

[20.1.14] Exemption from tax on gains accruing on certain disposals of shares (S.626B)

- 14.1** Section 626B provides an exemption for certain capital gains accruing on the disposal of certain shareholdings.
- 14.2** A gain accruing to an investor company on the disposal of shares in an investee company will not be a chargeable gain if, at the time of the disposal, it meets a number of conditions. The conditions include a shareholding requirement, a requirement concerning the investee company's residence and a trading requirement.

Shareholding Requirement

The investor company must be, or have been, a parent (as defined in **section 626B (1)(b)(i))** of the investee company. To qualify for exemption the disposal must either:

- have taken place when the investor company was a parent of the investee company. (An investor company is regarded as a parent company of an investee company at any time if that time is within a continuous period of 12 months throughout which the investor has a “real” holding of at least 5 per cent of the investee company), or
- have taken place within 2 years of the most recent time that the investor company was a parent of the investee company.

Residence Requirement

The investee company must be resident in a relevant territory, i.e. an EU Member State, a territory with which Ireland has a double tax treaty in force or a territory with which Ireland has signed a double tax treaty which has yet to come into force.

Trading Requirement

At the time of the disposal of shares a trading condition must be met. This trading requirement can be satisfied by either the investee company or the group. The alternatives are —

- the investee company's business consists wholly or mainly of the carrying on of a trade or trades, or
- in the case of a group, the business of the investor company, each company of which the investor company is the parent, the investee company (if the investor company is not its parent) and any company of which the investee company is the parent company, taken together consists wholly or mainly of the carrying on of a trade or trades.

For the purposes of the trading condition Revenue confirmed in **Tax Briefing 66** that 'wholly or mainly' means greater than 50%. The primary tests are the proportion of net trading profits and the proportion of net trading assets, though other factors may be taken into account. These lesser considerations would include trading turnover as a proportion of gross receipts and the proportion of employees' time devoted to trading and non-trading activities. In considering the test in a group context intra-group transactions, for example interest payments, are excluded.

Liquidation and the Trading Requirement

Revenue acknowledges that, in the process of liquidating a company, there can be a time difference between the date of the appointment of a liquidator and the date the company is finally wound up. In recognition of this time difference Revenue are prepared to accept, subject to all other conditions being satisfied, that relief is available under section 626B provided the company was trading up to the point of liquidation, albeit it may not be trading at the point of being finally wound up. Companies seeking to avail of this treatment must submit full details in writing to their Revenue district for approval.

14.3 The exemption does not apply to

- disposals which are deemed to be for a consideration such that no gain or no loss accrues to the disponent,
- gains which are not chargeable gains by virtue of any provision other than those contained in this section or **section 626C**,
- disposals, including deemed disposals, of shares which are part of a life assurance company's life business fund,
- disposals of shares which derive the greater part of their value from land or minerals in the State, any rights, interests or other assets in relation to mining or minerals or the searching for minerals or exploration or exploitation rights in a designated area,
- deemed disposals, on or after 2 February 2006, under the provisions of **section 627**.

14.4 Section 626B was amended by section 44 Finance Act 2014 to provide that the exemptions provided by this section and **section 626C** do not apply where any of the provisions of the anti-avoidance **section 590** apply, except where the participator (within the meaning of that section) is a company.

14.5 Schedule 25A TCA 1997 supplements section 626B and deals with the interaction between sections 626B, 626C and certain other reliefs.