securities of that class as are (or interests in which are)

the subject of the subsequent disposal. The apportionment must be by reference to the proportion that –

- (a) the number of the shares or securities of that class which are (or interests in which are) the subject of the subsequent disposal bears to
- (b) the number of shares or securities of that class which are (or interests in which are) the subject of the notional disposal.

Step 3

The amount resulting from these steps is –

- (a) the total of the amounts apportioned to shares or securities under Step 2, but
 - (b) excluding, in relation to each class of shares or securities, so much of those amounts as would, together with any chargeable gains treated by this section as accruing on previous disposals of (or of interests in) shares or securities of that class, exceed the amount attributed to that class under Step 1.
- (3) If the subsequent disposal is a disposal by virtue of section 122, the number of shares or securities of a particular class which are (or interests in which are) the subject of that disposal is to be treated for the purposes of Step 2 of subsection (2) as being equal to the number of shares or securities of that class as are (or interests in which are) the subject of the notional disposal.
 - (4) Subsections (5) and (6) have effect if it is necessary to find an amount resulting from the steps in subsection (2) in relation to the subsequent disposal of (or of interests in) shares forming part of a new holding following a reorganisation.
 - (5) If the new holding consists of more than one class of shares, the amount attributed to the class of the original shares under Step 1 in subsection (2) must be attributed to the classes of shares forming the new holding by reference to market value on the first day (whether that day fell before the reorganisation took effect or later) on which market values or prices were quoted or published for the shares forming the new holding.
 - (6) For the purposes of Step 2 in subsection (2), the extent to which a number of shares forming part of the new holding corresponds to a number of original shares must be determined by reference to the market value for the shares forming part of the new holding on that day compared with the market value for the original shares on the same day.
 - (7) In subsections (4) to (6) “reorganisation”, “new holding” and “original shares” have the same meanings as in sections 126 to 131 (see section 126).

169SE Elections under sections 169SC and 169SD

- (1) An election under section 169SC or 169SD is irrevocable.
- (2) An election under section 169SC must be made on or before the first anniversary of the 31 January following the tax year in which the notional disposal is made (“the relevant tax year”).

-
- (3) An election under section 169SD may not be made more than 4 years after the end of the relevant tax year.
 - (4) If—
 - (a) an individual makes an election under both sections 169SC and 169SD, and
 - (b) a tax return under the Management Act would not otherwise be required for the relevant tax year,the individual may make the elections by giving notice on or before the first anniversary of the 31 January following the relevant tax year.

169SF Claims for relief in respect of subsequent disposals

- (1) Where, as a result of an election under section 169SD, a chargeable gain is to be treated as accruing on a subsequent disposal, the following rules have effect.
 - (2) The individual making the subsequent disposal must make a claim for entrepreneurs' relief on or before the first anniversary of the 31 January following the first tax year in which, as a result of the election, the chargeable gain is to be treated as accruing.
 - (3) The chargeable gain is to be treated for the purposes of section 169N as the amount resulting from a calculation under subsection (1) of that section carried out when that chargeable gain accrues and because of the claim mentioned in subsection (2).
 - (4) If the chargeable gain is a part only of the notional gain, each chargeable gain that subsequently accrues is to be treated for the purposes of section 169N as the amount resulting from a calculation under subsection (1) of that section carried out when that chargeable gain arises and because of the claim mentioned in subsection (2).
 - (5) In relation to the claim for entrepreneurs' relief in respect of the chargeable gain, the company is to be treated for the purposes of condition A in section 169I(6) as if it were, throughout the period of 1 year ending with the date of the subsequent disposal, the individual's personal company."
- (2) The amendment made by this section has effect in relation to relevant share issues (within the meaning given by section 169SC(4) of TCGA 1992) which take place on or after 6 April 2019.