



HM Revenue
& Customs

Capital gains tax: restricting entrepreneurs' relief on associated disposals

Who is likely to be affected?

Individuals and members of partnerships who sell personal assets used in a business but do not, at the same time, dispose of a significant holding of shares in the company carrying on the business or of a significant share in the assets of the partnership carrying on the business.

General description of the measure

This measure will mean that entrepreneurs' relief (ER) will not be available to reduce capital gains tax (CGT) on gains which accrue on personal assets used in a business carried on by a company or a partnership, unless they are disposed of in connection with a disposal of at least a 5% shareholding in the company, or a 5% share in the partnership assets.

Policy objective

ER does not usually apply to the disposal of personal assets used in a company's or a partnership's business. However, 'associated disposal' rules allow ER on these assets when the disposal is associated with a partial or full withdrawal from the business or company. There has been no minimum requirement as to the size of this withdrawal and therefore some people are using these rules to benefit from ER on personal assets when they are not making a meaningful withdrawal.

This measure ensures that at least a 5% stake in the business must be disposed of by a claimant in order to benefit from ER on an associated disposal. This is in line with the policy intention to encourage someone who is significantly withdrawing from a business to sell the personal assets being used to the buyer along with the business.

Background to the measure

This measure was announced at Budget 2015.

Detailed proposal

Operative date

This measure will affect disposals on and after 18 March 2015.

Current law

The ER provisions are at sections 169H to 169S of the Taxation of Chargeable Gains Act 1992 (TCGA). ER reduces the rate of CGT on the disposal of assets to 10% from the standard 18% or 28%. Section 169K provides special rules which allow ER on assets used in a business but owned privately by a participator (a shareholder or partner) in the business, providing those assets are disposed of as part of a withdrawal for participation in the business.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to amend TCGA to ensure that in order for a disposal of a privately-owned asset to qualify for ER, the claimant must reduce their participation in the business by also disposing of a minimum 5% of the shares of the company carrying on the business, or (where the business is carried on in partnership) of a minimum 5% share in the assets of the partnership carrying on the business.

Summary of impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20
	negligible	+45	+45	+45	+45
	<p>These figures are set out in Table 2.1 of Budget 2015 as 'Capital gains tax: contrived ownership arrangements' and have been certified by the Office for Budget Responsibility. They represent the combined Exchequer impact of 'Capital gains tax: entrepreneurs' relief, joint ventures and partnerships' and 'Capital gains tax: restricting entrepreneurs' relief on associated disposals'. More details can be found in the policy costings document published alongside Budget 2015.</p>				
Economic impact	<p>This measure is not expected to have any significant economic impacts.</p>				
Impact on individuals, households and families	<p>Individuals who are either partners in a firm or shareholders in a company may be affected if they dispose of assets which they own and which are used in their firm's or company's business but do not make a meaningful withdrawal from the business.</p> <p>This measure is not expected to impact on family formation, stability or breakdown.</p>				
Equalities impacts	<p>This measure is not expected to have a significant impact on those with legally protected characteristics. Those affected will broadly reflect the composition of ER claimants.</p>				
Impact on business including civil society organisations	<p>This measure affects disposals made by individuals of assets held in their personal capacity. There is therefore no direct impact on businesses.</p>				
Operational impact (£m) (HMRC or other)	<p>There will be a negligible operational impact on HM Revenue & Customs.</p>				
Other impacts	<p>Other impacts have been considered and none have been identified.</p>				

Monitoring and evaluation

The measure will be monitored through disclosures of new avoidance schemes to circumvent the measure, and through communication with affected taxpayers and practitioners.

Further advice

If you have any questions about this change, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).

1 Entrepreneurs' relief: associated disposals

- (1) Section 169K of TCGA 1992 (disposal associated with relevant material disposal) is amended as follows.
- (2) For subsections (1) and (2) substitute –
 - “(1) There is a disposal associated with a relevant material disposal if –
 - (a) condition A1, A2 or A3 is met, and
 - (b) conditions B and C are met.
 - (1A) Condition A1 is that an individual (“P”) makes a material disposal of business assets which consists of the disposal of the whole or part of P’s interest in the assets of a partnership, and –
 - (a) P’s disposed of interest is at least a 5% interest in the partnership’s assets, and
 - (b) at the date of the disposal, no partnership purchase arrangements exist.
 - (1B) Condition A2 is that P makes a material disposal of business assets which consists of the disposal of shares in a company, all or some of which are ordinary shares, and at the date of the disposal –
 - (a) the ordinary shares disposed of –
 - (i) constitute at least 5% of the company’s ordinary share capital, and
 - (ii) carry at least 5% of the voting rights in the company, and
 - (b) no share purchase arrangements exist.
 - (1C) But condition A2 is not met if the disposal of shares is a disposal by virtue of section 122, other than such a disposal treated as made in consideration of a capital distribution from a company which is made in the course of dissolving or winding up the company.
 - (1D) Condition A3 is that P makes a material disposal of business assets which consists of the disposal of securities of a company, and at the date of the disposal –
 - (a) the securities disposed of constitute at least 5% of the value of the securities of the company, and
 - (b) no share purchase arrangements exist.
 - (1E) For the purposes of conditions A2 and A3, in relation to the disposal of shares in or securities of a company (“company A”), “share purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire shares in or securities of –
 - (a) company A, or
 - (b) a company which is a member of a trading group of which company A is a member.
 - (2) For the purposes of subsection (1E)(b), a company is treated as a member of a trading group of which company A is a member if, at the date of the disposal mentioned in condition A2 or A3, arrangements exist which it is reasonable to assume will result in the company and company A becoming members of the same trading group.”
- (3) In subsection (3) –
 - (a) for “the individual”, in the first place it occurs, substitute “P”, and

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- (b) for “the withdrawal of the individual” substitute “P’s withdrawal”.
- (4) After subsection (3) insert—
- “(3A) The disposal mentioned in condition B is not treated as part of P’s withdrawal from participation in the business carried on by a partnership if at the date of that disposal there exist any partnership purchase arrangements.
- (3B) The disposal mentioned in condition B is not treated as part of P’s withdrawal from participation in the business carried on by a company (“company A”) if at the date of that disposal there exist any arrangements under which P or a person connected with P is entitled to acquire shares in or securities of—
- (a) company A, or
- (b) a company which is a member of a trading group of which company A is a member.
- (3C) For the purposes of subsection (3B)(b), a company is treated as a member of a trading group of which company A is a member if, at the date of the disposal mentioned in condition B, arrangements exist which it is reasonable to assume will result in the company and company A becoming members of the same trading group.”
- (5) After subsection (5) insert—
- “(6) In this section, in relation to a partnership, “partnership purchase arrangements” means arrangements under which P or a person connected with P is entitled to acquire any interest in, or increase that person’s interest in, the partnership (including a share of the profits or assets of the partnership or an interest in such a share).
- (7) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “securities” includes an interest in securities, and an “interest in securities” includes (in particular) an option to acquire securities;
- “shares” includes an interest in shares, and an “interest in shares” includes (in particular) an option to acquire shares.
- (8) For the purposes of this section, a person is treated as entitled to acquire anything which the person—
- (a) is entitled to acquire at a future date, or
- (b) will at a future date be entitled to acquire.
- (9) For the purposes of this section the assets of—
- (a) a Scottish partnership, or
- (b) a partnership under the law of any other country or territory under which assets of a partnership are regarded as held by or on behalf of the partnership as such,
- are to be treated as held by the members of the partnership in the proportions in which they are entitled to share in the profits of the partnership.

References in this section to an individual's interest in the partnership's assets are to be construed accordingly."

- (6) The amendments made by this section have effect in relation to disposals made on or after 18 March 2015.

EXPLANATORY NOTE

ENTREPRENEURS' RELIEF: ASSOCIATED DISPOSALS

SUMMARY

1. This clause changes the conditions which must be met in order for an individual to claim entrepreneurs' relief (ER) on a disposal of his or her personal assets. These are assets which the claimant owns personally but which are used in a business carried on by a partnership of which he or she is a member, or by a company in which he or she is a shareholder. Under the new rules, such a disposal must be associated with a significant reduction in the claimant's participation in the business in terms of his interest in the partnership's assets or his shareholding in the company. The new rules come into effect in relation to disposals on or after 18 March 2015.

DETAILS OF THE CLAUSE

2. This clause amends section 169K of the Taxation of Chargeable Gains Act (TCGA) 1992.

3. Subsection (2) deletes subsections (1) and (2) of section 169K and replaces them with new subsections (1), (1A) to (1E) and (2).

4. Section 169K, new subsection (1) summarises the new conditions which must be met in order for there to be an associated disposal on which ER must be claimed. Any one of conditions A1, A2 or A3 must be met, along with both condition B and condition C. Conditions A1, A2 and A3 are new and are described below. Conditions B and C are existing conditions given at subsections (3) and (4) of section 169L.

5. Section 169K, new subsection (1A) describes new condition A1. This condition applies if the individual claiming ER ("P") has disposed of his or her interest in the assets of a partnership and that is the "material disposal of business assets" with which the disposal of personal assets may be associated. The condition is met if the interest disposed of is at least a 5% interest in the assets of the partnership, and there are no arrangements by which P could acquire or increase his interest in the partnership after the disposal. These "partnership purchase arrangements" are defined at new subsection (6). For the purposes of this condition, the normal capital gains tax (CGT) rules for determining a partner's share in partnership assets will apply.

6. Section 169K, new subsection (1B) describes new condition A2. This condition applies if P has disposed of shares in a company and that is the material disposal of business assets with which the disposal of personal assets may be associated. The condition is that the

shares disposed of must constitute at least 5% of the company's ordinary share capital and must carry at least 5% of the voting rights in the company. Also, there must be no arrangements by which P could increase his level of participation in the company by acquiring shares or securities either in the company or in a company which is a member of a trading group of which the company is a member. These "share purchase arrangements" are defined at new subsections (1E) and (2).

7. Section 169K, new subsection (1C) limits the circumstances in which condition A2 is met. The condition is not met if the disposal of shares takes place because the company has made a capital distribution in respect of those shares, unless the distribution is made in the course of the company's winding-up or dissolution.

8. Section 169K, new subsection (1D) describes new condition A3. This condition applies if P has disposed of securities of a company and that is the material disposal of business assets with which the disposal of personal assets may be associated. The condition is that the securities disposed of must constitute at least 5% by value of the securities of the company which are in issue (and not redeemed or cancelled) at the time of the disposal. Also, there must be no arrangements by which P could increase his level of participation in the company by acquiring shares or securities either in the company or in a company which is a member of the trading group of which the company is a member. These share purchase arrangements are defined at new subsections (1E) and (2).

9. Section 169K, new subsections (1E) and 2 define the share purchase arrangements relevant to whether conditions A2 or A3 are met. These arrangements include agreements, understandings or schemes under which P or a person connected with P is entitled to acquire shares in, or securities of, certain companies. The companies in question are the company whose shares P has sold and any other company which is a member of the same trading group as that company. If, at the time the shares are sold, there are arrangements which make it reasonable to assume that another company will become a member of the same group as the company whose shares are sold then those companies are treated as being members of the same group at the time of the sale. Section 286 applies for determining whether a person is connected with P.

10. Subsection (3) makes minor changes to subsection (3) of section 169K to make its language consistent with new the subsections (1) to (2).

11. Subsection (4) inserts new subsections (3A) to (3C) into section 169K.

12. Section 169K, new subsection (3A) modifies condition B in subsection (3). Condition B is that the disposal of the personally-owned asset must be part of a withdrawal of P from participation in the business carried on by the partnership or by the company. The effect of new subsection (3A) is that the disposal is not treated as part of such a withdrawal if, at the date of the disposal, there are arrangements by which P could acquire or increase his interest in the partnership after the disposal. These partnership purchase arrangements are defined at new subsection (6). This requirement applies at the time the privately-owned asset is disposed

of: it complements the similar requirement in condition A1 which applies at the time of the material disposal of business assets.

13. Section 169K, new subsections (3B) and (3C) also modify condition B in subsection (3). The disposal of a personally-owned asset is not treated as part of a withdrawal from a company's business if, at the date of the disposal, there exist arrangements by which P could acquire shares in, or securities of, certain companies. The companies in question are the company whose shares P has sold and any other company which is – or can be expected to become - a member of the same trading group as that company. These arrangements correspond to the share purchase arrangements relevant to condition A2 which are described at new subsections (1E) and (2). This requirement applies at the time the privately-owned asset is disposed of: it complements the similar requirement in condition A2 which applies at the time of the material disposal of business assets (see above).

14. Subsection (5) inserts new subsections (6), (7), (8) and (9) into section 169K.

15. Section 169K, new subsection (6) defines partnership purchase arrangements. These are arrangements under which P or a person connected with P (for instance, P's spouse or civil partner, sibling or child: see section 286 for a definition) is "entitled to acquire" an interest in the partnership which is carrying on the trade, or to increase their interest. An interest in a partnership includes a share in the income or profits of a partnership, or a fractional share in the assets of the partnership for the purposes of computing chargeable gains. It also includes an interest in such a share. The meaning of entitled to acquire is given by new subsection (8).

16. Section 169K, new subsection (7) defines terms used elsewhere in the section.

17. Section 169K, new subsection (8) explains what is meant by entitled to acquire in the section. A person is entitled to acquire a thing if they currently have an entitlement to acquire it at a future date, or if they will in future acquire such an entitlement.

18. Section 169K, new subsection (9) contains special rules which determine how the section applies to Scottish partnerships and to partnerships constituted under non-UK law where that law treats partnership assets as held by or on behalf of the partnership (rather than, for instance, by the partners). It ensures that the treatment of these partnerships is consistent with the usual CGT treatment of partnerships by which assets of the partnership are treated as held by the partners.

19. Subsection (6) states that the amendments to section 169K apply to disposals on or after 18 March 2015.

BACKGROUND NOTE

20. These new provisions are effective in relation to disposals on or after 18 March 2015 in order to prevent the forestalling which would otherwise be likely.

21. This measure removes an unintended facility under the entrepreneurs' relief rules. Under these rules the relief could be claimed by an individual on a disposal of a private asset used in a business without the individual permanently reducing their participation in the business by a meaningful amount. Allowing relief in these circumstances is not consistent with the purpose of ER on associated disposals, which is to promote the transfer of a business to new proprietors along with all the assets used in that business, including assets which are not owned by the trading entity.

22. This measure ensures that entrepreneurs' relief is better targeted at people who have genuinely reduced their participation in a business.