

*Status: Point in time view as at 12/02/2019.*

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## SCHEDULES

### SCHEDULE 16

Section 39

#### ENTREPRENEURS' RELIEF

*Periods throughout which conditions for relief must be met*

- 1 (1) Chapter 3 of Part 5 of TCGA 1992 (transfer of business assets: entrepreneurs' relief) is amended as follows.
- (2) In section 169I (material disposal of business assets)—
  - (a) in subsections (3), (6) and (7A)(b) and (c), for “1 year” substitute “2 years”,
  - (b) in subsection (4)(a), for “1 year” substitute “2 years”,
  - (c) in subsections (7) and (7B)(b) and (c), for “1 year” substitute “2 years”, and
  - (d) after subsection (7) insert—

“(7ZA) If, in any case where an individual disposes of any shares in a company—

    - (a) there has been an issue of shares in the company to the individual following a relevant business transfer, and
    - (b) any of the issued shares constitute, or otherwise form part of, the shares disposed of,

the conditions in subsection (6)(a) and (b) are to be treated as met in any period ending immediately before the transfer throughout which the individual owned the business.

(7ZB) For the purposes of subsection (7ZA), shares have been issued “following a relevant business transfer” if they have been issued wholly or partly in exchange for the transfer of a business as a going concern, together with the whole assets of the business or the whole of those assets other than cash.”
- (3) In section 169J (disposal of trust business assets)—
  - (a) in subsection (4), for “1 year” substitute “2 years”, and
  - (b) in subsection (5)(a), for “1 year” substitute “2 years”.
- (4) In section 169K(4) (disposal associated with relevant material disposal), for “1 year” substitute “2 years”.
- (5) In section 169O(6) (amount of relief: special provisions for certain trust disposals), for “1 year” substitute “2 years”.
- (6) In Schedule 7ZA (“trading company” and “trading group”), in paragraph 25 (meaning of “relevant period”)—
  - (a) in sub-paragraph (a), for “1 year” substitute “2 years”, and
  - (b) in sub-paragraphs (b) and (c), for “1 year” substitute “2 years”.

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*Additional requirements relating to the beneficial ownership of companies*

- 2 (1) Chapter 3 of Part 5 of TCGA 1992 (transfer of business assets: entrepreneurs' relief) is amended as follows.
- (2) In section 169K(1B) (disposals associated with relevant material disposal), for paragraph (a) (together with the “and” at the end of it) substitute—
- “(a) the ordinary shares disposed of constitute at least 5% of the company's ordinary share capital and are shares in the individual's personal company (and section 169S(3A)(a) to (c) apply here but as if the reference to the final day of the period mentioned in section 169S(3A)(a) were to the date of the disposal), and”.
- (3) In section 169LA (relevant business assets: goodwill transferred to a close company)
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- (a) for subsection (1) substitute—
- “(1) Subject to subsection (1A), subsection (4) applies if—
- (a) as part of a qualifying business disposal, a person (“P”) disposes of goodwill directly or indirectly to a close company (“C”), and
- (b) immediately after the disposal, P meets any of the personal company conditions in the case of C or any company which is a member of a group of companies of which C is a member.
- (1ZA) For the purposes of subsection (1)(b)—
- (a) the reference to the personal company conditions is a reference to any of the conditions in 169S(3)(a), (b), (c)(i) or (ii), and
- (b) P is taken to have all the rights and interests of any relevant connected person.
- (1ZB) For the purposes of subsection (1ZA)—
- (a) section 169S(3) is treated as having effect with the omission of the references to “by virtue of that holding”,
- (b) section 169S(3A)(a) and (b) are to apply for the purposes of section 169S(3)(c)(ii) but as if the reference to the final day of the period mentioned in section 169S(3A)(a) were to the time immediately after the disposal, and
- (c) the condition in section 169S(3)(c)(i) is to be read as containing two separate conditions (one relating to profits and the other relating to assets).”, and
- (b) in subsection (1A)(a), for “subsection (1)(aa)” substitute “ subsection (1)(b) ”.
- (4) In section 169S (interpretation of Chapter), for subsections (3) and (4) substitute—
- “(3) For the purposes of this Chapter a company is a “personal company” in relation to an individual if—
- (a) the individual holds at least 5% of the ordinary share capital of the company,
- (b) by virtue of that holding, at least 5% of the voting rights in the company are exercisable by the individual, and

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- (c) either or both of the following conditions are met—
  - (i) by virtue of that holding, the individual is beneficially entitled to at least 5% of the profits available for distribution to equity holders and, on a winding up, would be beneficially entitled to at least 5% of assets so available, or
  - (ii) in the event of a disposal of the whole of the ordinary share capital of the company, the individual would be beneficially entitled to at least 5% of the proceeds.
- (3A) In determining whether subsection (3)(c)(ii) applies for the purposes of any provision of this Chapter under which a question arises as to whether or not a company is the individual's personal company at any time in a particular period—
  - (a) it is to be assumed that (so far as this is not otherwise the case) the whole of the ordinary share capital is disposed of at that time for a consideration equal to its market value on the final day of the period,
  - (b) it is to be assumed that the amount of the proceeds to which the individual would be beneficially entitled at that time is the amount of the proceeds to which, having regard to all the circumstances as they existed at that time, it would be reasonable to expect the person to be beneficially entitled, and
  - (c) the effect of any avoidance arrangements is to be ignored.
- (3B) For the purposes of subsection (3A)(c)—
  - (a) arrangements are “avoidance arrangements” if the main purpose of, or one of the main purposes of, the arrangements is to secure that any provision of this Chapter applies or does not apply, and
  - (b) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
- (3C) For the purposes of subsection (3) if the individual holds any shares in the company jointly with one or more other persons, the individual is to be treated as the sole holder of so many of them as is proportionate to the value of the individual's share (and references in subsection (3) to the exercise of voting rights or beneficial entitlement are to be read accordingly).
- (3D) A modified version of Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of subsection (3) reading references to company A as references to the individual.
- (3E) The reference here to a modified version of Chapter 6 of Part 5 of CTA 2010 is to the provisions of that Chapter having effect as if—
  - (a) for the purposes of section 158(1)(b), a person carrying on a business of banking were not a loan creditor of a company in respect of any loan capital or debt issued or incurred by the company for money lent by the person to the company in the ordinary course of that business,
  - (b) sections 171(1)(b) and (3), 173, 174 and 176 to 181 were omitted, and
  - (c) any modifications were made as are necessary for the purpose of applying that Chapter as if the individual were company A.”

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*Relief where company ceases to be individual's personal company*

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

### “CHAPTER 3A

#### ENTREPRENEURS' RELIEF WHERE COMPANY CEASES TO BE INDIVIDUAL'S PERSONAL COMPANY

#### **Overview of Chapter**

169SB 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.

#### **Election by individual where company ceases to be personal company**

169S(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, immediately before the relevant share issue, the individual had made a disposal at their relevant value of all assets consisting of 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 shares in or securities of the company, and
  - (b) immediately after that event, as having reacquired those assets, at their relevant value.
- (5) In this section—
 

“material disposal of business assets” and “personal company” have the same meanings as in Chapter 3 (see section 169S),

“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, and

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“relevant value” means—

- (a) in relation to an asset consisting of 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) For the purposes of the definition of “relevant share issue” in subsection (5)

—  
“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.

(7) In this Chapter—

- (a) references to “the notional disposal” are references to the disposal mentioned in subsection (4)(a),
- (b) references to “the notional gain” are references to the chargeable gain mentioned in subsection (3)(b), and
- (c) references to shares in or securities of a company include references to interests in such shares or securities.

### **Supplementary election to defer gains until subsequent disposal**

169SD) 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 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 the subject of the notional disposal. The attribution must be made, in relation to each class, by reference to the proportion that—

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- (a) the relevant gains (see section 169N(5)) accruing on the notional disposal in respect of 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 the shares or securities of that class which are the subject of the subsequent disposal. The apportionment must be by reference to the proportion that—

- (a) the nominal value of the shares or securities of that class which are the subject of the subsequent disposal bears to
- (b) the nominal value of shares or securities of that class 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 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 nominal value of shares of a particular class 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 nominal value of shares of that class as are the subject of the notional disposal.

#### **Application of section 169SD where section 116 applies**

169SE) This section has effect in any case where a transaction occurs to which section 116 (reorganisations, conversions and reconstructions) applies.

- (2) If sections 116(10)(b) and 169SD(1)(b) have effect in relation to a subsequent disposal of the new asset—
  - (a) there must be calculated the chargeable gain that would have been treated by section 169SD(1)(b) as accruing to the individual if, at the time of the relevant transaction, the old asset had been disposed of immediately before that transaction,
  - (b) the whole or a corresponding part of the chargeable gain mentioned in paragraph (a) is to be treated as accruing on the subsequent disposal of the whole or part of the new asset (in addition to any gain or loss that actually accrues on that disposal and any chargeable gain treated by section 116(10)(b) as accruing on that disposal), and
  - (c) on that subsequent disposal, section 115 (exemptions for gilt-edged securities and qualifying corporate bonds) has effect only in relation to any gain that actually accrues and not in relation to any gain which is treated as accruing by virtue of paragraph (b).
- (3) In subsection (2) “the new asset”, “the old asset” and “the relevant transaction” have the same meanings as in section 116.

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### **Application of section 169SD where sections 127 to 130 apply**

- 169S(F) This section has effect in any case where a transaction occurs to which sections 127 to 130 (treatment of share capital following a reorganisation) apply by virtue of any provision of Chapter 2 of Part 4.
- (2) If a gain is treated by section 169SD(1)(b) as accruing on a subsequent disposal of the new holding and it is necessary to apportion the gain between shares or securities forming part of that new holding, the apportionment must be made in the same proportions as those in which the costs of acquisition of the original shares fall to be apportioned under the provisions of that Chapter.
  - (3) If subsection (3) of section 128 (consideration given or received by holder) has effect in relation to an individual, the individual is treated for the purposes of section 169SD as making the disposal of the interest in the original shares mentioned in that subsection.
  - (4) In this section “the new holding” and “the original shares” have the same meanings as in sections 127 to 130 (see section 126).

### **Elections under sections 169SC and 169SD**

- 169S(G) 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.

### **Claims for relief in respect of subsequent disposals**

- 169S(H) 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 carried out when that chargeable gain accrues and because of the claim mentioned in subsection (2).

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- (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 2 years ending with the date of the subsequent disposal, the individual's personal company.”

#### *Commencement*

- 4 (1) Subject as follows, the amendments made by paragraph 1 of this Schedule have effect in relation to disposals on or after 6 April 2019.
- (2) The amendments made by paragraph 1(2)(b), (3)(b) and (4) do not have effect in relation to a disposal where the time at which the business ceases to be carried on is before 29 October 2018.
- (3) The amendments made by paragraph 1(2)(c), (3)(a) and (6)(b) do not have effect in relation to a disposal where the date on which the company—
  - (a) ceases to be a trading company without continuing to be or becoming a member of a trading group, or
  - (b) ceases to be a member of a trading group without continuing to be a trading company,is before 29 October 2018.
- (4) The amendments made by paragraph 2 of this Schedule have effect in relation to disposals on or after 29 October 2018 but, in the case of a disposal made before 21 December 2018, section 169LA(1ZA)(a) of TCGA 1992 has effect as if the reference to section 169S(3)(c)(ii) of that Act were omitted.
- (5) The amendment made by paragraph 3 of this Schedule has effect in relation to relevant share issues (within the meaning given by section 169SC(5) of TCGA 1992) which take place on or after 6 April 2019.



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