

Postponement of charge on deemed disposal under S.627 (S.628)

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2.1 **Section 628** provides for the possible postponement of a tax charge arising under **Section 627** in relation to the deemed disposal of foreign assets where the parent company remains resident in the State. If the migrating company is a 75% subsidiary of an Irish resident company, a joint election in writing may be made to the inspector within 2 years after the date of migration. However, the deferred gain will accrue to the parent company if at any time within ten years of the date of changing residency of the migrating company:

- there is a disposal of the foreign assets by the subsidiary company,
- the migrating company ceases to be a 75% subsidiary of the Irish resident parent, or
- the Irish resident parent ceases to be resident in the State.

2.2 The section also provides that, where at any time:

- the company has allowable losses which have not been allowed as a deduction from chargeable gains, and
- a chargeable gain accrues to the parent company under subsection (4) or (5),

then, a joint election can be made in writing to the inspector within 2 years after that time for those losses to be allowed as a deduction from that gain.

[20.02.02A] Deferral of exit tax

2A.1 **Section 628A** provides for a deferral, in certain circumstances, of the charge to tax arising under section 627 where a company ceases to be resident in the State. The section provides migrating companies with options to elect to defer the immediate payment of tax arising (i.e. exit tax) where a company migrates its residency to another EU Member State or EEA State. Such migrating companies who wish to defer their exit tax charge are required to make an election on their final tax return.

This manual should be read in conjunction with the Notes for Guidance for section 628A TCA 1997.

2A.2 A migrating company may elect to pay exit tax—

- (a) in 6 equal annual instalments, the first of which is due and payable on the date the final tax return is due to be made by the migrating company, with the remaining 5 instalments due and payable on the next 5 anniversaries of that date, or
- (b) not later than 60 days after the disposal of assets by the migrating company, having regard to the apportionment mechanism set out in section 628A(3)(b)(i).

Any exit tax which is not due and payable within a period of 10 years from the migration date will be deemed to become due and payable on the 10th anniversary of the date the company ceased to be resident in the State.

An election for deferral must be made in the company's final CT1 return. The return requests the following information –

- the date the company ceased to be resident in the State,
- the EU/EEA territory where the company has become resident,
- the amount of the exit tax, and
- the deferral option the company is electing to make.

2A.3 Annual Statement:

Section 628A (4) requires companies that have made an election to defer payment of exit tax to complete and return an annual statement (Form ETS1). This form is available for download from www.revenue.ie and should be returned by **email only** to the following address **exittaxstatement@revenue.ie**.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

In the case of companies electing to pay exit tax by annual instalments, annual statements must be electronically returned within 21 days of the end of each of the five calendar years following the year of migration. In the case of a company electing to pay exit tax on the disposal of assets, annual

statements must be electronically returned within 21 days of the end of each of the nine calendar years following the year of migration.

2A.4 Crystallisation of Tax:

If, at any time within 10 years of the date the company ceased to be resident in the State, the company ceases to be tax resident in an EU Member State or EEA State; fails to pay exit tax due; or a liquidator (or the equivalent of a liquidator) is appointed to the company, then the exit tax plus any interest due becomes payable at that time.

2A.5 Interest:

Interest (*calculated at the current rate as specified in S1080*) on outstanding exit tax is due and payable at the same time as exit tax is due and payable as set out in section 628A(6).

2A.6 Security:

Revenue may, where considered necessary, require security under section 628A(7) from a company opting to defer tax where the deferral of exit tax poses a serious risk to the collection of such tax. Such risk would include a history of defaulting on tax payments.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

Where a District Manager forms the view that security is necessary they should, irrespective of the payment option elected, notify the migrating company in writing that security is required in accordance with section 628A(7) and issue a form of guarantee for completion (*a sample of a form of request and form of guarantee are provided in the attached appendix*). The security must be given within 30 days of service on the company of a written notice from Revenue. If the requested security is not provided the migrating company may not avail of the deferral options set out under section 628A(2). If a migrating company refuses to provide security then the exit tax plus interest, if any, will immediately be payable in full.

Once security is requested and processed the case will be transferred to the Dublin Region City Centre District, which has responsibility for dealing with the deferred payment option that a migrating company has elected to make and for monitoring the return of annual statements due under section 628A(4).

The payment of Exit tax and interest is to be made to the Collector-General, and without the making of an assessment.

Section 628A applies to companies ceasing to be Irish-resident on or after 1 January 2014.

A more recent version of this manual is available.

Appendix:

Form of request for security and form of guarantee

(Form of request for Security)

To: *[Name of Company Secretary and current address for migrating company]*

Date:

Dear Sir/Madam,

Notice is hereby given that the Revenue Commissioners, in accordance with the provisions of section 628A(7) of the Taxes Consolidation Act 1997, require you to give security in the amount of € . This security is required in order to guarantee payment by you of the Exit Tax due under section 627 of the Taxes Consolidation Act 1997.

This Notice is in accordance with section 628A(7) Taxes Consolidation Act 1997, and has effect from the date of service of this notice.

Security should take the form of a guarantee provided by any bank licensed by the Central Bank of Ireland to carry on a banking business in the State. The required form of guarantee is enclosed, and should be completed and executed by the bank.

Yours faithfully,

District Manager

(Form of Guarantee)

Guarantee for Payment of Exit Tax
Section 628A TCA 1997

To: *(Name and address of Revenue Officer/District Manager)*

The following sections to be completed by the guarantor

Name and address of the bank guarantor (hereinafter called "the guarantor")

Guarantor's Name, Address and Telephone Number:	Guarantor's Official Stamp:

In consideration of the Revenue Commissioners (hereinafter called “the Commissioners”) permitting

Name of Company Secretary, Address of Migrating Company, Telephone Number and Email Address:	Guarantor’s Official Stamp:

(hereinafter called “the migrating company”) to defer payment of relevant tax (hereinafter called “Exit Tax”) under the provisions of section 628A Taxes Consolidation Act 1997, the guarantor, for the purposes of the abovementioned section hereby guarantees the payment of Exit Tax due by the migrating company to the Revenue Commissioners during the currency of this guarantee.

The total liability of the guarantor under this guarantee shall not exceed the amount of

Amount in words:	Amount in figures (€):

This guarantee shall commence on:

Day:	Month:	Year:

For _____
_____ (Name of Guarantor)

Signed: _____

Status: _____

Form of security to be provided

The form of security that migrating companies may provided is not specified in section 628A TCA. Instead the form and manner of the security will be determined by the Revenue Commissioners and must be provided within 30 days from the date of service on the migrating company of a notice in writing.

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