

## Amendments 2 and 3 to Clause 38 and Schedule 15: Entrepreneurs' relief

### Summary

1. These two amendments to Schedule 15 introduce an alternative test into the definition of 'personal company' which can apply instead of the original two tests introduced by the Schedule. This alternative test is based on the claimant's entitlement to a share of disposal proceeds in the event of the company being sold.

### Details of the amendments

2. Amendment 2 substitutes a new paragraph 2 to Schedule 15. It refines the definition of what is meant by a 'personal company'.
3. New paragraph 2(1) introduces the amendments to the Taxation of Chargeable Gain Act (TCGA) 1992.
4. New paragraph 2(2) amends section 169K(1B), so that the conditions for entrepreneurs' relief on an associated disposal apply the amended definition of a 'personal company'.
5. New paragraph 2(3) amends section 169LA TCGA 1992 by introducing new sections 169LA(1) to 169LA(1ZB). These ensure that the amended definition of a 'personal company' applies when restricting relief on a disposal of goodwill to a company.
6. New paragraph 2(4) amends the definition of 'personal company' in section 169S TCGA 1992. It substitutes new subsections (3) to (3E) for subsections (3) and (4).
7. New subsection (3) defines personal company. This requires an individual to: hold 5% of the ordinary share capital of the company and have 5% of the voting rights, and meet one of two new conditions found at new subsection (3)(c). These are (i) that the individual is entitled to both 5% of the profits available for distribution and assets available for distribution in a winding up or (ii) in the event of a disposal of the ordinary share capital of the company the individual would be entitled to 5% of the disposal proceeds.
8. New subsection (3A) applies for establishing if the test at new subsection (3)(c)(ii) is met. It provides that to establish whether a company is an individual's 'personal company' at any point in a period, it is to be assumed that the ordinary share capital of the company is sold at the market value it held on the final day of the period, and that the individual's share of the proceeds is the amount that it is reasonable to expect they would have been beneficially entitled to in the circumstances in place at the time. It also provides that the effect of any avoidance arrangements should be

ignored.

9. New subsection (3B) defines what is meant by ‘avoidance arrangements’ for the purposes of new subsection (3A)(c).
10. New subsection (3C) applies to joint holdings of shares. In such cases the individual is treated as holding a proportion of shares and control equal to the value of their interest. This re-states the effect of subsection 169S(4), which is omitted.
11. New subsection (3D) applies the definitions applicable to group relief in determining an individual’s interest in a company for the purposes of the test in new section 169S(3)(c)(i).
12. New subsection (3E) makes certain modifications to the group relief definitions for this purpose.
13. Amendment 3 amends the commencement provision in paragraph 4(4) to Schedule 15. It provides that the new ‘personal company’ condition introduced by Amendment 1 does not apply for the purposes of section 169LA for disposals made before 21 December 2018.

## Background note

14. Clause 38 and Schedule 15 amend the rules for entrepreneurs’ relief (ER) in various ways, including introducing two new tests into the definition of a claimant’s ‘personal company’ which applies for ER purposes.
15. These changes improve the effectiveness of ER by ensuring that claimants disposing of shares have a minimum economic stake in the company. The government considers this to be more characteristic of entrepreneurial activity.
16. This amendment ensures that these changes operate as intended, by allowing claimants to use their entitlement to the sales proceeds of the company as evidence of their economic stake, in circumstances where their entitlement to the profits and assets of the company cannot be demonstrated.
17. This is in line with the government’s policy of supporting enterprise creation and growth in the UK.