

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 41: Entrepreneurs' Relief: Associated Disposals

Details of the Section

2. This section amends section 169K of the Taxation of Chargeable Gains Act (TCGA) 1992.
3. Subsection (2) deletes subsections (1) and (2) of section 169K and replaces them with new subsections (1), (1A) to (1E) and (2).
4. Section 169K, new subsection (1) summarises the new conditions which must be met in order for there to be an associated disposal on which ER must be claimed. Any one of conditions A1, A2 or A3 must be met, along with both condition B and condition C. Conditions A1, A2 and A3 are new and are described below. Conditions B and C are existing conditions given at subsections (3) and (4) of section 169L.
5. Section 169K, new subsection (1A) describes new condition A1. This condition applies if the individual claiming ER ("P") has disposed of his or her interest in the assets of a partnership and that is the "material disposal of business assets" with which the disposal of personal assets may be associated. The condition is met if the interest disposed of is at least a 5% interest in the assets of the partnership, and there are no arrangements by which P could acquire or increase his interest in the partnership after the disposal. These "partnership purchase arrangements" are defined at new subsection (6). For the purposes of this condition, the normal capital gains tax (CGT) rules for determining a partner's share in partnership assets will apply.
6. Section 169K, new subsection (1B) describes new condition A2. This condition applies if P has disposed of shares in a company and that is the material disposal of business assets with which the disposal of personal assets may be associated. The condition is that the shares disposed of must constitute at least 5% of the company's ordinary share capital and must carry at least 5% of the voting rights in the company. Also, there must be no arrangements by which P could increase his level of participation in the company by acquiring shares or securities either in the company or in a company which is a member of a trading group of which the company is a member. These "share purchase arrangements" are defined at new subsections (1E) and (2).
7. Section 169K, new subsection (1C) limits the circumstances in which condition A2 is met. The condition is not met if the disposal of shares takes place because the company has made a capital distribution in respect of those shares, unless the distribution is made in the course of the company's winding-up or dissolution.
8. Section 169K, new subsection (1D) describes new condition A3. This condition applies if P has disposed of securities of a company and that is the material disposal of business assets with which the disposal of personal assets may be associated. The condition is that the securities disposed of must constitute at least 5% by value of the securities of the

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company which are in issue (and not redeemed or cancelled) at the time of the disposal. Also, there must be no arrangements by which P could increase his level of participation in the company by acquiring shares or securities either in the company or in a company which is a member of the trading group of which the company is a member. These share purchase arrangements are defined at new subsections (1E) and (2).

9. Section 169K, new subsections (1E) and 2 define the share purchase arrangements relevant to whether conditions A2 or A3 are met. These arrangements include agreements, understandings or schemes under which P or a person connected with P is entitled to acquire shares in, or securities of, certain companies. The companies in question are the company whose shares P has sold and any other company which is a member of the same trading group as that company. If, at the time the shares are sold, there are arrangements which make it reasonable to assume that another company will become a member of the same group as the company whose shares are sold then those companies are treated as being members of the same group at the time of the sale. Section 286 applies for determining whether a person is connected with P.
10. Subsection (3) makes minor changes to subsection (3) of section 169K to make its language consistent with new the subsections (1) to (2).
11. Subsection (4) inserts new subsections (3A) to (3C) into section 169K.
12. Section 169K, new subsection (3A) modifies condition B in subsection (3). Condition B is that the disposal of the personally-owned asset must be part of a withdrawal of P from participation in the business carried on by the partnership or by the company. The effect of new subsection (3A) is that the disposal is not treated as part of such a withdrawal if, at the date of the disposal, there are arrangements by which P could acquire or increase his interest in the partnership after the disposal. These partnership purchase arrangements are defined at new subsection (6). This requirement applies at the time the privately-owned asset is disposed of: it complements the similar requirement in condition A1 which applies at the time of the material disposal of business assets.
13. Section 169K, new subsections (3B) and (3C) also modify condition B in subsection (3). The disposal of a personally-owned asset is not treated as part of a withdrawal from a company's business if, at the date of the disposal, there exist arrangements by which P could acquire shares in, or securities of, certain companies. The companies in question are the company whose shares P has sold and any other company which is – or can be expected to become - a member of the same trading group as that company. These arrangements correspond to the share purchase arrangements relevant to condition A2 which are described at new subsections (1E) and (2). This requirement applies at the time the privately-owned asset is disposed of: it complements the similar requirement in condition A2 which applies at the time of the material disposal of business assets (see above).
14. Subsection (5) inserts new subsections (6), (7), (8) and (9) into section 169K.
15. Section 169K, new subsection (6) defines partnership purchase arrangements. These are arrangements under which P or a person connected with P (for instance, P's spouse or civil partner, sibling or child: see section 286 for a definition) is "entitled to acquire" an interest in the partnership which is carrying on the trade, or to increase their interest. An interest in a partnership includes a share in the income or profits of a partnership, or a fractional share in the assets of the partnership for the purposes of computing chargeable gains. It also includes an interest in such a share. The meaning of entitled to acquire is given by new subsection (8).
16. Section 169K, new subsection (7) defines terms used elsewhere in the section.
17. Section 169K, new subsection (8) explains what is meant by entitled to acquire in the section. A person is entitled to acquire a thing if they currently have an entitlement to acquire it at a future date, or if they will in future acquire such an entitlement.

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18. Section 169K, new subsection (9) contains special rules which determine how the section applies to Scottish partnerships and to partnerships constituted under non-UK law where that law treats partnership assets as held by or on behalf of the partnership (rather than, for instance, by the partners). It ensures that the treatment of these partnerships is consistent with the usual CGT treatment of partnerships by which assets of the partnership are treated as held by the partners.
19. Subsection (6) states that the amendments to section 169K apply to disposals on or after 18 March 2015.