

Case study on a BADR claim by trustees (Lecture B1363 – 10.44 minutes)

In *The Quentin Skinner 2015 Settlements v HMRC (2022)*, the Court of Appeal unanimously decided in favour of the trustees on a question of the relationship between the forerunner of business asset disposal relief and the sale of shares in a qualifying trading company held by an interest in possession trust.

If an asset such as a shareholding in a family trading company is held by a discretionary trust, a sale of those shares by the trustees can never qualify for business asset disposal relief. The trustees' CGT will always be at the full rate of 20%.

The sale of shares held in a life interest trust where there is a 'qualifying beneficiary' can attract this valuable relief so that the 10% tax rate will be in point. This is subject to the caveat that the life tenant is prepared to surrender the relevant part of his personal relief entitlement to the trustees.

The key legislative requirements are illustrated in the case study below.

Case study

Donald and Alastair are UK-resident beneficiaries of a family trust which had been created in 2009. Since its inception, the trust has owned a 20% ordinary share stake in Rockshiel Developments Ltd (a qualifying trading company for business asset disposal relief purposes).

Donald became a director of Rockshiel Developments Ltd in 2015, owning 12% of the company's ordinary shares in his own name. These shares also carry 12% of the company's voting and economic rights.

Under the terms of the trust, Donald and Alastair are entitled to an equal share of the trust's income as it arises.

In February 2023, the trustees sold their shares in Rockshiel Developments Ltd, generating a gain of £560,000. Neither Donald nor Alastair has ever made a claim for entrepreneurs' relief or business asset disposal relief.

The following considerations apply to determine whether the trustees are able to make a competent claim for business asset disposal relief in respect of their 2022/23 gain:

- The sale of the shares in February 2023 is a disposal of 'settlement business assets' within S169J(1)(a) and (2) TCGA 1992;
- Donald is regarded as a 'qualifying beneficiary' (S169J(1)(b) and (3) TCGA 1992) since he is entitled to an interest in possession in the part of the trust which holds the shares in Rockshiel Developments Ltd.
- The condition in S169J(4) TCGA 1992 is satisfied, given that throughout a period of two years ending within three years of the share sale:
 - Rockshiel Developments Ltd was Donald's personal company (since it is a qualifying trading company in which Donald held at least 5% of the ordinary share capital, voting rights and economic rights per S169S(3) TCGA 1992); and
 - Donald was a director of the company.

Alastair is also entitled to a half-share of the income of the settled property. Thus S169O TCGA 1992 applies to apportion the gain which is eligible for business asset disposal relief on a 50 : 50 basis. However, no business asset disposal relief claim can be made in respect of Alastair's part, given that he does not appear to fall within S169J(4) TCGA 1992.

On the assumption that Donald makes a joint claim with the trustees under S169M TCGA 1992 in relation to his proportion of the gain:

- £280,000 of the gain (50% x £560,000) will be eligible for the 10% CGT rate in the trustees' hands; but
- the remaining £280,000 relating to Alastair's share will be chargeable at the normal trust CGT rate of 20%.

Contributed by Robert Jamieson