



# Taxation of Chargeable Gains Act 1992

## 1992 CHAPTER 12

### PART V

#### TRANSFER OF BUSINESS ASSETS

#### [<sup>F1</sup> CHAPTER 3

#### ENTREPRENEURS' RELIEF

##### Textual Amendments

- F1** Pt. 5 Ch. 3 inserted (with effect in accordance with Sch. 3 para. 5 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 3 para. 2](#) (with [Sch. 3 paras. 6-8](#))

#### **169H Introduction**

- (1) This Chapter provides [<sup>F2</sup>for a lower rate of capital gains tax] in respect of qualifying business disposals (to be known as “entrepreneurs' relief”).
- (2) The following are qualifying business disposals—
  - (a) a material disposal of business assets: see section 169I,
  - (b) a disposal of trust business assets: see section 169J, and
  - (c) a disposal associated with a relevant material disposal: see section 169K.
- (3) But in the case of certain qualifying business disposals, entrepreneurs' relief is given only in respect of disposals of relevant business assets comprised in the qualifying business disposal: see [<sup>F3</sup>sections 169L and 169LA].
- (4) Section 169M makes provision requiring the making of a claim for entrepreneurs' relief.
- (5) Sections 169N to 169P make provision as to the amount of entrepreneurs' relief.

*Status: Point in time view as at 26/03/2015.*

*Changes to legislation: Taxation of Chargeable Gains Act 1992, Chapter 3 is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) Sections 169Q and 169R make provision about reorganisations.
- (7) Section 169S contains interpretative provisions for the purposes of this Chapter.

#### Textual Amendments

- F2** Words in s. 169H(1) substituted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 4](#)
- F3** Words in s. 169H(3) substituted (with effect in accordance with s. 42(5) of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [s. 42\(2\)](#)

### 169I Material disposal of business assets

- (1) There is a material disposal of business assets where—
  - (a) an individual makes a disposal of business assets (see subsection (2)), and
  - (b) the disposal of business assets is a material disposal (see subsections (3) to (7)).
- (2) For the purposes of this Chapter a disposal of business assets is—
  - (a) a disposal of the whole or part of a business,
  - (b) a disposal of (or of interests in) one or more assets in use, at the time at which a business ceases to be carried on, for the purposes of the business, or
  - (c) a disposal of one or more assets consisting of (or of interests in) shares in or securities of a company.
- (3) A disposal within paragraph (a) of subsection (2) is a material disposal if the business is owned by the individual throughout the period of 1 year ending with the date of the disposal.
- (4) A disposal within paragraph (b) of that subsection is a material disposal if—
  - (a) the business is owned by the individual throughout the period of 1 year ending with the date on which the business ceases to be carried on, and
  - (b) that date is within the period of 3 years ending with the date of the disposal.
- (5) A disposal within paragraph (c) of subsection (2) is a material disposal if condition A<sup>[F4]</sup>, B, C or D] is met.
- (6) Condition A is that, throughout the period of 1 year ending with the date of the disposal—
  - (a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and
  - (b) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.
- (7) Condition B is that the conditions in paragraphs (a) and (b) of subsection (6) are met throughout the period of 1 year ending with 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 or becoming a trading company,

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and that date is within the period of 3 years ending with the date of the disposal.

[ Condition C is that—

- <sup>F5</sup>(7A) (a) the assets disposed of are relevant EMI shares,  
(b) the option grant date is, or is before, the first date of the period of 1 year ending with the date of the disposal, and  
(c) throughout that period of 1 year—  
(i) the company is either a trading company or the holding company of a trading group, and  
(ii) the individual is an officer or employee of the company or (if the company is a member of a trading group) of one or more companies which are members of the trading group.

(7B) Condition D is that—

- (a) the assets disposed of are relevant EMI shares acquired by the individual before the cessation date,  
(b) the option grant date is, or is before, the first date of the period of 1 year ending with the cessation date,  
(c) the conditions in paragraph (c) of subsection (7A) are met throughout that period of 1 year, and  
(d) the cessation date is within the period of 3 years ending with the date of the disposal.

(7C) In this section “relevant EMI shares” means—

- (a) shares of a company acquired by an individual to which subsection (7D) applies, or  
(b) shares of a company to which subsection (7F) applies.

(7D) This subsection applies to shares of a company acquired by an individual if the individual—

- (a) acquires them on or after 6 April 2013, and  
(b) acquires them as a result of the exercise of a qualifying option within the meaning given by section 527(4) of ITEPA 2003 (enterprise management incentives) where the option is exercised on or before the tenth anniversary of the date mentioned in section 529(2) of that Act.

(7E) Subsection (7D) does not apply to shares acquired as a result of the exercise of a qualifying option if—

- (a) a disqualifying event (see section 533 of ITEPA 2003) occurs in relation to the option before its exercise, and  
(b) it is exercised later than the period mentioned in section 532(1)(b) of ITEPA 2003.

(7F) This subsection applies to shares of a company if—

- (a) the shares are the new holding in a case in which section 127 applies in relation to an individual,  
(b) the original shares in that case are relevant EMI shares (whether by virtue of subsection (7D) or this subsection), and  
(c) that case is one in which section 127 applies by virtue only of—  
(i) section 126, or  
(ii) subject to subsection (7G), section 135(3).

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- (7G) Subsection (7F)(c)(ii) applies only if—
- (a) the exchange of shares in question is a qualifying exchange of shares as defined in paragraph 40 of Schedule 5 to ITEPA 2003, and
  - (b) when the exchange occurs, the independence requirement (see paragraph 9 of Schedule 5 to ITEPA 2003) and the trading activities requirement (see paragraphs 13 and 14 of that Schedule) are met in relation to the new company (see paragraph 40(1)(a) of that Schedule).
- (7H) In this section “the original relevant EMI shares”, in relation to shares which are relevant EMI shares by virtue of subsection (7F), means the shares originally acquired by the individual to which subsection (7D) applied.
- (7I) If the shares disposed of are relevant EMI shares by virtue of subsection (7F), in relation to times before the reorganisation mentioned in section 127, in subsection (7A) (c) references to the company are to be read as references to (if different)—
- (a) the company whose shares are the original relevant EMI shares, or
  - (b) if there has been more than one reorganisation since the original relevant EMI shares were acquired—
    - (i) the company whose shares are the original relevant EMI shares, or
    - (ii) if at the time in question the individual is holding relevant EMI shares which are shares of another company, that other company.
- This subsection is subject to subsection (7N).
- (7J) If the shares disposed of are relevant EMI shares by virtue of subsection (7F), the question of whether the requirement of subsection (7B)(a) is met is to be determined by reference to the date of the acquisition of the original relevant EMI shares.
- (7K) Subject to what follows, in subsections (7A)(b) and (7B)(b) “the option grant date” means the date on which the qualifying option in question was granted.
- (7L) Subsections (7M) and (7N) apply if the qualifying option is a replacement option for the purposes of the EMI code (see paragraph 41 of Schedule 5 to ITEPA 2003).
- (7M) In subsections (7A)(b) and (7B)(b) “the option grant date” means—
- (a) the date on which the old option was granted, or
  - (b) if the old option was also a replacement option, the date on which the earlier old option was granted,
- and so on.
- (7N) In relation to any time during the currency of an old option taken into account under subsection (7M), in subsection (7A)(c) references to the company are to be read as references to the company whose shares were the subject of the old option.
- (7O) In subsection (7B) “the cessation date” means 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 or becoming a trading company.
- (7P) Subsections (7Q) and (7R) apply in relation to a disposal of relevant EMI shares if—
- (a) the shares were acquired as a result of the exercise of a qualifying option where—

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- (i) a disqualifying event (see section 533 of ITEPA 2003) occurs in relation to the option before its exercise, but
  - (ii) it is exercised within the period mentioned in section 532(1)(b) of ITEPA 2003, or
- (b) if the shares are relevant EMI shares by virtue of subsection (7F), the original relevant EMI shares were acquired as mentioned in paragraph (a).
- (7Q) Subsection (7A)(b) has effect as if the reference to the date of the disposal were a reference to the date of the disqualifying event.
- (7R) If the disqualifying event is within section 534(1)(c) of ITEPA 2003, subsection (7B) (a) has effect as if the reference to the cessation date were a reference to the first day after the period mentioned in section 532(1)(b) of that Act if that day is later than the cessation date.]
- (8) For the purposes of this section—
- (a) an individual who disposes of (or of interests in) assets used for the purposes of a business carried on by the individual on entering into a partnership which is to carry on the business is to be treated as disposing of a part of the business,
  - (b) the disposal by an individual of the whole or part of the individual's interest in the assets of a partnership is to be treated as a disposal by the individual of the whole or part of the business carried on by the partnership, and
  - (c) at any time when a business is carried on by a partnership, the business is to be treated as owned by each individual who is at that time a member of the partnership.

#### Textual Amendments

- F4** Words in s. 169I(5) substituted (with effect in accordance with Sch. 24 para. 5(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 1\(2\)](#)
- F5** S. 169I(7A)-(7R) inserted (with effect in accordance with Sch. 24 para. 5(1) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 24 para. 1\(3\)](#)

#### Modifications etc. (not altering text)

- C1** S. 169I modified (18.3.2015) by [Finance Act 2015 \(c. 11\)](#), [s. 43\(4\)\(5\)](#)

### 169J Disposal of trust business assets

- (1) There is a disposal of trust business assets where—
- (a) the trustees of a settlement make a disposal of settlement business assets (see subsection (2)),
  - (b) there is an individual who is a qualifying beneficiary (see subsection (3)), and
  - (c) the relevant condition is met (see subsections (4) and (5)).
- (2) In this Chapter “settlement business assets” means—
- (a) assets consisting of (or of interests in) shares in or securities of a company, or
  - (b) assets (or interests in assets) used or previously used for the purposes of a business,
- which are part of the settled property.

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- (3) An individual is a qualifying beneficiary if the individual has, under the settlement, an interest in possession (otherwise than for a fixed term) in—
- (a) the whole of the settled property, or
  - (b) a part of it which consists of or includes the settlement business assets disposed of.
- (4) In relation to a disposal of settlement business assets within paragraph (a) of subsection (2) the relevant condition is that, throughout a period of 1 year ending not earlier than 3 years before the date of the disposal—
- (a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group, and
  - (b) the qualifying beneficiary is an officer or employee of the company or (if the company is a member of a group of companies) of one or more companies which are members of the trading group.
- (5) In relation to a disposal of settlement business assets within paragraph (b) of that subsection, the relevant condition is that—
- (a) the settlement business assets are used for the purposes of the business carried on by the qualifying beneficiary throughout the period of 1 year ending not earlier than 3 years before the date of the disposal, and
  - (b) the qualifying beneficiary ceases to carry on the business on the date of the disposal or within the period of three years before that date.
- (6) In subsection (5)—
- (a) the reference to a business carried on by the qualifying beneficiary includes a business carried on by a partnership of which the qualifying beneficiary is a member, and
  - (b) the reference to the qualifying beneficiary ceasing to carry on the business includes the qualifying beneficiary ceasing to be a member of the partnership or the partnership ceasing to carry on the business.

### **169K Disposal associated with relevant material disposal**

- [<sup>F6</sup>(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.

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- (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) Condition B is that [F7P] makes the disposal as part of [F8P's withdrawal] from participation in the business carried on by the partnership or by the company or (if the company is a member of a trading group) a company which is a member of the trading group.
- [ The disposal mentioned in condition B is not treated as part of P's withdrawal from
- <sup>F9</sup>(3A) 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.]
- (4) Condition C is that, throughout the period of 1 year ending with the earlier of—
- (a) the date of the material disposal of business assets, and
  - (b) the cessation of the business of the partnership or company,
- the assets which (or interests in which) are disposed of are in use for the purposes of the business.
- (5) For the purposes of this Chapter the disposal mentioned in Condition B is the disposal associated with a relevant material disposal.

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[ In this section, in relation to a partnership, “partnership purchase arrangements” means <sup>F10</sup>(6) 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.]

#### Textual Amendments

**F6** S. 169K(1)-(2) substituted for s. 169K(1)(2) (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(2\)](#)

**F7** Word in s. 169K(3) substituted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(3\)\(a\)](#)

**F8** Words in s. 169K(3) substituted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(3\)\(b\)](#)

**F9** S. 169K(3A)-(3C) inserted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(4\)](#)

**F10** S. 169K(6)-(9) inserted (with effect in accordance with s. 41(6) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 41\(5\)](#)

#### 169L Relevant business assets

(1) If a qualifying business disposal is one which does not consist of the disposal of (or of interests in) shares in or securities of a company, entrepreneurs' relief is given only in respect of the disposal of relevant business assets comprised in the qualifying business disposal.

(2) In this Chapter “relevant business assets” means assets (including<sup>F11</sup>, subject to section 169LA,] goodwill) which are, or are interests in, assets to which subsection (3) applies, other than excluded assets (see subsection (4) below).



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- (3) This subsection applies to assets which—
- (a) in the case of a material disposal of business assets, are assets used for the purposes of a business carried on by the individual or a partnership of which the individual is a member,
  - (b) in the case of a disposal of trust business assets, are assets used for the purposes of a business carried on by the qualifying beneficiary or a partnership of which the qualifying beneficiary is a member, or
  - (c) in the case of a disposal associated with a relevant material disposal, are assets used for the purposes of a business carried on by the partnership or company.
- (4) The following are excluded assets—
- (a) shares and securities, and
  - (b) assets, other than shares or securities, which are held as investments.

#### Textual Amendments

**F11** Words in s. 169L(2) inserted (with effect in accordance with s. 42(5) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 42\(3\)](#)

#### **Relevant business assets: goodwill transferred to a related party etc**

**F12** **169LA**

- (1) 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”),
  - (b) at the time of the disposal, P is a related party in relation to C, and
  - (c) P is not a retiring partner.
- (2) P is a related party in relation to C for the purposes of this section if P is a related party in relation to C for the purposes of Part 8 of CTA 2009 (intangible fixed assets) (see Chapter 12 of that Part (related parties) and, in particular, section 835(5) of that Act).
- (3) P is a retiring partner if the goodwill is goodwill in a business carried on, immediately before the disposal, by a partnership of which P is a member and at the time of the disposal—
- (a) P is not, and no arrangements exist under which P could become, a participator in C or in a company that has control of, or holds a major interest in, C (a “relevant participator”),
  - (b) P is a related party in relation to C because P is an associate of one or more relevant participators, and
  - (c) P is only an associate of each of those relevant participators because they are also members of the partnership.
- (4) For the purposes of this Chapter, the goodwill is not one of the relevant business assets comprised in the qualifying business disposal.
- (5) If a company—
- (a) is not resident in the United Kingdom, but
  - (b) would be a close company if it were resident in the United Kingdom,

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the company is to be treated as being a close company for the purposes of this section (including for the purposes of determining whether a person is a related party in relation to the company for the purposes of this section).

- (6) If a person—
- (a) disposes of goodwill as part of a qualifying business disposal, and
  - (b) is party to relevant avoidance arrangements,
- subsection (4) applies (if it would not otherwise do so).
- (7) In subsection (6) “relevant avoidance arrangements” means arrangements the main purpose, or one of the main purposes, of which is to secure—
- (a) that subsection (4) does not apply in relation to the goodwill, or
  - (b) that the person is not a related party (for whatever purposes) in relation to a company to which the disposal of goodwill is directly or indirectly made.
- (8) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “associate”, “control”, “major interest” and “participator” have the same meaning as in Chapter 12 of Part 8 of CTA 2009 (see, in particular, sections 836, 837 and 841 of that Act).]

#### Textual Amendments

**F12** S. 169LA inserted (with effect in accordance with s. 42(5) of the amending Act) by [Finance Act 2015](#) (c. 11), s. 42(4)

### 169M Relief to be claimed

- (1) Entrepreneurs' relief is to be given only on the making of a claim.
- (2) A claim for entrepreneurs' relief in respect of a qualifying business disposal must be made—
  - (a) in the case of a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
  - (b) otherwise, by the individual.
- (3) A claim for entrepreneurs' relief in respect of a qualifying business disposal must be made on or before the first anniversary of the 31 January following the tax year in which the qualifying business disposal is made.
- (4) A claim for entrepreneurs' relief in respect of a qualifying business disposal may only be made if the amount resulting under section 169N(1) is a positive amount.

### 169N Amount of relief: general

- (1) Where a claim is made in respect of a qualifying business disposal—
  - (a) the relevant gains (see subsection (5)) are to be aggregated, and
  - (b) any relevant losses (see subsection (6)) are to be aggregated and deducted from the aggregate arrived at under paragraph (a).

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- [<sup>F13</sup>(2) The resulting amount is to be treated for the purposes of this Act as a chargeable gain accruing at the time of the disposal to the individual or trustees by whom the claim is made.
- (3) The rate of capital gains tax in respect of that gain is 10%, but this is subject to subsections (4) to (4B).
- (4) Subsections (4A) and (4B) apply if the aggregate of—
- (a) the gain mentioned in subsection (2), and
  - (b) the total of so much of each amount resulting under subsection (1) by virtue of its operation in relation to earlier relevant qualifying business disposals (if any) as was—
    - (i) charged at the rate in subsection (3), or
    - (ii) subject to reduction under subsection (2) of this section as originally enacted,exceeds [<sup>F14</sup>£10 million].

(4A) The rate in subsection (3) is to apply only to so much (if any) of the gain mentioned in subsection (2) as (when added to the total mentioned in subsection (4)(b)) does not exceed [<sup>F15</sup>£10 million].

(4B) Section 4 (rates of capital gains tax) is to apply to so much of the gain mentioned in subsection (2) as is not subject to the rate in subsection (3).]

(5) In subsection (1)(a) “relevant gains” means—

    - (a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), the gains accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of chargeable gains), and
    - (b) otherwise, the gains accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed).

(6) In subsection (1)(b) “relevant losses” means—

    - (a) if the qualifying business disposal is of (or of interests in) shares in or securities of a company (or both), any losses accruing on the disposal (computed in accordance with the provisions of this Act fixing the amount of allowable losses, on the assumption that notice has been given under section 16(2A) in respect of them), and
    - (b) otherwise, any losses accruing on the disposal of any relevant business assets comprised in the qualifying business disposal (so computed, on that assumption).

(7) In [<sup>F16</sup>subsection (4)] “earlier relevant qualifying business disposals” means—

    - (a) where the qualifying business disposal is made by an individual, earlier qualifying business disposals made by the individual and earlier disposals of trust business assets in respect of which the individual is the qualifying beneficiary, and
    - (b) where the qualifying business disposal is a disposal of trust business assets in respect of which an individual is the qualifying beneficiary, earlier disposals of trust business assets in respect of which that individual is the qualifying beneficiary and earlier qualifying business disposals made by that individual.

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- (8) If, on the same day, there is both a disposal of trust business assets in respect of which an individual is the qualifying beneficiary and a qualifying business disposal by the individual, this section applies as if the disposal of trust business assets were later.
- (9) Any gain or loss taken into account under subsection (1) is not to be taken into account under this Act as a chargeable gain or an allowable loss.

#### Textual Amendments

- F13** S. 169N(2)-(4B) substituted for s. 169N(2)-(4) (with effect in accordance with Sch. 1 para. 14 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 5\(2\)](#)
- F14** Sum in s. 169N(4) substituted (with effect in accordance with s. 9(2) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 9\(1\)\(a\)](#)
- F15** Sum in s. 169N(4A) substituted (with effect in accordance with s. 9(2) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [s. 9\(1\)\(b\)](#)
- F16** Words in s. 169N(7) substituted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 5\(3\)](#)

### 169O Amount of relief: special provisions for certain trust disposals

- (1) This section applies where, on a disposal of trust business assets, there is (in addition to the qualifying beneficiary) at least one other beneficiary who, at the material time, has an interest in possession in—
- the whole of the settled property, or
  - a part of it which consists of or includes the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of.
- (2) Only the relevant proportion of the amount which would otherwise result under subsection (1) of section 169N is to be treated as so resulting.
- (3) And the balance of that amount, <sup>F17</sup> ... , is accordingly a chargeable gain for the purposes of this Act.
- (4) For the purposes of this section “the relevant proportion” of an amount is the same proportion of the amount as that which, at the material time—
- the qualifying beneficiary's interest in the income of the part of the settled property comprising the shares or securities (or interests in shares or securities) or assets (or interests in assets) disposed of, bears to
  - the interests in that income of all the beneficiaries (including the qualifying beneficiary) who then have interests in possession in that part of the settled property.
- (5) In subsection (4) “the qualifying beneficiary's interest” means the interest by virtue of which he is the qualifying beneficiary (and not any other interest the qualifying beneficiary may have).
- (6) In this section “the material time” means the end of the latest period of 1 year which ends not earlier than 3 years before the date of the disposal and—
- in the case of a disposal of settlement business assets within paragraph (a) of subsection (2) of section 169J, throughout which the conditions in paragraphs (a) and (b) of subsection (4) of that section are met, and

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- (b) in the case of a disposal of settlement business assets within paragraph (b) of subsection (2) of that section, throughout which the business is carried on by the qualifying beneficiary.

#### Textual Amendments

**F17** Words in s. 169O(3) omitted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by virtue of [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 6](#)

### **169P Amount of relief: special provision for certain associated disposals**

- (1) This section applies where, on a disposal associated with a relevant material disposal, any of the conditions in subsection (4) is met.
- (2) Only such part of the amount which would otherwise result under subsection (1) of section 169N as is just and reasonable is to be treated as so resulting.
- (3) And the balance of that amount, <sup>F18</sup>..., is accordingly a chargeable gain for the purposes of this Act.
- (4) The conditions referred to in subsection (1) are—
- (a) that the assets which (or interests in which) are disposed of are in use for the purposes of the business for only part of the period in which they are in the ownership of the individual,
  - (b) that only part of the assets which (or interests in which) are disposed of are in use for the purposes of the business for that period,
  - (c) that the individual is concerned in the carrying on of the business (whether personally, as a member of a partnership or as an officer or employee of a company which is the individual's personal company) for only part of the period in which the assets which (or interests in which) are disposed of are in use for the purposes of the business, and
  - (d) that, for the whole or any part of the period for which the assets which (or interests in which) are disposed of are in use for the purposes of the business, their availability is dependent on the payment of rent.
- (5) In determining how much of an amount it is just and reasonable to bring into account under subsection (2) regard is to be had to—
- (a) in a case within paragraph (a) of subsection (4), the length of the period for which the assets are in use as mentioned in that paragraph,
  - (b) in a case within paragraph (b) of that subsection, the part of the assets that are in use as mentioned in that paragraph,
  - (c) in a case within paragraph (c) of that subsection, the length of the period for which the individual is concerned in the carrying on of the business as mentioned in that paragraph, and
  - (d) in a case within paragraph (d) of that subsection, the extent to which any rent paid is less than the amount which would be payable in the open market for the use of the assets.

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### Textual Amendments

**F18** Words in s. 169P(3) omitted (with effect in accordance with Sch. 1 para. 14 of the amending Act) by virtue of [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 7](#)

## 169Q Reorganisations: disapplication of section 127

- (1) This section applies where—
  - (a) there is a reorganisation (within the meaning of section 126), and
  - (b) the original shares and the new holding (within the meaning of that section) would fall to be treated by virtue of section 127 as the same asset.
- (2) If an election is made under this section, a claim for entrepreneurs' relief may be made as if the reorganisation involved a disposal of the original shares; and if such a claim is made section 127 does not apply.
- (3) An election under this section must be made—
  - (a) if the reorganisation would (apart from section 127) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
  - (b) otherwise, by the individual.
- (4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the reorganisation takes place.
- (5) The references in this section to a reorganisation (within the meaning of section 126) includes an exchange of shares or securities which is treated as such a reorganisation by virtue of section 135 or 136.

## [<sup>F19</sup>169R Reorganisations involving acquisition of qualifying corporate bonds

- (1) This section applies where the calculation under section 116(10)(a) would (apart from this section) have effect to produce a chargeable gain for an individual by reason of a relevant transaction.
- (2) If an election is made under this section, a claim for entrepreneurs' relief may be made as if the relevant transaction involved a disposal of the old asset; and if such a claim is made section 116(10) does not apply.
- (3) An election under this section must be made—
  - (a) if the relevant transaction, so far as it relates to the old asset, would (apart from section 116(10)) involve a disposal of trust business assets, jointly by the trustees and the qualifying beneficiary, and
  - (b) otherwise, by the individual.
- (4) An election under this section must be made on or before the first anniversary of the 31 January following the tax year in which the relevant transaction takes place.
- (5) In this section, “old asset” and “relevant transaction” have the meaning given by section 116.]

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### Textual Amendments

**F19** S. 169R substituted (with effect in accordance with Sch. 1 para. 15 of the amending Act) by [Finance \(No. 2\) Act 2010 \(c. 31\)](#), [Sch. 1 para. 8](#)

## 169S Interpretation of Chapter

- (1) For the purposes of this Chapter “a business” means anything which—
  - (a) is a trade, profession or vocation, and
  - (b) is conducted on a commercial basis and with a view to the realisation of profits.
- (2) References in this Chapter to a disposal of an interest in shares in a company include a disposal of an interest in shares treated as made by virtue of section 122.
- (3) For the purposes of this Chapter “personal company”, in relation to an individual, means a company—
  - (a) at least 5% of the ordinary share capital of which is held by the individual, and
  - (b) at least 5% of the voting rights in which are exercisable by the individual by virtue of that holding.
- (4) For the purposes of subsection (3) if the individual holds any shares in the company jointly or in common with one or more other persons, the individual is to be treated as sole holder of so many of them as is proportionate to the value of the individual's share (and as able to exercise voting rights by virtue of that holding).
- (5) In this Chapter—
  - “disposal associated with a relevant material disposal” has the meaning given by section 169K,
  - “disposal of business assets” has the meaning given by section 169I(2),
  - “disposal of trust business assets” has the meaning given by section 169J,
  - “employment” has the meaning given by section 4 of ITEPA 2003,
  - “entrepreneurs' relief” has the meaning given by section 169H(1),
  - “holding company” has the same meaning as in section 165 (see section 165A),
  - “material disposal of business assets” has the meaning given by section 169I,
  - “office” has the meaning given by section 5(3) of ITEPA 2003,
  - “ordinary share capital” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007),
  - “qualifying business disposal” has the meaning given by section 169H(2),
  - “relevant business asset” has the meaning given by section 169L,
  - “rent”, in relation to an asset, includes any form of consideration given for the use of the asset,
  - “securities”, in relation to a company, includes any debentures of the company which are deemed by subsection (6) of section 251 to be securities for the purposes of that section,
  - “settlement business assets” has the meaning given by section 169J(2),
  - “trade” has the same meaning as in the Income Tax Acts (see section 989 of ITA 2007), <sup>F20</sup>...

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F20 ..... ]

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**Textual Amendments**

**F20** Words in s. 169S(5) omitted (18.3.2015) by virtue of [Finance Act 2015 \(c. 11\), s. 43\(3\)\(5\)](#)



**Status:**

Point in time view as at 26/03/2015.

**Changes to legislation:**

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