

Company amalgamations by exchange of shares (S.586)

Part 19-04-10

This document should be read in conjunction with sections 583, 584 and 586 of the Taxes Consolidation Act 1997

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Introduction

Section 586 of the Taxes Consolidation Act 1997 ("TCA 1997") provides that, with the necessary modifications, the rules in [section 584 TCA 1997](#) relating to the reorganisation or reduction of a company's share capital apply also in the case where a company issues shares to a person in exchange for shares of another company. The exchange is treated as if the 2 companies were one and the same company and the exchange of shares were a reorganisation of its share capital.

10.1 Application of section 584

Section 586 TCA 1997 provides that, subject to certain restrictions (see [para 10.2](#)), the rules in **section 584 TCA 1997** relating to the reorganisation of a company's share capital (see [Tax and Duty Manual \(TDM\) Part 19-04-06](#)) are applicable, with any necessary adaptations, to company amalgamations (see definition in [TDM Part 19-04-11](#)). If, for example, A Ltd. issues its shares to a person in exchange for shares in B Ltd., that person should be treated as having acquired the shares of A Ltd. at the same time and for the same cost as that person's original holding in B Ltd. There is no disposal for Capital Gains Tax purposes on the occasion of the exchange.

The rule applies to a person who accepts new shares in whole or part satisfaction for giving up their original shares, notwithstanding that person is given the option to take the whole of the consideration in cash.

Subject to certain limited circumstances, **section 586 TCA 1997** does not apply on or after 4 December 2002 where debentures, loan stock or other similar securities are issued in exchange for shares.

The section does not apply where the company issuing the shares or debentures is an investment undertaking within the meaning of **section 739B TCA 1997**.

Section 586(1) TCA 1997 provides that **section 584 TCA 1997** is to apply "as if the two companies were the same company". Thus where, on the amalgamation of two companies, the shareholders of the one company receive cash or other consideration in addition to shares in the other company, such cash or other consideration is a capital distribution for the purposes of **section 583 TCA 1997**.

10.2 Conditions for relief

In general, the special treatment applicable to company amalgamations should be confined to the case where a company issuing the shares has, or will have, control of the other company. Thus, it will apply where the issuing company -

- (a) acquires part or all of the minority shares or debenture holdings in an existing subsidiary company; or
- (b) makes a successful take-over bid for the other company; or
- (c) rounds off a successful take-over bid for the other company by acquiring the remainder of its shares or debentures.

It will also apply, however, where the issuing company has made an unconditional general offer which was in the first instance conditional on its acquiring control of the other company. If, for example, A Ltd., in pursuance of a take-over bid, offers to acquire the shares of B Ltd. on condition that the offer is accepted in respect of more than 50 per cent of the company's share capital and then, in the course of negotiations, makes its offer unconditional, the special treatment is still applicable even though the take-over bid proves to be unsuccessful.

In the following two examples, it is assumed that -

- (i) in 2017, X buys 3,600 ordinary shares in B Ltd. at €1.15 each, including expenses (€4,140).
- (ii) in 2021, A Ltd., by letter addressed to the shareholders of B Ltd., offers to acquire their shares in B Ltd. on condition that the offer is accepted in respect of 90 per cent of the ordinary share capital of B Ltd.

Example 1

The offer of A Ltd. is to issue two €1 shares in A Ltd. in exchange for every three shares in B Ltd. In due course, X accepts the offer which has by this time become unconditional. The acceptance by X establishes an unconditional contract.

The exchange is not a chargeable transaction and X is treated as having acquired 2,400 shares in A Ltd. for €4,140.

Example 2

The offer of A Ltd. is to issue two €1 shares in A Ltd. plus a cash payment of €0.25 for every three shares in B Ltd. In due course, X accepts the offer which has by this time become unconditional.

X should be treated as if X's new holding has been acquired in 2017, and as if on the date of acceptance of the offer X had disposed of an interest in the original shares of a market value equal to the cash which he or she was entitled to receive.

The market value of the shares of A Ltd. on that date (computed as in [TDM Part 19-04-02](#)) is €2.15, so that the value of the new holding is €5,160 ($3,600 \times \frac{2}{3} = 2,400 @ €2.15$). X is also entitled to cash of €300 ($3,600 \times \frac{1}{3} = 1,200 @ €0.25$).

The notional cost of the interest disposed of is therefore: -

$$\begin{array}{rcccccc} \text{€4,140} & & \times & & \text{€300} & & = & & \text{€227} \\ & & & & \hline & & & & \text{€300} + \text{€5,160} & & & & \end{array}$$

For the purposes of a subsequent disposal, the cost of the new holding is deemed to be €3,913 (€4,140 less €227).

This relief does not apply if the exchange forms part of an avoidance scheme (**section 586(3) TCA 1997**).