



What practical steps can you take to minimise the tax payable when getting assets and property out of family businesses, i.e. entrepreneurs relief, pacing of the agreement etc.?

**Philip Ridgway**

CTA (Fellow), MABRP, Barrister

Temple Tax Chambers

# Structure

1. Entrepreneurs' Relief
  - Shares
  - Assets
2. Inter spousal transfers
3. Phoenix companies
4. Timing of disposals

Note: tax is complex. It is as much about not getting it wrong as it is about doing clever things to reduce tax.

Early advice:

Look out for time limits

RTFL

# Entrepreneurs' relief (Shares)

1. Conditions for relief:
  - 5% or more of the ordinary shares
  - Carrying 5% of the votes
  - Officer or employee of the company
  - Trading company or the holding company of a trading group
  - **Conditions satisfied for the year ending with the date of disposal**
  
2. Look at the balance sheet: are there any “funny” shares?
3. Have there been any share movements in the last year?  
(including redemptions)
4. Are they officers or employees?
5. Have they resigned before the date of disposal?

# Ordinary Share Capital

- Definition
  - all the company's issued share capital (however described), other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the company's profits
  - Deferred Shares
  - Zero coupon/0% preference shares
  - Cumulative/non-cumulative preference shares

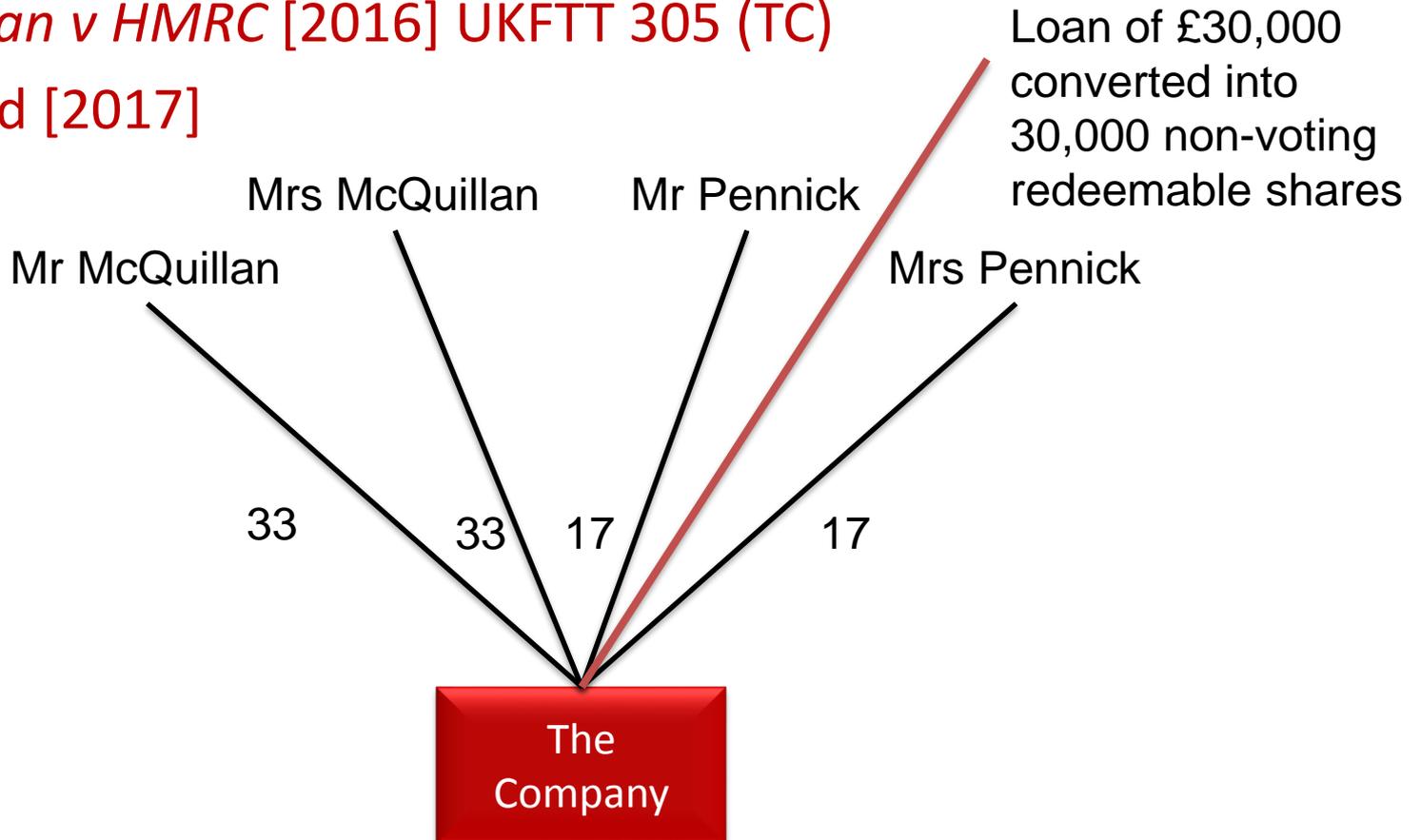
# Ordinary Share Capital

- *Castledine v HMRC* [2016] UKFTT 145 (TC)

	Issued	Held by Mr Castledine
"A" Ordinary Shares £1	1,895,482.00	94,755
"B" Ordinary Shares £0.01	20,019.85	1,001
Deferred Shares £0.01	2,043.54	Nil
Totals	<u>1,917,545.39</u>	<u>95,776</u>
£1 preference shares	165,088,062.00	6,785,137

# Ordinary Share Capital

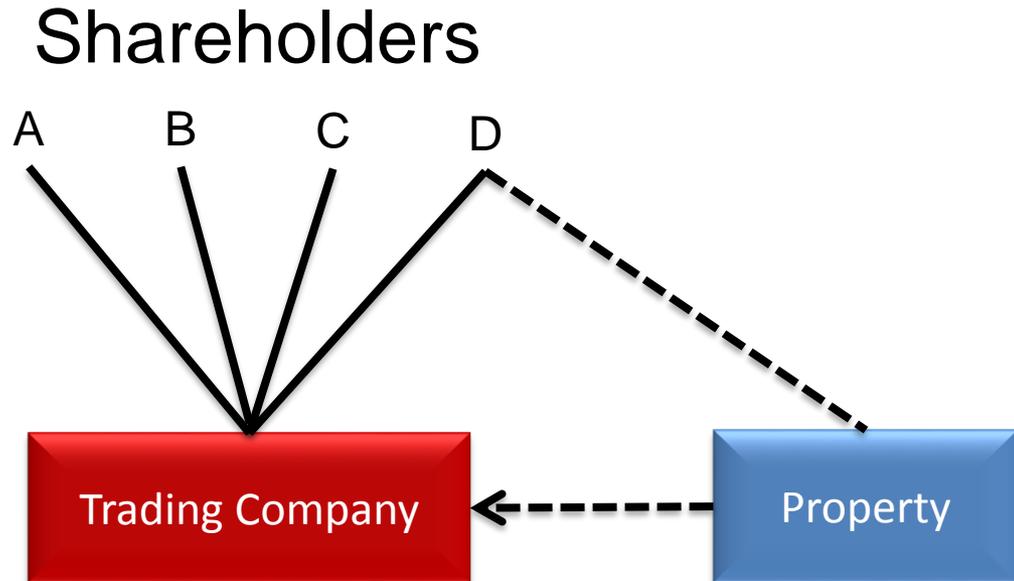
- *McQuillan v HMRC* [2016] UKFTT 305 (TC)
- Reversed [2017]



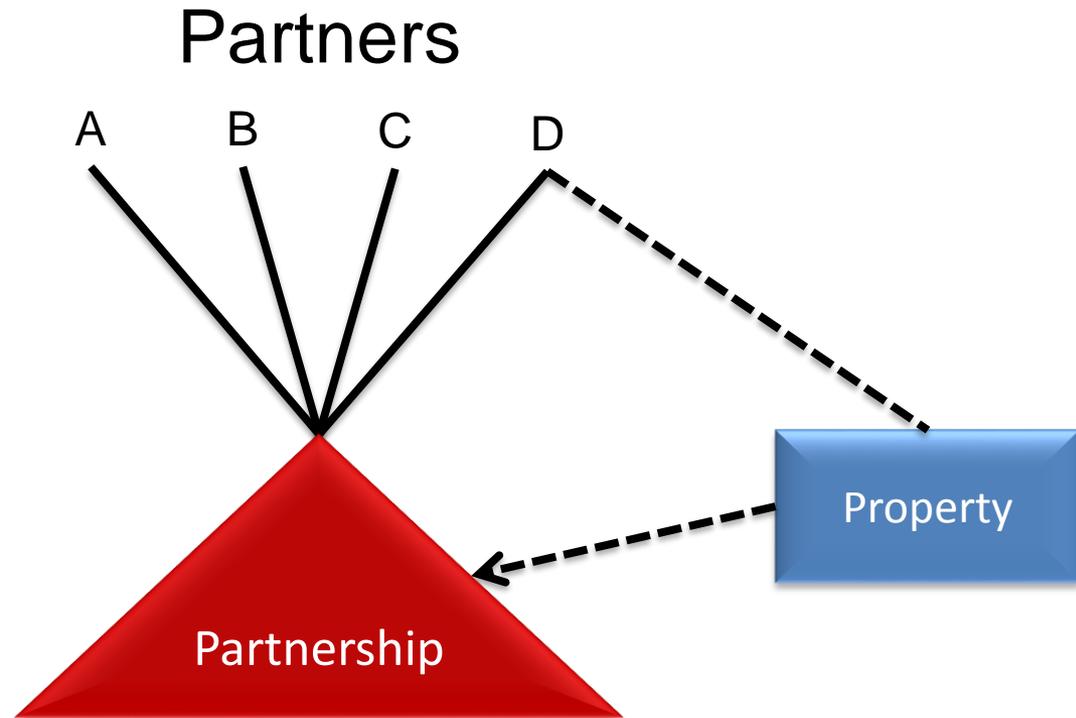
# Entrepreneurs' relief (Assets)

1. Although the legislation talks about sales of assets, there must be a disposal of the whole or part of a business unless an associated disposal or a disposal following cessation of business..
2. Associated disposal rules apply when a person is withdrawing from a business and disposes of an asset that was used in the business (either a partnership or a company)
  - No relief if a rent has been charged
  - Reduced relief in certain circumstances
  - **Don't assume it is available**

# Associated disposals



# Associated disposals



# Inter-spousal transfers

1. Transfer between spouses are fo no gain/ no loss i.e. there is no charge to tax and the other spouse assumes the original spouse's base cost but not the length of time they have held the asset. (s58, TCGA 1992)
2. Individual living with spouse or civil partner
  - S288(3), TCGA 1992
  - S1011, ITA 2007
    - Separated under a court order
    - Separated by deed of separation
    - Thy are in fact separated in circumstances in which the separation is likely to be permanent.
  - **You have until the 5<sup>th</sup> April in the tax year of separation to make the disposal. After that it is market value.**
3. (N.b. the tax free period in which to sell a residence has reduced to 18 months)

# 396B Distributions in a winding up

- (1) For the purposes of this Chapter, a distribution made to an individual in respect of share capital in the winding up of a UK resident company is a distribution of the company if—
  - (a) Conditions A to D are met, and
  - (b) the distribution is not excluded (see subsection (7)).
- (2) Condition A is that, immediately before the winding up, the individual has at least a 5% interest in the company.
- (3) Condition B is that the company—
  - (a) is a close company when it is wound up, or
  - (b) was a close company at any time in the period of two years ending with the start of the winding up.

# 396B Distributions in a winding up

(4) Condition C is that, at any time within the period of two years beginning with the date on which the distribution is made—

(a) the individual carries on a trade or activity which is the same as, or similar to, that carried on by the company or an effective 51% subsidiary of the company,

(b) the individual is a partner in a partnership which carries on such a trade or activity,

(c) the individual, or a person connected with him or her, is a participator in a company in which he or she has at least a 5% interest and which at that time—

(i) carries on such a trade or activity, or

(ii) is connected with a company which carries on such a trade or activity, or

(d) the individual is involved with the carrying on of such a trade or activity by a person connected with the individual.

# 396B Distributions in a winding up

- (5) Condition D is that it is reasonable to assume, having regard to all the circumstances, that—
- (a) the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a charge to income tax, or
  - (b) the winding up forms part of arrangements the main purpose or one of the main purposes of which is the avoidance or reduction of a charge to income tax.
- (6) The circumstances referred to in subsection (5) include in particular the fact that Condition C is met.
- (7) A distribution to an individual is excluded if or to the extent that—
- (a) the amount of the distribution does not exceed the amount that would result in no gain accruing for the purposes of capital gains tax, or
  - (b) the distribution is a distribution of irredeemable shares.

# 396B Distributions in a winding up

(8) In this section—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable;

“effective 51% subsidiary” has the meaning given by section 170(7) of TCGA 1992;

“participator” has the meaning given by section 454 of CTA 2010.

(9) For the purposes of this section, an individual has at least a 5% interest in a company if—

(a) at least 5% of the ordinary share capital of the company is held by the individual, and

(b) at least 5% of the voting rights in the company are exercisable by the individual by virtue of that holding.

(10) For the purposes of subsection (9) if an individual holds any shares in a company jointly or in common with one or more other persons, he or she is to be treated as sole holder of so many of them as is proportionate to the value of his or her share (and as able to exercise voting rights by virtue of that holding).

# 396B Distributions in a winding up

## 1. Basically:

- If you own 5% or more of the shares in a close company: and
- You wind the company up; and
- You receive the proceeds as capital (and pay CGT and possibly get ER); and
- You carry on a similar business within 2 years
- **The proceeds on which you paid CGT will be taxed as income retrospectively**
- **UNLESS it was not for tax avoidance purposes.**



- Philip Ridgway
- Temple Tax Chambers  
3 Temple Gardens  
London EC4Y 9AU
- [pridgway@templetax.com](mailto:pridgway@templetax.com)
- <http://www.templetax.com/barristers/philip-ridgway>