

## SCHEDULES

### SCHEDULE 13

Section 86

#### ENTREPRENEURS’ RELIEF: “TRADING COMPANY” AND “TRADING GROUP”

- 1 TCGA 1992 is amended as follows.
- 2 In section 169H(7) (introduction), for “Section 169S contains” substitute “Sections 169S and 169SA contain”.
- 3 In section 169S (interpretation of Chapter), subsection (4A) is treated as never having had effect, and is omitted accordingly.
- 4 After section 169S insert—

#### “169SA Meaning of “trading company” and “trading group”

Schedule 7ZA gives the meaning in this Chapter of “trading company” and “trading group”.

- 5 After Schedule 7 insert—

#### “SCHEDULE 7ZA

Section 169SA

#### ENTREPRENEURS’ RELIEF: “TRADING COMPANY” AND “TRADING GROUP”

### PART 1

#### MEANING OF “TRADING COMPANY” AND “TRADING GROUP”

- 1 (1) This paragraph gives the meaning of “trading company” and “trading group” where used in the following provisions of Chapter 3 of Part 5 (entrepreneurs’ relief)—
  - (a) in section 169I (material disposal of business assets)—
    - (i) paragraphs (a) and (b) of subsection (6) (which apply for the purposes of conditions A and B in that section), and
    - (ii) sub-paragraphs (i) and (ii) of subsection (7A)(c) (which apply for the purposes of conditions C and D in that section), and
  - (b) section 169J(4) (disposal of trust business assets).
- (2) “Trading company” and “trading group” have the same meaning as in section 165 (see section 165A), but as modified by Part 2 of this Schedule.
- (3) “Trading activities” (see section 165A(4) and (9)) is to be read in accordance with Part 3 of this Schedule.

- 2 In provisions of Chapter 3 of Part 5 not mentioned in paragraph 1(1), “trading company” and “trading group” have the same meaning as in section 165 (see section 165A), except that subsections (7) and (12) of section 165A are to be disregarded.

## PART 2

### JOINT VENTURE COMPANIES

#### Attribution of activities of a joint venture company

- 3 In relation to a disposal of assets consisting of (or of interests in) shares in or securities of a company (“company A”), activities of a joint venture company are to be attributed to a company under subsections (7) and (12) of section 165A only if P—
- (a) passes the shareholding test in relation to the joint venture company (see paragraphs 5 to 8), and
  - (b) passes the voting rights test in relation to the joint venture company (see paragraphs 9 to 12).

#### Meaning of “investing company”

- 4 (1) For the purposes of this Part, a company is an “investing company” in relation to P and a joint venture company if it meets conditions 1 and 2.
- (2) Condition 1 is that—
- (a) the company is company A (see paragraph 3), or
  - (b) P directly owns some portion of the ordinary share capital of the company.
- (3) Condition 2 is that the company owns some portion of the ordinary share capital of the joint venture company (whether it is owned directly, indirectly, or partly directly and partly indirectly).
- (4) In sub-paragraph (3) the reference to a company owning share capital indirectly is to be read in accordance with section 1155 of CTA 2010.

#### Shareholding test

- 5 P passes the shareholding test in relation to a joint venture company if, throughout the relevant period, the sum of the percentages given by paragraphs (a) and (b) is at least 5%—
- (a) the percentage of the ordinary share capital of the joint venture company that is owned directly by P, and
  - (b) P’s indirect shareholding percentage (see paragraph 6).
- 6 P’s “indirect shareholding percentage” is found by—
- (a) calculating the percentage of the ordinary share capital of the joint venture company that is owned indirectly by P through a particular investing company (see paragraph 7), and

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- (b) where there are two or more investing companies, adding those percentages together.
- 7 The percentage of the ordinary share capital of a joint venture company that is owned indirectly by P through a particular investing company (“company IC”) at a particular time is given by—
- $$R \times S \times 100$$
- where—
- R is the fraction of company IC’s ordinary share capital that is owned by P at that time, and
- S is the fraction of the joint venture company’s ordinary share capital that is owned by company IC at that time (whether it is owned directly, indirectly, or partly directly and partly indirectly) (see paragraph 8).
- 8 (1) The fraction of the joint venture company’s ordinary share capital that is owned indirectly by company IC is calculated—
- (a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, and
- (b) on the assumptions specified in sub-paragraph (2).
- (2) The assumptions are—
- (a) where company IC directly owns more than 50% of the ordinary share capital of a company, company IC is taken to own the whole of the ordinary share capital of that company;
- (b) where a company other than company IC (“company B”) directly owns more than 50% of the ordinary share capital of another company (“company C”) which is a member of a group of companies of which company IC is a member, company B is taken to own the whole of the ordinary share capital of company C.

### **Voting rights test**

- 9 P passes the voting rights test in relation to a joint venture company if, throughout the relevant period, the sum of the percentages given by paragraphs (a) and (b) is at least 5%—
- (a) the percentage of the voting rights that P holds directly in the joint venture company, and
- (b) P’s indirect voting rights percentage (see paragraph 10).
- 10 P’s “indirect voting rights percentage” is found by—
- (a) calculating the percentage of the voting rights in the joint venture company that P holds indirectly through a particular investing company (see paragraph 11), and
- (b) where there are two or more investing companies, adding those percentages together.
- 11 The percentage of the voting rights in a joint venture company that P holds indirectly through a particular investing company (“company IC”) at a particular time is given by—

$$T \times U \times 100$$

where—

T is the fraction of the voting rights in company IC that is held by P at that time, and

U is the fraction of the voting rights in the joint venture company that is held by company IC at that time (whether the voting rights are held directly, indirectly, or partly directly and partly indirectly) (see paragraph 12).

- 12 (1) The fraction of the voting rights in the joint venture company that is held indirectly by company IC is calculated—
- (a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, as if references in those sections to owning the ordinary share capital of a company were references to holding voting rights in a company, and
  - (b) on the assumptions specified in sub-paragraph (2).
- (2) The assumptions are—
- (a) where company IC directly holds more than 50% of the voting rights in a company, company IC is taken to hold all the voting rights in that company;
  - (b) where a company other than company IC (“company B”) directly holds more than 50% of the voting rights in another company (“company C”) which is a member of a group of companies of which company IC is a member, company B is taken to hold all the voting rights in company C.

### PART 3

#### PARTNERSHIPS

##### **Activities of a company as a member of a partnership**

- 13 (1) In relation to a disposal of assets consisting of (or of interests in) shares in or securities of a company (“company A”), activities carried on by a company as a member of a partnership are to be treated as not being trading activities of the company (see section 165A(4) and (9)) if P fails either or both of the following—
- (a) the profits and assets test in relation to the partnership (see paragraphs 15 to 20);
  - (b) the voting rights test in relation to the partnership (see paragraphs 21 to 23).
- (2) In relation to such a disposal, activities carried on by a company as a member of a partnership are also to be treated as not being trading activities of the company if the company is not a member of the partnership throughout the relevant period.

### **Meaning of “direct interest company” and “relevant corporate partner”**

- 14 (1) This paragraph applies for the purposes of this Part.
- (2) A company is a “direct interest company” in relation to P if—
- (a) it is company A (see paragraph 13(1)), or
  - (b) P directly owns some portion of the ordinary share capital of the company.
- (3) A company is a “relevant corporate partner” in relation to P and a partnership if—
- (a) a direct interest company in relation to P (“company DIC”) owns some portion of the ordinary share capital of the company (whether it is owned directly, indirectly or partly directly and partly indirectly),
  - (b) the company is a member of a group of companies of which company DIC is a member, and
  - (c) the company is a member of the partnership.
- (4) In sub-paragraph (3) the reference to a company owning share capital indirectly is to be read in accordance with section 1155 of CTA 2010.

### **Profits and assets test**

- 15 P passes the profits and assets test in relation to a partnership if, throughout the relevant period, the sum of the percentages given by paragraphs (a), (b) and (c) is at least 5%—
- (a) the percentage which is P’s direct interest in the assets of the partnership,
  - (b) the percentage which is P’s share of the partnership through direct interest companies that are members of the partnership (see paragraph 16), and
  - (c) the percentage which is P’s share of the partnership through direct interest companies and relevant corporate partners in the partnership (see paragraph 18).
- 16 P’s “share of the partnership through direct interest companies that are members of the partnership” is found by—
- (a) calculating the percentage which is P’s indirect share of the partnership through each direct interest company that is a member of the partnership (see paragraph 17), and
  - (b) where there are two or more direct interest companies that are members of the partnership, adding those percentages together.
- 17 The percentage which is P’s indirect share of the partnership through a particular direct interest company that is a member of the partnership (“company DICP”) at a particular time is given by—

$$R \times V \times 100$$

where—

R is the fraction of company DICP’s ordinary share capital that is owned by P at that time, and

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- V is the lower of—
- (a) the fraction of the profits of the partnership in which company DICP has an interest at that time, and
  - (b) the fraction of the assets of the partnership in which company DICP has an interest at that time.
- 18 P’s “share of the partnership through direct interest companies and relevant corporate partners in the partnership” is found by—
- (a) calculating the percentage which is P’s indirect share of the partnership through each direct interest company and each relevant corporate partner in the partnership (see paragraph 19), and
  - (b) where there are two or more direct interest companies or two or more relevant corporate partners, or both, adding those percentages together.
- 19 The percentage which is P’s indirect share of the partnership through a particular direct interest company (“company DIC”) and a particular relevant corporate partner in the partnership (“company CP”) at a particular time is given by—
- $$R \times V \times W \times 100$$
- where—
- R is the fraction of company DIC’s ordinary share capital that is owned by P at that time,
- V is the lower of—
- (a) the fraction of the profits of the partnership in which company CP has an interest at that time, and
  - (b) the fraction of the assets of the partnership in which company CP has an interest at that time, and
- W is the fraction of company CP’s ordinary share capital that is owned by company DIC at that time (whether it is owned directly, indirectly, or partly directly and partly indirectly) (see paragraph 20).
- 20 (1) The fraction of a company’s ordinary share capital that is owned indirectly by company DIC is calculated—
- (a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, and
  - (b) on the assumptions specified in sub-paragraph (2).
- (2) The assumptions are—
- (a) where company DIC directly owns more than 50% of the ordinary share capital of a company, company DIC is taken to own the whole of the ordinary share capital of that company;
  - (b) where a company other than company DIC (“company B”) directly owns more than 50% of the ordinary share capital of another company (“company C”) which is a member of a group of companies of which company DIC is a member, company B is taken to own the whole of the ordinary share capital of company C.

### Voting rights test

- 21 (1) P passes the voting rights test in relation to a partnership if, throughout the relevant period, the sum of P’s direct voting rights percentage and P’s indirect voting rights percentage is at least 5%.
- (2) P’s “direct voting rights percentage” is found by—
- (a) taking the percentage of the voting rights that P holds directly in each direct interest company that is a member of the partnership, and
  - (b) where P directly holds voting rights in two or more direct interest companies that are members of the partnership, adding those percentages together.
- (3) P’s “indirect voting rights percentage” is found by—
- (a) calculating the percentage which is P’s indirect holding of voting rights in each relevant corporate partner in the partnership through each direct interest company (see paragraph 22), and
  - (b) where there are two or more relevant corporate partners or two or more direct interest companies, or both, adding those percentages together.
- 22 The percentage which is P’s indirect holding of voting rights in a particular relevant corporate partner in the partnership (“company CP”) through a particular direct interest company (“company DIC”) at a particular time is given by—
- $$T \times X \times 100$$
- where—
- T is the fraction of the voting rights in company DIC that is held by P at that time, and
  - X is the fraction of the voting rights in company CP that is held by company DIC at that time (whether the voting rights are held directly, indirectly, or partly directly and partly indirectly) (see paragraph 23).
- 23 (1) The fraction of the voting rights in a company that is held indirectly by company DIC is calculated—
- (a) by applying sections 1156 and 1157 of CTA 2010, as read with section 1155 of that Act, as if references in those sections to owning the ordinary share capital of a company were references to holding voting rights in a company, and
  - (b) on the assumptions specified in sub-paragraph (2).
- (2) The assumptions are—
- (a) where company DIC directly holds more than 50% of the voting rights in a company, company DIC is taken to hold all the voting rights in that company;
  - (b) where a company other than company DIC (“company B”) directly holds more than 50% of the voting rights in another company (“company C”) which is a member of a group of

companies of which company DIC is a member, company B is taken to hold all the voting rights in company C.

## PART 4

### INTERPRETATION OF THIS SCHEDULE

#### Meaning of “P”

- 24 (1) In the case of a material disposal of business assets, “P” means the individual making the disposal.
- (2) In the case of a disposal of trust business assets—
- (a) “P” means any relevant beneficiary, but
  - (b) in any reference to P passing or failing the tests mentioned in paragraphs 3 and 13(1), P is to be read as being a single body consisting of all the relevant beneficiaries (so that, for the purposes of determining if those tests are met, percentages are to be calculated in respect of each relevant beneficiary and then aggregated).
- (3) The following are “relevant beneficiaries”—
- (a) the qualifying beneficiary in relation to the disposal (see section 169J(3)), and
  - (b) any other beneficiary who is, in relation to the disposal, a beneficiary mentioned in section 169O(1).

#### Meaning of “relevant period”

- 25 “The relevant period” means—
- (a) for the purposes of conditions A and C in section 169I, the period of 1 year ending with the date of the disposal,
  - (b) for the purposes of conditions B and D in section 169I, the period of 1 year ending with the date mentioned in subsection (7) (a) or (b) or (7O)(a) or (b) of that section, and
  - (c) for the purposes of section 169J(4), a period of 1 year ending not earlier than 3 years before the date of the disposal.

#### Other interpretation provisions

- 26 (1) Terms used in this Schedule which are defined in subsection (14) of section 165A have the same meaning as they have in that subsection.
- (2) References to a person holding voting rights include references to a person who has the ability to control the exercise of voting rights by another person.
- (3) For the purposes of Part 3 of this Schedule, the assets of—
- (a) a Scottish partnership, or
  - (b) a partnership under the law of any other country or territory under which assets of a partnership are regarded as held by or on behalf of the partnership as such,

are to be treated as held by the members of the partnership in the proportions in which they are entitled to share in the capital profits of the partnership.

References in Part 3 to a person's interest in the assets of a partnership are to be construed accordingly."

- 6 (1) The amendments made by this Schedule (except paragraph 3) have effect in relation to disposals made on or after 18 March 2015, but only for the purposes of determining what is a trading company or trading group at times on or after that date.
- (2) In conditions B and D in section 169I of TCGA 1992 (material disposal of business assets)—
- (a) a reference to a company ceasing to be a trading company does not include a case where, as a result of the coming into force of the amendments made by this Schedule, a company which was a trading company immediately before 18 March 2015 is treated as ceasing on that day to be a trading company, and
  - (b) a reference to a company ceasing to be a member of a trading group does not include a case where, as a result of the coming into force of the amendments made by this Schedule, a company which was a member of a trading group immediately before 18 March 2015 is treated as ceasing on that day to be a member of a trading group.
- (3) Sub-paragraph (2) is without prejudice to the operation of section 43(4) of FA 2015.