

Business asset disposal relief on the March 2027 sale of an 8% shareholding

Research memorandum to the engaging firm: TCGA 1992, ss 28, 165A, 169I, 169M and the 18% rate in FA 2025, s 8, 13 October 2026

Prepared for	the engaging firm
Question	On a March 2027 sale of her 8% shareholding in a trading company in which she has been a director and employee since May 2019, does business asset disposal relief apply to the client's gain, at what rate is the relieved gain charged, and does the company's £1,200,000 of cash on deposit prevent it from being a trading company?
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Question presented

On a sale of the client's 8% shareholding in a lab equipment manufacturer, with completion expected on 15 March 2027, does business asset disposal relief apply to her gain? At what rate is a relieved gain charged, and does the company's £1,200,000 of cash held on 12-month deposit prevent it from being a trading company for the purposes of the relief?

Three subsidiary questions follow from those: what fixes the date of disposal and therefore the tax year and the rate; and by whom and by when must the claim be made.

Short answer

SHORT ANSWER

On the facts given, the two conditions the question puts are capable of being met. A disposal of shares is a material disposal of business assets where, throughout the period of 2 years ending with the date of the disposal, the company is the individual's personal company and is a trading company, and the individual is an officer or employee of it (TCGA 1992, s 169I(2)(c), (5) and (6)).

The client's 8% of ordinary share capital carrying 8% of the votes exceeds the 5% ordinary share capital and 5% voting rights limbs of the personal company definition, and she has been an employee and a director since May 2019. The retrieved authorities do not reproduce the profits and assets limb of TCGA 1992, s 169S(3A), so her stated 8% entitlement to dividends and to assets on a winding up is recorded here as unsupported on this record rather than confirmed.

On rate, FA 2025, s 8(4) substitutes 18% for 14% in TCGA 1992, s 169N(3) and s 8(6) provides that the amendment has effect in relation to disposals made on or after 6 April 2026. If the disposal is made in 2026/27 and the relief is in point and claimed, the qualifying gain is charged at 18%, up to the £1,000,000 lifetime limit, with any excess charged under TCGA 1992, s 1H. The client has never claimed the relief before, so on the facts given the whole qualifying gain is within the lifetime limit.

On the cash, £1,200,000 of retained trading profits on deposit does not of itself prevent trading company status. TCGA 1992, s 165A(3) asks whether the company carries on trading activities and whether its activities include, to a substantial extent, activities other than trading activities.

The first question is whether holding the cash is an identifiable activity separate from the trade at all; only if it is does one weigh whether it is substantial, by reference to non-trading income, the asset base, expenses, officer and employee time and the company's history.

On a £7,000,000 turnover with no investment subsidiaries and no stated investment property, loans out or non-trading income, the facts point towards trading status, but this is a question of fact that cannot be settled without the balance sheet and the board's purpose for holding the cash.

Timing is the live risk. Under TCGA 1992, s 28(1) the disposal is made when the contract is made, not on completion, and under s 28(2) a conditional contract is made when the condition is satisfied. The facts give only an expected completion date, so the tax year, and therefore the rate, is not fixed on this record. The same date closes the 2-year period in s 169I(6).

The claim must be made by the client herself on or before the first anniversary of the 31 January following the tax year of disposal, that is 31 January 2029 for a 2026/27 disposal.

Facts

- The client is resident in Bristol, England and is a UK resident higher-rate taxpayer.
- In May 2019 she subscribed at par for 8% of the ordinary shares of a company that manufactures lab equipment.

- The shares carry 8% of the votes and 8% of the dividend and winding-up rights.
- She has been an employee and a director of the company throughout the period since May 2019.
- The company's turnover is £7,000,000; it holds £1,200,000 of cash from retained profits on 12-month deposits; it has no investment subsidiaries.
- The company is being sold for £9,000,000 in March 2027, with completion expected on 15 March 2027.
- Her share of the proceeds would be £720,000.
- She has never used business asset disposal relief or entrepreneurs' relief before.

The facts do not state the date of exchange of contracts, whether the contract is conditional, the par value actually subscribed, or the composition of the consideration. Those gaps are carried into the analysis and are listed again at the end of this memorandum.

Analysis: Issue 1, Conditions for the relief on a share disposal

Authority: Taxation of Chargeable Gains Act 1992, s 169I. Grade: VERIFIED. The retrieved text provides:

"Condition A is that, throughout the period of 2 years ending with the date of the disposal, (a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and (b) the individual is an officer or employee of the company".

The rule operates in three steps. Section 169I(2)(c) treats a disposal of shares in a company as a disposal of business assets; s 169I(5) makes that a material disposal where Condition A is met; and s 169I(6) sets Condition A out in the terms quoted above. Relief is given only on a claim, a requirement referred to in s 169H(4), and the amount of relief is governed by ss 169N to 169P.

Applying that to the facts: the disposal consists of shares in a company, so s 169I(2)(c) is satisfied. The personal company limb is met on the ordinary share capital and voting rights tests, since 8% of ordinary share capital and 8% of the votes held from May 2019 exceeds the 5% limbs of the definition in s 169S(3) as set out by the Upper Tribunal in Warshaw. The officer or employee limb is satisfied on the stated facts, she having been an employee and a director throughout. The 2-year period is satisfied on a disposal date in March 2027 for shares subscribed in May 2019.

Two limbs are not established on this record. The facts state 8% of dividend and winding-up rights, but the retrieved text does not contain the text of the profits and assets limb of s 169S(3A), so that limb is recorded as unsupported here rather than confirmed. The trading company limb depends on TCGA 1992, s 165A and is addressed at Issue 3 below.

Two drafting points on the authorities. The 2-year period runs to the date of the disposal, so the disposal date and not the completion date governs. Warshaw and the Finance Act 2016 material both state a 1-year period, which is the earlier version of the test; the 2-year period in the current s 169I(6) applies.

Conclusion on Issue 1, graded VERIFIED: on the retrieved text the conditions in s 169I(2)(c), the voting and ordinary share capital limbs of the personal company test, the officer or employee test and the 2-year period are met on the facts given, subject to the trading company test at Issue 3, the profits and assets limb recorded as unsupported, and the claim at Issue 5.

Analysis: Issue 2, Rate on relieved gains for a 2026/27 disposal

Authority: Finance Act 2025, s 8. Grade: VERIFIED. The retrieved text provides: "The amendments made by subsections (4) and (5) have effect in relation to disposals made on or after 6 April 2026".

Section 8(4) substitutes "18%" for "14%" in TCGA 1992, s 169N(3), and s 8(6) ties the amendment to the date of the disposal. The operative trigger is therefore the date of the disposal, not the date a claim is made under TCGA 1992, s 169M and not the date the tax falls due. HMRC states the same, that the rate increases to 18% for qualifying gains arising from disposals occurring on or after 6 April 2026.

On the facts given, a disposal made on 15 March 2027 falls in 2026/27 and so, if the relief is in point and claimed, the qualifying gain is charged at 18% under TCGA 1992, s 169N(3) as amended. That rate applies only to so much of the gain as, added to gains on earlier relevant qualifying business disposals, does not exceed £1,000,000 of lifetime gains (s 169N(4) and (4A)); any excess is charged under TCGA 1992, s 1H (s 169N(4B)).

The client has never claimed the relief or entrepreneurs' relief before, so on those facts the whole qualifying gain falls within the lifetime limit.

Section 8 requires only that the disposal be made on or after 6 April 2026, and the facts do not fix the date of disposal, which for a sale under contract is not necessarily the completion date. If a binding contract was or is entered into before 6 April 2026, the question of which rate applies arises, and HMRC records that Finance Act 2025 includes anti-forestalling rules directed at arrangements seeking to lock in lower rates, with guidance at CG10249 to CG10251; that text was not retrieved.

The gain itself is left open: the facts state subscription at par but give no figure, so the chargeable gain is £720,000 of proceeds less an unquantified base cost and incidental costs of disposal, and is not the same figure as the proceeds.

Conclusion on Issue 2, graded VERIFIED: for a disposal made on or after 6 April 2026, the qualifying gain within the lifetime limit is charged at 18%, conditional on the disposal date point at Issue 4 and on the claim at Issue 5.

Analysis: Issue 3, Trading company status and the £1,200,000 on deposit

Authority: Taxation of Chargeable Gains Act 1992, s 165A. Grade: VERIFIED. The retrieved text provides: "'Trading company' means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities".

Section 165A(3) sets two limbs: the company must carry on trading activities, and its activities must not include, to a substantial extent, activities other than trading activities. The first limb is satisfied, the company manufacturing lab equipment on a turnover of £7,000,000. On the second limb, holding retained profits on deposit is not automatically a non-trading activity; the first question is whether there is any identifiable activity distinct from the trade at all.

HMRC's guidance at CG64060 accepts that short-term lodgement of surplus funds can count as a trading activity, while long-term retention of significant earnings may amount to an investment activity. That guidance is procedural in character and informs HMRC's approach rather than settling the statutory question. Only if a separate investment activity is identified does one go on to measure whether it is substantial.

On measurement, CG64090 weighs non-trading income, the asset base, expenses and the time of officers and employees, and the company's history, with no single percentage test. HMRC's stated practice is that where neither non-trading income nor the asset base suggests the non-trading element exceeds 20%, the case is unlikely to warrant more detailed review.

That 20% figure is a review threshold in HMRC's own guidance, not a statutory safe harbour, and the manual states expressly that the indicators are not individual tests to which a percentage limit applies.

The Upper Tribunal has confirmed that the words "to a substantial extent" bear their ordinary meaning and that holding investments can be caught where it is substantial in the context of the company's activities as a whole ([2021] UKUT 291 (TCC)). The Assem Allam First-tier decision referred to in CG64090 decides its own case and is persuasive only; the Upper Tribunal decision is the authority to rely on.

Several measurements cannot be made on the facts given. The facts do not state total assets or balance sheet value, so £1,200,000 cannot be measured against the asset base; they do not state the deposit interest, so non-trading income cannot be compared with trading receipts; they do not state why the cash is held or whether the 12-month term is rolled over year after year, which CG64060 treats as the central question; and they do not state what officer or employee time is spent managing the funds.

A statutory linkage point should also be checked. Section 165A is expressed to have effect for the interpretation of s 165, and the interpretative provision referred to in TCGA 1992, s 169H(7) carrying that definition into the business asset disposal relief Chapter is not among the retrieved texts. HMRC applies the same wording for the relief in CG64060 and CG64090, but that link should be confirmed against the section itself before the position is signed.

Conclusion on Issue 3, graded VERIFIED as to the test: on the facts shown the company is carrying on a manufacturing trade and nothing in the facts identifies an activity other than that trade, so the test in s 165A(3) is capable of being met, and a 12-month deposit of trading profits in a company with £7,000,000 turnover, no investment subsidiaries and no stated investment property, loans out or non-trading income points towards trading status.

Whether the condition is in fact met throughout the 2 years ending with the date of disposal is a question of fact that cannot be settled without the balance sheet and the purpose for which the cash is held.

Analysis: Issue 4, Date of disposal: contract or completion

Authority: Taxation of Chargeable Gains Act 1992, s 28. Grade: VERIFIED. The retrieved text provides: "where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred)".

Section 28(1) is expressly subject to s 22(2) and to s 28(2). Under s 28(2), where the contract is conditional, including conditional on the exercise of an option, the disposal is made when the condition is satisfied.

HMRC's guidance confirms the same approach and confirms that the date so fixed determines the tax year in which the gain arises and the rate of tax charged; it also records that deciding whether a term makes a contract conditional for s 28(2) can be difficult and requires the full facts to be considered in the context of contract law.

On these facts completion is expected on 15 March 2027, but the facts do not state the date of exchange or whether the contract is conditional, so the tax year of disposal cannot be fixed. If the contract is unconditional and made between 6 April 2026 and 5 April 2027, the disposal falls in 2026/27. If it was made, or the condition satisfied, on or before 5 April 2026, the disposal falls in 2025/26; if the contract is conditional and the condition is satisfied after 5 April 2027, the disposal falls in 2027/28.

Two further qualifications follow from the retrieved material. Section 28 presupposes that a disposal actually occurs: if the contract goes off there is no disposal and nothing to deem to have happened at the contract date. Whether a contract has been made at all is decided by the ordinary principles of contract formation, including sufficient certainty as to price or the mechanism for determining it.

The same date also closes the 2-year period ending with the date of the disposal in TCGA 1992, s 169I(6), so the exchange date and not completion is the date against which the personal company and officer or employee tests are measured. The date used for a relief's period of ownership test is not necessarily the same date as the s 28 date, so each test should be read against its own words.

Conclusion on Issue 4, graded VERIFIED: the disposal is made when the contract is made, or where the contract is conditional when the condition is satisfied, and not on completion. The tax year, and therefore the rate under Issue 2 and the end of the 2-year period under Issue 1, turn on that date, which the facts given do not establish.

Analysis: Issue 5, Who claims and by when

Authority: Taxation of Chargeable Gains Act 1992, s 169M. Grade: VERIFIED. The retrieved text provides: "A claim for business asset disposal relief in respect of a qualifying business disposal must be made on or before the first anniversary of the 31 January following the tax year in which the qualifying business disposal is made".

Relief is given only on the making of a claim, and for a disposal by an individual the claim must be made by that individual under s 169M(2)(b), not by the company or by the adviser in their own name. A claim may only be made if the computation under s 169N(1) produces a positive amount, that is a net gain after netting the relevant gains and losses (s 169M(4)).

On these facts, completion is expected on 15 March 2027, which falls in 2026/27 (6 April 2026 to 5 April 2027). The 31 January following that tax year is 31 January 2028, so the claim must be made on or before 31 January 2029. If completion, or more precisely the disposal date fixed under Issue 4, slips past 5 April 2027, the disposal falls in 2027/28 and the deadline becomes 31 January 2030.

On mechanics, and as a procedural point only, HMRC's guidance states that for an individual, where a notice to file a return has been issued, the claim should be made in that individual's personal return, that is in the capital gains pages of the 2026/27 self assessment return.

The same guidance records that a claim is not irrevocable and may be amended or revoked within the time limit, and that the self assessment and standalone claim provisions may extend the time for amendment, particularly where an enquiry is opened; the enquiry window itself runs from delivery of the return under TMA 1970, s 9A(2).

The deadline in s 169M(3) is a claim time limit, not an extendable administrative date. A different deadline applies where a gain has been deferred under the EIS or social investment rules, being the anniversary of the 31 January following the tax year in which the gain is brought back into charge; nothing in the facts suggests that applies here.

Conclusion on Issue 5, graded VERIFIED: the client must make the claim herself, and for a 2026/27 disposal on or before 31 January 2029, the quantum point remaining open because her base cost is not stated.

Conclusion

On the retrieved authorities, the client's disposal is capable of qualifying for business asset disposal relief: the shares are a disposal of business assets under TCGA 1992, s 169I(2)(c); the 8% of ordinary share capital and 8% of the votes satisfy the voting and share capital limbs of the personal company test; and she has been an officer and employee since May 2019, covering the 2-year period in s 169I(6).

The £1,200,000 of cash on 12-month deposit does not of itself displace trading company status under TCGA 1992, s 165A(3). The facts as given, a £7,000,000 manufacturing turnover, no investment subsidiaries and no stated investment property, loans out or non-trading income, point towards trading status, but the substantial extent question is a question of fact that requires the balance sheet, the deposit interest and the board's purpose for holding the cash.

If the disposal is made on or after 6 April 2026 and the relief is claimed, the qualifying gain within the £1,000,000 lifetime limit is charged at 18% under TCGA 1992, s 169N(3) as amended by FA 2025, s 8, with any excess charged under TCGA 1992, s 1H. The client has made no earlier claim, so on the facts given the lifetime limit is unused.

The dominant open point is timing. Under TCGA 1992, s 28 the disposal is made at the date of the contract, or where the contract is conditional at the date the condition is satisfied, not on completion, and that date fixes the tax year, the rate, the end of the 2-year period and the claim deadline. The claim must be made by the client herself, on or before 31 January 2029 for a 2026/27 disposal. This memorandum states no outcome and is a draft for the adviser to validate, edit and sign.

What the firm must confirm

On the conditions for relief, the adviser must confirm from the articles and the register of members that the 8% holding, the 8% of voting rights and the 8% entitlement to profits available for distribution and to assets on a winding up were held continuously from May 2019 to the disposal date.

The full current text of TCGA 1992, s 169S(3) and (3A) must be checked, since the retrieved material quotes only the ordinary share capital and voting rights limbs and the profits and assets limb is unsupported on this record.

The adviser must also confirm whether the shares are "ordinary share capital" as defined for tax purposes and whether any class carries preferential rights; whether the client holds or has held any other shares, options or securities in the company or acquired further shares after May 2019; whether she will remain an officer or employee up to the disposal date as determined under Issue 4; and whether any reorganisation, earn-out or share exchange on the sale changes the analysis under TCGA 1992, ss 169Q and 169R.

On trading company status, the adviser must confirm that the current text of TCGA 1992, s 169S applies the s 165A definition of "trading company" for the purposes of the business asset disposal relief Chapter, as HMRC's guidance assumes. The adviser must obtain the statutory accounts for the periods falling in the 2 years ending with the disposal date, so that £1,200,000 can be measured against total assets and the deposit interest against total receipts.

The adviser must confirm the board's documented purpose for holding the cash, including any earmarking for capital expenditure, working capital or a trading liability; whether the 12-month deposits are rolled over on maturity and for how long the balance has been accumulated; what officer and employee time is spent managing the funds; whether the company has any subsidiaries at all, so that the group test rather than the single company test may apply; and that the company has no other non-trading activity, such as investment property, let land, loans to connected parties or shareholdings, beyond the deposits.

On timing, the adviser must confirm the date the sale contract is made and whether it is unconditional or conditional, and if conditional the date every condition is satisfied; that the terms are sufficiently certain for a binding contract to have been formed on the date relied on; that completion in fact occurs, since s 28 fixes timing only where a disposal actually takes place; and whether the transaction is instead structured as an option, in which case the contract is the contract for sale formed on exercise.

On rate and quantum, the adviser must confirm that FA 2025, s 8(4) to (6) remains unamended at the disposal date and has not been superseded by a later Finance Act, and the lifetime limit then applying. The adviser must confirm that no contract, share exchange or election under TCGA 1992, s 169Q or s 169VT brings the anti-forestalling rules at CG10249 to CG10251 into play, the text of which was not retrieved.

The adviser must establish the par value actually subscribed in May 2019, so that the allowable cost and the chargeable gain can be computed; the gain is left open and is not the same figure as the £720,000 of proceeds.

The adviser must also establish whether any part of the consideration is deferred, contingent (an earn-out) or satisfied in loan notes or shares of the purchaser, which would affect the amount and timing of the gain and the need for any election, and whether the client has other chargeable gains or allowable losses in 2026/27 and whether the annual exempt amount is otherwise used.

On the claim, the adviser must confirm the actual date of disposal and that it falls in 2026/27 rather than 2027/28, since the deadline moves with the tax year; that a notice to file for 2026/27 has been issued, so the claim is properly made in the client's own self assessment return rather than as a standalone claim under TMA 1970, Sch 1A; that the claim is made in the client's name and signed or authorised by her; and the current wording of the relevant box and the capital gains pages for 2026/27, which were not retrieved. The client's reference should be entered as [UTR].

Two further matters the retrieved authorities did not settle. The text of TCGA 1992, s 169M on the time limit for making a claim was retrieved, but the text of ss 169N to 169P governing the full computation of the amount of relief was not, so the computation of relief beyond the rate and lifetime limit points stated above should be checked against those sections.

The client's UK residence status for 2026/27 and whether any period of temporary non-residence is in prospect is a question not researched in this memorandum and should be taken separately.

Authorities relied on

Taxation of Chargeable Gains Act 1992, s 169I Statute

• VERIFIED

"Condition A is that, throughout the period of 2 years ending with the date of the disposal, (a) the company is the individual's personal company and is either a trading company or the holding company of a trading group, and (b) the individual is an officer or employee of the company"

[2020] UKUT 366 (TCC) HMRC v Stephen Warshaw ^{Upper Tribunal decision} Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

Finance Act 2025, s 8 Statute

• VERIFIED

"The amendments made by subsections (4) and (5) have effect in relation to disposals made on or after 6 April 2026."

Taxation of Chargeable Gains Act 1992, s 169N Statute

Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

HMRC Capital Gains Manual CG63955 HMRC manual

Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

Taxation of Chargeable Gains Act 1992, s 165A Statute

• VERIFIED

"Trading company" means a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities."

HMRC Capital Gains Manual CG64060 HMRC manual

Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

HMRC Capital Gains Manual CG64090 HMRC manual

Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

Taxation of Chargeable Gains Act 1992, s 28 Statute

• VERIFIED

"where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred)."

HMRC Capital Gains Manual CG14250 HMRC manual

Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

Taxation of Chargeable Gains Act 1992, s 169M Statute

• VERIFIED

"A claim for business asset disposal relief in respect of a qualifying business disposal must be made on or before the first anniversary of the 31 January following the tax year in which the qualifying business disposal is made."

HMRC Capital Gains Manual CG63970 HMRC manual

Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

Taxation of Chargeable Gains Act 1992, s 169H Statute

Corroborating authority; not independently text-checked for this letter.

• ADVISER TO CONFIRM

Research and drafting for a licensed professional. Every grade is an evidence label, not an eligibility ruling; the reviewing professional validates each conclusion before relying on it.