# Exemption from charge under section 623 in the case of certain mergers (section 624)

## Part 20-01-11

This document should be read in conjunction with sections 623 and 624 of the Taxes Consolidation Act 1997

Document last reviewed March 2022

# Introduction

Section 624 of the Taxes Consolidation Act 1997 ("TCA 1997") provides that where a company ceases to be a member of a group, as part of a merger, which is for bona fide commercial reasons, it is not to be subject to the provisions set out in section 623. The requirements for an arrangement to be recognised as a merger under this section are set out and provision is made for the application of the section to non-resident companies.

## 11.1 Situations where section 623 does not apply

In order to facilitate bona fide company mergers **section 624 TCA 1997** provides that **section 623 TCA 1997** is not to apply if all the following conditions are satisfied when a company (referred to in these instructions as "company A") leaves the group as part of a merger:

(a) There are bona fide commercial reasons for the merger.

(b) Avoidance of tax is not the main or one of the main purposes.

(c) The merger is within the definition in **section 624(2) TCA 1997**.

## 11.2 Definition of merger section 624

For the purposes of the section, a merger is defined as being an arrangement or series of arrangements:

(a) whereby a company, or companies, outside a group of companies acquires, or acquire, one or more interests in the whole or part of the business carried on by company A (the company leaving the group); and

(b) whereby the group of companies of which A was a member acquires an interest in the business carried on by each acquiring company or, in the case of a consortium operating through a joint operating company, by a company 90 per cent or more of whose ordinary share capital is owned by the acquiring companies; and

(c) in respect of which the conditions in **para 11.4** are satisfied.

## 11.3 Details

For the purposes of the section it is provided that –

(i) the acquisition must be otherwise than with a view to disposal;

(ii) a member of a group shall be treated as carrying on as one business the activities of the group;

(iii) the word "company" can include a company not resident in a relevant Member State (Tax and Duty Manual Part 20-01-03).

## 11.4 Conditions

The conditions referred to in **para 11.2** are as follows:

(a) Not less than 25 per cent by value of the interests acquired by each party are to be by way of ordinary share capital, the balance (as regards the acquisition by A or its group) being by way of debentures or shares.

(b) The value or aggregate values of the interests acquired by both parties to the merger are to be substantially of the same value.

(c) The consideration received by the group of companies of which A ceases to be a member is to be applied in the acquisition of the interest in the other group of companies. The words of the Act ensure that the consideration may be wholly in shares **or** partly in cash and partly in shares provided that the part in cash is applied to purchase the relevant shares.

## 11.5 Both sets of companies resident in the State

It should be borne in mind that when both sets of companies are resident in the State then both are "acquiring companies" for the purpose of **section 624(2)(a) TCA 1997**, i.e. each will be in an "a" group for one part of the transaction, and in the other group for the counterpart of the transaction.

## 11.6 Companies and capital gains tax

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