Transfers of assets, other than trading stock, within a group (S.617)

Part 20-01-04

This document should be read in conjunction with section 617 of the Taxes Consolidation Act 1997

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Revenue
Cáin agus Custaim na hÉireann
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Introduction

Section 617 of the Taxes Consolidation Act 1997 ("TCA 1997") provides that the disposal of a chargeable asset (other than trading stock) within a group of companies is to be treated as having been for a consideration of such an amount that neither a gain nor a loss accrues to the company making the disposal.

1. Application

Section 617 TCA 1997 provides that the disposal of a chargeable asset (other than trading stock) within a group of companies is to be treated, for the purpose of Corporation Tax ("CT") on chargeable gains, as having been for a consideration of such an amount that neither a gain nor a loss accrues to the company making the disposal. See section 649 TCA 1997 for the provisions relating to companies chargeable to Capital Gains Tax ("CGT") on chargeable gains accruing on the disposal of development land.

Example 1

The following example illustrates the relief.

A Ltd. and B Ltd. are both members of the same group. A Ltd. acquired an asset for €100,000 and incurred allowable enhancement expenditure of €5,000 on the asset. A Ltd. sells the asset to B Ltd. for €150,000 and incurs transfer expenses of €1,000. B Ltd. sells the asset for €200,000 to a person who is not a member of the group.

A Ltd. is treated as having disposed of the asset to B Ltd. at neither a gain nor a loss, i.e. for a consideration of €106,000 (€100,000 plus enhancement expenditure of €5,000 plus transfer expenses of €1,000). The disposal by B Ltd. gives rise to a chargeable gain of €94,000 (€200,000 minus €106,000). The actual consideration of €150,000 for the transfer from A Ltd. to B Ltd. is disregarded.

2. Conditions

The company transferring the asset must be resident in the State at the time of transfer or the asset must be a chargeable asset in relation to that company immediately before the time of transfer. Similarly, the company acquiring the asset must be resident in the State at the time of transfer or the asset must be a chargeable asset in relation to that company immediately after the time of transfer. The acquiring company must not be an authorised investment company that is an investment undertaking (within the meaning of section 739B TCA 1997), a Real Estate Investment Trust (within the meaning of section 705A TCA 1997) or a member of a group Real Estate Investment Trust (within the meaning of section 705A TCA 1997) or an authorised ICAV (within the meaning of section 2 of the Irish Collective Asset-management Vehicles Act 2015).

3. Group of companies

Section 617 TCA 1997 was amended by section 31 of the Finance Act 2017. The amendment provides that, for the purposes of the section, a "group of companies" includes companies that are resident for tax purposes in an EU member state or other territory with which Ireland has a double taxation treaty. In this context, "tax" means any tax imposed in the member state or territory which corresponds to CT in Ireland.

Where a foreign entity forms part of a group of companies and there is some level of uncertainty as to the classification of the entity for the purposes of section 617(5) TCA 1997, for example, as to whether the entity is considered "opaque" (i.e. as is the case, for example, for an Irish company) or "transparent" (i.e. as is the case, for example, for an Irish partnership) the guidance provided in TDM Part 35C-00-02 ("Foreign Entity Classification for Irish Tax Purposes") may be helpful. Where there continues to be uncertainty, requests concerning the classification of a foreign entity should be submitted and dealt with using the RTS framework.

4. Actual transactions

This provision relates only to actual transactions and not to occasions on which a disposal is deemed to have occurred.

5. Non-resident CGT groups

A Revenue practice had existed whereby a non-resident group could qualify for relief under section 617 TCA 1997 where certain conditions were met. In practice, on a submission to Revenue, relief was allowed in circumstances involving transfers within a non-resident CGT group where assets were transferred as part of a transfer of a trade carried on in the State and the profits of the trade, including chargeable gains, were chargeable to CT. The assets must have been in use for the purpose of the trade and there must have been no discontinuance of the trade, i.e. the transferee continued to carry on the trade. The transfer must also have been for bona fide commercial reasons and not to avoid tax.

As noted in 3 above, section 617 TCA 1997 was amended by section 31 of the Finance Act 2017 to provide for the application of relief under section 617 TCA 1997 in respect of certain transfers involving non-resident groups from 1 January 2018. As this matter is now dealt with in legislation, the practice of availing of the relief based on a submission to Revenue has been withdrawn. The practice ceased to apply to transfers from 1 January 2021.

6. Companies Act 2014

Relief applies to a merger or division under the Companies Act 2014, provided the conditions of the section are met. For this purpose, the disposal is treated as having occurred immediately before the dissolution of the transfer or company.

7. Exceptions

The following exceptions are made to the general rule that disposals within a group are deemed to give rise to neither a gain nor a loss. These exceptions are made in order to prevent tax avoidance. Any chargeable gain or allowable loss accruing in any of these circumstances to a member of a group is to be charged or allowed.

(a) The disposal of a debt (or part of a debt) due from and satisfied by another member of the group. If, however, a chargeable asset passes from the debtor to the creditor member in satisfaction of the debt, the disposal and acquisition of the asset fall within section 617(1) TCA 1997.

(b) A disposal which occurs on the redemption by one member of a group of its shares held by another member of the group.

(c) A deemed disposal of shares by one member of a group on the occasion of a capital distribution (as defined in section 583 TCA 1997). If it takes the form of a distribution of assets in kind by another member of the group, however, the general rule applies to the disposal of the assets distributed in kind (so that if the company which acquires the assets subsequently disposes of them, the base cost to be taken will be the cost to the distributing company).

Example 2

A Ltd. and B Ltd. are both members of the same group. A Ltd. issues debentures in the open market at their nominal value of €100. Subsequently, by reason of a general increase in interest rates, the market price of the debenture falls to €80. B Ltd. buys some of the debentures at €80 and A Ltd. redeems them at €100. B Ltd. has thus made a gain of €20. Under the general rule this gain would be ignored but it is brought into charge by exception (a) above.

8. Further exception

A further exception is provided to the general rule where the consideration for a disposal from one member of a group to another consists of a payment for damage to the asset and that payment is provided by an insurer. The disposal is treated as having been made to the insurer.

9. Specified intangible assets

Where a member of a group of companies disposes of a specified intangible asset (within the meaning of section 291A TCA 1997) to another member of the group, section 617(1) (i.e. the treatment outlined in 1 above) will not apply to the disposal of that asset where the companies jointly so elect, by giving notice to the Collector General in such manner as the Revenue Commissioners may require, not later than 12 months from the end of the accounting period in which the other member of the group acquired the asset.