

Depreciatory transactions in group (S.621)

Part 20-01-08

This document should be read in conjunction with section 621
of the Taxes Consolidation Act 1997

Document last reviewed March 2022

Introduction

The objective of section 621 of the Taxes Consolidation Act 1997 (“TCA 1997”) is to prevent the artificial manufacture of capital losses within a group of companies.

8.1 Details

The objective of **section 621 TCA 1997** is to counter various devices whereby groups of companies strip value out of one member’s shares into another member or members of the group and follow this by a disposal of the shares in the “stripped” company in respect of which an allowable loss is claimed. Such devices are known as depreciatory transactions. The counter measures deal with any of the following transactions where the effect is to reduce materially the value of the shares or securities of the company, the shares of which are being disposed of:

- (a) The disposal of assets by one member to another at other than market value.
- (b) Any transaction satisfying the conditions set out in **section 621(4) TCA 1997**.
- (c) The cancellation of the shares or securities of one member of a group under section 84 of the Companies Act 2014 (**section 621(5) TCA 1997**).

For the purposes of this section, a group of companies may consist of companies some or all of which are non-resident in a relevant Member State ([Tax and Duty Manual Part 20-01-03](#)).

8.2 Application

Section 621 TCA 1997 applies where the value of shares or securities has been materially reduced by a depreciatory transaction effected on or after 6 April 1974. It does not apply to any transaction (including a disposal of assets or a distribution) to the extent that it consists of a payment which has to be taken into account in computing a chargeable gain or allowable loss for corporation tax purposes on the company or companies making the disposal of the shares in the “stripped” company.

For the purposes of **section 621 TCA 1997**:

- (a) securities include any loan stock or similar securities whether secured or unsecured;
- (b) references to the disposal of assets include references to any method by which one company appropriates the goodwill of another member of the same group;
- (c) references to a disposal of shares include references to a claim under **section 538(2) TCA 1997**.

The definition of “depreciatory transaction” covers transactions which do not consist of a disposal of assets. Such transactions may include, for example:

- (a) payments for group relief in excess of the tax advantages obtained;
- (b) cancellation of loans or debts;
- (c) liabilities transferred;
- (d) rents or other payments at non-commercial rates.

The above list is not exhaustive.

The treatment of the restricted loss or reduction of certain chargeable gains should follow the same pattern as that set out in **para 8.3 and 8.4**.

If one company in a group has a shareholding in another member of the group and these shares are cancelled under section 84 of the Companies Act 2014, then such a cancellation is treated as a depreciatory transaction.

8.3 Restriction of losses

If the company making the disposal is, or has at any time been, a member of the group of companies concerned in the depreciatory transaction, then any loss arising on disposal is restricted to such an amount as appears to the inspector or, on appeal, the Tax Appeal Commissioners, to be just and reasonable. A minority shareholder (possibly a member of another group of companies) who has suffered from the depreciatory transaction, is, however, excluded from the operation of **section 621 TCA 1997**, provided that such a shareholder was not a member of the group at the time of the depreciatory transaction.

The amount of the allowable loss is to be restricted without giving credit for any increase in the value of the assets of another member of the group as a result of the depreciatory transaction. Any other transaction on or after 6 April 1974 which has enhanced the value of the company being disposed of while depreciating the value of another group member’s assets, may, however, be taken into account when restricting the amount of the allowable loss.

The objective of the inspector should be to ensure that the loss restriction is of such an amount that the final figures in the capital gains computation are the same as they would have been if the assets had been disposed of by the transferring company at market value.

8.4 Possible reduction of a future gain

Any reduction in the value of shares or securities in a company caused by a depreciatory transaction may be balanced by an increase in the value of the shares or securities in the company benefiting from the transaction. No allowance is to be made for this when restricting the loss claim (see **para 8.3**) but if, within 10 years of the depreciatory transaction, a chargeable gain arises on the disposal of shares or securities in the company benefiting from the transaction, some reduction of the gain may be due. Such reduction is the amount considered just and reasonable by the inspector or, on appeal, the Tax Appeal Commissioners, having regard to the effect of the depreciatory transaction on the value of the shares or securities at the time of their disposal. The total amount of any reduction of the gain is not to exceed the amount of the loss restriction.

8.5 CGT for companies

See **section 649 TCA 1997** for the provisions relating to companies chargeable to capital gains tax on chargeable gains.