



# Further Aspects of Partnership Tax: CGT

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# CGT and partnerships

- Partnerships don't pay CGT: partners do!
- Transparency
  - TCGA 1992 s59, s59A
  - Circumstances of cessation 59A(4)
- SP D12
- Basis of valuation
- Allocation of *proceeds* and *cost* (not *gains* or *losses*)
  - By reference to share in asset surpluses at the relevant time
  - Effect for Entrepreneurs' Relief, Rollover and Holdover Reliefs

# CGT and partnerships

- Changes in asset surplus ratios
- Entrepreneurs' Relief
  - The seven cases
- Rollover Relief
- Holdover Relief
- Incorporation Relief

# Changes in asset surplus ratios

Deemed disposal by partner reducing share

Deemed acquisition by partner increasing share

Normally at Balance Sheet value

Special cases

- Connected partners
- Payment off-balance sheet

# Change of ratio

A and B equal partners

Asset cost £200k, MV £300k

A and B each have base cost £100k

C introduced as 20% partner

No off-balance sheet payment

# No prior revaluation

- A, B each own 50% with cost £100k
- A, B each treated for CGT as disposing of 10% (cost £20k) for £20k
  - Normal part-disposal rules don't apply
- C treated for CGT as acquiring 20% for £40k
- CGT costs for subsequent disposal
  - A  $£100k - £20k = £80k$
  - B  $£100k - £20k = £80k$
  - C £40k

# Subsequent disposal for £300k

- Accounting gain £100k credited 40/40/20
- For CGT
  - A, B, each have gain £40k
    - Proceeds 40% x £300k = £120k
    - Cost £100k - £20k = £80k
  - C has gain £20k
    - Proceeds 20% x £300k = £60k
    - Cost £40k

# Revaluation to MV £300k before introduction of new partner

- On revaluation, A,B each credited with  $50\% \times (£300k - £200k) = \mathbf{£50k}$  (no tax charge)
- On change of profit-share ratios
  - A,B each treated for CGT as disposing of 10% (cost £20k) for  $10\% \times £300k = £30k$ . CGT on **£10k**
  - C treated for CGT as acquiring 20% for  $20\% \times £300k = £60k$
- CGT costs for subsequent disposal
  - A  $£100k - £20k = £80k$
  - B  $£100k - £20k = £80k$
  - C  $£60k$



# Subsequent disposal for £300k

- Accounting gain £Nil
- For CGT A,B each have gain £40k
  - Proceeds 40% x £300k = £120k
  - Cost £100k- £20k = £80k
- C has gain £nil
  - Proceeds 20% x £300k = £60k
  - Cost £60k

# Mergers

A,B,C own ABC & Co in equal shares

D,E own DE & Co in equal shares

On merger, each own 20% of merged firm

# Mergers

A,B,C have each given up  $33.33\% - 20\% = 13.33\%$  of each ABC & Co asset and acquired 20% of each DE & Co asset

D,E have each given up  $50\% - 20\% = 30\%$  of each DE & Co asset and acquired 20% of each ABC & Co asset

No CGT problem if there has been no revaluation

Otherwise, consider scope for

- Entrepreneurs' Relief
- Rollover Relief

# Partners and ER

A partnership business is treated as owned by each individual member

A disposal of an interest in the assets of a partnership is treated as a disposal of the business

A disposal by a sole trader on taking in a partner is treated as the disposal of part of a business

Conditions are applied separately to each partner

# Partners and ER

- On the partnership disposing of the business
- On a partner disposing of an interest (including change in PSR)
- On introducing a partner
- On a disposal following cessation of the partnership business of assets used on cessation
- By trustees – “trust business disposal”
- By a partner making an “associated disposal”
- By shareholders of a company which is a corporate member of a partnership

# Partners and ER

On a disposal following cessation of the partnership business of assets used on cessation

S169I(4)

- Asset in use for business at time of cessation
- Business owned by individual through one year ending with cessation
- Cessation within three years of disposal

Assets owned by partnership or personally by partner

Do not confuse with “associated disposal”

# Partners and ER

By trustees – “trust business disposal”

S169J

- Qualifying beneficiary
- Assets used for business carried on by QB throughout one year ending no more than three years before disposal
- QB ceases to carry on business on disposal or within previous three years

# Associated disposals

If material disposal is a complete exit from partnership

- MD must be at least 5% interest or have been at least 5% for at least three years in previous eight

If material disposal is not a complete exit

- MD must be at least 5% interest

Usual associated disposal restrictions apply

- Not used by business throughout ownership
- Part-only use for business
- Owner involved in business for part only of period
- Rent etc paid after 5 April 2008



# Rollover Relief TCGA 1992 s152

- Applied on a partner-by-partner basis (even for H&W partnerships – see *Tod v Mudd* 60TC 237)
- Compare share of proceeds of old asset with share of cost of new asset
- Some partners may qualify while others don't
- Can be claimed by partners in respect of personally-owned assets
- In principle, can roll gains on partnership assets into acquisition of personally-owned assets and vice versa
- Rollover partnership gains into sole trade acquisitions and vice versa

# Rollover Relief TCGA 1992 s152

- Receipt of rent etc on old or new asset no bar to relief
- Initial business use necessary but no withdrawal on cessation of business use unless it's a "depreciating asset"
- May be relevant on mergers
- Watch for crystallisation of deferred gains on
  - Change of PSR
  - Cessation of transparency by LLP
  - Expiry of time limit on "depreciating assets"

# Holdover Relief TCGA 1992 s165

Applied on a partner-by-partner basis

Compare share of actual consideration with share of allowable cost

Can be claimed by partners in respect of personally-owned assets

Receipt of rent no bar to relief

May be relevant on mergers

# Incorporation Relief TCGA 1992 s162

- Applies where a person who is not a company transfers to a company a business as a going concern, wholly or partly in exchange for shares
- Business is wider than trade and may include income from property (see Elisabeth Moyne Ramsay [2013] UKUT 226)
- Applied on a partner-by-partner basis
  - Corporate partnerships
  - Only some partners taking shares