

Value shifting and the exercise of control (Lecture P1093 - 6.59 minutes)

The First-Tier Tribunal decision in *Conegate Ltd v HMRC* (2018) involved a lengthy and complicated dispute in which the judges had to consider the position where two (unconnected) shareholders appeared to have exercised control together so that value passed out of some shares. Relief for the resulting capital loss was refused by HMRC on the grounds that the transaction was caught by the anti-avoidance provisions (S29 TCGA 1992). The Tribunal concurred with HMRC's stance.

S29(2) TCGA 1992 reads as follows:

‘If a person having control of a company exercises his control so that value passes out of shares in the company owned by him or a person with whom he is connected, or out of rights over the company exercisable by him or by a person with whom he is connected, and passes into other shares in or rights over the company, that shall be a disposal of the shares or rights out of which the value passes by the person by whom they were owned or exercisable.’

S29(3) TCGA 1992 goes on to state that a loss on such a disposal will not be an allowable loss for capital gains purposes to the extent that it is attributable to value which has passed out of the shares or rights.

Importantly, the Tribunal rejected the contention that, in order for the value shifting regime to apply, the two shareholders acting together needed to be connected. The judges noted that in the earlier case of *Floor v Davis* (1979) – which was a decision of the House of Lords – the shareholders were in fact connected with each other, but they did not consider that this was relevant to the *Floor v Davis* (1979) conclusion on the exercise of control. In other words, it is not a prerequisite under S29 TCGA 1992 that the parties are connected.

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