

Finance (No. 3) Bill, *continued*

The Chancellor of the Exchequer

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★ Schedule 15, page 291, line 31, leave out paragraph 2 and insert—

“2 (1) Chapter 3 of Part 5 of TCGA 1992 (transfer of business assets: entrepreneurs’ relief) is amended as follows.

(2) In section 169K(1B) (disposals associated with relevant material disposal), for paragraph (a) (together with the “and” at the end of it) substitute—

“(a) the ordinary shares disposed of constitute at least 5% of the company’s ordinary share capital and are shares in the individual’s personal company (and section 169S(3A)(a) to (c) apply here but as if the reference to the final day of the period mentioned in section 169S(3A)(a) were to the date of the disposal), and”.

(3) In section 169LA (relevant business assets: goodwill transferred to a close company)—

(a) for subsection (1) substitute—

“(1) Subject to subsection (1A), subsection (4) applies if—

(a) as part of a qualifying business disposal, a person (“P”) disposes of goodwill directly or indirectly to a close company (“C”), and

(b) immediately after the disposal, P meets any of the personal company conditions in the case of C or any company which is a member of a group of companies of which C is a member.

(1ZA) For the purposes of subsection (1)(b)—

(a) the reference to the personal company conditions is a reference to any of the conditions in 169S(3)(a), (b), (c)(i) or (ii), and

(b) P is taken to have all the rights and interests of any relevant connected person.

(1ZB) For the purposes of subsection (1ZA)—

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- (a) section 169S(3) is treated as having effect with the omission of the references to “by virtue of that holding”,
- (b) section 169S(3A)(a) and (b) are to apply for the purposes of section 169S(3)(c)(ii) but as if the reference to the final day of the period mentioned in section 169S(3A)(a) were to the time immediately after the disposal, and
- (c) the condition in section 169S(3)(c)(i) is to be read as containing two separate conditions (one relating to profits and the other relating to assets).”, and
- (b) in subsection (1A)(a), for “subsection (1)(aa)” substitute “subsection (1)(b)”.
- (4) In section 169S (interpretation of Chapter), for subsections (3) and (4) substitute—
  - “(3) For the purposes of this Chapter a company is a “personal company” in relation to an individual if—
    - (a) the individual holds at least 5% of the ordinary share capital of the company,
    - (b) by virtue of that holding, at least 5% of the voting rights in the company are exercisable by the individual, and
    - (c) either or both of the following conditions are met—
      - (i) by virtue of that holding, the individual is beneficially entitled to at least 5% of the profits available for distribution to equity holders and, on a winding up, would be beneficially entitled to at least 5% of assets so available, or
      - (ii) in the event of a disposal of the whole of the ordinary share capital of the company, the individual would be beneficially entitled to at least 5% of the proceeds.
- (3A) In determining whether subsection (3)(c)(ii) applies for the purposes of any provision of this Chapter under which a question arises as to whether or not a company is the individual’s personal company at any time in a particular period —
  - (a) it is to be assumed that (so far as this is not otherwise the case) the whole of the ordinary share capital is disposed of at that time for a consideration equal to its market value on the final day of the period,
  - (b) it is to be assumed that the amount of the proceeds to which the individual would be beneficially entitled at that time is the amount of the proceeds to which, having regard to all the circumstances as they existed at that time, it would be reasonable to expect the person to be beneficially entitled, and
  - (c) the effect of any avoidance arrangements is to be ignored.
- (3B) For the purposes of subsection (3A)(c)—
  - (a) arrangements are “avoidance arrangements” if the main purpose of, or one of the main purposes of, the arrangements is to secure that any provision of this Chapter applies or does not apply, and
  - (b) “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).

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- (3C) For the purposes of subsection (3) if the individual holds any shares in the company jointly with one or more other persons, the individual is to be treated as the sole holder of so many of them as is proportionate to the value of the individual’s share (and references in subsection (3) to the exercise of voting rights or beneficial entitlement are to be read accordingly).
- (3D) A modified version of Chapter 6 of Part 5 of CTA 2010 (group relief: equity holders and profits or assets available for distribution) applies for the purposes of subsection (3) reading references to company A as references to the individual.
- (3E) The reference here to a modified version of Chapter 6 of Part 5 of CTA 2010 is to the provisions of that Chapter having effect as if—
  - (a) for the purposes of section 158(1)(b), a person carrying on a business of banking were not a loan creditor of a company in respect of any loan capital or debt issued or incurred by the company for money lent by the person to the company in the ordinary course of that business,
  - (b) sections 171(1)(b) and (3), 173, 174 and 176 to 181 were omitted, and
  - (c) any modifications were made as are necessary for the purpose of applying that Chapter as if the individual were company A.””

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- ★ Schedule 15, page 298, line 7, at end insert “but, in the case of a disposal made before 21 December 2018, section 169LA(1ZA)(a) of TCGA 1992 has effect as if the reference to section 169S(3)(c)(ii) of that Act were omitted”
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