

OFFICE OF TAX SIMPLIFICATION FOCUS PAPER: DISINCORPORATION RELIEF – WHAT OF THE FUTURE?

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the Office of Tax Simplification's focus paper *Disincorporation Relief – What of the Future?* (the paper) published on 26 July 2017¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 We consider that the original policy rationale behind disincorporation relief (the relief) - that tax charges should not act as a barrier to proposed changes in the structure of a business - is still valid. In our opinion a disincorporation relief in some form should be retained post 31 March 2018 as a relief whose time has not yet come.
- 1.4 In our response we set out in section 2 some reasons why the relief has not proved popular, in section 3 why the relief will be needed in the future, and finally in section 4 an alternative to the current £100,000 asset limit to make the relief more attractive.

2 Reasons for a low take up of the relief

- 2.1 The paper highlights that to March 2016 take up of the relief has been low. We agree that lack of awareness by advisers, the £100,000 asset limit, and the remaining personal charge on the value of assets transferred to shareholders, are reasons for a low take up.
- 2.2 We would also propose the following reasons as contributory factors:
 - Wasted corporation tax losses – any losses in the company cannot be transferred to the shareholders on disincorporation so will be wasted.

¹ <https://www.gov.uk/government/publications/disincorporation-relief-what-of-the-future>

- Losses on incorporation – where an election was made under s86 ITA 2007 on incorporation of a sole trade to allow the individual to use losses against future dividends or salary, any used losses will be unavailable on disincorporation.
- Uncertainty of valuations, particularly for goodwill - a company may feel their assets are fairly valued at under £100,000 but valuations are subjective and, if increased on challenge by HMRC, the relief could subsequently be denied.
- The relief only covers certain capital assets subject to Capital Gains Tax - the company may still have a balancing charge on plant and machinery, especially if they have claimed the Annual Investment Allowance.
- Stamp Duty Land Tax may be payable if the shareholder purchases the property from the company.

3 Reasons for retaining disincorporation relief

3.1 We propose the following reasons to retain the relief post March 2018:

- Changes to dividend taxation in April 2016. Many shareholders will not fully appreciate the impact of the new £5,000 dividend allowance until January 2018 when their final 2016/17 tax bill falls due. This allowance is set to reduce further to £2,000 in April 2018.
- Recent changes to the Personal Service Company (PSC) tax rules (e.g. travel and expenses restrictions), and new rules for the PSCs in the public sector, which it is widely anticipated will be extended to PSCs operating in the private sector, may mean a company structure is no longer appropriate for individuals using these structures.
- Administrative simplifications, such as the increase in the cash basis threshold and the extension of the cash basis to landlords from April 2017, which are not available for companies, could encourage a movement away from corporate structures.

4 Widening the scope of the relief

4.1 A simple change to increase attractiveness of the relief would be to extend the £100,000 limit on value of assets transferred.

4.2 Alternatively, consideration could be given to modifying the current absolute limit which creates a cliff edge based purely on asset values, with no consideration given to the actual underlying gain relieved. For example, a company with no land and buildings, but internally generated goodwill of £100,000, can have a gain of £100,000 exempted. In contrast, the relief would not apply to a company with purchased goodwill, or land and buildings, worth £105,000 even if those assets had been purchased at, say, £75,000 and so the gain was only £30,000.

4.3 An alternative qualifying condition to the limit set by reference to asset values could be a condition based on the amount of any gains, not asset values. For example a limit of either:

- A corporate gain not exceeding £X, or
- A corporate gain not exceeding £Y and a total value of relevant assets not exceeding £Z, where £Z is greater than the current £100,000 limit.

5 Contact details

- 5.1 We would be pleased to join in any discussion related to this focus paper. Should you wish to discuss any aspect of this response, please contact the relevant Technical Officer, Emma Rawson, on 07773 087111 or at emma.rawson@att.org.uk.

Yours sincerely

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Co-Chair of the Technical Steering Group

6 Note

- 6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 8,000 members and Fellows together with over 5,700 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.