

[19.4.7] Sale of 'Rights' (S.584 et seq)

- 7.1** Where, on the reorganisation of the share capital of a resident unquoted company, an issue of shares is treated as income of the shareholder under **Section 816**, the net amount of the distribution should be treated as an addition to the acquisition price of the new holding. In the case of a quoted company (resident or non-resident) there is no addition to the acquisition price in such circumstances since **S.816** does not apply to the issue of such shares. Where income distributions of a foreign unquoted company are applied to the acquisition of new shares, however, the gross (not the net) amount of the distribution (less any withholding tax) should be taken into account. (The taxpayer meets the Case III tax on the distribution.)
- 7.2** Where a person becomes entitled to a rights issue of shares, he or she will normally receive a provisional letter of allotment which will entitle the person to the new shares, etc., upon making the required payment. If, without accepting the allotment, he or she disposes of the "rights" ("nil" paid) represented by that letter (or part of them) he or she should be treated as having received from the company a capital distribution equal to the consideration received for that disposal.

Example 1

An individual purchased 1,200 ordinary €1 shares in a public company on 1 January 2001 for €2,000. On 1 January 2005 she was given the right to subscribe at par for 1 share for every 12 held.

On 1 March, 2005, when the value of the shares was €8 per share, she sold the rights for €600. On 1 March 2006, she sold the shares for €10,800 (€9 per share).

(1) <u>Sale of rights</u>	€
Amount of consideration	600
Proportion of cost- 2000 x	600 = 35 x 1.144 = 40
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	9,600 (1200 @ €8) + 600
Chargeable gain 2005	560
(2) <u>Sale of shares</u>	€
1,200 at €9 - consideration	10,800
Balance of cost (2000-35)= 1965 x 1.144 =	<hr/> 2,248
Chargeable gain 2006	8,552

- 7.3 A transfer of "rights" ("nil" paid) between spouses (**Tax Instruction Part 44.2.1 Par. 3**) ranks as a part-disposal which gives rise to neither a gain nor a loss. The following examples illustrate the correct treatment of such cases.

Example 2

300 shares cost €300.

A husband transfers to his spouse rights ("nil" paid) to subscribe at €2 per share for 1 share for every 3 held and she takes up those rights. At the date of transfer the market values are - rights, €1 per share; shares, €3 each.

The cost of the rights is therefore:-

$$€300 \times \frac{100}{100 + 900} = €30$$

Cost of the husband's remaining interest (300 shares) is €300 less €30, i.e. €270.

The cost of the 100 shares acquired by his spouse is €30 + €200 = €230.

In practice, if the value of the rights is small, if both spouses are resident in the State and they deal with the matter as if the disposing spouse's original holding remained undisturbed and the acquiring spouse made a new acquisition at the subscription price, no objection need be raised to this treatment.

- 7.4 Rights ("nil" paid) are not regarded as shares, etc., for Capital Gains Tax purposes, as an allotment remains provisional until a payment is made - see the definition of shares in **Section 5(1)**. As regards the acquirer of rights ("nil" paid) (as distinct from the person who originally became entitled to the rights - **Par. 2**), in the normal case where the rights acquired are used to take up shares, **Section 559**, ensures that the cost of the rights is added to the subscription price to arrive at the cost of the shares.
- 7.5 Where a person who becomes entitled to a rights issue of shares or debentures sells part of the rights and, at the time of such a sale -
- he or she has not accepted the allotment of the new shares or debentures which he proposes to retain, the market value of the property not disposed of includes only the value of those rights together with the market value of the original holding;
 - he or she has accepted the allotment of the new shares, etc., which he or she proposes to retain (by payment of the whole or part of the consideration), the total value of those shares etc., including the amount remaining due (if any), is to be taken into account as part of the value of the property not disposed of.

It follows that if he or she has accepted allotment of some of the new shares, etc., to which the rights relate, but has retained some of the rights without yet formally accepting allotment of the new shares, etc., to which they relate, the market value of the property not disposed of includes:-

- (i) the market value of the original holding;
- (ii) the market value of the new shares etc., allotted, including the amount remaining due (if any), and
- (iii) the market value of the rights retained.

7.6 The rules in **Section 584** do not apply to shares which a shareholder may acquire, whether or not at the price of the rights issue, as a result of taking up excess shares which other shareholders have not taken up. The acquisition of such shares should be treated simply as a purchase.

7.7 Where a shareholder is granted rights by a company, in proportion to his or her shareholding, to buy shares or securities in another company, the acquisition of any of those shares by the shareholder is an ordinary purchase, and the rules in **Section 584** do not apply.

7.8 Where, following a reorganisation of share capital, bonus or rights issue of shares are of the same class as the shares in respect of which they were issued except that they are only partly paid (see **Tax Instruction Part 19.4.6 Par. 15**), the new shares may, subject to any adjustment of unpaid purchase money, be treated as being of the same class as the original shares, provided that any balance of the purchase price of the new shares is payable within 6 months of the issue. Similar treatment may be applied to a bonus or rights issue of shares of the same class as the original shares except that they are still in letter of allotment form (see **Tax Instruction Part 19.4.1 Par. 9**).

The above treatment may also be extended to the purchase in the open market of additional rights to such shares or of additional partly paid shares.

7.9 The treatment outlined in the preceding paragraphs does not apply where the new holding comprises debentures, loan stock or other similar securities issued or allotted on or after 4 December 2002 unless —

- they were issued or allotted under a legally binding written agreement made before that date, or
- **Section 584** applies by virtue of **Section 586**, which deals with the CGT treatment of company amalgamations by exchange of shares.

In addition, it does not apply in relation to any shares or debentures issued by a company on or after 22 February 2012 where the new holding comprises units in an investment undertaking which is a company. The definitions of “investment undertaking” and “unit” have the same meanings as in **Section 739B TCA 1997**.

The amendments outlined in the previous paragraph were designed to counteract a scheme which attempted to avoid CGT on the disposal of valuable shares in a company by means of an exchange of shares in the company for units in a collective investment undertaking and the subsequent disposal of those units to an offshore company.

A more recent version of this manual is available.