

## Excerpt from Capital Gains Tax 2019/20 – Chapter 8 – Partnerships

### DISPOSAL OF PARTNERSHIP ASSETS

#### 6.9

When a partnership disposes of an asset to an outside party, each partner is treated as making a disposal of his fractional share (see 6.6) in that asset. The proceeds of disposal are allocated to the partners in the ratio of their share in asset surpluses (capital profits) at the time of disposal.

If this ratio is not specifically laid down, the allocation follows the destination of the surplus as shown in the partnership accounts, but regard is also given to any agreement outside the accounts. If the surplus is put to a common reserve, the asset surplus-sharing ratio is used to divide the proceeds. If no such ratio is specified, the ordinary income profit-sharing ratio will be used (SP D12, para 2; see 6.26).

#### **Example 6.1—Share of partnership gain by partners**

Each of the following partnerships disposes of its chargeable asset to outside parties at arm's length, realising a gain of £90,000. The gain is apportioned among the partners as follows:

##### *Arthur & Co*

The partnership agreement states that each of the three partners shall be entitled to share equally in any surplus arising from assets disposed of by the partnership. Each partner is therefore treated as if he had made a gain of £30,000.

##### *Binder & Co*

The three partners in Binder & Co have no formal agreement, but interest on capital contributed to the partnership is shown in the accounts at the same sum for each. The inference is that the capital has been equally contributed and can be equally withdrawn, so that the apportioned gain is £30,000 to each partner.

##### *Cooper & Co*

The three partners, Abby, Chris and Kate, have no formal agreement and the capital is shown in the accounts as a global sum. The profit-sharing ratio is 3:2:1. Thus the gain is apportioned as follows:

- Abby: £45,000;
- Chris: £30,000; and

- Kate: £15,000.

## Part disposals

### 6.10

If a partnership makes a part disposal, the part disposal rules (see [2.4](#)) are applied before the gain is divided among the partners. Where the relief for small part disposals of land is available (see [10.3](#)), the conditions are applied separately in relation to each partner. However, the normal part disposal rules do not apply to changes in fractional partnership shares between the partners (see [6.15](#)).

## Partnership assets distributed in kind

### 6.11

Where a partnership asset is distributed in kind to one or more partners (eg on a dissolution of the partnership), the disposal is treated as being made for a consideration equal to the market value of the asset. Partners who do not receive a share of the asset are treated as having disposed of their fractional share in the asset at the time of the distribution ([CG27400](#)).

The gain accruing to each individual partner is computed but the gain accruing to the partner receiving the asset is deducted from his allowable expenditure on a subsequent disposal of the asset. The same principle applies where a loss arises (SP D12, para 3.2; see [6.26](#)).

## Rebasing rule for disposal of partnership assets

### 6.12

All assets held by individual partners at 31 March 1982 which are disposed of after 5 April 2008 are rebased at the March 1982 value for CGT purposes. Statement of Practice 1/89 deals with the indexation allowance in relation to no gain, no loss transfers between partners ([CG28300–CG28340](#)). For disposals made after 5 April 2008, SP 1/89 only applies to corporate partners whose capital gains are subject to corporation tax, and indexation allowance is frozen for those corporate partners from 1 January 2018 (see [Chapter 9](#)).

Where an individual partner has previously acquired an asset on a no gain, no loss basis, the base cost of that asset may include indexation allowance from 31 March 1982 or the month in which the partner acquired the asset, to the date of disposal or April 1998 if earlier ([TCGA 1992, s 35A](#)). This will occur in the following circumstances:

- the partner acquired the asset between 31 March 1982 and 5 April 1998 as a no gain, no loss transaction;
- any previous disposal and acquisition of the asset since 31 March 1982 has been on a no gain, no loss basis; and

- the asset was not rebased on the transfer to the partner.

### Example 6.2—New partner introduced and subsequent sale

Alistair and Tony formed a partnership in March 1979, sharing all profits equally. They immediately acquired a building for use in the partnership business for £100,000, which was valued at £120,000 on 31 March 1982. On 1 May 1999, Gordon joined the partnership and the profit-sharing ratios were changed to: Alistair 25%, Tony 50%, Gordon 25%; although Gordon made no payment towards his acquisition of a share in the partnership-owned building. This building was not revalued in partnership accounts from the historical cost of £100,000, and the partners did not make rebasing elections in their capacity as partners. The building was sold on 8 June 2019 for £800,000.

Alistair is treated as disposing of 25% of the value of the partnership building to Gordon in 1999/2000 at a no gain, no loss transfer. When the building is sold in 2019, all three partners are treated as disposing of their fractional shares in the property. The gains are calculated as follows:

|  |   |          |
|--|---|----------|
| <i>Alistair: 1999/2000</i>                                   | £   | £        |
| Deemed disposal value  | $100,000 \times 25\%$                       | 25,000   |
| Indexation allowance to April 1998 on 1982 value of £120,000 | $120,000 \times 25\% = 30,000 \times 1.047$ | 31,410   |
|  |   | 56,410   |
| Less cost – historical                                       |   | (25,000) |
| Unindexed gain   |   | 31,410   |
| Indexation allowance   |   | (31,410) |
| No gain, no loss:  |   | Nil      |

Under the practice set out in SP 1/89, Gordon acquires his share in the building for £56,410 (see [6.16](#)).

|                              |                       |          |
|------------------------------|-----------------------|----------|
| <i>All partners: 2019/20</i> | £                     | £        |
| <i>Alistair</i>              |                       |          |
| Disposal consideration       | $25\% \times 800,000$ | 200,000  |
| Less 1982 value              | $25\% \times 120,000$ | (30,000) |
| Gain:                        |                       | 170,000  |
| <i>Tony</i>                  |                       |          |
| Disposal consideration       | $50\% \times 800,000$ | 400,000  |
| Less 1982 value:             | $50\% \times 120,000$ | (60,000) |
| Gain:                        |                       | 340,000  |

### *Gordon*

|   |  |         |
|---|--|---------|
| Disposal consideration  | $25\% \times 800,000$                  | 200,000 |
| Less cost per <a href="#">TCGA 1992, s 35A</a>                  | $25\% \times \text{£}120,000 = 30,000$ |         |
| Market value at 31 March 1992 plus indexation from 1992 to 1998 | $+ 30,000 \times 1.047 = 31,410$       | 61,410  |
| Gain:   |  | 138,590 |

Under [TCGA 1992, s 35A](#), Gordon acquires his interest in the partnership building at the indexed cost of the 1982 value. The provisions in s 35A supersede the result of the capital gains calculation in 1999/2000 based on SP 1/89 (see Revenue & Customs Brief 9/09).

## Market value rule

### 6.13

Partners are connected persons (see [3.20](#)) for CGT purposes. However, where an interest in a partnership asset is transferred between partners on a commercial basis, market value is not substituted for the actual consideration passing unless the partners are otherwise connected.

HMRC guidance makes it clear that this practice applies to:

- 'normal disposals and acquisitions' of fractional shares in partnership assets carried out on a commercial basis between partners who are otherwise acting at arm's length and connected solely by partnership; and
- acquisitions made by an incoming partner and disposals made by the existing partners, carried out under genuine commercial arrangements ([TCGA 1992, s 286\(4\)](#); [CG27800](#)).

HMRC may seek to apply the market value rule where the partners are connected otherwise than by partnership (such as relatives), or where they are not so connected but the transaction is not conducted at arm's length. HMRC will consider whether any consideration passing is of an amount that might reasonably have been expected to pass had they been unconnected except by partnership, and are acting at arm's length ([CG27800](#); SP D12, para 8.3).

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