

Taper Relief – Increased Opportunities

by Felicity Cullen

Under the Finance Bill the circumstances in which a trading company (or holding company of a trading group) may in future be a “qualifying company by reference to an individual” have increased so as to include all shareholdings, of whatever size, held by employers in an employer company and all shareholdings, of whatever size, in unquoted companies.

These changes are a helpful extension to taper relief and give rise to interesting opportunities.

Under paragraph 22 Schedule A1 TCGA 1992 “shares” in relation to a company are defined so as to include any securities of that company.

Accordingly, securities of an unquoted trading company will in future be eligible for taper relief at the business assets rate. Securities of a trading company have previously been eligible for such relief, but only, because of the relatively limited meaning of “qualifying company by reference to an individual”, when held together with shares carrying voting rights. In future, securities of unquoted trading companies may be eligible for taper relief at the business assets rate even when held alone and not together with shares carrying voting rights.

This increase in the scope of taper relief opens up the possibility for persons selling shares in companies to roll gains into loan notes in a purchasing company (which is a trading company or holding company of a trading group) and keep the ownership period running for the purposes of taper relief. Thus a guaranteed value can be achieved on a sale whilst taper relief “grows”.

The loan notes, in these circumstances, would have to be structured as otherwise than qualifying corporate bonds; this is so that the ownership period for taper relief purposes is not cut short by paragraph 16 Schedule A1 TCGA 1992.

As regards paragraph 10 – periods of limited exposure to fluctuations in value not to count – comfort can be drawn from the Inland Revenue’s Manuals at para.CG17916:

- *the exchange of shares for loan notes*

In a take-over, shares in one company may be exchanged for loan notes (which are not qualifying corporate bonds) in a different company in such a way that Section 135 TCGA 1992 applies the same asset rule in Section 127 TCGA 1992, *see* CG52500+. The loan notes are treated as the same asset as the shares for which they were exchanged. As loan notes will typically not bear the same degree of exposure to fluctuations in value as the shares for which they were exchanged it might be thought that paragraph 10 applies to treat the exchange as a transaction which has the effect of limiting exposure to fluctuations in value. In practice, however, where the loan notes are issued as part of the normal commercial arrangements in an exchange the Inland Revenue do not consider that paragraph 10 applies. This will usually be so

even where the loan notes are underwritten by a third party guarantee (for example a bank guarantee) as part of those arrangements. In more complex or non-commercial circumstances, where the loan notes are issued to exploit the operation of taper, paragraph 10 may, however, apply. If you consider taper relief should be restricted for this reason you should make a report to CGT (Solihull) enclosing your papers.”

Similar principles will apply to disposals by trustees and personal representatives providing the usual further requirements are met.

Felicity Cullen

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