

## Sale of 'rights'

### Part 19-04-07

This document should be read in conjunction with sections 5, 559, 584 and 816 of the Taxes Consolidation Act 1997

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## Introduction

This manual, in conjunction with **sections 5, 559, 584 and 816 of the Taxes Consolidation Act 1997 ("TCA 1997")**, sets out the rules to be applied on reorganisation or reduction of the share capital of a company as, for example, when persons are allotted shares in a company in proportion to their existing shareholdings or when rights attaching to different classes of shares are altered.

### 7.1 Reorganisation of share capital

Where, on the exercise by a shareholder of an option to take additional shares of an Irish resident company (quoted or unquoted), **section 584(4)(b) TCA 1997** ensures that where an issue of shares is treated as income of the shareholder under **section 816 TCA 1997**, the sum in cash which the shareholder would have received if that shareholder had not exercised the option is treated as an addition to the acquisition price of the new holding.

### 7.2 Rights issue and allotment

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 2020 she was given the right to subscribe at par for 1 share for every 12 held.

On 1 March 2020, when the value of the shares was €8 per share, she sold the rights for €600. On 1 March 2021, she sold the shares for €10,800 (€9 per share).

(1) <u>Sale of rights</u>		€
Amount of consideration		600
Proportion of cost-		
€2,000	x	$\frac{€600}{€9,600 (1,200 @ €8) + €600} = €118 \times 1.144 =$
		135
Chargeable gain 2020		465
(2) <u>Sale of shares</u>		€
1,200 @ €9 - consideration		10,800
Balance of cost	$(€2,000 - €118) = €1,882 \times 1.144 =$	2,153
Chargeable gain 2021		8,647

### 7.3 Transfer of “rights” between spouses

A transfer of "rights" ("nil paid") between spouses (see [Tax and Duty Manual \(TDM\) Part 44-02-01](#) in respect of inter-spousal transfers generally) ranks as a part-disposal which gives rise to neither a gain nor a loss. Similar treatment applies in respect of civil partners (see [TDM Part 44A-02-01](#) in respect of transfers between civil partners generally). The following example illustrates the correct treatment of such cases.

#### Example 2

300 shares cost €300.

Spouse A transfers rights ("nil paid") to subscribe at €2 per share for 1 share for every 3 held to their Spouse B and Spouse B 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: -

$$\begin{array}{rccccccc} \text{€300} & & \times & & \frac{\text{€100}}{\text{€100} + \text{€900}} & & = & & \text{€30} \end{array}$$

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

The cost of the 100 shares acquired by his or her 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”)

Rights ("nil paid") are not regarded as shares, etc. issued, for Capital Gains Tax purposes, as an allotment remains provisional until a payment is made - see interpretation of “shares” in **section 5(1) TCA 1997**. As regards the acquirer of rights ("nil paid") (as distinct from the person who originally became entitled to the rights – [para 7.2](#)), in the normal case where the rights acquired are used to take up shares, **section 559 TCA 1997** ensures that the cost of the rights is added to the subscription price to arrive at the cost of the shares.

## 7.5 Time of sale of rights issue

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, -

- (a) they have not accepted the allotment of the new shares or debentures which they propose 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;
- (b) they have accepted the allotment of the new shares, etc., which they propose 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 that person 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 Acquisition of additional shares

The rules in **section 584 TCA 1997** 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 Non application of section 584 TCA 1997

Where a shareholder is granted rights by a company, in proportion to their 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 TCA 1997** do not apply.

## 7.8 Shares only partly paid

Where, following a reorganisation of share capital, bonus or rights issue shares are of the same class as the shares in respect of which they were issued except that they are only partly paid (see [TDM Part 19-04-06](#)), 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 [TDM Part 19-04-01](#)).

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 Certain new holdings on or after 4 December 2002

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 TCA 1997** applies by virtue of **section 586 TCA 1997**, 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.