

# **EXPLANATORY NOTES ON COMPLETION OF FORM AOS 1**

**ACQUISITION BY A COMPANY OF ITS OWN SHARES**

# Introduction

Chapter 9 of Part 6 Taxes Consolidation Act 1997 (TCA 1997) permits Capital Gains Tax treatment where a company buys its own or its holding company's shares providing certain conditions are met. Chapter 9 complements the powers of companies, provided by Part XI of the Companies Act 1990, to acquire their own shares or their holding companies' shares.

## Conditions

For a payment to be treated as not being a distribution by virtue of Chapter 9 the following conditions must be met:

- (a) The company purchasing its own shares must be an unquoted trading company or the unquoted holding company of a trading group.
- (b) The redemption, repayment or purchase must be made wholly or mainly to benefit the company's trade or the trade of a 51 per cent subsidiary of it.
- (c) The redemption, repayment or purchase must not be part of any scheme the purpose of which is to enable the owner of the shares to participate in profits of the company without receiving a dividend.
- (d) The vendor must be resident and ordinarily resident in the State.
- (e) In general the vendor must have owned or be deemed to have owned the shares for at least five years. In the case of inherited shares or certain shares which were appropriated to the vendor under an approved profit sharing scheme the minimum period of ownership is reduced to three years.
- (f) There must have been a proportionate 25 per cent reduction (at least) in the vendor's interest in:
  - (i) the issued share capital,
  - and
  - (ii) the distributable profitsof the company and, where appropriate, of the group of which the company is a member.
- (g) The vendor must not be connected (as defined by Section 186 TCA 1997) with the company immediately after the purchase.

## Purchase of Shares in Parent

Under the provisions of Sections 130 and 135 TCA 1997, the purchase by a company, which is a member of a 90 per cent group, of shares in another member of that group for an amount in excess of the issue price gives rise to a distribution. Chapter 9 provides that, notwithstanding this, a payment by a company for shares in its parent will qualify for Capital Gains Tax treatment if the payment would have so qualified if made by the parent itself for those shares.

## Inheritance Tax

Conditions (b) to (g) incl. above need not be met where the payment is applied to the discharge of inheritance tax or a debt incurred for the purposes of discharging inheritance tax in respect of the shares. The payment must be applied within four months of the valuation date in discharging the inheritance tax itself or within one week of the date the payment is made if it is applied in discharging a debt so incurred. It must also be shown that **undue hardship** would have been caused in otherwise discharging the inheritance tax (and, where appropriate, the debt incurred in discharging that tax).

## Relaxation of Conditions

Conditions (f) and (g) above are relaxed where shares are redeemed from a shareholder to enable an associate of the shareholder to meet those conditions (see Section 181 TCA 1997).

## Important Definitions

Your attention is drawn to the definitions of “group”, “associated persons” and “connected persons” in Sections 179(1), 185 and 186 TCA 1997 respectively.

## Return

Form AOS1, when completed should be returned to the company's Revenue office.

## Penalties

Section 1071 TCA 1997 provides for penalties for a company failing to make a return. In addition, the Secretary of such a company may be liable to a separate penalty.

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**Revenue**

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