

Husband and wife companies (Lecture B1267 – 15.18 minutes)

If a sale is in prospect for a husband and wife company, advantage should be taken, whenever possible, of Statement of Practice SP 5/89. It is self-explanatory and reads as follows:

‘Under S35 and Sch 3 TCGA 1992, a person is treated as having held an asset at 31 March 1982 if he acquired it after that date by a transfer, or series of transfers, treated as giving rise to neither a gain nor a loss for capital gains purposes, from someone who did hold it at that date. Shares or securities of the same class in any company which are acquired in this way will be added to any shares or securities of the same class in the same company held by the transferee at 31 March 1982. Where, for rebasing . . . purposes, it is necessary to determine the market value of the shares or securities at 31 March 1982, they will be valued as a single holding.

If the shares or securities in the relevant disposal represent some but not all of those valued at 31 March 1982, then the allowable cost . . . will be based on the proportion that the shares or securities disposed of bears to the total holding.’

It may therefore be beneficial for spouses who have each owned shares in the same private company since before 31 March 1982 to combine their holdings prior to sale so as to ensure a higher rebased cost (*R v CIR, ex parte Kaye (1992)*). This is demonstrated in the illustration below.

It goes without saying that the transfer of shares should be executed *before* a purchaser comes on the scene in order to avoid the risk of HMRC countering the advantage under the *Furniss v Dawson (1984)* doctrine. The impact on each shareholder’s business asset disposal relief entitlement should also be considered.

Illustration

Gerrard Ltd, an unquoted trading company, has an issued share capital of 100 ordinary shares of £1 each. The shares are held as follows:

Dick	45
Lesley, Dick’s wife	35
Martin, Dick’s brother	20

Dick and Lesley are directors of Gerrard Ltd. They have never previously made a qualifying disposal.

Martin is not, and never has been, a director or employee of the company.

All these shares have been owned since before 31 March 1982, on which date it should be assumed that the following values per share applied:

<u>Size of holding</u>	<u>£</u>
0% – 25%	500
26% – 50%	1,000
51% – 74%	1,750
75% – 100%	2,500

It is known that a plc is interested in acquiring Gerrard Ltd for cash and it is expected that a price of around £12,000 per share would be forthcoming if an offer were made.

As things stand, the CGT position for Dick and Lesley will be:

Dick

	£
Sale proceeds (45 x £12,000)	540,000
Less: Market value at 31.3.82 (45 x £1,000)	<u>45,000</u>
	495,000
Less: Annual CGT exemption	<u>12,300</u>
	<u>482,700</u>
CGT @ 10%	£48,270

Lesley

	£
Sale proceeds (35 x £12,000)	420,000
Less: Market value at 31.3.82 (35 x £1,000)	<u>35,000</u>
	385,000
Less: Annual CGT exemption	<u>12,300</u>
	<u>372,700</u>
CGT @ 10%	£37,270

This gives a total CGT liability for Dick and Lesley of £48,270 + £37,270 = £85,540.

If, however, Lesley gave, say, 30 of her shares to Dick before any offer was made by the plc, the couple's tax position would be significantly improved:

Dick

	£
Sale proceeds (75 x £12,000)	900,000
Less: Market value at 31.3.82 (75 x £2,500)	<u>187,500</u>
	712,500
Less: Annual CGT exemption	<u>12,300</u>
	<u>700,200</u>
CGT @ 10%	£70,020

Lesley

	£
Sale proceeds (5 x £12,000)	60,000
Less: Market value at 31.3.82 (5 x £1,000)	<u>5,000</u>
	55,000
Less: Annual CGT exemption	<u>12,300</u>
	<u>42,700</u>
CGT @ 10%	4,270

As a result, the couple's tax liability becomes £70,020 + £4,270 = £74,290, a reduction of £11,250. Note that Lesley is allowed to keep the original 31 March 1982 valuation for the five shares which she retained.

Although there are now fewer and fewer companies being sold with shares which predate 31 March 1982, it is important to be aware that there is a real possibility of a new rebasing arrangement in the light of any reform to the CGT code. If this materialises (so that, for example, assets are rebased to 31 March 2000), this planning point would suddenly become even more important.

Contributed by Robert Jamieson