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Rt Hon Nicky Morgan MP
Chair of the Treasury Committee
Treasury Committee
House of Commons
Committee Office
London
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9th January 2019

Nicky Morgan

Changes to Entrepreneurs' Relief

Thank you for your letter of 19 November 2018 on behalf of the Treasury Committee, regarding changes announced at Budget to Entrepreneurs' Relief (ER).

The government believes it is important to support entrepreneurs who, with considerable initiative and risk, play a key role in building and growing a business. However, as with all tax policy, the government must keep generous tax reliefs such as Entrepreneurs' Relief under review to ensure that they remain well-targeted, and are not subject to abuse.

As you are aware, the changes that you discuss in your letter were introduced to address an abuse of the current rules notified to HMRC through DOTAS (Disclosure of Tax Avoidance Schemes). The changes act to ensure that shareholders claiming ER have a genuine economic stake in the company, by requiring them to be entitled to at least 5% of the distributable profits and assets of a company. These new rules apply in addition to the current 5% of the share capital and voting rights (the 'personal company' test).

You outlined in your letter circumstances where you believe these changes will have impacts, in particular on family businesses, outside of their stated policy objective. I appreciate you taking the time to share these concerns with me, and I have considered them carefully.

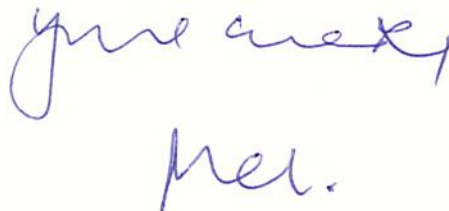
As a result, the government has decided to lay an amendment that will introduce an additional test that can be used instead of the newly introduced profits and assets test introduced at Budget. It allows individuals who are unable to demonstrate their entitlement to 5% of the profits and assets of the company to

still claim the relief if they would be entitled to 5% of the proceeds of a whole company disposal.

The existing profits and assets test will continue to apply to provide certainty to those with straightforward company structures. For those with more complex structures, this amendment ensures the measure works as intended by closing a loophole being used for abuse whilst ensuring those with genuine commercial arrangements continue to benefit from the relief.

I am happy for you to share this information with those individuals that raised their concerns with you. This amendment was passed at Report Stage.

I would also like to take this opportunity to clarify another of the concerns raised in your letter, regarding individuals who lend money to a company. Such individuals will not necessarily be considered an 'equity holder' for the purposes of the 5% test. The exception is where the loan has terms which mean it is not a commercial loan. I understand that there are complexities around establishing whether a loan is considered to be commercial. HMRC will publish guidance on these changes in due course. In the meantime, guidance on loans is available in HMRC's Company Taxation Manual.

A handwritten signature in blue ink, appearing to read 'Mel Stride', with the first name 'Mel' written on a separate line below the main signature.

RT HON MEL STRIDE MP