

**TRAVERS SMITH**

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## **Share Identification Rules**

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## Relevance in practice

Working out capital gain realised

- need to know the base cost of the shares you are disposing of

Tax Planning: spouse transfers

- accessing spouse's lower tax rates (annual exemption)
- transferring shares with the right base cost

When issues arise:

- exit events: public and private takeovers
- ordinary course events: acquisition of shares under share ownership or share option arrangement and disposals

## The Share Identification Rules

Why are they necessary?



To identify securities being disposed of or acquired in order to calculate gains or losses

### The principle:

#### Securities

- of the same class
- acquired by the same person
- in the same capacity

Are indistinguishable parts of the same asset growing and diminishing on their acquisition and sale (the “s.104 Holding”)

## What is a Security?

- Shares or securities of a company; and
- Any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

Shares and securities are not treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if traded on such an exchange

## Individuals vs Companies

Different rules apply for CGT purposes and Corporation Tax purposes

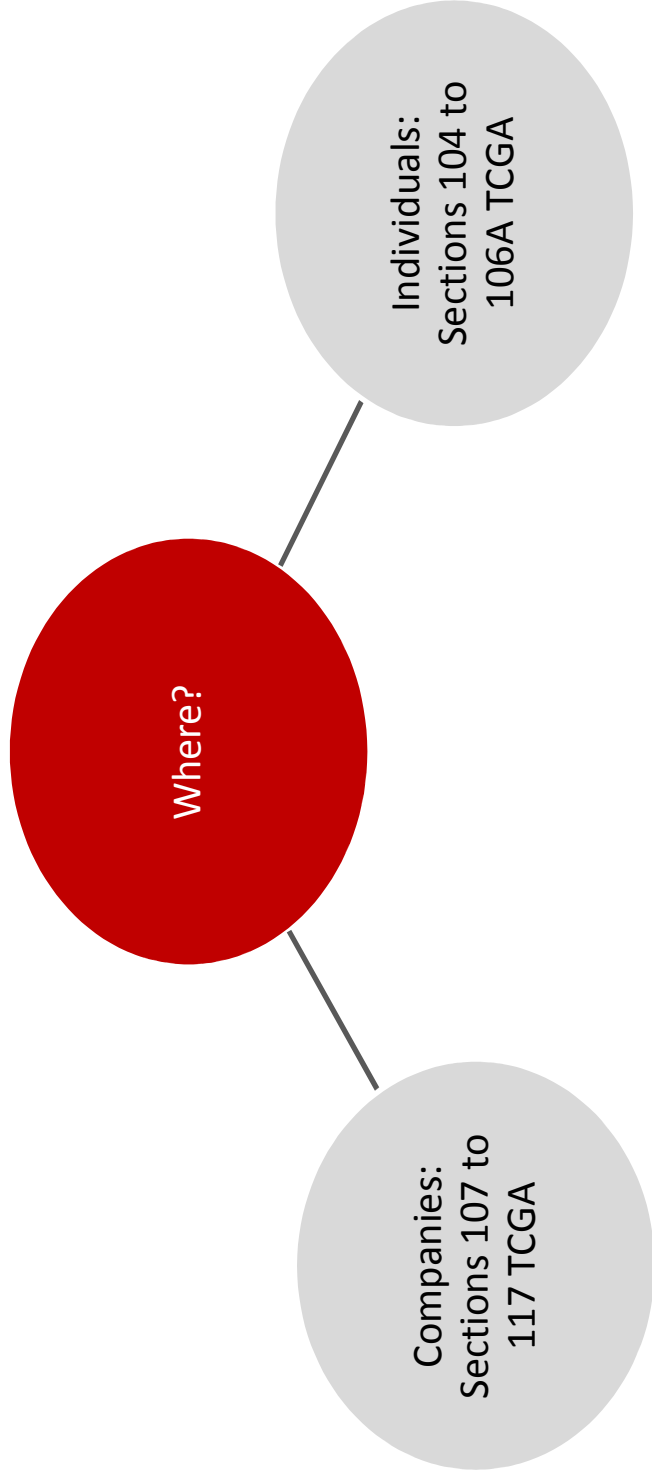
### Individuals

- **Gains:** subject to capital gains tax
- **Losses:** can be offset against capital gains only

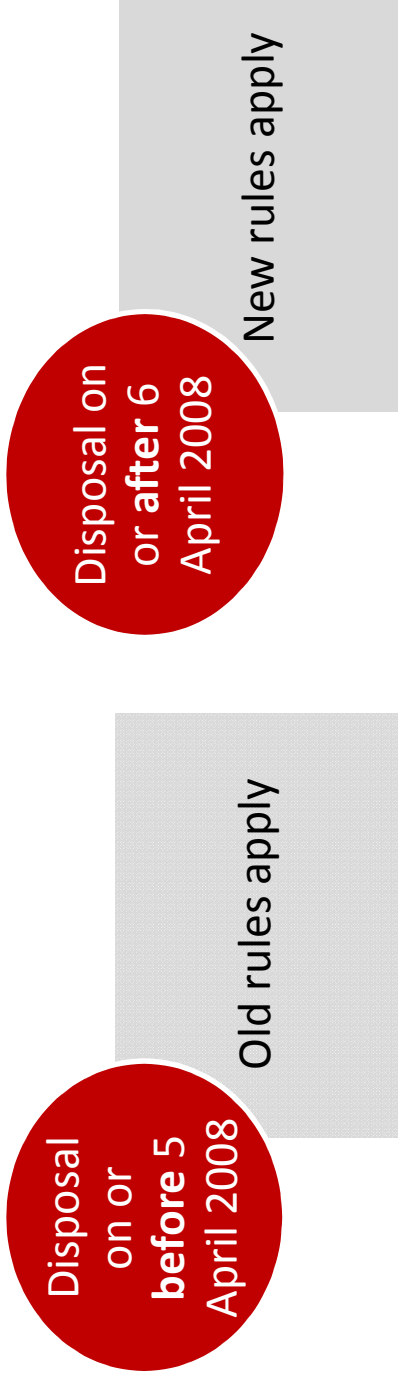
### Companies

- **Gains:** subject to corporation tax
- **Losses:** can be offset against capital gains only

# The Law



## Old rules vs Current Rules

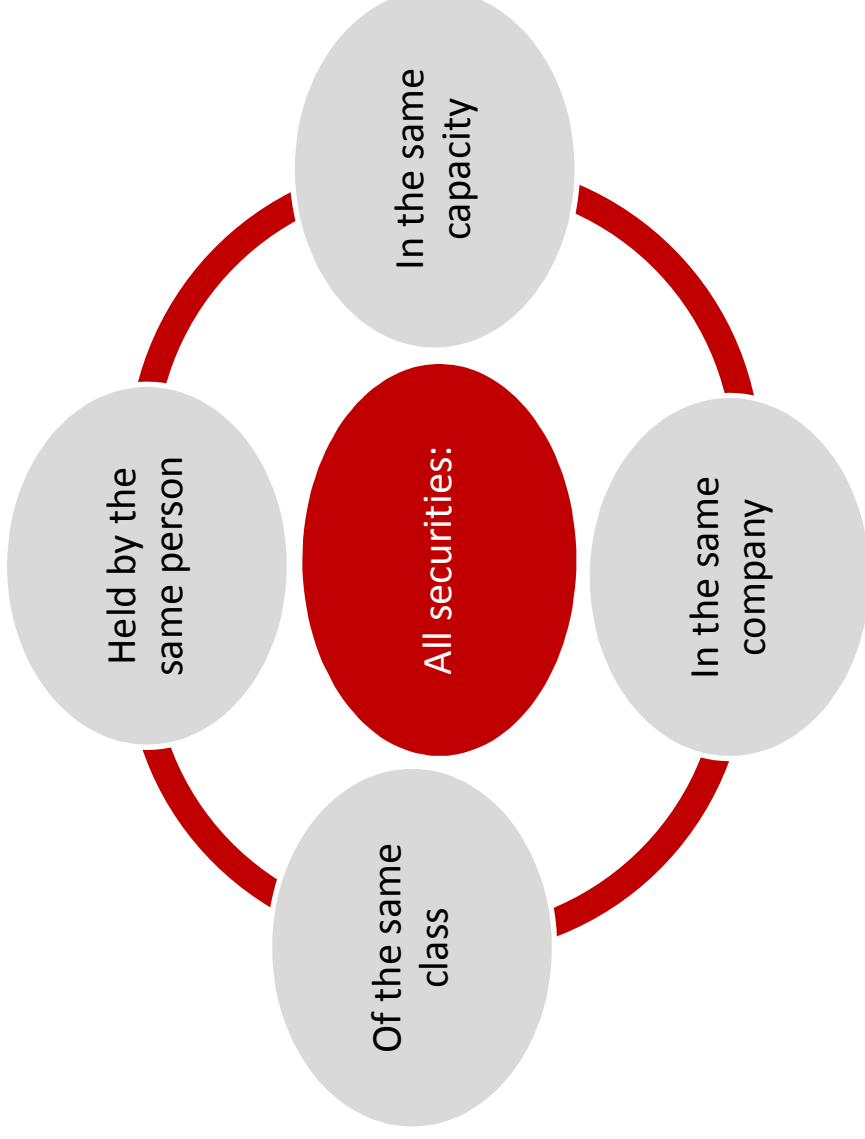


**What this talk covers...**

- rules relating to individuals
- but not in relation to EIS and VCT shares
- new rules only: disposals on or after 6 April 2008



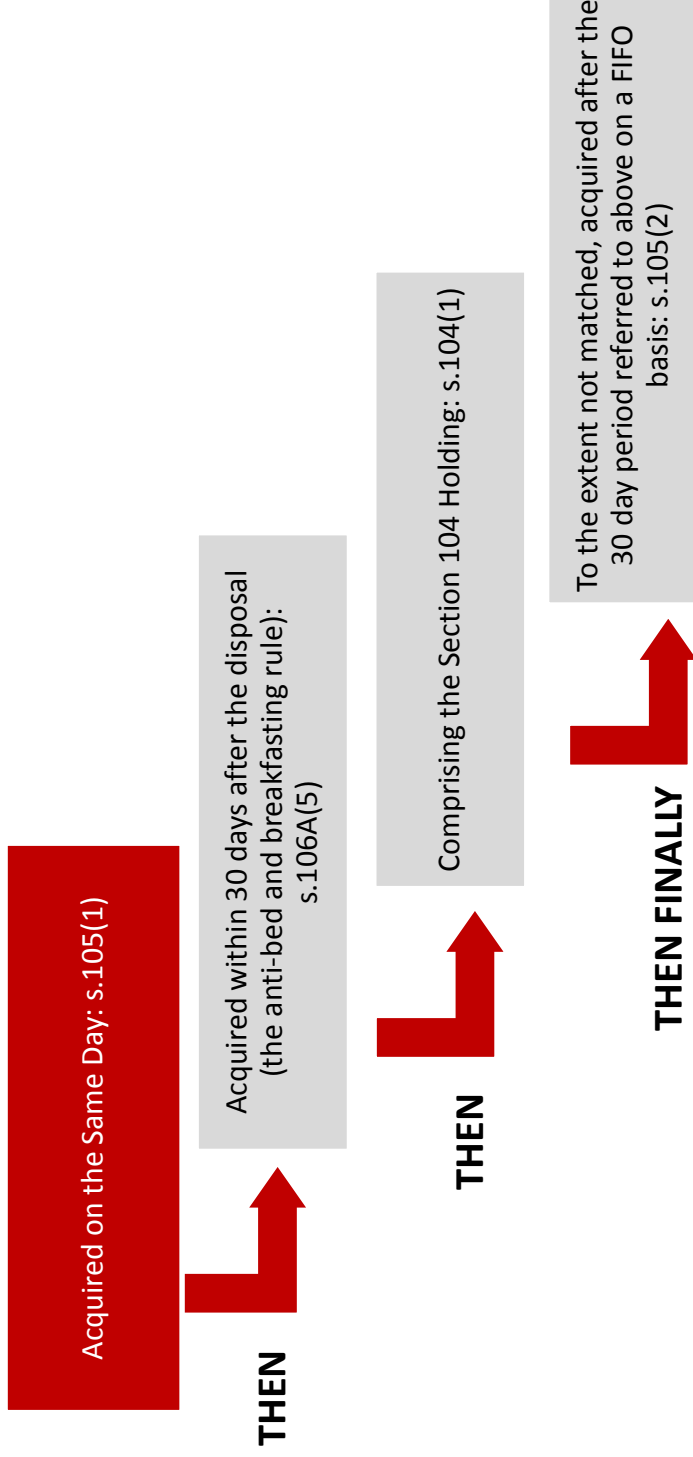
## General principle



form a single asset (s 104 Holding)

## Rules that apply on disposals

Identify disposals with acquisitions in the following order:



## Same Day Rule (s 105(1) TCGA)

- Securities of same class acquired/disposed of by same person in same capacity on same day:
  - Shares acquired on same day treated as acquired by a single transaction
  - Shares disposed of on same day treated as disposed of by a single transaction
  - Shares acquired on same day identified with shares disposed of on same day

## Same Day Rule: EMI Exception (s.105(4)/(5))

Applies if relevant EMI shares  
acquired on exercise of EMI options  
on the same day as non-EMI option  
shares

No election is required for  
this treatment to apply

Non-EMI shares and relevant  
EMI shares treated as single, but  
separate, acquisition

See Example 2

## Same Day Rule: EMI Exception (cont.)

- “Relevant EMI Shares” has narrow meaning:

Those  
acquired on  
exercise of  
EMI options

On or after 6  
April 2013

Within 10  
years of grant

No  
disqualifying  
event /within  
90 days of  
disqualifying  
event

## Same Day Rule: Approved Option Election (s.105A)

Alternative treatment for CSOP and SAYE options (“Approved Options”). CSOP and SAYE must be exempt from income tax on exercise

Shares acquired on exercise of Approved Options treated as part of a separate transaction to other shares acquired on same day

Other shares treated as disposed of prior to Approved Option shares

An election is required for this treatment to apply

## Same Day Rule: Approved Option Election

### Benefit

Allows shares with higher base cost to be sold in preference to shares with lower base cost

### Making the Election

Must be made within 12 months of 31 January after the end of the tax year in which the options are exercised

No prescribed form

Automatically applies to clogged shares once they become unclogged

## 30 Day Rule: Anti-Bed and Breakfast (s.106A(5))

Why  
necessary?

To prevent avoidance  
in this area

Type of  
planning  
used

Individuals sold and immediately  
re-acquired shares at end of tax  
year

No tax paid (gain covered by CGT  
annual exemption)

Increase in base cost but no  
permanent disposal



## 30 Day Rule: Anti-Bed and Breakfasting

If:

- a disposal occurs, and
- the same securities are acquired within 30 days of the disposal

then



The securities disposed are matched with the earliest (and, if relevant, subsequent) acquisitions in the 30 day period

## 30 Day Rule: Anti-Bed and Breakfasting

### Exceptions

EMI shares

Disposal is matched to non-EMI share in priority to EMI shares acquired within the 30 day period

Securities acquired during the 30 day period when the individual is non-UK tax resident or non-resident (under relevant double taxation treaty)

These can be ignored for 30 day rule

## Section 104 Holding

**What is the 104 Holding?**

A single pool of securities, whenever acquired

**BUT NOT**

Securities covered by the Same Day or 30 Day Rules

**When must the 104 Holding be considered?**

After applying the Same Day/30 Day Rules (as applicable). Then all disposals are matched with securities comprised in the 104 Holding

## Clogged shares (s.104(4))

What are clogged shares?

Shares acquired as an employee on terms which prevent their disposal (i.e. restricted shares)

How are they treated?

As a different class to shares of the same type:

- acquired in a non-employment capacity **OR**
- subject to different restrictions **OR**
- initially, but no longer, subject to same restrictions

What happens when restrictions fall away?

The clogged shares move into the unclogged pool  
This occurs at average cost if only some become unclogged

## Disposal of clogged shares

### Issue

The legislation does not provide for which shares (clogged or unclogged) are disposed of first

### HMRC's view

Facts should dictate which shares are being sold  
Taxpayer's allocation should be accepted if situation unclear

## **Non-residents**

**Share identification rules apply to temporary non-residents i.e.:**

Those who return to the UK within 5 years of breaking UK residence

**AND**

Are taxed on certain gains realised in their non-residence period in the tax year of return

**Any Questions?**