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Category	Course title	Author
Tax	Holdover relief	Cath Hall

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### Content Table

1. Introduction .....	2
1.1. Gifts by qualifying persons resulting in holdover relief.....	2
2. Qualifying assets.....	2
2.1. Restrictions – assets used in a trade.....	3
2.2. Restrictions – shares in a personal company .....	3
2.3. Restrictions – trading company .....	3
3. Operation of the relief .....	4
3.1. Sale at undervalue.....	4
4. Claiming holdover relief .....	6



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# Holdover relief

## 1. Introduction

This module examines the circumstances where holdover (gift) relief is available to individuals and trustees on the disposal of business assets by way of gift or certain transactions occurring at undervalue.

### *1.1. Gifts by qualifying persons resulting in holdover relief*

A gift is a disposal for capital gains tax purposes, as are certain disposals at undervalue, typically where this occurs between connected parties. Gift relief is available to qualifying persons on the disposal of business assets and shares, in certain circumstances, which are examined below. These notes focus mainly on the relief available to individuals, with mention of transfers to trusts, but without detailed analysis of trust rules.

On the occasion of a gift, as described above, there is a disposal for capital gains tax purposes and the possibility of gift relief, as a deferral (TCGA 1992 ss 165 – 169G, 260, 281 and Sch 7). The exception is a gift between spouses or civil partners where the transaction is at nil gain/nil loss.

Spouses and civil partners aside, the consideration for the disposal is the market value of the asset concerned and the gain (or loss) is computed according to the usual rules. This will also be the case where the “gift” is not outright and some proceeds are received, which is discussed with examples below.

The sale of an asset at undervalue in a commercial context would not normally result in an adjustment to market value of the consideration for the purposes of calculating the gain.

In certain circumstances, where the asset qualifies, holdover/gift relief is available to defer the gain that would otherwise be chargeable against the cost of the asset transferred. The deferred gain is effectively chargeable when the asset is sold by the donee.

In practice, the valuation of the asset (market value) at the time of the gift may be time consuming and difficult for unquoted shares and property. As a result, valuation may be deferred until the eventual disposal by the donee.

## 2. Qualifying assets

There is a range of qualifying assets, and in some circumstances attendant restrictions on the amount of the holdover/gift relief that may be claimed. Qualifying assets are as follows:

- Gift of an asset used in a trade or profession by:
  - Donor or his personal trading company
  - A company in a group where the holding company is the donor's personal trading company
- Gifts of farm land and buildings that qualify for agricultural property relief

- Gifts of shares in trading companies that are:
  - Unlisted, or
  - In the donor's personal company
- Gifts that are immediately chargeable to inheritance tax (IHT)
- Gifts that would otherwise be immediately chargeable to IHT were it not for certain exemptions

### **2.1. Restrictions – assets used in a trade**

The initial instances of qualifying assets above look at assets used in a trade of the donor or their personal company (essentially requiring a 5% holding – see below).

If the asset is only partly used for the purposes of the donor, there will be a proportionate restriction on the relief. For example a building may be used for commercial purposes and a part of it (e.g. a flat above a shop) may not. A “just and reasonable” restriction is required with respect to the amount of the relief that is available.

In addition, the relief will be restricted if the asset in question is not used for the purposes of the trade throughout the donor's period of ownership. In these cases, the relief is restricted proportionately using the fraction A/B where A is the number of days of non-business use and B is the total number of days of the period of ownership.

### **2.2. Restrictions – shares in a personal company**

A personal company is one in which an individual has at least 5% of the voting rights. Note that the company may qualify as ‘personal’ even though its shares may be listed on a recognised stock exchange.

There is a restriction on the amount of holdover relief where the qualifying asset is shares in the donor's personal company. The amount of relief is calculated as:

$$\text{Gain} \times \frac{\text{Market value of the chargeable business assets (CBA) of the company}}{\text{Market value of the chargeable assets (CA) of the company}}$$

CBA = Assets that give rise to a chargeable gain, but are used in the trade of the company concerned

CA = All assets that give rise to a chargeable gain

The difference between the two is likely to be investments e.g. rental properties or shares. Non-chargeable assets would include, cash, stock and cars.

### **2.3. Restrictions – trading company**

The definitions above frequently use the term “trading company”.

This is defined as a company carrying on trading activities where those activities do not to include “to a substantial extent” those that are not trading in nature.

A group of companies is a trading group if one or more of its members is a trading company carrying on trading activities and the activities of the group as a whole do not include to a substantial extent non-trading activities.

There is no definitive test of “to a substantial extent”.

### 3. Operation of the relief

As described above, on the occasion of a gift the market value of the asset transferred is used as consideration for the calculation of the gain.

The holdover relief claimed is a deferral and the amount deferred reduces the base cost of the asset transferred for capital gains tax purposes. That means that the gain is effectively taxed when the asset is sold by the donee, the claim thereby passing the burden of tax to the donee.

#### 3.1. Sale at undervalue

Holdover relief may also be available on a sale at undervalue. This would involve a sale at less than the market value at the time of the transaction, but in a situation that is not at arm’s length.

Typically, this would occur between individuals who are related in some way e.g. family members. A commercial transaction that happened to be at below market value would not qualify for gift relief.

In circumstances where holdover relief applies, the excess of any actual proceeds received above the cost of the asset is treated as a capital gain, chargeable immediately. The balance of the gain may be the subject of a holdover relief claim.

#### Example 1

Andy made a gift of 1,000 unquoted shares in Carroll Ltd, a trading company, in April 2018 when the market value of those shares was £28,000.

The shares were subscribed for at £1 par in January 2016.

The gift is a disposal and the deemed proceeds are the market value. In the absence of holdover relief the gain is as follows:

	£
Deemed proceeds	28,000
Less: Cost	(1,000)
Capital gain	27,000

A claim for holdover relief is not compulsory, so in its absence Andy would be subject to a gain, less capital losses, current and brought forward and the annual exempt amount.

### Example 2

Kevin made a gift to his son of 12,000 unquoted shares in Noble Ltd, a trading company, in March 2018. The shares had a market value of £28,000, resulting in a capital gain of £23,000.

A holdover relief claim was made. The effect of the claim is as follows:

	£
Capital gain	23,000
Less: Holdover relief	(23,000)
Taxable	NIL
MV of gift	28,000
Less: holdover relief	(23,000)
Base cost of the shares	5,000

In this second example, a holdover relief claim is made and the base cost of the shares for Kevin's son is reduced to £5,000

### Example 3

John sold 12,000 unquoted shares in Gas Ltd, a trading company, to his son in March 2018. The shares had a market value of £28,000, resulting in a capital gain of £23,000. His son paid £7,000 in March 2018. A holdover relief claim was made. The effect of the holdover relief claim is as follows:

	£
Capital gain	23,000
Less: Holdover relief	(21,000)

Taxable £(7,000 – 5,000)	2,000
MV of gift	28,000
Less: Holdover relief	(21,000)
Base cost of shares in Gas Ltd	7,000

In this third example, John's son paid £7,000 for the shares and the excess above cost of £5,000 i.e. £2,000 is chargeable. The balance can be the subject of a holdover relief claim and reduces the base cost of the shares in Gas Ltd.

#### **4. Claiming holdover relief**

Holdover relief is normally only available if the donee is UK resident. The rationale being that as residence normally governs the scope of CGT, the deferred gain will be subject to tax on eventual disposal by the donee.

As a holdover/gift relief claim passes the burden of tax from donor to donee, a joint claim is needed, except where the donees are trustees. In that case, only the donor is required to make the claim.

However, holdover relief must be claimed, it is not automatic. There is an online form that should be completed and returned. A scanned pdf may be attached to the electronic submission of the self assessment tax return.

The time limit for the claim is four years after the end of the tax year of assessment.

##### ***4.1. UK residential property***

From 1 April 2015, holdover relief is available where a business asset in the form of UK residential property is transferred as a gift from a UK resident to a non-UK resident.

This applies if the property would be subject to non-resident CGT on the residential property (NRCGT).

##### ***4.2. Claw back of relief***

Holdover relief is normally only available if the donee is UK resident. It is the donee who will be liable for the capital gains tax that has been deferred by way of the holdover relief, when the asset is eventually sold.

There is a claw back of the relief if the donee becomes non-resident within six years after the end of the tax year in which the gift was made, and the asset has not yet been sold. In those circumstances the holdover relief is chargeable when the donee leaves.

There are exceptions with regard to the individuals leaving the UK to take up employment overseas and returning within three years of leaving.

In addition, if the asset qualifying for holdover relief is UK residential property (NRCGT, see above), an election can be made for the claw back to accrue when the property is disposed of.