

CHAPTER 23

GIFT RELIEF

23.1 Introduction

A gift is a disposal for capital gains tax purposes. Therefore the person who is giving the asset away - the donor - could have CGT to pay even though he has received no money from the recipient. To calculate the donor's capital gain, we **assume that sales proceeds are equal to the market value of the asset** at the date of the gift. This rule applies whether or not the donor and the donee are connected persons.

[TCGA 1992, s.17](#)

Consider the situation where Dad gives shares in a company called Dad Limited to his son. The shares are worth £200,000 at the date of the gift. To calculate Dad's capital gain, we deduct the cost of the shares to arrive at the gain.

	£
MV @ gift	200,000
Less: cost	<u>(120,000)</u>
	<u>£80,000</u>

As far as the son is concerned, we **assume that he has bought the shares from Dad for their market value** - i.e. for £200,000. This becomes the son's base cost for CGT purposes.

23.2 The deferral relief

[TCGA 1992, s.165](#)

In the above scenario, it seems unfair that Dad has a gain of £80,000, when he has no money to pay the capital gains tax.

Therefore in certain situations, "gift relief" is available to defer Dad's gain on the gift of the shares. Gift relief operates in a similar way to rollover relief. We **defer the gain on Dad's gift by rolling over this capital gain against the base cost of the shares in the hands of the donee**. Essentially the relief transfers Dad's capital gain to the son.

[TCGA 1992, s.165\(4\)](#)

If gift relief is available to defer the capital gain, the way in which the relief is given, is by taking the capital gain of £80,000 and deducting it from the base cost of the donee. Two things are happening here. First, the donor's capital gain is reduced to zero by the gift relief.

	£
Proceeds (MV)	200,000
Cost	<u>(120,000)</u>
Gain	£80,000
Deferred	<u>(80,000)</u>
Gain	<u>Nil</u>

Second, the donee's base cost from £200,000 is reduced to £120,000. This is what we mean by the donor's capital gain being transferred to the donee. When the **donee comes to sell the asset, his capital gain will be higher** by £80,000 because of this reduction in his base cost.

	£
Cost	200,000
Rolled over gain	<u>(80,000)</u>
Base cost	<u>£120,000</u>

The donee's base cost is equal to the donor's base cost.

Note that if the gift was made prior to 6 April 2008 in respect of an asset that was acquired before 6 April 1998, the donee's base cost will equal the donor's base cost plus indexation allowance.

Because the donee's cost is the same as the donor's cost, the market value of the asset at the date of the gift is largely irrelevant. HMRC has confirmed in [SP 8/92](#) that where the donor and the donee are intending to make a gift relief claim and the whole of the capital gain will be deferred, no formal valuation of the asset is necessary. This is particularly useful when assets such as unquoted shares are being gifted, because in practice, trying to find a value for unquoted shares can often be a painstaking exercise.

23.3 Qualifying assets

Not all gifts will qualify for gift relief. Sometimes the donor will be left with a CGT liability even though he has received no cash proceeds. Before March 1989 gift relief applied to gifts of any type of asset. However, the rules now applying are less generous. Gift relief is at present available under either Section 165 or Section 260 of TCGA 1992.

Gift relief under Section 165

Section 165 allows a gift relief claim when the asset being gifted is a "**business asset**".

Any number of shares in an unquoted trading company are business assets for gift relief purposes. **Shares in a personal trading company** are also business assets under Section 165. A personal company is any company in which the shareholder owns at least 5% of the voting rights.

[TCGA 1992, s. 165\(2\)\(b\)](#)

HMRC will apply a "20% test" to determine whether or not the company is trading. If:

- more than 20% of the company's turnover is made up of non-trading income; or
- more than 20% of the company's assets are not used to generate trading profits; or

- more than 20% of the directors' time or more than 20% of the expenses are incurred on non-trading activities

the company is not a trading company and gift relief will be denied. This is the same "20% test" that is applied in relation to entrepreneurs' relief.

Assets used in a business will also qualify for relief. Typically these will include land and buildings, goodwill or plant and machinery used for the purpose of a trade. The trade must either be carried on by an individual as a sole trader, or as a member of a partnership, or be assets owned by an individual and used by his personal trading company. A furnished holiday letting qualifies as a trade for this purpose.

[TCGA 1992, s. 165\(2\)\(a\)](#)

Finally **agricultural land and buildings used for the purposes of farming** will also qualify for gift relief.

[TCGA 1992, Sch 7 para \(1\)](#)

The most common asset that is **not** a business asset under Section 165, is shares in a **quoted** company where the donor **does not have 5%** of the voting rights. In most instances gifts of quoted shares will not qualify for gift relief. If gift relief is not available, the donor will pay capital gains tax in the normal way.

Gift relief under Section 260

Section 260 TCGA 1992, allows gift relief where the **gift is immediately chargeable to inheritance tax**. This will apply when an individual makes a gift to a **relevant property trust**. Prior to 22 March 2006, relief under Section 260 only applied in respect of gifts to discretionary trusts. In this instance, the type of asset being gifted is irrelevant, as a gift relief claim can always be made.

[TCGA 1992, s. 260](#)

23.4 Claiming gift relief

In order for the donor to receive gift relief, it is necessary for a specific claim to be made, either under Section 165 or under Section 260. In the majority of cases, the election is a **joint election** between the donor and the donee. The donor cannot make a gift relief claim on his own - he must have the consent of the donee. The only time when a gift relief claim is not a joint election, is in the case of a gift to a trust. Gifts between individuals always require a joint election to be made.

[TCGA 1992, s. 165\(1\)\(b\)](#)

The time limit for the gift relief claim is **four years from the end of the tax year** of disposal. Therefore, for a gift in the tax year 2010/11, a gift relief claim is only valid if it is made on or before 5 April 2015.

[TMA 1970, s. 43\(1\)](#)

Example 1

Mr Kent bought a furnished holiday cottage for £50,000 in September 1988. He gave the cottage to his son Carl in May 2010 when it was worth £90,000. No claim for entrepreneurs' relief is to be made.

Carl sold the cottage in March 2011 for £120,000 having used it in the summer for his family.

Assuming all appropriate claims are made, calculate Carl's chargeable gain on the sale of the cottage.

Example 2

Which of the following assets is NOT a business asset for gift relief purposes?

- a) A 4% holding of shares in Chiswick Ltd, an unquoted trading company.
- b) A 6% holding of shares in Hammersmith plc, a quoted trading company.
- c) A 10% holding of shares in Richmond Investments Ltd, an unquoted investment company.
- d) A furnished holiday letting.

Answer 1

<i>Mr Kent's gain:</i>	£
Proceeds (MV)	90,000
Less: cost	<u>(50,000)</u>
	40,000
Less: gift relief under S.165	<u>(40,000)</u>
Chargeable gain	<u>NIL</u>

<i>Carl's base cost:</i>	£
Market value (May 2010)	90,000
Less: gift relief	<u>(40,000)</u>
Base cost	<u>£50,000</u>

<i>Carl's gain:</i>	
Proceeds (March 2011)	120,000
Less: base cost	<u>(50,000)</u>
Gain	<u>70,000</u>

Answer 2

The answer is **C**

Shares in investment companies do not qualify for gift relief.

Shares in unquoted trading company, shares in personal trading company, and furnished holiday lettings all qualify for gift relief.