HM Revenue & Customs

Capital Gains Tax for Shares Toolkit

2019-20 Self Assessment Tax Returns

Published June 2020

Index

Introduction

Tax agents and advisers play an important role in helping their clients to get their tax returns correct. This toolkit is aimed at helping and supporting tax agents and advisers by providing guidance on the errors we find commonly occur in relation to Capital Gains Tax for shares. It may also be helpful to anyone who is completing an Income Tax Self Assessment tax return.

This toolkit is applicable for the tax year commencing 6 April 2019 for Income Tax Self Assessment tax returns. Its use is entirely voluntary.

The content of this toolkit is based on HMRC's view of how tax law should be applied. Its application to specific cases will depend on the law at the relevant time and on the precise facts.

This version of the toolkit was published during June 2020. The risks in this toolkit have been reviewed and updated where necessary for 2019-20.

For further information on using this toolkit and reasonable care under HMRC's penalty system see **Tax Agents toolkits**.

For guidance on matters not dealt with in this toolkit you should refer to the **Capital Gains Manual (CG)**.

Areas of risk within Capital Gains Tax for shares

Capital Gains Tax is charged on capital gains arising on the disposal of assets. A capital gain may arise when a 'chargeable person' (**CG10700c**) disposes of a 'chargeable asset' (**CG11700c**) on a 'chargeable occasion' (**CG12700c**).

It is important to note that any charge to Income Tax will take priority over a capital gains charge. For further guidance see **CG10260**.

The relevant Capital Gains Tax legislation is contained in the Taxation of Chargeable Gains Act 1992. The main source of guidance is contained in the **Capital Gains Manual** although there are several useful links to Capital Gains Tax guides and help sheets on the **Capital Gains Tax** pages of the HMRC website.

Capital Gains Tax is charged at 10 per cent and 20 per cent on gains that are not 'upper rate gains'. The rate paid by individuals depends upon the amount of their total taxable income. Gains of trustees or personal representatives of deceased persons are charged at 20 or 28 per cent. Gains qualifying for Entrepreneurs' Relief are taxed at a rate of 10 per cent.

Entrepreneurs' Relief is subject to a lifetime limit of £10million qualifying gains per individual for disposals made before 11 March 2020. For disposals made on or after 11 March 2020, the cumulative lifetime limit has been reduced to £1million. All previous gains on which Entrepreneurs' Relief has been claimed must be taken into account when determining the level of lifetime limit remaining for each year.

Allowable losses may be deducted from gains in whatever way is most beneficial to the individual. For further guidance on rates of tax see **CG10246**, and for set-off of losses see **CG21600+**.

This toolkit aims to identify risks for Capital Gains Tax for shares only. Capital Gains Tax may be due on gains arising from other types of asset. For further guidance on the types of asset on which Capital Gains Tax may be due see **Capital Gains Tax pages**.

For any other questions or advice please refer to **Capital Gains Tax** and **Capital Gains Manual**.

The main areas of risk for Capital Gains Tax for shares broadly fall into five categories:

Record keeping

Good record keeping is essential. Poorly kept records can mean that information provided is not accurate and may result in expenditure or reliefs being claimed incorrectly. Conversely allowable expenses or reliefs may not be claimed.

The nature of Capital Gains Tax means that relevant events may have occurred in the distant past yet still affect the current transaction, for example, a previous part disposal. Having access to detailed histories of shareholdings makes it easier to gather the relevant information when disposals occur and help complete the return correctly and in full.

For Self Assessment tax return purposes, for 2019-20 tax returns filed by the filing date, records should normally be kept until 31 January 2022, or until 31 January 2026 for self-employed businesses or partnerships. Records will need to be kept longer for tax returns filed late or where HMRC have started a check into the return.

Records connected with the acquisition of shares or securities will need to be retained until the shares are disposed of. After disposal, these records will need to be retained for the further period in line with general record keeping requirements.

In the case of the disposal of part of a shareholding, records will need to be retained until the remainder of the shareholding is disposed of, and then the further period.

For further information see **Record keeping and Capital Gains Tax**.

Disposals

Disposals include the sale, exchange or gift of all or part of a shareholding. It can also include a claim that shares that have become worthless, or almost worthless (the value of the shares is negligible) and the receipt of capital sums derived from shareholdings.

It is important to establish the date of disposal to ensure that Capital Gains Tax is calculated for the correct tax year. Often the date of disposal will be clear such as when the disposal is made under an unconditional contract where the date of disposal is the date of the contract. However, there are occasions when this will not be straightforward, for example when a contract is conditional.

A contract is only conditional if particular conditions have to be satisfied before the contract becomes legally binding. The date on which these conditions are met and the contract becomes legally binding is the date of disposal.

Valuations

In respect of 'unquoted' shares, valuations are the biggest single area of risk, accounting for a large part of HMRC’s compliance checks. This is particularly so where the valuation is not referred to an independent valuer and it is important to make sure the valuation is made for the purposes of relevant legislation.

Issues that are sometimes overlooked when instructions are given to a valuer include:

- the full history of the shareholding
- relevant close company information in respect of unquoted shares.

Where we are satisfied that all the relevant information has been fully considered by an independent valuer, the valuation is less likely to be challenged.

It is often necessary to establish a market value for shares held at 31 March 1982 or which have been transferred as part of an estate, but there are other occasions when it may also be required. Such occasions can be overlooked.

For further guidance see **CG59500c**.

Expenditure

Certain expenditure is allowed against the disposal proceeds in calculating the chargeable gain. The main rules are contained in S38 Taxation of Chargeable Gains Act 1992 and cover:

- acquisition costs
- enhancement expenditure
- incidental costs of acquisition and disposal.

The expenditure should be capital and not allowable elsewhere against income. There are specific rules for apportioning the allowable expenditure on a part disposal.

For further guidance see **CG15150+**.

Reliefs

There are several reliefs that may apply to a chargeable gain. There are certain conditions that must be met before each relief is due. If these conditions are not met the relief may not be available.

There are some reliefs which require specific associated documentation without which the claim for relief is invalid. It is important to ensure that all necessary documentation is available and complete before making a claim for relief.

Using links within this document

Blue underlined text are links within this document.

Green bold text are hyperlinks to external documents on the internet (access to the internet is necessary to view these).

We have a range of services for people with disabilities, including guidance in Braille, audio and large print. Most of our forms are also available in large print. Please contact any of our helplines if you need these services.

Dealing with HMRC if you have additional needs

Giving HMRC feedback on toolkits

HMRC would like to hear about your experience of using the toolkits to help develop and prioritise future changes and improvements. HMRC is also interested in your views of any recent interactions you may have had with the department.

Send HMRC your feedback

Client Name:	Period Ended:

Checklist for Capital Gains Tax for shares

Computations

		Yes	No	N/A	N/K
1	Have the correct figures been entered in the capital gains summary pages SA108 and any computations submitted with the return?	☐	☐	☐	☐

Disposals

		Yes	No	N/A	N/K
2	Has the correct date of disposal been established?	☐	☐	☐	☐
3	Has market value been used instead of actual disposal proceeds, where appropriate?	☐	☐	☐	☐
4	Where the disposal was to a connected person, has market value been applied?	☐	☐	☐	☐
5	Where a valuation is necessary, has the shareholding disposed of been valued by a properly instructed, independent valuer?	☐	☐	☐	☐
6	Has any non-monetary consideration included in the disposal proceeds been properly valued?	☐	☐	☐	☐

Disposals continued

7 Where any of the consideration is deferred, has the correct treatment been identified?

	☐	☐	☐	☐

8 Has the correct treatment been applied where any deferred consideration that is unascertainable may be satisfied by the issue of shares or debentures?

	☐	☐	☐	☐

Allowable costs

9 If there has been a disposal of part of a shareholding, has reference been made to the S104 holding (share-pool) for details of allowable expenditure?

	☐	☐	☐	☐

10 If there has been a disposal of shares which were held on 31 March 1982, has the valuation been made by reference to the full holding at that date?

	☐	☐	☐	☐

11 Where shares have been disposed of that were inherited, has the correct acquisition cost been used for their disposal?

	☐	☐	☐	☐

Reliefs

12 Have all of the conditions been met on a claim for gift relief on a gift of shares or securities of a trading company, and the claim made on the specified form?

	☐	☐	☐	☐

Reliefs continued

13 Has it been established whether the transfer on which gift relief is claimed is an outright or a partial gift?

14 Have all of the conditions been met for a claim to Entrepreneurs' Relief?

15 Have all the conditions been met for a claim for Enterprise Investment Scheme Deferral Relief?

16 Is capital gains reinvestment relief being claimed for gains invested under the Seed Enterprise Investment Scheme (SEIS)?

17 Have all the conditions been met for a claim under the Investors' Relief?

Losses

18 If a loss has arisen from a disposal of shares to a connected person, has it been relieved only against gains arising on a further disposal to the same connected person?

19 Has relief for losses brought forward been claimed correctly?

Losses continued

20 Have all the conditions been met for a claim that shares have become of negligible value?

21 Have all the conditions been met for a claim for relief against income in respect of an allowable loss on shares subscribed for in a qualifying trading company?

Explanation and mitigation of risks

Computations

1. Have the correct figures been entered in the capital gains summary pages SA108 and any computations submitted with the return?

Risk
Problems with unattached and/or incorrect computations can cause delays and extra costs for both agents and their clients and HMRC. Eighty per cent of paper returns which cannot be processed have to be sent back due to there being no computation attached. Other common problems are:

- where the total gains are shown net of the annual exempt amount (AEA) on the SA108
- losses have been carried or brought forward incorrectly
- where the estimates or valuations boxes have not been ticked when they should have been.

Mitigation

- Use the toolkit to ensure reliefs etc. are claimed correctly
- Although not mandatory, it may be helpful to use the computation working sheet provided at page CGN 20 in the **SA108 Notes** for straightforward computations.

Explanation
We see a significant proportion of returns where basic computational errors have been made or no computation has been attached. The most common error is where the AEA has been deducted in the computation and the figure which is then entered on the return is provided net of the AEA. AEA is automatically applied when a return is processed.

back to checklist

Disposals

2. Has the correct date of disposal been established?

Risk
Proceeds for the disposal of shares may be received in a later year to that in which the disposal arises for capital gains purposes. Where the date of disposal is not correctly identified and the gain arises in an earlier or later year, there may be significant tax consequences. For example, the rate of tax charged could be affected, as could the availability of reliefs or losses.

Mitigation
Ensure that the correct date of disposal has been identified. This will normally be easily identifiable but there are specific rules which determine the date of disposal in particular circumstances as explained below.

Explanation
Where shares are disposed of other than under a contract, the date of disposal will depend on the nature of the transaction. For further guidance on the specific rules see **CG14260**.

Where a company has been struck off the register of companies (or an equivalent for companies incorporated outside the UK), the shares of that company will have ceased to exist. There will be a disposal of the shares on the date the company is struck off as per S24(1) of the Taxation of Chargeable Gains Act 1992. For further guidance see **CG13120**.

Where a valid negligible value claim is made under S24(2) of the Taxation of Chargeable Gains Act 1992, the shares are deemed to be disposed of on the date the claim is made to HMRC. If certain conditions are met then an earlier time for the deemed disposal may be specified in the claim. For further guidance see Q20 below and **CG13125+**.

Where shares are disposed of under a contract, the date of disposal will depend on whether the contract is unconditional or conditional. Where the contract is unconditional, the date of disposal will be the date of the contract. However where the contract is conditional, the date of disposal will be the date on which the conditions are satisfied.

A contract is only conditional if particular conditions have to be satisfied before the contract becomes legally binding.

For further guidance see **CG14270+**.

back to checklist

3. Has market value been used instead of actual disposal proceeds, where appropriate?

Risk
In a number of circumstances market value must be used instead of the actual disposal proceeds. If market value is not used the consideration may be incorrect resulting in an under or overstatement of a capital gain.

Mitigation
Establish whether this disposal involves any of the criteria for using market value. Ensure market value is used in place of the actual disposal proceeds when calculating any chargeable gain or loss.

Explanation
Market value is the price which the shares disposed of might reasonably be expected to fetch on a sale in the open market. There are many circumstances in which a valuation of shares may be needed for Capital Gains Tax. The most common are:

- where shares are disposed of otherwise than by way of a bargain made at arm's length, S17 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG14530**
- where shares are disposed of to a connected person, S17 and S18 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG14530** and Q4 below
- where rebasing to 31 March 1982 applies, S35 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG16700c** and Q10 below
- where shares are inherited, S62 Taxation of Chargeable Gains Act 1992 - for further guidance see **CG32230** and Q11 below.

Where shares are disposed of for consideration in money's worth rather than in cash, the value of the money's worth consideration will need to be established. Any assets which are received in exchange for the shares disposed of will need to be valued.

For further guidance see **CG14500** and Q6 below.

back to checklist

4. Where the disposal was to a connected person, has market value been applied?

Risk
Where there is a disposal of shares to a connected person, the disposal is treated as a transaction 'otherwise than by way of a bargain made at arm's length'. In these circumstances the market value rule needs to be applied. For further guidance see **CG14530+**.

If the disposal is not identified as one made to a connected person, the gain may be mistakenly computed by reference to sale proceeds, if any, rather than to market value and the resulting gain may be incorrect.

Mitigation
Check the disposal details and identify the person acquiring the shares to determine whether there is any connection between them and the person disposing of the shares. Where the person acquiring the shares is a connected person, a valuation of the shares disposed of will be required, in order to establish the correct disposal consideration to be used in calculating the gain. See Q5 for valuations.

Explanation
In many cases it will be obvious that the parties to the transfer of shares are connected but there can be occasions when it is not immediately apparent. For example, the disposal may be to a company which the vendor controls.

Persons connected to an individual are:

- their spouse or civil partner (but see the notes below on transfers of shares between spouses and civil partners)
- their brothers and sisters, and their spouses or civil partner's brothers and sisters
- their, and their spouses or civil partners, parents, grandparents and other ancestors
- their, and their spouses or civil partners, children and other direct descendants
- the spouses or civil partners of any of the relatives mentioned above
- their business partners and their spouses or civil partners and relatives (except for genuine commercial acquisitions or disposals of partnership assets)
- any company an individual controls, on their own or with any of the other people mentioned above
- the trustees of any settlement where an individual, or any person connected with that individual, is a settlor.

For further guidance on connected persons see **CG14580+**.

Transfers of shares between spouses or civil partners may not always result in a gain or loss. For further guidance on transfers of shares between spouses or civil partners see **CG22200+** and **Helpsheet 281**.

back to checklist

5. Where a valuation is necessary, has the shareholding disposed of been valued by a properly instructed, independent valuer?

Risk
Valuation of 'unquoted' shares is an area of high risk. This is particularly so where the valuation is not referred to an independent valuer. However, it is not sufficient simply to refer a valuation to a valuer. In the absence of proper instructions, the valuer will not understand the context nor have all the necessary details on which to make a proper valuation.

For 'unquoted' shares, areas that are frequently overlooked include:

- The size of the holding
- A full description of the rights attaching to the shares
- The class (for example, ordinary, preference, A, B etc.) and denomination of the shares (disposals of different classes of share in the same company must be shown as separate transactions)
- A history of the holding, particularly if there has been a reorganisation or takeover - in which case all the above details in respect of the original shares held will need to be included. For further information on share reorganisations see **Helpsheet 285**.

Mitigation
Check whether the shares disposed of were 'quoted' or 'unquoted'. The value of 'quoted' shares at any given date can be obtained by subscription from sources such as Interactive Data. For further guidance see **CG50280**. Alternatively, many public companies include information about their own shares on their websites.

For 'unquoted' shares a formal valuation will be required. Valuations are not a precise science and lengthy correspondence with us may be avoided if it is demonstrated that all the relevant factors have been taken into consideration. It is important to:

- engage an independent valuer
- explain the context, for example, a valuation for the purposes of rebasing to 31 March 1982 (S35 Taxation of Chargeable Gains Act 1992)
- draw attention to the definition of market value for Capital Gains Tax purposes
- provide all relevant details concerning the shareholding, and in particular, the points mentioned in the bullet points under 'Risk' above.

For further information on the valuation of shares see **Valuation of Assets**.

Explanation
Shares and securities fall into two categories – 'quoted' and 'unquoted' (also known as listed or unlisted). It is essential to correctly identify which type has been disposed of in order to establish when a valuation may be required.

Formal valuations are more likely to be required for 'unquoted' shares, i.e. shares not listed on any recognised stock exchange and shares listed on the Alternative Investments Market, than 'quoted' shares, although there are occasions when a valuation of ‘quoted’ shares will be necessary.

For further guidance on valuation of 'quoted' shares see **CG59510+**.

For further guidance on valuation of 'unquoted' shares see **CG59540+**.

You may also consider using the CG34 procedure (post transaction valuation check) to agree the valuation prior to submitting the return. For further guidance see **CG16600+**.

If you use the CG34 procedure, ensure you enclose a Capital Gains computation for the Self Assessment year, clearly state which reliefs are being claimed or are due, and provide an explanation of how the value was arrived at. You must ensure that the CG34 is submitted at least two months prior to filing the relevant Self Assessment tax return or we may be unable to complete the check in time.

Forms CG34 and any relevant additional information should be sent directly to the appropriate office, as indicated on the form, and not to HMRC’s Shares and Assets Valuation (SAV) office.

back to checklist

6. Has any non-monetary consideration included in the disposal proceeds been properly valued?

Risk
If there is a non-monetary element to the consideration for the shares disposed of, such as a share for share transaction, it will be necessary to value that non-monetary element. It may not always be apparent that this is the case. For example, the consideration may be an asset, such as shares in another company, plus a sum of money.

Mitigation
Check the disposal details to confirm exactly what form the consideration took. Where appropriate, ensure the non-monetary element has been properly valued.

Explanation
Where all or part of the consideration received is something other than cash, a valuation of the non-cash element of the consideration is required.

Consideration can be any form of value received. It can take the form of money's worth as well as money. For further guidance see **CG14500** for further details.

back to checklist

7. Where any of the consideration is deferred, has the correct treatment been identified?

Risk
There are occasions when the proceeds of disposal are not received immediately and some, or all, of the consideration is deferred. Depending on the nature of the deferred consideration, it may need to be taken into account immediately when computing the gain or loss for the disposal, even if it is not received until sometime after the disposal. Broadly where the amount of the future consideration is ascertainable, the full amount is included when calculating the gain or loss.

Mitigation
Check the disposal agreement or contract fully to identify any deferred consideration. Where there appears to be deferred consideration, establish the terms of the future payments e.g. whether the amount of the deferred consideration is **known** at the date of disposal, or whether the amount will be established by a future event(s). See **CG14883** and **CG14940**.

The Capital Gains Tax treatment depends on whether deferred consideration is ascertainable or not, and not on whether the deferred amount is contingent.

Explanation
Where the deferred amount is known or ascertainable by calculation, for example if the consideration consists of an immediate payment followed by a number of known annual instalments, the whole amount is ascertainable in the year of disposal and should all be included in the consideration.

Where the deferred amount is contingent it may still be known or ascertainable, for example where a fixed and known amount is payable but only if future profits of the company reach a specified level, in this case the amount is ascertainable and should be included in the consideration in the year of disposal.

Where the deferred amount is not ascertainable, for example, because future amounts payable are dependent on future events (such as being a percentage based on the future profits of the company in which the shares disposed of were held), the right to that part of the consideration is

itself an asset. The value of this asset i.e. the right to receive the future payments, is included in the consideration for the disposal of the shares and so will have to be valued. See **CG14950**.

When that part of the consideration is eventually received it is treated as consideration for the disposal or part disposal of the right, not the original shares. There is a separate chargeable occasion when each instalment of the future payment is received (in respect of unascertainable deferred consideration) and further Capital Gains Tax calculations will be needed.

For further guidance see **CG14970**.

For further guidance on deferred consideration see **CG14850+**.

Where the consideration for an asset is ascertainable and payable by instalments, the vendor may, in certain circumstances, ask to pay the tax due on its disposal by instalments.

This relief is available where the instalments of consideration specified in the contract for sale of the shares meet all of the following conditions:

- the instalments begin no earlier than the date of disposal of the shares
- the instalments extend over a period exceeding 18 months
- the instalments continue beyond the date on which the tax would otherwise be due and payable.

Where these requirements are satisfied, the calculation of the instalments of tax which the vendor should pay is to be made in accordance with **CG14910**.

back to checklist

8. Has the correct treatment been applied where any deferred consideration that is unascertainable may be satisfied by the issue of shares or debentures?

Risk

In some circumstances an exchange of shares for other shares (or for debentures that are not Qualifying Corporate Bonds (QCBs)) is treated as involving no disposal for Capital Gains Tax purposes. Instead the new asset inherits the cost of the original asset so any gain arises on the disposal of the new asset.

Where some or all of the consideration is deferred and the deferred amount is not ascertainable and may be satisfied by the issue of shares or debentures, the application of the ‘no disposal’ share exchange rules can only apply to the part which is to be settled by shares or debentures and only where the right must be satisfied by an issue of shares or debentures.

Where the right does not have to be satisfied by an issue of shares or debentures, for example where it may possibly or only be paid in cash, the ‘no disposal’ share exchange treatment is not available.

Mitigation

Check the disposal agreement or contract fully to identify any unascertainable deferred consideration, see Q7 above, and whether it can be satisfied only by an issue of shares or debentures.

Explanation

For further guidance on the 'no disposal' share exchange rules see **Helpsheet 285** and **CG52500+**.

Where the right to unascertainable deferred consideration can be satisfied only by an issue of shares or debentures, it is known as an 'earn-out right' and S138A Taxation of Chargeable Gains Act 1992 treats it as an asset to which the 'no disposal' share exchange rules can apply.

An individual can elect that S138A Taxation of Chargeable Gains Act 1992 shall not apply.

Special rules apply if the exchange is for debentures that are QCBs. These rules defer the gain on the shares until the disposal of the QCBs. For further guidance see **CG58070**.

This is a complex area. For further guidance see **CG58000+**.

back to checklist

Allowable costs

9. If there has been a disposal of part of a shareholding, has reference been made to the S104 holding (share pool) for details of allowable expenditure?

Risk
It is not always clear that the shares disposed of are only part of the total shareholding held at the time of disposal. If this is overlooked, then the allowable expenditure may be calculated incorrectly.

Mitigation
Check the history of the shareholding to confirm whether the shares disposed of are the entire shareholding held or only a proportion of it. Where there has been a disposal of only part of the shareholding, refer to the Section 104 holding (share pool) to determine the correct amount of allowable expenditure to be used in the calculation of any gain or loss.

Explanation
Shares of the same class in the same company are pooled together in what is called a S104 holding (share pool), apart from shares disposed of that are identified with acquisitions under the 'same day' or 'bed and breakfasting' rules (acquisitions within the 30 days following the disposal).

For further guidance see **CG51500**.

The apportionment of a disposal of part of a shareholding is made by reference to the number of shares held, not their value. The S104 holding (share pool) should hold details of all previous disposals thus allowing an accurate calculation of allowable expenditure.

For further information on shares and Capital Gains Tax see **Helpsheet 284**.

Example
Ms Davy makes the following acquisitions and disposals:

- on 15 April 2012 she buys 1,000 shares for £1,300
- on 4 August 2012 she buys another 1,000 shares for £1,450
- on 19 January 2013 she buys a further 500 shares for £950
- on 16 March 2018 she sells 2,000 shares for £6,850
- on 7 April 2018 she buys another 2,000 shares for £6,790
- on 10 December 2019 she sells 2,200 shares for £7,700

Under the share identification rules her disposals must be identified with acquisitions in the following order:

- Disposal on 16 March 2018 - this is matched with the 2,000 shares acquired on 7 April 2018. A gain £60 (£6,850 - £6,790) arises. Because the shares bought on 7 April are identified under the 'bed and breakfast' rule, they do not enter the pool
- Disposal on 10 December 2018 - this is a disposal from the Section 104 holding (share pool). Before the disposal, the Section 104 holding (share pool) comprised the following:

Shares: 1,000 + 1,000 + 500 = 2,500

Cost: £1,300 + £1,450 + £950 = £3,700

Ms Davy sold 2,200 out of 2,500 shares so, on a simple apportionment, the shares sold have a cost of £3,256. Her chargeable gain is therefore £7,700 - £3,256 = £4,444.

The S104 holding (share pool) remaining after the disposal comprises 300 shares at a cost of £444.

back to checklist

10. If there has been a disposal of shares which were held on 31 March 1982, has the valuation been made by reference to the full holding at that date?

Risk
If shares were held at 31 March 1982, any valuation required must refer to the full number of shares of that class in that company held at that date. It is often only the number of shares being disposed of that is valued, which may not match the full number of shares held at 31 March 1982. This may result in the miscalculation of allowable expenditure deducted and the incorrect calculation of any gain.

Mitigation
Check the number of shares which were held at 31 March 1982 and compare that to the number of shares now being disposed of. Ensure that the valuation is made by reference to the whole shareholding held at 31 March 1982, in order to establish the allowable expenditure for the shares disposed of.

For further information on valuations see Q5 above.

Explanation
Where shares were held on 31 March 1982, the market value on that date is substituted for the actual acquisition cost.

An important factor in the valuation of 'unquoted' shares is the size of the shareholding to be valued. The valuation needed is normally all of the shares held, or treated as held, on 31 March 1982.

For further guidance see **CG59580**.

back to checklist

11. Where shares have been disposed of that were inherited, has the correct acquisition cost been used for their disposal?

Risk
It is sometimes assumed that a value provided to us for Inheritance Tax purposes has been ‘ascertained’ and that the same value is acceptable for Capital Gains Tax purposes. This is not always the case and so the market value of the shares at the date of death may still have to be established.

For the meaning of 'ascertained' in this context see **CG32224**.

Mitigation
Check whether the value of the shares has been 'ascertained' for Inheritance Tax purposes. For further guidance see **CG16251**.

If it has not been 'ascertained', ensure that an appropriate market value of the shares at the date of death is established see **CG32230**.

For further information about valuations see Q5 above.

Explanation
When a person dies, the value of his or her estate may need to be considered by HMRC's Inheritance Tax office to determine any liability to Inheritance Tax. Where the values of the assets making up that estate have been 'ascertained' for the purpose of Inheritance Tax the same values must be used for Capital Gains Tax.

However, there are occasions when a value has been returned to HMRC's Inheritance Tax Office, for Inheritance Tax purposes but has not been considered and so has not been 'ascertained'. These include:

- the whole estate may be clearly below the Inheritance Tax threshold
- the estate may be transferred to the deceased's spouse or civil partner so that Inheritance Tax is not due.

Where the value has been not been 'ascertained' for the purposes of Inheritance Tax, the value must be determined for Capital Gains Tax purposes. For further guidance see **CG32210+**.

back to checklist

Reliefs

12. Have all of the conditions been met on a claim for gift relief on a gift of shares or securities of a trading company, and the claim made on the specified form?

Risk
Incorrect claims are sometimes made when the particular conditions for gift relief are not satisfied.

Mitigation
Check that all of the conditions are met as shown below and that claims are submitted in the correct format within the time limit. The claim should be made on the form at the end of **Helpsheet 295**.

Conditions for relief are:

- there has been a gift by an individual, or trustees, of shares or securities of a trading company or holding company of a trading group to a UK resident individual or settlement
- the shares or securities disposed of are not listed on a 'recognised stock exchange' - the Alternative Investment Market is not a recognised stock exchange
- a valid claim has been made.

Exceptionally, listed shares can qualify. This is where the trading company or holding company is the personal company of the person making the disposal or, in the case of trustees, where the trustees have not less than 25 per cent of the voting rights. For further information see **Helpsheet 295**.

Explanation
A gift is a disposal otherwise than by way of a bargain made at arm's length.

S165 Taxation of Chargeable Gains Act 1992 allows a claim for the capital gain on shares or securities in a trading company that are given away to be deferred or held over until the recipient of the shares disposes of them. Unless the gift is only a partial gift (see Q13 below), the effect of the claim is that the recipient takes over the transferor's Capital Gains Tax acquisition cost. When the recipient disposes of the shares their chargeable gain will be calculated using this cost.

For further guidance see **CG66450+**.

Relief is not available on gifts to a settlor interested settlement nor where there is an arrangement under which the settlement will or may become a settlor interested settlement, nor on gifts of shares to a company.

For further guidance see **CG66918+**.

There are also special rules that apply for gifts on which Inheritance Tax is chargeable. Certain gifts to settlements are chargeable to Inheritance Tax and will qualify for relief under S260 Taxation of Chargeable Gains Act 1992. This relief must be claimed in priority to relief under S165 Taxation of Chargeable Gains Act 1992 and is not restricted to gifts of shares or securities in trading companies. It is also subject to the restriction on gifts to settlor interested settlements.

For further guidance see **CG67030+**.

back to checklist

13. Has it been established whether the transfer on which gift relief is claimed is an outright or partial gift?

Risk
If a partial gift is treated as an outright gift the relief claimed may be excessive. A partial gift is a gift in which the recipient gives some consideration for the disposal but this is less than the market value of the shares. An outright gift is a gift in which no consideration is given.

Mitigation
Identify whether any consideration was received in respect of shares gifted to another person and where necessary restrict the amount of gift relief claimed appropriately (see explanation below).

For further guidance on how to calculate the amount of relief due see **CG66982**.

Explanation
If there is a partial gift, the relief should be restricted when the consideration given exceeds the costs that are allowed in calculating the transferor's gain on making the disposal (i.e. the cost of the acquisition and the incidental costs of acquisition and disposal). Relief cannot be claimed on the amount of the excess.

The claim should be made on the form at the end of **Helpsheet 295** and submitted with the return.

Example
Mr C and Mrs D are connected.

Mr C disposes of 5000 shares in XYZ Ltd to Mrs D where the facts are as follows:

Market value		£150,000
Cost of shares in 2008	£40,000	
Incidental costs of transfer	£3,150	£43,150
Gain based on market value		£106,850

Mrs D agrees to pay Mr C £100,000 for the shares in XYZ Ltd. As the parties are connected, this is not an arm's length disposal and therefore a claim under S165 Taxation of Chargeable Gains Act 1992 can be made. This is a partial gift in which the consideration of £100,000 exceeds the costs of £43,150 that Mr C is allowed in calculating the gain on the disposal.

Relief cannot be claimed on the excess of the consideration received over the costs.

Mr C therefore has a chargeable gain of £56,850 (sale proceeds £100,000 less costs £43,150) and a further £50,000 of the gain is held over. Mrs D is treated as acquiring the shares in XYZ

Ltd at a cost of £100,000, that is a market value of £150,000 less the amount of the held over gain.

back to checklist

14. Have all of the conditions been met for a claim to Entrepreneurs' Relief?

Risk

Entrepreneurs' Relief can reduce the amount of Capital Gains Tax for individuals in business, and some trustees, when they dispose of qualifying business assets if qualifying conditions have been met throughout a two-year qualifying period. The risk arises where Entrepreneurs' Relief is claimed but is not due because all of the conditions are not satisfied, or the asset is not a relevant business asset.

A claim is required by the first anniversary of 31 January following the tax year when the disposal took place, or when the 'first eventual gain' accrues in certain cases where a gain has been deferred. For a qualifying business disposal in the tax year 2019-20 a claim must be made by 31 January 2022.

Entrepreneurs' Relief is subject to a lifetime limit of £10million qualifying gains per individual for disposals made before 11 March 2020. For disposals made on or after 11 March 2020, the cumulative lifetime limit has been reduced to £1million. All previous gains on which Entrepreneurs' Relief has been claimed must be taken into account when determining the level of lifetime limit remaining for each year.

Mitigation

Check that the asset disposed of is a qualifying business asset. Qualifying business assets include certain shares in and securities of a 'personal' trading company or holding company of a trading group.

For further guidance see **CG63975**.

The qualifying conditions and date the qualifying period ends depend on the type of disposal. Check that all the qualifying conditions have been met throughout a two-year qualifying period:

For disposals of shares in and securities of your 'personal' company the individual must hold at least 5 per cent of the ordinary share capital and that holding must give them at least 5 per cent of the voting rights in the company. For disposals from 29 October 2018 then one of the following additional conditions must also be met:

- The individual is entitled to 5% of the company's profits available for distribution and 5% of its assets in a winding up by virtue of the holding, or;
- The individual would be entitled to 5% of the proceeds if the whole company was sold.

For further guidance see **CG64050**.

The company must be a trading company or the holding company of a trading group (see **CG64055**) and the individual must also be an officer or employee of that company (or of one or more members of a trading group) (see **CG64110**). The qualifying period ends on the date of disposal or the date the company ceased to qualify as a trading company or member of a trading group and that date is within the period of 3 years ending with the date of disposal.

Entrepreneurs' Relief is also available in relation to gains on shares that are acquired on the exercise of an option granted under the Enterprise Management Incentive (EMI) scheme. The shares do not need to be in your "personal company" but the shares must have been held for at least two years commencing on the date of the grant of the option. The relief will normally apply only to EMI shares acquired on or after 6 April 2013. See **CG64052**.

Check that adequate records are kept to accurately determine the level of lifetime limit used and remaining for each year.

For further details on Entrepreneurs' Relief see **Helpsheet 275**.

Explanation
Relief will be due as long as the qualifying conditions have been met throughout a two-year qualifying period either up to the date of disposal or the date the business ceased.

Spouses and civil partners are treated separately for Entrepreneurs' Relief. Each person is entitled to relief up to the maximum lifetime limit provided the relevant conditions are met.

Qualifying chargeable gains are charged to Capital Gains Tax at the Entrepreneurs' Relief rate of 10 per cent. The total lifetime qualifying gains must not exceed £1million (£10million for disposals made before 11 March 2020).

The excess above the lifetime limit will be taxable at the appropriate Capital Gains Tax rate.

For further guidance see **CG63950+**.

back to checklist

15. Have all the conditions been met for a claim for Enterprise Investment Scheme Deferral Relief?

Risk
A gain may be deferred and not immediately charged to Capital Gains Tax if Enterprise Investment Scheme (EIS) shares are subscribed for and a claim for EIS Deferral Relief is made. Where the conditions for a valid claim have not been met, a gain may be deferred incorrectly.

Mitigation
Check:

- that the EIS shares subscribed for were issued on or after 6 April 1998
- that an EIS3 certificate has been received from the qualifying company.

If the EIS shares were issued before the date of the gain upon which deferral relief is being claimed arose, check that the EIS shares are still held at that date.

Then:

- complete and submit part 2 of the EIS3 certificate.

For further information see **Helpsheet 297**.

Explanation
EIS deferral relief is available to individuals and trustees who are resident or ordinarily resident in the UK. It is not available to personal representatives, or to individuals who are treated by Double Taxation Agreements as resident elsewhere.

The qualifying EIS shares to which the individual is subscribing must have been issued within the period starting 12 months before and ending three years after the date on which the gain arose. If the EIS shares were issued before the date of the gain upon which deferral relief is being claimed arose, the EIS shares must still be held at that date.

The individual must have received form EIS3 from the qualifying company before making a claim. If the individual has not received form EIS3, no claim can yet be made. However, a claim can be made later. The latest date for making a claim is four years after the tax year in which the shares were issued.

This is a claim and therefore both the gain and the amount of the relief set against it must be shown in the return, even if the gain is fully relieved.

If the circumstances are more complicated, refer to the detailed guidance in **Venture Capital Schemes Manual (VCM) VCM23000+**.

For further guidance on the claims procedure see **VCM23200**.

back to checklist

16. Is capital gains reinvestment relief being claimed for gains invested under the Seed Enterprise Investment Scheme (SEIS)?

Risk
The exemption from Capital Gains Tax for gains reinvested under SEIS can apply only if the investor has qualified for and claimed SEIS Income Tax relief.

Box 40 is included on the SA108 - Capital Gains Summary to record the amount of gains invested under SEIS and qualifying for exemption. A maximum of £50,000 can be entered here. Any gains included in the return should be net of the amount claimed to be exempt due to reinvestment under the SEIS.

If more capital is invested in SEIS shares than the gains made, a loss cannot be created.

Mitigation
Capital gains reinvestment relief for gains invested under SEIS must be claimed by completing box 40 on the SA108 - Capital Gains Summary. A SEIS3 certificate must have been received from the SEIS company and the claim form attached to the certificate must be completed and attached to the SA108 - Capital Gains Summary. Also, the relevant code must be entered in box 36 and details of the claim provided in box 54 or in the computation, providing a clear statement that SEIS reinvestment relief is being claimed. See **Helpsheet 293** for more information.

Any part of a gain not exempted through reinvestment in SEIS shares remains chargeable and must be declared.

Explanation
If an asset has been disposed of in 2019-20 which would give rise to a chargeable gain, and an amount equal to all or part of the of the gain is reinvested in subscribing for shares which also qualify for SEIS income tax relief, half of the amount reinvested will be exempt from Capital Gains Tax. The asset does not have to be disposed of first and the investment in SEIS shares can take place before disposal of the asset, providing that both disposal and issue of shares take place in the same tax year and the SEIS shares were still held at the time of the disposal.

The £100,000 investment limit which applies for SEIS Income Tax relief also applies for reinvestment relief. Thus the exempt part of gains reinvested in SEIS shares may not exceed £50,000. So, if £100,000 were invested in SEIS shares and matched with chargeable gains of £100,000, only £50,000 of those gains could be treated as exempt.)

For further guidance see Venture Capital Manual **VCM45000+**.

back to checklist

17. Have all of the conditions been met for a claim under the Investors' Relief?

Risk
Investors' Relief can reduce the amount of Capital Gains Tax for individuals and some trustees when they dispose of shares in certain trading companies provided, they have been held for at least three years. It is designed to attract new external investment and is not normally available to an employee of the company or any company connected with it.

Investors' relief is only available against gains on shares that were acquired on or after the date the relief was announced on 17 March 2016 and applies to disposals that take place from 6 April 2019 onwards. Where the investor holds other shares that do not qualify there are special rules to determine how much of a gain can qualify for the relief.

A claim is required by the first anniversary of 31 January next following the tax year when the disposal took place. For a qualifying business disposal in the tax year 2019-20 a claim must be made by 31 January 2022.

The relief is subject to a lifetime limit of £10million qualifying gains per individual.

Mitigation
Check that the shares disposed of meet the qualifying conditions for the relief. Some of the important ones are set out below but see **CG63520**.

The shares must have been subscribed for fully in cash on or after 17 March 2016 and held for at least three years. Disposals from 6 April 2019 can qualify.

The company that issued the shares must be a trading company or the holding company of a trading group throughout the period between the share subscription and the date of disposal. The company's shares must not have been listed on a stock exchange at the time they were issued.

The relief is not available if the investor or a person connected with them is an employee of the company or a company connected with it. There is an exception where an investor with no other connection with the company becomes an unpaid director (the "business angel" investor). See **CG63550**.

Because all shares of the same time held by a person are treated as a single "pool" (see question 9 above) where only some of the shares in the pool will qualify for Investors' Relief. In that case the gain on a disposal is worked out in the normal way but only a part of it will qualify for the relief. There are special rules to take account of the shares that can never qualify and those that have not been held for long enough to qualify. See **CG63520**.

Check that adequate records are kept to accurately determine which shares held qualify for the relief, and the level of lifetime limit used and remaining for each year.

For further details on Investors' Relief see **Helpsheet 308**.

Explanation
Relief will be due as long as the qualifying conditions have been met for shares that were issued on or after 17 March 2016 and disposed of from 6 April 2019 onwards.

Spouses and civil partners are treated separately for Investors' Relief. Each person is entitled to relief up to the maximum lifetime limit provided the relevant conditions are met.

Qualifying chargeable gains are charged to Capital Gains Tax at the Investors' Relief rate of 10 per cent. The total lifetime qualifying gains must not exceed £10million.

The excess above £10million will be taxable at the appropriate Capital Gains Tax rate.

For further guidance see **CG63500+**.

back to checklist

Losses

18. If a loss has arisen from a disposal of shares to a connected person, has it been relieved only against gains arising on a further disposal to the same connected person?

Risk
Losses arising from a disposal to a connected person can be only be relieved against gains arising on disposals to the same connected person. Such losses are known as 'clogged losses' and cannot be relieved against general chargeable gains.

Mitigation
Ensure that losses arising from disposals to connected persons, including such losses brought forward, have been relieved only against gains arising on a disposal to the same connected person. If any unused balance of a clogged loss is to be carried forward, keep a separate record of it for future reference.

Explanation
Where a loss arises on a disposal to a connected person that loss is known as a 'clogged loss'. These losses can only be set against gains arising on disposals to the same connected person.

A clogged loss can only be set against gains:

- arising from a disposal to the same connected person
- at a time when the persons concerned are still connected.

The general rule for losses is that they may be set off against gains in whatever way is most beneficial in terms of reducing the Capital Gains Tax payable. For further guidance see **CG21600**. However this general rule does not override existing legislation that limits the gains from which allowable losses may be deducted, including 'clogged losses'. For further guidance see **CG21610**.

For further guidance on 'clogged losses' see **CG14561**.

For further guidance on connected persons see **CG14580** and Q4 above.

back to checklist

19. Has relief for losses brought forward been claimed correctly?

Risk
Without a full history of shareholdings, or details of all the relevant disposals where losses have been claimed and relieved, it is possible to make an incorrect claim for the amount of losses to be set against chargeable gains or carried forward.

Mitigation
When checking allowable losses brought forward:

- obtain full details of when the losses arose and how they have been applied, including any adjustments following amendments or enquiries
- if the amounts cannot be confirmed from records, an appropriate explanation should be entered in the 'Additional information' box
- check for clogged losses - see Q18 above.

Explanation
Allowable losses should be deducted:

- as far as possible from chargeable gains arising in the same year of assessment, with;
- any balance carried forward without time limit and deducted from chargeable gains arising in the earliest later year.

Losses brought forward are not required to reduce the net chargeable gains to below the annual exempt amount. Any losses which thus cannot be deducted remain available for carry forward for deduction in later years.

Where gains are charged at more than one rate, allowable losses may be deducted from gains in whatever way is most beneficial to the individual. For further guidance see **CG21600**.

Relief for losses may not be given in any of the following circumstances:

- more than once in respect of the same loss
- if relief has been or may be given in respect of the loss against profits or income under the

Income Tax Acts see **CG15831**

- for losses carried back (with some limited exceptions) see **CG15811**.

For further guidance on losses see **CG15812** and **CG15813**.

back to checklist

20. Have all the conditions been met for a claim that shares have become of negligible value?

Risk

There are certain conditions that must be met in order for a claim that shares have become of negligible value to be valid. Any deduction of an allowable loss made as a result of an invalid negligible value claim could result in understated tax liability.

Mitigation

Check that the negligible value claim is valid - both of these conditions must be met:

- the shares must still be owned at the time of the negligible value claim
- the shares must have become of negligible value during the period of ownership.

The first condition won't be met if the negligible value claim is made to HMRC after the company has been struck off the register of members (or an equivalent where the company is incorporated outside of the UK). This is because the shares are treated by S24(1) of the Taxation of Chargeable Gains Act 1992 as having been disposed of at the date the company was struck off, for further guidance see **CG13120**. This remains the case even if the negligible value claim specifies that the deemed disposal should take place on a date specified before the company was struck off.

A negligible value claim cannot be made in respect of shares which were of negligible value at the date of acquisition.

For further information see **Helpsheet 286**.

Explanation

If a person owns shares which have become of negligible value, that person may make a claim to be treated as though the shares had been sold and immediately reacquired at the time the claim is made for an amount equal to their value (a negligible value claim), which should be specified in the claim.

When a negligible value claim is made, the claim may specify an earlier time, falling in the two previous tax years, at which the deemed disposal should be treated as occurring. All the necessary conditions for the claim have to be met at that earlier time, as well as at the time that the claim is made.

If a negligible value claim is made during the tax year 2016-17, any loss resulting from the deemed disposal will arise in that year, unless the claim specifies that the claimant is to be treated as if the shares had been disposed of at a time falling in 2014-15 or 2015-16.
A competent negligible value claim only deems that the shares that were the subject of the claim were deemed to be disposed of and immediately reacquired. It will still be necessary to give notice of any loss arising from the deemed disposal in order for the loss to be an allowable loss for the purposes of S16(2A) of the Taxation of Chargeable Gains Act 1992. For further guidance see **CG15813**.

For further guidance on negligible value and 'quoted' shares see **CG13140**.

For further guidance on negligible value and 'unquoted' shares see **CG13145**.

back to checklist

21. Have all the conditions been met for a claim for relief against income in respect of an allowable loss on shares subscribed for in a qualifying trading company?

Risk
Losses can arise on the disposal of shares, or by way of a negligible value claim in respect of shares, acquired by subscription in a qualifying trading company. In certain circumstances a claim can be made to give relief for these allowable losses against income. If the claim is not valid this will result in understated tax liability.

Mitigation
Check that all of the conditions, as set out under the explanation below, have been met.

Explanation
There are very detailed conditions which must be satisfied before relief can be claimed for allowable losses to be set against income. Some of the main ones are summarised below. For more detail see **Helpsheet 286**.

The following conditions must be met:

- The loss arising on the disposal of the shares has been notified to HMRC in accordance with S16(2A) of the Taxation of Chargeable Gains Act 1992 so that it is an allowable loss
- The shares on which the loss arose must be ordinary shares and not fixed rate dividend preference shares
- The shares must have been subscribed for by the claimant, not purchased from or gifted by a previous holder. The claimant can subscribe personally, jointly with another person, or through a nominee. Shares subscribed for by the claimant's spouse or civil partner and transferred to the claimant during their lifetime are treated as shares subscribed for by the claimant
- The shares were shares in a trading company, or in the holding company of a trading group

The company must satisfy the following conditions:

- the company must have carried on its business wholly or mainly in the UK from the time it was incorporated (or one year before the shares were issued if that is later) until the date of disposal which results in a loss
- the company must have been an 'unquoted' company when the shares were issued and there must have been no arrangements then for it to cease to be an 'unquoted' company
- the company must be a trading company, a company whose only purpose or existence is that of carrying on one or more qualifying trades (apart from purposes incapable of having any significant effect on the extent of its activities), or it must be the parent company of a trading group without substantial non-qualifying activities.

Slightly different rules apply if the shares were issued before 6 April 1998.

back to checklist