

Transfer of a business to a company

Part 19-06-04

This document should be read together with section 600 TCA 1997

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Introduction

Section 600 of the Taxes Consolidation Act 1997 ("TCA 1997") provides that, where a person (other than a company) transfers a business as a going concern to a company wholly or partly in exchange for shares in the company, relief from Capital Gains Tax ("CGT") is available to the extent that the consideration for the transfer is taken in the form of shares.

4.1 The Relief

When a business with the whole of its assets (or the whole of its assets other than cash) is transferred to a company by a person (other than a company) as a going concern wholly or partly in exchange for shares, relief from CGT is available to the extent that the consideration for the transfer is taken in the form of shares. Any shares received as consideration for the transfer are referred to as "the new assets". The gain on the transfer is apportioned between the consideration received in shares and any other consideration received e.g. a cash payment. The part of the gain attributable to the shares is deducted from the allowable cost of the shares in computing the gain on a future disposal of the shares.

This relief is not available unless the transfer is effected for bona fide commercial reasons and does not form part of a tax avoidance scheme (Section 600(6)).

4.2 Proportion of gain appropriate to consideration other than shares

For such transfers by a person (other than a company), the net gains on transfer of the assets to the company are to be computed in the normal way and the proportion appropriate to any consideration other than shares is charged to CGT immediately.

Where a business is transferred to a company and part of the consideration consists of a credit balance on loan or current account due by the company to the transferor, the amount of the loan, etc., should be treated as consideration other than shares.

4.3 Calculation of gain on transfer of business

The amount of the total gain (see below) arising on the transfer of the business to the company which is to be deducted from the "cost" of the shares acquired wholly or partly in exchange for the business is that proportion of the total gains which the value of the shares received bears to the value of the whole of the consideration for the transfer of the business. If more than one class of share is involved, the gains to be deducted from the "cost" of the shares are to be apportioned on the basis of the relative market values of the shares at the time of acquisition.

The total gain arising on the transfer is the sum of the net chargeable gains (chargeable gains less allowable losses).

4.4 Consideration other than shares

If shares are not the only consideration for the transfer, the consideration should be allocated so that in effect chargeable assets of the business are treated as disposed of for any consideration other than shares according to the following rules:-

- (a) Any liabilities of the business included in the transfer rank, as far as may be, as consideration for the transfer and should be allocated primarily to any cash included in the transfer.
- (b) Any part of the consideration not consisting of liabilities or of shares issued by the company, e.g., cash, should then be allocated –
 - (i) first, to any items transferred which do not belong to the business;
 - (ii) next, to assets of the business:
- (c) The shares and any liabilities which cannot be allocated under (a) to cash should then be allocated proportionately among all the remaining assets transferred by reference to their values as reduced by the allocations under (a) and (b).

Liabilities of the business included in the transfer rank as consideration for the transfer because the discharge of liabilities of the transferor by the transferee is equivalent to the payment of cash by the transferee to the transferor.

In practice, however, where an individual transfers a business to a company, in exchange for **shares only** and assets exceed liabilities, bona fide **trade creditors** taken over will not be treated as consideration.

The term “bona fide trade creditors” means genuine creditors who supply goods or services to a business. An example of a trade creditor is a supplier of food to a restaurant. Liabilities of a business such as bank loans or tax liabilities taken over by the company are not trade creditors and, if taken over, are to be included as consideration for the transfer of a business.

Example 1(a)

A transfers his or her business to a company. In consideration for the transfer, A receives shares in the company. The company also takes over trade creditors of €20,000.

The gain on the transfer is €25,000.

Shares	€200,000
Trade creditors	€20,000

By concession, the trade creditors are not treated as consideration for the transfer. Accordingly, the gain of €25,000 on the transfer is deferred.

Example 1(b)

The facts are the same as in Example 1(a) except that the company also takes over a bank loan relating to the business and tax liabilities of the transferor amounting to €30,000.

The gain on the transfer is €25,000, which is attributable proportionately as follows:

Shares	€200,000
Trade creditors	€20,000
Bank loan / Tax liabilities	€30,000

The concession does not apply in this example because in addition to the trade creditors, a business bank loan and tax liabilities are taken over by the company.

Accordingly, only the proportion of the gain attributed to the shares can be deferred i.e. $€25,000 \times (\frac{€200,000}{€250,000}) = €20,000$. The balance of the gain, i.e. €5,000 is charged to CGT immediately.

4.5 Date of acquisition

The date of the contract for the transfer of the business should be taken as the date of acquisition of any shares received in exchange for non-chargeable assets.

4.6 Example of application of Section 600

The following example illustrates the application of **Section 600**:

Example 2

A person transfers his or her business with all its assets except the cash to a company and receives 30,000 shares and €200,000 in cash.

The balance sheet of the business is –

Stock in trade	€100,000
Goodwill	€20,000
Premises	€70,000
Cash	<u>€60,000</u>
Total assets	€250,000
Less:	
Creditors	<u>€40,000</u>
Capital and reserves	€210,000

During the negotiations, the following were agreed market values -

Stock in trade	€120,000
Goodwill	€50,000
Premises	<u>€130,000</u>
	€300,000
Creditors	<u>€40,000</u>
Net value of assets transferred	€260,000

The 30,000 shares and €200,000 cash which the person receives for the transfer are worth €260,000 so that the value of the shares is €60,000 (i.e. €260,000 less €200,000).

The gains are

Stock (not chargeable)	Nil
Goodwill	€30,000
Premises	<u>€60,000</u>
Total Gain	€90,000

The consideration received was –

Value of shares (as mentioned already)	€60,000
Cash	€200,000
Creditors (a liability taken over – see note 1)	<u>€40,000</u>
Total consideration	€300,000

Amount of gain not to be charged to CGT

Section 600(5) TCA 1997 provides that the amount of the gain not to be charged to CGT is the part of the total net gain on the assets transferred which is attributable proportionately to the shares received in exchange for the business.

The “cost of the new assets” (i.e. the shares) is €60,000. The fraction to be applied under Section 600(5) (i.e. the amount of the gain not to be charged to CGT) is, therefore:-

$$\frac{€60,000}{€300,000} = \frac{1}{5}$$

Calculation of gain on transfer

Chargeable gain in respect of all assets transferred	€90,000
Less Amount not chargeable (1/5 th) (see note 2)	<u>€18,000</u>
Amount chargeable	€72,000

Cost of shares for future disposals

Under the rule in **Section 600(4)**, the cost of the shares in the event of a future disposal of those shares is €42,000 (i.e. €60,000, which is the value of the shares, less €18,000, which is the amount of the gain attributable to the shares that is not charged to CGT).

Note 1: In this example, the creditors taken over are included as consideration for the transfer other than shares, as the total consideration does not consist only of shares.

Note 2: Section 600(3) TCA 1997 provides that the amount determined under section 600(5) (i.e. the part of the gain not to be charged) is to be deducted from the aggregate of net chargeable gains on the assets transferred.