

Transfers of assets, other than trading stock, within group

Part 20-01-04

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

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- 4.1 Section 617** 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 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** for the provisions relating to companies chargeable to capital gains tax on chargeable gains accruing on the disposal of development land.
- 4.2** 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**, a Real Estate Investment Trust (within the meaning of **section 705A**) or a member of a group Real Estate Investment Trust (within the meaning of **section 705A**) or an authorised ICAV (within the meaning of section 2 of the Irish Collective Asset-management Vehicles Act 2015).
- 4.3 Section 617** was amended by **section 31 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 this country has a double taxation treaty. In this context, “tax” means any tax imposed in the member state or territory which corresponds to corporation tax in this country.
- 4.4** This provision relates only to actual transactions and not to occasions on which a disposal is deemed to have occurred.
- 4.5** In practice, Revenue will allow relief in circumstances involving transfers within a non-resident CGT group where assets are transferred as part of a transfer of a trade carried on in the State where profits of the trade, including chargeable gains, are chargeable to Corporation Tax. The assets must be in use for the purpose of the trade and there must be no discontinuance of the trade i.e. the transferee will continue to carry on the trade. The transfer must also be for bona fide commercial reasons and not to avoid tax. To avail of this treatment a submission should be made in accordance with the “Guidelines on Revenue’s Service to Practitioners and Business Taxpayers” available on www.revenue.ie. This will involve formal undertakings from the transferee and the group parent in relation to the asset transferred.
- 4.6** 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.

4.7 The following example illustrates the relief.

A Ltd. and B Ltd. are both members of the same group. A Ltd. buys an asset for €100,000 and incurs allowable expenditure in respect of it of €5,000. 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 gain nor loss, i.e. for a consideration of €106,000 (€100,000 plus €5,000 plus €1,000). The disposal by B Ltd. gives rise to a chargeable gain of €94,000 (€200,000 minus €106,000), before any indexation relief. The actual consideration of €150,000 for the transfer from A Ltd. to B Ltd. is disregarded.

4.8 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 falls within Section 617(1).
- (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**). 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

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.

4.7 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.

- 4.8** Where a member of a group of companies disposes of a specified intangible asset (within the meaning of **section 291A**) to another member of the group, subsection (1) 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.

A more recent version of this manual is available.