# 3T and the SSE

**The substantial shareholding exemption is examined in ATT paper 4. Sheridan Matthew Gray explains that he has an idea for a mnemonic that should help students remember the main conditions that apply.**

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Readers with an interest in 1990s pop music may recall the boyband that Michael Jackson's nephews formed – and this could help tax students remember the conditions for the substantial shareholding exemption. This topic is examined at principles level for ATT paper 4, which means 'you will be expected to have an awareness that a provision exists and its main thrust, without necessarily knowing the details of the provision.'

Below I have set out a typical conversation that I might have when teaching a student about the SSE.

## The exemption and boybands

*Student: What is this boyband called then?*
*Me*: The band was called '3T' and their debut single 'Anything' reached number two in the UK singles chart in 1995.
*Student: What's the significance of that for tax?*
*Me*: Well, there were three members of the group. They were the sons of Michael Jackson's brother Tito and each also had a name beginning with T (Taj, Tyrell and TJ). Now, if a company is selling shares in another company we need to consider whether the substantial shareholding exemption applies and, coincidentally, this has three conditions that all begin with the letter T:

- Trading company – the investee company.
- Ten per cent (10%).
- Twelve months within the past six years.

All three conditions must be satisfied to obtain the SSE just like you need all three members to form this great boyband.

**Key points**

- The substantial shareholding exemption is examined at principles level for ATT paper 4.
- An awareness of the provision is expected without knowing the full details.
- The trading, ten per cent, and twelve month conditions.
- If the conditions are met, chargeable gains will be exempt and capital losses will not be allowable.
- The exemption is automatic if the conditions apply and there is no ability to disclaim it.

*Student: OK, I see the significance now. Which company is the investee company?*
*Me*: That is the company being disposed of – the one 'underneath'. The way I remember it is that I work for a company and I am an employee. Investee and employee both end with 'ee'. Compare that with the company that I work for – the employer – and the company 'above' that does the disposing here is called the investor company. Employer and investor both end with 'r'.
*Student: And it's the investee company that needs to be a trading company?*
*Me*: Yes. Although the investee company would still meet that first condition if it was the holding company of a trading group.
*Student: Perfect thanks. I now understand the first T.*

## The ten per cent condition

Student: What do you mean by 'ten per cent'?
*Me*: The investor company needs to hold in the investee company at least 10% of its ordinary share capital, profits available for distribution and assets available for distribution on the event of a winding up. The investor company does not necessarily need to be disposing of 10%, it just needs to ensure that it has held 10%.
*Student: Does the 10% have to be held by just one company?*
*Me*: That's a good point. The substantial shareholding exemption rules can still be satisfied if the 10% holding is split between group companies.
*Student: What do you mean by a group here?*
*Me*: The principal company and its 51% subsidiaries.

*Student: Could you give me an example of this.*
*Me*: Of course, look at the diagram entitled ***ABC Companies*** which illustrates this condition. Because the limited companies A and B form a group, the shares in company C owned by B are treated as if they are owned by A. As a result, A is treated as owning at least ten per cent (9% + 2% = 11%).

## The twelve-month condition

*Student: OK. So with the last 'T', can the 10% have been held for any 12-month period within the past six years?*
*Me*: Yes. The 10% shareholding needs only to have been owned for 12 consecutive months at some point within the past six years. So, at the point of disposal, the investor company might not necessarily own 10%.
*Student: Super. I think I now know my '3T conditions' and I've learnt some pop trivia as well – who knows when that (or the substantial shareholding exemption) will crop up in conversation? By the way, a friend studied ATT a few years ago and they told me some slightly different rules. Has my friend got things mixed up?*
*Me*: Probably not. The rules I have described are for disposals made by companies on or after 1 April 2017. Before that date the substantial shareholdings exemption rules were slightly stricter, but '3T' can still be used to remember them.
The pre-1 April 2017 rules were as follows.

- Trading company – both the investor and investee company must be trading, rather than just the investee company as it is now.
- Ten per cent.
- Twelve months of the past two years, rather than of the past six years as it is now.

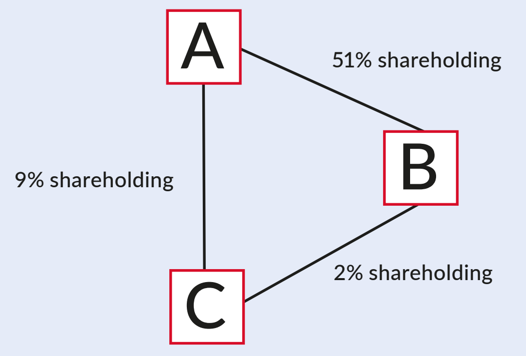
## The tax implications

*Student: OK. So not too much of a difference to remember. What happens if the substantial shareholding exemption applies?*
*Me*: If the conditions apply, the gain that would otherwise have been chargeable will be exempt. Similarly, if there would otherwise have been a capital loss, that loss will not be allowable.
*Student: When does the claim need to be made?*
*Me*: This exemption is automatic if the conditions apply and there is no ability to disclaim it. So, if there would otherwise have been a capital loss, the exemption is a bad thing for the company.
*Student: Why would having a capital loss not being allowable be a bad thing?*
*Me*: Try to think of this from a tax perspective rather than looking at it from a commercial point of view. Remember that, for companies, a capital loss can be offset against current year capital gains and, if there are still some capital losses left after that, these can be carried forward against future capital gains. Reducing gains will in turn reduce the amount of corporation tax paid.

**Planning point**

Note that the investor company does not necessarily need to be disposing of 10% of the shares in the investee company, but it must have owned 10% or more in the past six years.

**ABC companies**




*Student: Great. Where are the SSE rules in the legislation?*
*Me*: The rules are in TCGA 1992, Sch 7AC. However, this isn't an area I would spend a lot of time highlighting for an exam. If you know the 3T conditions that should be enough for a principles level topic.
*Student: Brilliant. Thanks for your help.*
*Me*: No worries. Best of luck.

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## Conclusion

Hopefully this nostalgic trip down the 1990s memory lane of pop trivia will help students to remember the conditions for the substantial shareholding exemption and help with the paper 4 exam. And who knows, the information may also come in useful at the next pub quiz.

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