

Comparing two holdover relief provisions (Lecture P1393 – 21.06 minutes)

S.165 TCGA 1992 deals with holdover relief for gifts of business assets. The section provides that, on a claim, a gain can be held over and deducted from the asset's acquisition cost in the hands of the donee. This prevents what is often referred to as a 'dry' tax charge. There is no CGT for the donor to pay and the donee will use the reduced base cost when calculating the gain on any future sale of the asset.

The most common assets to benefit from business asset holdover relief are shares or securities. By virtue of s.165(2)(b) TCGA 1992, they must be part of the capital of a trading company or the holding company of a trading group where:

- the shares (or securities) are not listed on a recognised stock exchange; or
- the trading company or holding company is the donor's 'personal company'.

A personal company is one where the individual has at least 5% of the company's votes.

It is important to appreciate that there is a key restriction which can catch shares which are eligible for s.165 TCGA 1992 relief. This applies where there is a gift of shares and the company owns chargeable assets which are not chargeable business assets (Para 7(1) Sch 7 TCGA 1992).

Where a company owns non-business chargeable assets on the date of the gift, the qualifying gain on that gift is subject to the following reduction:

$$\text{Gain} \times \frac{\text{Chargeable business assets (CBA)}}{\text{Total chargeable assets (CA)}}$$

with the chargeable business assets and the total chargeable assets being valued at their market values on the date of the gift.

Example 1

On 1 August 2023, Rachel, a top rate taxpayer, gave her daughter, Samantha, a holding in a personal company (Rachel Real Estate Ltd). These trading company shares had cost Rachel £1,000 when she acquired them in 1995 and their market value was £285,000 on the date of the gift.

The company's balance sheet showed assets with the following values on 1 August 2023:

	£
Goodwill (pre-2002)	60,000
Freehold premises	240,000
Shares held as investments	100,000
Trade debtors and other net assets	82,000
Cash at bank	158,000

The company's chargeable business assets and chargeable assets are:

	CBA	CA
	£	£
Goodwill	60,000	60,000
Freehold premises	240,000	240,000
Shares held as investment	<u>—</u>	<u>100,000</u>
	<u>300,000</u>	<u>400,000</u>

Rachel's gain on the gift of the shares to Samantha is:

	£
Market value as at 1 August 2023	285,000
Less: Cost	<u>1,000</u>
Gain	<u>284,000</u>

The gain which is eligible for holdover relief under s.165 TCGA 1992 is:

$$284,000 \quad \times \quad \frac{300,000}{400,000} = \quad \pounds 213,000$$

The balance of Rachel's gain of £71,000 (£284,000 – £213,000) is immediately chargeable to CGT. On the assumption that Rachel had already utilised her business asset disposal relief limit of £1,000,000 and her annual CGT exemption for 2023/24 of £6,000, the gift produces a CGT liability of 20% x £71,000 = £14,200.

In this context, a business asset is an asset used for the purposes of the company's trade and a chargeable asset is one which, if sold for a profit, would give rise to a chargeable gain (Para 7(2) Sch 7 TCGA 1992). Note that the values employed for the above calculation are those at the date of the gift rather than cost or book value.

It is worth pointing out that, if the company in the previous example had sold its investments for cash immediately prior to Rachel's gift, there would have been no restriction to the held over gain of £284,000. Cash is not a chargeable asset and so the relevant fraction would then have become:

$$\frac{300,000}{300,000}$$

with Rachel's entire gain being eligible for deferral.

A critical issue these days is the position of goodwill. In the previous example, the pre-2002 goodwill was a chargeable asset (and therefore a chargeable business asset). However, if the company had created or acquired its goodwill on or after 1 April 2002, it would have been an intangible fixed asset which is dealt with under Part 8 CTA 2009 and is *not* a chargeable asset.

This can produce some surprising results, given that post-2002 goodwill is therefore omitted from both the numerator and the denominator of the fraction in Para 7(1) Sch 7 TCGA 1992.

One planning point which Rachel could have investigated was to set up an interest in possession trust with a life tenancy for Samantha as an alternative to making her an outright gift. In this case, Rachel's gift would have been an immediately chargeable transfer for IHT purposes and so would have qualified for holdover relief under the s.260 TCGA 1992 facility. Because the shares are relevant business property by virtue of S105(1)(bb) IHTA 1984, they would have attracted 100% business relief. There would have been no IHT to pay on the creation of the interest in possession trust, but, looking at the S260 TCGA 1992 holdover regime, there is *no* restriction of the gain which can be held over where the company has chargeable assets which are not chargeable business assets.

This could have saved Rachel a CGT charge of £14,200.

Contributed by Robert Jamieson