# Notes for Guidance - Taxes Consolidation Act 1997

# Finance Act 2024 edition

# Part 20

# Companies' Chargeable Gains

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# PART 20
# COMPANIES' CHARGEABLE GAINS

## CHAPTER 1
## *General*

### Overview

This Chapter contains the general rules relating to companies' chargeable gains. It is mainly concerned with the treatment of chargeable gains in special situations involving groups of companies (***section 615*** to ***626***). The Chapter also sets out the rules for the recovery of unpaid tax from a shareholder where a company fails to pay the tax due in certain circumstances (***section 614***).

### 614 Capital distribution derived from chargeable gain of company: recovery of tax from shareholder

#### Summary

This section provides for the recovery of corporation tax from a person connected with a resident company where corporation tax due from the company is not paid within 6 months of the date it becomes payable. The section applies where the company makes a capital distribution (other than one representing a reduction in share capital) derived from, or consisting of, assets on which a chargeable gain accrues to the company. It also provides for the further recovery of this payment from the company by the connected person.

***Section 977*** provides for a similar provision to this in the case of a company chargeable to capital gains tax in respect of a chargeable gain.

#### Details

***Definition***

"capital distribution" has the meaning set out in ***section 583***. ***(1)***

***Application***

This section applies where a person connected with an Irish resident company receives or is entitled to receive a capital distribution deriving from, or consisting of, a disposal on which a chargeable gain arises to a company. The section does not apply where the capital distribution represents a reduction in share capital. ***(2)***

***Recovery of tax***

Where the corporation tax due by the company on a chargeable gain is not paid within 6 months of it becoming due, the connected person may be assessed, in the name of the company, within 2 years of that date to an amount of corporation tax not exceeding —

- the capital distribution which that person has received or became entitled to receive, and
- that person's proportionate share of the tax on the gain, at the rate in force when the gain accrued.

***Shareholder's subsequent recovery of tax and own liability to tax***

The connected person assessed to tax under this section may recover the tax paid from the company. ***(4)***

This section does not affect the connected person's own liability to tax in respect of the capital distribution (***section 583***), in so far as it represents a disposal of shares. ***(5)***

## 615 Company reconstruction or amalgamation: transfer of assets

### Summary

This section operates in a situation where, on a reconstruction or amalgamation, one resident company takes over the whole or part of the business of another resident company and that other company receives no consideration for the transfer of the business other than the taking over of its liabilities. The section provides that no corporation tax is to be charged in respect of chargeable gains accruing to the transferor company, but the transferee company is to be treated as if it had acquired the assets at the time and the price at which they were acquired by the transferor company.

Where the transferor or transferee company is not resident in Ireland but is resident in an EU Member State, in an EEA State or in the United Kingdom, the relief applies where the assets are within the charge to corporation tax immediately before the transfer in the case of the transferor company and immediately after the transfer in the case of the transferee company.

This section does not apply to trading stock and, in the case of the transfer of a specified intangible asset within the meaning of ***section 291A***, companies have the option to dis-apply the provisions of the section where the acquiring company wishes to claim an allowance under ***section 284***, as applied by ***section 291A***, in respect of the transfer of the asset.

The section does not apply unless the scheme of reconstruction or amalgamation is carried out for bona fide commercial reasons and does not form part of an arrangement whose purpose, or one of its main purposes, is the avoidance of tax.

### Details

A "scheme of reconstruction or amalgamation" is the reconstruction of a company or companies or a scheme for the amalgamation of 2 or more companies. ***(1)***

"trading stock" has the meaning set out in ***section 89***.

To qualify for relief, the following conditions must be satisfied: ***(2)***

- the company transferring the assets must be resident in an EU Member State, in an EEA Member State with which Ireland has a tax treaty (currently Norway and Iceland) or in the United Kingdom at the time of transferring them, or (where it is not so resident) the assets must be chargeable assets for capital gains tax purposes in relation to the company immediately before that time, and
- the company acquiring the assets must be resident in an EU Member State, in an EEA Member State with which Ireland has a tax treaty (currently Norway and Iceland) or in the United Kingdom at the time of acquisition, or the assets must become chargeable assets in relation to the company on acquisition, and
- the company acquiring the assets must not be an authorised investment company (within the meaning of Part 24 of the Companies Act 2014) or an authorised ICAV (within the meaning of section 2 of the Irish Collective Asset-management Vehicles Act 2015) Such companies come within the definition of "investment undertakings" in ***section 738B*** and as such are covered by the "gross roll up" taxation regime.

In these circumstances the asset transferred continues to be within the charge to capital gains tax. The transferring company is not to be subject to any charge to tax on the transfer but the acquiring company is treated as having acquired the asset at the time and for the cost at which it was acquired by the transferring company.

The transfer from a transferor company of all its assets and liabilities to a successor company in the course of a merger or a division under the Companies Act 2014 will be treated as a transfer of a business and the liabilities of that business, where the transferor company was carrying on a business immediately prior to the transfer. ***(2A)***

Where an asset was trading stock for the transferor company or would become trading stock for the transferee company, such an asset is excluded from relief under this section. ***(3)***

This section does not apply in relation to the transfer of a specified intangible asset where both the company transferring the specified intangible asset and the acquiring company so elect by giving notice in writing to the Collector-General not later than 12 months from the end of the accounting period in which the company acquired the asset. ***(4)(a)***

Where an election in accordance with ***paragraph (a)*** is made and the transfer is not a transfer to which ***section 400(6)*** applies, both the disposal and the acquisition of the asset are treated, for capital gains tax purposes, as having been made at market value. ***(4)(b)***

The section does not apply to a scheme of reconstruction or amalgamation involving the transfer of the whole or part of a company's business to another company unless it is shown that the reconstruction or amalgamation is carried out for bona fide commercial reasons and does not form part of an arrangement of which the main purpose, or one of the main purposes, is the avoidance of tax. ***(4A)***

## 616 Groups of companies: interpretation

### Summary

This section sets out the various interpretational provisions for the remaining sections of this Chapter.

### Details

#### *Definitions*

"company", "principal company", "subsidiary", "group" and "chargeable asset" are defined for the purposes of this section and succeeding sections in this Chapter. Any reference to a company in this section (which defines a group of companies) is a reference to a company which is resident in a relevant Member State (as defined in ***subsection (7)*** below) for the purposes of a tax which corresponds to Irish corporation tax. ***(1)***

For the purposes of this Chapter, an "effective 75 per cent subsidiary" means that —

- the company is a 75 per cent subsidiary of the parent within the meaning of ***section 9*** i.e. the parent owns directly or indirectly not less than 75 per cent of the ordinary share capital of the company,
- the parent is beneficially entitled to not less than 75 per cent of the profits of the company available for distribution, and
- the parent would be entitled to not less than 75 per cent of the assets of the company available for distribution on a winding up.

The provisions of ***sections 413*** to ***419*** are imported into the section for the purposes of the definition of "an effective 75 per cent subsidiary". Those sections underpin the terms used in the definition and identify the real and ultimate equity interest in a company for the purposes of establishing whether it is a member of a group of companies.

Notwithstanding the definition of "effective 75 per cent subsidiary" as set out above, a company will be an "effective 75 per cent subsidiary" of the National Asset Management Agency (NAMA) where shares in that company are held directly by the Agency. In addition, a company which is an "effective 75 per cent subsidiary" of a company which is itself an "effective 75 per cent subsidiary" of the National Asset Management Agency will also be an "effective 75 per cent subsidiary" of NAMA.

***Limitation on meaning of "company"***

The meaning of company is limited to certain specified companies, building societies and industrial and provident societies. ***(2)***

***Change in "principal company" – effect on group***

A group remains the same so long as the same company remains the principal company, even if the principal company becomes an effective 75 per cent subsidiary of another company. The main effect of this provision is to prevent a company "ceasing to be a member of the group" just because the group is taken over by another company and thereby becomes a part of a larger group. ***(3)***

***Principal company becoming an SE/SCE – effect on group***

Where a company that is the principal company of a group of companies — ***(3A)***

- becomes an SE by reason of being the acquiring company in the formation of an SE,
- becomes a subsidiary of a holding SE,
- is transformed into an SE, or
- becomes an SCE in the course of a merger to form an SCE,

then the group of which the company was the principal company up to the time the SE/SCE was formed and any group of which the SE/SCE is a member on its formation will be regarded as the same group.

***Winding-up of a member company – effect on group***

Where a company goes into liquidation this is not taken to be an occasion of either it or its subsidiaries "ceasing to be a member of a group". ***(4)***

***Nationalised bodies***

The provisions of this Part regarding members of a group of companies extend to the various industrial bodies with related functions under national ownership or control. ***(5)***

***Application of Capital Gains Tax Acts***

For the purposes of this Part, the rules in the Capital Gains Tax Acts —

- for the apportionment of cost on a part disposal, (***section 557***) are to be operated before regard is had to the various provisions which secure that in certain circumstances no gain or loss is deemed to have arisen on the disposal, and ***(6)(a)***
- for the adjustment of the cost of shares in close companies transferring assets at an undervalue, are not to apply to transfers within a group of companies which are deemed to produce "no gain/no loss". ***(6)(b)***

For the purposes of this Part the following definitions will apply: ***(7)***

"EEA Agreement" means the Agreement on the European Economic Area signed on 2 May 1992, as adjusted by the Protocol signed on 17 March 1993;

"EEA State" means a state which is a contracting party to the EEA Agreement;

"relevant Member State" means —

- a Member State of the European Communities (including the United Kingdom),
- if not a Member State, an EEA State whose government has made arrangements which have the force of law by virtue of ***section 826(1)***.

## 617 Transfers of assets, other than trading stock, within group

### Summary

This section provides that the disposal of a chargeable asset (other than trading stock) within a group of companies is to be treated as having been for a consideration of such an amount that neither a gain nor a loss accrues to the company making the disposal. Certain financial transactions are excluded. Where the consideration for a disposal consists of compensation for damage to an asset, the disposal is to be treated as being to the person who ultimately bears the burden. In the case of the transfer of a specified intangible asset within the meaning of ***section 291A***, the section allows companies to opt out of the capital gains tax group relief provision so that the acquiring company may claim capital allowances under ***section 284***, as applied by ***section 291A***.

### Details

***Relief for transfer of assets in a group***

Where a member of a group of companies disposes of a chargeable asset to another member of the group the disposal is to be treated as if the consideration received by the company making the disposal is such that it gives rise to neither a gain nor a loss provided certain conditions are met. ***(1)***

These are that —

- the transaction is between members of a group of companies,
- the company transferring the asset is resident in the State at the time of transfer or the asset is a chargeable asset in relation to that company immediately before the time of transfer, and
- the company acquiring the asset is resident in the State at the time of transfer or the asset is a chargeable asset in relation to that company immediately after the time of transfer and is not an authorised investment company (within the meaning of Part 24 of the Companies Act 2014) that is an investment undertaking (within the meaning of section 739B), or a Real Estate Investment Trust or group Real Estate Investment Trust (both 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). ***(1)(ii)***

As set out in ***section 616*** membership of a group is open to companies resident in Member States of the European Union and to companies resident in Member States of the EEA with whom Ireland has a tax treaty.

***Exceptions***

Excluded from the relief are — ***(2)***

- a disposal that consists of paying off a debt (that is, one member of a group pays off the debt of another),
- a disposal that consists of redeeming shares (that is, where shares in one member of a group are owned by another member and are redeemed), and
- a disposal in consideration for a capital distribution (see ***section 583***).

***Compensation for destruction or damage of an asset***

Where the consideration received on a disposal of an asset from one group member to another takes the form of compensation for damage or injury to the asset, the consideration is deemed to be received from the person who ultimately bears the burden of the consideration (be that the insurer or otherwise). ***(3)***

***Election to disapply this section in the case of the disposal of a specified intangible asset***

This section will not apply to the disposal of a specified intangible asset by one group member to another group member where both the company disposing of the asset and the company acquiring the asset so elect by giving notice in writing to the Collector-General, not later than 12 months from the end of the accounting period in which the other member of the group acquired the asset. ***(4)***

***Meaning of "group of companies"***

For the purposes of the section, a "group of companies" includes companies which, under the law of a relevant Member State or other territory with which this country has a double tax treaty, are resident for tax purposes in such Member State or territory. In this context, "tax" means any tax in the Member State or territory which corresponds to corporation tax in the State. ***(5)***

## 617A Transfers arising from certain mergers under Companies Act 2014

### Summary

This section confirms that where a company transfers all its assets and liabilities to its 100 per cent parent as a consequence of a merger by absorption, as provided for in Chapter 3 of Part 9 and Chapter 16 of Part 17 of the Companies Act 2014, it shall not be treated as giving rise to a disposal by the parent of the share capital it holds in the company.

Section 633D of the Taxes Consolidation Act 1997 was introduced in 2012 to ensure cross-border mergers do not give rise to chargeable gains, in line with Article 7 of Council Directive 2009/133/EC (the Mergers Directive); however domestic mergers were not provided for in Irish law until the introduction of the Companies Act 2014. The purpose of section 617A is to confirm that domestic mergers by absorption similarly are not treated as involving a disposal by the parent company.

## 618 Transfers of trading stock within group

### Summary

This section sets out the tax treatment of transfers of trading stock within a group. Specifically, it deals with two circumstances, firstly where non-trading stock is transferred within a group for use as trading stock, and secondly the reverse of that situation.

### Details

Where a member of a group of companies acquires as trading stock an asset from another member in whose hands the asset was not trading stock, the member acquiring the asset is to be treated as having acquired it otherwise than as trading stock and as having immediately appropriated it to use as trading stock. ***(1)***

The result is that —

- the company disposing of the asset is treated as having made neither a gain nor a loss on the disposal, and the company acquiring the asset is treated as having —
  - acquired it at the price at which the other company acquired it, and
  - immediately disposed of it at market value with the resultant charge to tax on the chargeable gain.

However, under ***section 596***, the acquiring company is given the option of bringing the asset (now trading stock) into its trading account at its cost to the other company. The actual profit on the disposal would then be a profit on income account.

Where a member of a group of companies transfers an asset out of its trading stock to another member and that other company acquires the asset otherwise than as trading stock, the transferor company is to be treated as having appropriated the asset for some purpose other than trading stock immediately before the transfer and therefore as having acquired it at that time for a consideration equal to the amount brought into its accounts for tax purposes. ***(2)***

The effect of this is that the asset is treated as having been transferred by the transferor company otherwise than out of its trading stock. The amount brought into the accounts for tax purposes then forms the base cost of the asset for the purpose of computing any gain on a subsequent disposal by the transferee company.

The section applies to trades carried on in the State by companies which are resident in EU Member States or in EEA Member States with which Ireland has a tax treaty provided that they are either Irish resident companies or companies resident in other Member States which trade in Ireland through a branch or agency. ***(3)***

## 619 Disposals or acquisitions outside group

### Summary

This section sets out the main provisions for computing gains where an asset, acquired by a member of a group of companies from another group member, is eventually disposed of outside the group. Specific provisions are made for the restriction of losses and the relevant acquisition cost on the disposal of development land after a particular date.

### Details

A member of a group disposing of an asset outside the group (in the course of a disposal to which ***section 617*** applies, that is, a transfer of assets, other than trading stock, within a group) is treated as having acquired the asset at the time it was first acquired by the group (that is, as if the actions of the group member were the actions of the entire group), and indexation relief under ***section 556*** applies accordingly. ***(2)(a)***

Where a member of a group of companies disposes of an asset outside the group (in the course of a disposal to which ***section 617*** applies, that is, a transfer of assets, other than trading stock, within a group) the capital allowances to be taken into account for the purposes of restricting losses under ***section 555*** are to include allowances given to other members of the group who had previously owned the asset. ***(1)***

Where development land has been transferred within a group before 24 April, 1992 and is subsequently disposed of outside the group, the disposing member is treated as having acquired the land at the time of actual transfer from the other group member (and not at the time when it was first acquired by the group). ***(2)(b)***

## 620 Replacement of business assets by members of group

### Summary

This section modifies "rollover relief" (under ***section 597***) in the context of groups of companies. ***Section 597*** provides for rollover relief where a person disposes of trading assets and uses the proceeds to acquire other trading assets within a given period. Under the rules, the person may claim that the chargeable gain on the old assets is not charged to tax until the person disposes of the replacement assets. This section provides that for the purposes of ***section 597*** all trades carried on by members of a group of companies are to be treated as a single trade.

### Details

See ***section 597*** for the meanings of "old assets" and "new assets". ***(1)***

All trades "to which the section applies" are to be treated as a single trade for the purposes of "rollover relief" under ***section 597***. ***(2)***

The trades to which the section applies are trades carried on by resident companies and trades carried on in the State through a branch or agency by companies not resident in the State (but which are resident in other EU Member States or in EEA Member States with which Ireland has a tax treaty – as provided for in the definition of "company" in ***section 616***). ***(3)***

In the case of companies which are not resident in the State the assets concerned must be chargeable assets in relation to the company if this section is to apply. ***(4)***

## 620A Deemed disposal in certain circumstances

This section provides for an exit charge to apply in relation to an asset which ceases to be chargeable to capital gains tax because it becomes situated outside the State and in respect of which relief was given under ***section 615***, ***617*** or ***620***.

For this purpose, the company is treated as having sold and immediately reacquired the asset at its market value at the time the asset became situated outside of the State.

## 621 Depreciatory transactions in group

### Summary

This section is designed to prevent the artificial manufacture of capital losses within a group of companies. This could be done by draining one company of its assets by transferring them to another group company for nominal consideration (which under the preceding sections would be treated as giving rise to neither a gain nor a loss). The company which had been drained of its assets would then be liquidated at which stage its shares would show a loss, despite the fact that nothing had left the group as a whole. Where the value of the shares or securities of a group company has been materially reduced by such depreciatory transactions, then any loss claimed in respect of the disposal of such shares is disallowed to the extent that is just and reasonable having regard to the depreciatory transactions concerned. An artificial loss could be created by a reverse take-over bid which is also countered by this section. A loss disallowed under this section may be set against a gain realised on the shares of companies which had benefited from the depreciatory transaction.

### Details

#### *Definitions*

"securities" includes any secured or unsecured loan stock or similar security. ***(1)***

A "group of companies" can include non-resident companies or could consist of all non-resident companies.

Disposal of assets includes the acquisition by whatever method of the goodwill (for example, by asking customers of the finance company to renew their contracts, when they expire, with the latter company) of a group member by another group member.

The disposal of shares includes the deemed disposal and immediate reacquisition of shares which occurs under ***section 538***, where, although the shares have not actually been disposed of, a claim is made that they have become of negligible value. ***(2)***

#### *Depreciatory transactions*

The following are considered to be depreciatory transactions —

- the disposal of shares and securities in a company, the value of which have been materially reduced by transfers of assets, at less than market value, from one member of a group of companies to another (transactions which have already been taken into account for the purposes of corporation tax on chargeable gains of the company making the disposal are not to be taken into account also for the purposes of this section), ***(3)***
- in a case where the transaction which materially reduces the value of the shares in or securities of a company is not the transfer of assets at an undervalue, the disposal of shares or securities of a company where the company whose shares or securities are being disposed of (or an effective 75 per cent subsidiary of that company (as defined in ***section 616***)) is a party to the transaction, and at least two of the parties to the transaction are members of the same group, ***(4)***

- a cancellation of shares or securities held by a parent company in its subsidiary company (known as a "reverse take-over") where, immediately before the cancellation, the shares or securities were the property of another member of the group. ***(5)***

***Consequence of depreciatory transactions***

A loss arising on the disposal, by a member or former member of a group, of group shares or securities which have been the subject of depreciatory transactions is, for the purposes of making a self-assessment, restricted to such an extent as the inspector (or, on appeal, the Appeal Commissioners) considers just and reasonable. Losses on shares owned by a person who has left the group are not to be restricted under the section by reference to transactions which took place while that person was not a group member. ***(6)***

Accordingly, when a company leaves a group but retains a minority interest in a group company which then becomes the subject of a depreciatory transaction any loss on the disposal of the minority holding is not to be disallowed.

In measuring the loss to be disallowed, no regard is to be had to the fact that a depreciatory transaction in relation to the company under consideration has enhanced the value of the assets of the group member that was the other party to the transaction, but that regard may be had to transactions which enhanced the value of the company's assets but diminished those of other group members. ***(7)***

Where a reduction is made in a loss under ***subsection (6)***, any chargeable gain accruing on the disposal of shares in or securities of any other company which was a party to the transaction by reference to which the reduction was made is reduced, for the purposes of making a self-assessment, to such extent that the gain does not reflect any increase in the value of the company's assets attributable to the depreciatory transaction on the value of those shares or securities at the time of their disposal, where that disposal took place within 10 years after the depreciatory transaction. ***(8)(a)***

In making an assessment, the inspector (or, on appeal, the Appeal Commissioners) will reduce any chargeable gain to such an extent as appears to the inspector or the Appeal Commissioners to be just and reasonable on the basis that the gain ought not to reflect any increase in the value of the company's assets attributable to a depreciatory transaction. ***(8)(aa)***

The reduction in the later gains cannot exceed the reduction in the earlier loss, and tax which is overpaid as a result of this adjustment must be repaid. ***(8)(b), (c)***

## 622 Dividend stripping

### Summary

This section is similar to the previous section except insofar as it deals with distributions which materially reduce the value of a holding in a company such that the shares or securities in the holding can be declared to be of negligible value and a loss claimed. This process is known as "dividend stripping". This section applies ***section 621*** in such cases, subject to certain adaptations.

### Details

***Definitions***

This section is construed together with ***section 621***, which deals with depreciatory transactions within a group. ***(3)***

A "dealing company", in relation to a holding, is a company whose profit on the sale of a holding would be taken into account in computing it's trading profits. ***(4)***

A "holding in a company" is a holding of shares and securities which entitle the holder to receive distributions made by the company. Here holdings of different classes are considered to be different holdings, and holdings of shares and securities with different entitlements and obligations are considered to be different classes. ***(5)***

***Application***

This section applies where a company (Company A) has a holding in another company (Company B) such that — ***(1)***

- company A's holding comprises at least 10 per cent or is an ingredient in a holding comprising 10 per cent of the same class in company B,
- company A is not a dealing company in relation to the holding,
- a distribution has been made to company A after 6th April, 1974 in relation to its holding,

and the distribution materially reduced the value of the holding.

In examining one company's holding in relation to another the following apply — ***(6)***

- all a company's holdings of the same class in another company constitute a single holding, and
- one company's holding and holdings held by connected persons are to be aggregated to determine whether the company has a 10 per cent holding.

***Consequences of application of section***

Where this section applies, then ***section 621*** applies to any disposal of shares or securities in the holding whether by company A or a company to whom the holding has been transferred under ***section 617*** (that is, with no loss or gain accruing) as if — ***(2)(a)***

- the distribution concerned was a depreciatory transaction, and
- the companies concerned are members of a group, whether they are or not.

A distribution is not to be treated as a depreciatory transaction to the extent that it is taken into account in computing a chargeable gain or allowable loss accruing to the person making the final disposal. ***(2)(b)***

## 623 Company ceasing to be member of group

### Summary

This section sets out the charge to tax on one or more group members leaving a group of companies in respect of assets the company leaving the group acquired from other group companies within a period of 10 years immediately preceding the time the company leaves the group. It also provides rules of assessment and collection of tax in such circumstances.

### Details

***Interpretation***

Associated companies are described as 2 or more companies who, by themselves, would form a group of companies. ***(1)(a)***

A chargeable gain deferred on a replacement of business assets is a chargeable gain on the disposal of the old assets which, under ***section 597***, is treated as not accruing until the new assets cease to be used for the company's trade. ***(1)(b)***

An asset and another asset owned later, the value of which is derived from the first asset, are treated as one and the same asset. In particular, a freehold is treated as the same asset as a leasehold where the reversion is later acquired by the lessee. ***(1)(c)***

A company which leaves a group as a result of it or another group member winding up for bona fide commercial reasons (and not for the purposes of avoiding tax) is not considered to have ceased to be a member of a group. ***(1)(d)***

***Application***

This section applies to assets where — ***(2)***

- a company which is a member of a group had acquired an asset from another member of the group,
- the company subsequently ceases to be a member of the group within 10 years after the acquisition,
- at the time of acquisition of the asset the company was resident in the State or (in the case of a company which was not so resident) the asset was a chargeable asset in relation to the company,

  and
- at the time of acquisition the group company from which the asset was acquired was resident in the State or (in the case of a company not so resident) the asset was a chargeable asset in relation to the company.

The section does not apply to inter-group transfers of assets between the National Asset Management Agency and its effective 75 per cent subsidiaries (within the meaning of ***section 616(1)(g)***). ***(2A)***

Excluded from the application of the section are transfers of assets from one associated company to another associated company and both such companies and other associated companies, if any, leave the group at the same time, while continuing to be in a group relationship with each other. ***(3)(a)(i)***

Where 2 or more such associated companies leave a group at the same time and a dividend has been paid or a distribution has been made by one of the associated companies to a company which is not one of the associated companies wholly or partly out of profits deriving from the transfer of an asset between the associated companies, then, the amount of the dividend or of the distribution attributable to such profits is to be treated as additional consideration received by the company (in respect of the dividend/distribution) in respect of a disposal which disposal gave rise to or was caused by the associated companies ceasing to be group members. ***(3)(a)(ii) & (b)***

***Effect of leaving a group***

A charge to tax is imposed where a chargeable company ceases to be a member of a group and the chargeable company or an associated company of the chargeable company (which is also leaving the group) at that time owns an asset to which this section applies. The charge to tax is imposed by deeming the chargeable company to having effectively disposed of and immediately reacquired the asset at market value at the date when the asset was acquired from another group member. The chargeable company would have been treated under ***section 617*** as having acquired the asset at the original cost to the other group company from which it ***(4)*** acquired the asset. This provision by deeming the asset to have been disposed of at market value generates a chargeable gain equal to the excess of the market value over the original cost of the asset to the group member from which it was acquired. Also brought into charge by this subsection is a gain on the sale of business assets which has been deferred under ***section 597***. This provision does not apply to trading stock.

Finance Act 2014 amended subsection (4) to clarify that the due date for payment of the charge to tax should be determined by reference to the accounting period in which the company leaves the group. Therefore, the due date for payment of the tax is the due date for payment of the company's corporation tax for that accounting period. The rate of tax is determined by reference to the capital gains tax rate applying at the time of the original intra-group transfer.

***Recovery of tax from other group member***

Revenue have the right — ***(5) & (6)***

- to recover, from other companies in the group, tax assessed under this section which remains unpaid 6 months after the due date,
- to assess the principal company, or any company which owned the asset at the due date (or when the chargeable company ceased to be a member of the group) for all or part of the tax due within 2 years after that date,
- to make assessments up to 10 years after the chargeable company leaves the group, and to make recomputations and adjustments of tax under the section.

Where, under this section, another member company pays the tax due it has the right to recover the tax from the chargeable company.

***Meaning of "group of companies"***

For the purposes of the section, a "group of companies" includes companies which, under the law of a relevant Member State or other territory with which this country has a double tax treaty, are resident for tax purposes in such Member State or territory. In this context, "tax" means any tax in the Member State or territory which corresponds to corporation tax in the State. ***(7)***

## 623A Transitional provisions in respect of section 623

### Summary

The current definition of what constitutes a group (***section 616(1)***) was introduced in the Finance Act, 1999. This section ensures that a company which ceases to be a member of a group solely as a result of this change in definition is not immediately exposed to a tax charge under ***section 623***. However, that tax charge could arise at a later date. For this tax charge to arise the company must leave the group according to the definition of group as it existed prior to the Finance Act, 1999.

### Details

***Definitions***

The "new definition" and the "old definition" mean, respectively, the definitions of what constituted a group after and before the changes introduced in the Finance Act, 1999. ***(1)***

***Deferred gains do not crystallise immediately solely because of change of definition of group***

If the change of definition of what constitutes a member of a group (which took effect on 11 February, 1999) caused — ***(2)***

- a company to cease to be a member of a group, and
- the triggering of a tax liability in respect of an asset under ***section 623***,

then that tax liability does not arise until certain conditions are satisfied.

These conditions are — ***(3)***

- the company subsequently ceases to be a member of a group as previously defined,
- that at that time the company or an associated company (i.e. a company which together with the first mentioned company form a group under the old definition) own the asset or a replacement, and
- the asset was acquired less than 10 years before that time.

## 624 Exemption from charge under *section 623* in case of certain mergers

### Summary

This section 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.

### Details

***Section 623*** is not to apply in a case where, as part of a merger, a company (company A) ceases to be a member of a group – and where this merger is carried out for bona fide commercial reasons and not to avoid tax. ***(1)***

For this purpose a merger is — ***(2)***

- where one or more companies outside A's group acquires an interest in the whole or part of A's business,
- where A's group acquires an interest in the business carried on by each acquiring company or (to meet the case where the acquiring companies are a consortium operating through a jointly-owned company) by a company 90 per cent or more of whose share capital is owned by the acquiring companies.

In addition — ***(4)***

- at least 25 per cent of the value of the interests acquired in A's group by the acquiring companies, and by A's group in them, must consist of ordinary shares, and that the rest of that interest must also be a permanent investment (that is, shares and debentures),
- the interest in A's group acquired by the acquiring companies must have substantially the same value as the interest acquired by A's group in them, and
- the whole of the consideration received by A's group (other than a *de minimis* amount) for the acquisition of an interest in its business must consist of or be applied in obtaining the A group's stake in the acquiring companies.

A member of a group of companies is to be treated as carrying on the activities of its group as one business. ***(3)***

Non-resident companies qualify for inclusion in this section. ***(5)***

## 625 Shares in subsidiary member of group

### Summary

This section protects against possible tax avoidance within a group of companies through the disposal of shares in a subsidiary to another group member in order to avoid a tax charge on such a disposal by virtue of ***section 617***.

### Details

Where a company (known as "the subsidiary") ceases to be a member of a group of companies and, on an earlier occasion, shares in the subsidiary were disposed of by another company (known as the "chargeable company") as part of a reconstruction or amalgamation, within 10 years before the subsidiary left the group, then the chargeable company is deemed to have disposed of and immediately reacquired the shares at market value immediately before the earlier amalgamation or reconstruction. This effectively imposes a charge to tax on the chargeable company. ***(1)(a) & (2)***

This section does not apply to a subsidiary which leaves the group by reason of a winding-up or dissolution of the subsidiary or of another member of the group. ***(1)(b)***

The principal company of a group may be assessed to the tax if at the time when the subsidiary leaves the group the chargeable company has been wound up. ***(3)***

Tax so assessed which remains unpaid 6 months after the due date may be assessed, within 2 years after that date, on the principal company of the group (or any company taking an interest in the subsidiary as part of the amalgamation or reconstruction). The company paying the tax is given rights of recovery against the company which should have paid it. ***(4)***

The time for making such an assessment is extended to 10 years from the date of the company leaving the group (the ordinary time limit would be insufficient as liability arises from deeming something to have happened). Provision is also made for adjustment of assessments to be made in cases where before the subsidiary finally left the group there had been a disposal or part disposal of shares in that subsidiary. ***(5)***

Disposal of shares include —

- the exchange of shares for the purposes of reconstruction or amalgamation where the rules applying to such an exchange apply here so as to equate shares in a company with shares or debentures in another company, ***(6)(a)***
- the disposal of shares in a reconstruction or amalgamation where the companies are members of the same group or become members of the same group as a result of the reconstruction or amalgamation, ***(6)(b)***
- the cancellation of shares (including the extinction of shares as a result of a merger or a division under the Companies Act 2014) for the purpose of replacing them by new ones under a reconstruction or amalgamation. ***(7)***

Examples

Company A owns all the shares in Company B. It paid €1,000 for the shares, which are now worth €10,000. If Company A sells those shares outside the group it will be chargeable to tax on a gain of €9,000.

Company A sets up another company (Company C) with 10,000 €1 shares, all of which are taken up by Company A. Company A then sells the shares in Company B to Company C for €10,000. Under section 617, this does not give rise to any charge on Company A.

Company C has acquired the shares in Company B at their market value (€10,000) and therefore can sell them for €10,000 without any chargeable gain. Through its control of Company C, Company A can then secure that the sale proceeds, €10,000, go back to it as a loan. Company A has now realised its capital gain, €9,000, without any liability to tax, and so long as Company C remains in existence (even if dormant) the capital gains tax charge will be postponed.

This section counters this by providing that, when Company B ceases to be a member of the group (that is, when Company C sells its shares outside the group), Company A (the chargeable company) is treated as if, immediately before the sale of the shares to Company C, Company A had sold and immediately reacquired those shares at their market value (€10,000) thus giving rise to a chargeable gain of €9,000.

## 625A Transitional provisions in respect of *section 625*

### Summary

This section ensures that when a company ceases to be a member of a group by virtue solely of the change in definition of a group (***section 616(1)***), introduced in the Finance Act, 1999, any charge which might be levied on another group company under ***section 625*** is postponed until the company leaves under the group definition, as it existed previously.

### Details

***Definitions***

The "subsidiary" and the "chargeable company" have the same meanings as in ***section 625(1)***. ***(1)***

The "new definition" and the "old definition" mean, respectively, the definitions of what constituted a group after and before the changes introduced in the Finance Act, 1999.

***Deferred gains do not crystallise immediately solely because of change of definition of group***

If the change in definition of what constitutes a member of a group, which took effect on 11 February, 1999, caused — ***(2)***

- a company to cease to be a member of a group, and
- a tax liability to accrue to another group company in respect of the sale of shares under ***section 625***,

Then that tax liability does not arise until certain conditions are satisfied.

These conditions are — ***(3)***

- the company subsequently ceases to be a member of a group as previously defined, and
- the disposal of shares during the amalgamation or reconstruction took place less than 10 years before that time.

## 626 Tax on company recoverable from other members of group

### Summary

This section empowers the Revenue Commissioners to recover unpaid tax in respect of a chargeable gain accruing to a member of a group of companies by assessing the principal member of the group or any member which owned the asset while a member of the group. The section also provides rights of recovery for such tax as is paid under this section.

### Details

If a chargeable gain accrues to a member of a group and any of the corporation tax for the relevant accounting period is not paid within 6 months of the due date, the inspector may, within 2 years of the date on which the tax became payable, assess (in the name of the defaulting company) — ***(1)***

- the principal company of the group at the time when the gain accrued, or
- any other company which in any part of the 2 year period ending with the accrual of the gain was a member of the group and owned the asset or any interest in it.
- the tax so assessed is not to exceed tax on the amount included in respect of the gain in the assessment on the defaulting company at the charged in that assessment.

A company assessed and charged under this section is entitled to recover the tax charged on it from the defaulting company or from the principal company of the group. A principal company so assessed is entitled to recover the tax from the defaulting company or from any other member of the group who owned the asset while a member of the group. ***(2)***

## 626A Restriction on set-off of pre-entry losses

This section provides for the application of ***Schedule 18A*** which restricts the extent to which "pre-entry losses" of a company can be used to shelter gains accruing to a company or a group of companies after the company with the unused losses has joined the group.

## 626B Exemption from tax in the case of gains on certain disposals of shares

### Summary

This section provides for an exemption from tax in the case of certain capital gains from the disposal of holdings in subsidiaries.

Certain conditions must be met before a gain can be exempt.

- First, the investor company must have a minimum shareholding in the investee company. The investor is required to have a minimum holding of at least 5 per cent in the investee company for a continuous period of at least 12 months in the 3 years prior to the disposal.

- Second, the investee company must carry on a trade, or the business of the investor company, its investee company and their "5 per cent" investee companies, taken as a whole, must consist wholly or mainly of the carrying on of a trade or trades.

- Finally, at the time of the disposal the investee company must be resident in 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.

The exemption does not apply where the shares are part of a life assurance company's life business fund nor will it apply to shares which derive the greater part of their value from land or minerals in the State, rights, interests or other assets in relation to mining or minerals or the searching for minerals or exploration or exploration rights relating to gas or oil. Furthermore, the exemption does not apply to deemed disposals under the provisions of ***section 627***. Finally, the exemption does 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.

## Details

### *Definitions*

"relevant territory" means a Member State of the EU, 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. ***(1)(a)***

"tax" in relation to a relevant territory other than the State is tax that corresponds to corporation tax in the State.

### *Other interpretation rules for the purposes of sections 626B and 626C and Schedule 25A*

A company will be regarded as a parent company throughout an uninterrupted period of 12 months throughout which it holds 5 per cent of another company's share capital. The shares can be held directly or indirectly. The holding must also be a "real" holding i.e. the company must be entitled not only to 5 per cent of the shares but also to 5 per cent of any distribution made by the other company and 5 per cent of the company's assets on a winding up. Certain provisions of this Act are applied for the purposes of determining whether a company has the required holding. ***(1)(b)(i)***

- Relevant parts of ***section 9*** are applied. Those parts contain detailed rules on what is required in the case of indirect holdings. ***Section 411(1)(c)*** is disapplied so as not to restrict this section to companies resident in EEA countries. ***(1)(b)(i)(A)***

- ***Sections 413 to 419*** which ensure that holdings are "real" and cannot be contrived, are applied. ***(1)(b)(i)(B)***

In determining whether a company satisfies the holding requirements in ***subsection (2)(a)***, a company that is a member of a 51 per cent group will be treated as holding any shares that other members of that group hold and as being entitled to any rights that those other group members are entitled. However, this does not apply in the case of shares held as part of a life business fund of a life assurance company. ***(1)(b)(ii)***

In deciding whether the exemption in ***subsection (2)*** applies, the question of whether there is a disposal is to be decided on the facts and without regard to ***section 584***. That section provides that a reorganisation or reduction of share capital is to be treated as not involving any disposal. Where the exemption under ***subsection (2)*** applies, the ***section 584*** treatment will not apply. ***(1)(b)(iii)***

Where a company is in liquidation, the fact that the company is in liquidation is ignored for the purposes of this section and entitlement to exemption will be determined on the basis that actions of the liquidator in relation to assets are actions of the company. ***(1)(b)(iv)***

***Section 616*** which would otherwise restrict the measure to companies resident in EEA Member States is disapplied. ***(1)(b)(v)***

### *Exemption from Capital Gains Tax: Disposal of shares by an investor company in an investee company*

A gain by an investor company on the disposal of shares in an investee company will not be a chargeable gain if it meets a number of conditions. The conditions include a shareholding requirement, a requirement concerning the investee company's residence and a trading requirement. ***(2)***

***Shareholding requirement***

The investor company must be a parent (defined in ***subsection (1)*** as holding 5 per cent) of the investee. 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 ***(2)(a)***

- have taken place within 2 years of the most recent time that the investor company was a parent of the investee company.

***Residence Condition***

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. ***(2)(b)***

***Trading Condition***

A requirement for trading at the time of disposal is imposed. This trading requirement can be satisfied by either the investee company or the group. The alternatives are — ***(2)(c)***

- the business of the investee consists wholly or mainly of trading.

- the trading condition can be met by reference to the group. The test is that the business of the investor and its 5 per cent investees, the investee and its 5 per cent investees, taken together, consists wholly or mainly of the carrying on of a trade or trades.

***Circumstances in which the exemption does not apply***

There are a number of circumstances in which the exemptions provided by this section and **section 626C** do not apply. These are as follows: ***(3)***

- where a disposal is regarded as being for a consideration that gives rise to no gain or no loss. ***(a)***

- where a gain is already exempt. ***(b)***

- where the shares are held as part of the life business of a life assurance company. ***(c)***

- where the shares 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 exploration rights relating to gas or oil – the value of assets which are transferred to a company to ensure that the greater part of the value of its shares is not derived from such assets is ignored in determining the value of the shares concerned, where the motive for the transfer was the avoidance of tax. ***(d)&(3B)***

- where a disposal is regarded as a deemed disposal under the provisions of ***section 627***. ***(e)***

- where any provision of section 590 applies except where the participator (within the meaning of that section) is a company. ***(3A)***

## 626C Treatment of assets related to shares

### Summary

***Section 626C*** provides a corresponding exemption to that provided for in ***section 626B*** for assets related to shares.

### Details

#### *Asset related to shares in a company*

The circumstances in which an asset is to be regarded as being related to shares in a company are set out. ***(1)(a)***

- an option to acquire or dispose of shares in a company is an asset related to shares in that company. ***(i)***
- certain securities are related to shares in a company where the holding of the securities gives a right to acquire or dispose of shares in the company, an option to acquire or dispose of shares in the company or another security with similar rights. ***(ii)***
- an option to acquire or dispose of such a security or an interest in such a security is also an asset related to the underlying shares.

In determining whether a security is an asset related to shares, no account is to be taken of rights attaching to the security other than rights in relation to the shares, or of rights in respect of which there was a negligible likelihood that they would be exercised to any significant extent. ***(1)(b)***

#### *Exemption from Capital Gains Tax: Disposal of an asset related to shares*

A gain accruing to a company on the disposal of an asset related to shares in another company is not to be a chargeable gain in any of the following circumstances: ***(2)***

- where the company making the disposal holds shares in the other company immediately before the disposal of the asset and any gain on the disposal of those shares would, under ***section 626B***, not be regarded as a chargeable gain. ***(a)***
- where the company making the disposal does not itself hold shares in the other company but a fellow-group company holds such shares immediately before the disposal of the asset <u>and</u>, if those shares had been held by the company making the disposal, any gain on this disposal would, under ***section 626B***, not have been a chargeable gain. ***(b)***

For the purposes of determining whether a company is a fellow-group company, a group is to be taken to be a company and all of its 51 per cent subsidiaries.

## CHAPTER 2
*Provisions relating to exit tax, etc.*

### Overview

This Chapter contains provisions transposing Article 5 of Council Directive (EU) 2016/1164 of 12 July 2016 (the Anti-Tax Avoidance Directive or ATAD), which provides for an exit tax on the occurrence of certain events, into Irish tax law.

### Summary

The new section 627 provides that an exit tax applies on the occurrence of any of the following events, where such event occurs on or after 10 October 2018:

- where a company transfers assets from its permanent establishment in Ireland to its head office or permanent establishment in another territory,
- where a company transfers the business carried on by its permanent establishment in Ireland to another territory, or
- where an Irish-resident company transfers its residence to another country.

The charge will not apply where Ireland retains taxing rights on a subsequent disposal of the assets, i.e. where they remain within the charge to Irish tax.

The charge will also not apply if the assets of an Irish-resident company continue to be used in Ireland by a permanent establishment of the company after the company migrated.

The rate of exit tax is 12.5%. However, an anti-avoidance provision is included in the legislation to ensure that a rate of 33% rather than 12.5% will apply if the event that gives rise to the exit tax charge forms part of a transaction to dispose of the asset and the purpose of the transaction is to ensure that the gain is charged at the lower rate.

Exit tax will not apply to assets which relate to the financing of securities, assets given as collateral or where the asset transfer takes place to meet prudential capital requirements or for liquidity management, where such assets will revert to the permanent establishment or company within 12 months of the transfer.

The legislation provides for the acceptance by this country of the value of an asset established by another Member State for the purposes of exit tax in that Member State as the base cost of that asset for tax purposes in this country unless that value does not reflect the market value of the asset concerned (***section 628***), allows for the payment of exit tax to be deferred by paying it in instalments over 5 years in the case of exits to an EU/EEA state (***section 629***) and ensures that exit tax in respect of non-resident companies can be recovered from another Irish-resident member of a group or from an Irish-resident controlling director (***section 629A***).

***Section 629B*** is a transitional provision to ensure that the power under ***subsection (3)*** of the former ***section 629*** to serve a notice on a group company or a controlling director is not affected by ***section 629A***.

***Section 629C*** deals with companies ceasing to be resident on formation of an an SE (a European public liability company) or an SCE (a European Cooperative Society). This section is identical to the former ***section 629A***.

## 627 Charge to exit tax

### Summary

This section imposes exit tax in certain situations with effect from 10 October 2018. The charge will not apply where Ireland retains taxing rights on a subsequent disposal of the assets i.e. where they remain within the charge to Irish tax. The section does not apply where the assets of a migrating company continue to be used in the State by a permanent establishment of that company or to certain assets which are to revert to the Member State of the transferor company within 12 months of the transfer

Details

***Definitions***

The following definitions are relevant for this section and ***sections 628*** and ***629***. ***(1)(a)***

"Directive" means Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market;

"market value" means the amount for which an asset can be exchanged or mutual obligations can be settled between unconnected willing buyers and sellers in a direct transaction;

"Member State" means a Member State of the European Communities;

"relevant event" means one of the events referred to in ***section 627(2);***

"tax" means corporation tax or capital gains tax chargeable by virtue of ***section 627(2);***

"third country" means a territory other than the State or another Member State;

"transfer", in relation to assets, means any transaction whereby (apart from the effect of ***section 627***) no liability to corporation tax or capital gains tax in respect of the assets the subject of the transfer arises, notwithstanding that those assets remain under the legal or economic ownership of the same entity.

The definition of "market value" is in line with Article 5(6) of the Directive. Accordingly, this definition of "market value" will apply to the exit tax provisions rather than ***section 548*** which would normally apply.

***References to a trade and to a branch or agency to include a business and a permanent establishment***

References in ***section 29(3)(c)*** to a trade and to a branch or agency are to be read as if they referred to a business and a permanent establishment respectively. This is necessary to ensure that a tax charge can be imposed on the assets associated with a business carried on in this country by a non-resident company through a permanent establishment. ***(1)(b)***

***Meaning of words or expressions***

A word or expression that is used in this Chapter and is also used in Article 5 of the Directive has the same meaning in this Chapter as it has in the Directive. ***(1)(c)***

***Exit tax charge***

This subsection imposes an exit tax charge in the following situations: ***(2)***

- where a company transfers assets from its permanent establishment in Ireland to its head office or permanent establishment in another territory,

- where a company transfers the business carried on by its permanent establishment in Ireland to another territory, or
- where an Irish-resident company transfers its residence to another country.

It does this by deeming a disposal and reacquisition of the relevant assets to have occurred. This results in a charge to tax in respect of any chargeable gains which may have accrued in respect of the assets such that they are no longer within the charge to tax. The charge is based on the market value of the assets at the time of the deemed disposal.

The time immediately before an Irish-resident company ceases to be resident in Ireland is treated as the time when the exit tax charge arises. ***(2A)***

***Exclusion from charge***

An exclusion from the exit tax charge applies where the State retains taxing rights on a subsequent disposal of the assets referred to in ***subsection (2).*** Such assets include land, minerals or mineral rights or assets situated outside this country of an overseas life assurance company which were held in connection with the life business carried on by the company which, at or before the time the chargeable gains accrued, were used or held by or for the purposes of that company's branch or agency in this country. ***(3)***

***Rate of charge***

The rate of exit is 12.5%. However, an anti-avoidance provision is included in ***paragraph (b)*** to ensure that a rate of 33% rather than 12.5% will apply if the event that gives rise to the exit tax charge forms part of a transaction to dispose of the asset and the purpose of the transaction is to ensure that the gain is charged at the lower rate. ***(4)***

***Roll-over relief***

Roll-over relief under ***section 597*** is not available in respect of assets disposed of before the migration of a company. ***Section 597*** enabled a person carrying on a trade to defer payment of capital gains tax on a disposal of certain business assets prior to 4 December 2002, where the proceeds were reinvested in acquiring new assets such as land or buildings, plant or machinery for use exclusively in the trade. While the relief was abolished in the case of disposals on or after 4 December 2002, gains arising from disposals before that date can be rolled over and can thus avail of the relief. ***(5)***

***Exceptions***

If the assets of a migrating company continue to be used in the State by a permanent establishment of the company after it migrated, exit tax does not apply. Roll-over relief continues to apply to such situations. ***(6)***

***Non-application of tax***

Exit tax does not apply to assets relating to the financing of securities, which are given as security for a debt or where the transfer takes place in order to meet prudential capital requirements or for liquidity purposes, where the assets are to revert to the Member State of the transferor within 12 months. ***(7)***

## 628 Value of certain assets to be accepted for purposes of Capital Gains Tax Acts

This section provides that the value of the assets referred to in Article 5(1) of the Directive which is accepted at the time the assets are transferred to the State shall be treated as the acquisition cost of the assets unless that value does not reflect the market value of the assets.

## 629 Deferral of exit tax

### Summary

This section provides that exit tax may be paid in instalments over 5 years on the migration of companies/assets to EU Member States or third countries that are party to the EEA Agreement and have concluded an agreement on the mutual assistance for the recovery of tax equivalent to the Mutual Assistance Directive of 16 March 2010, subject to the payment of interest on the balance of the tax outstanding at the rate of 0.0219% per day or part of a day. The section also sets out the circumstances where the deferral of exit tax is discontinued.

### Details

***Definitions***

Definitions are provided for the purposes of the section. ***(1)***

***Deferral of tax***

A taxpayer can defer the payment of exit tax by paying it in instalments over 5 years. The first instalment is due and payable on the specified date and the remaining instalments are due and payable on each of the next 5 anniversaries of that date. ***(2)***

***Non-availability of deferral option***

The deferral option provided for in ***subsection (2)*** will not be available in respect of assets which have been transferred to a third country unless that country is a party to the EEA Agreement and has concluded an agreement with this country or the European Union equivalent to the mutual assistance provided for in Council Directive 2010/24/EU of 16 March 2010. ***(3)***

***Tax payable in instalments***

Where an election is made to pay tax in accordance with subsection (2), that tax shall be payable each year in 6 equal yearly instalments, the first instalment of which is due and payable on the specified date and the remaining instalments are due on the next 5 anniversaries of the specified date. The specified date means – ***(4)***

- as regards corporation tax, the last day of the period of 9 months starting on the day immediately following the date of the event that gave rise to the exit tax charge, but in any event not later than day 23 of the month in which that period of 9 months ends, or
- as regards capital gains tax payable in respect of a year in which the exit charge arises, 31 October in the following year.

***Election to pay tax by instalments to be made in tax return***

An election to pay tax by instalments or on a disposal of assets must be made in the company's tax return. The return must be made electronically and specify: ***(5(a)***

- the date the company ceased to be resident in this country,
- the EU/EEA territory where the migrated assets were transferred,
- the amount of tax,
- the deferral option the company is electing to make, and
- any other information that Revenue may require for the purposes of the section.

***Obligation to make annual statement***

Irrespective of the type of election made by a company**,** the company is obliged to make, without being notified to do so, an annual statement to Revenue specifying whether the company is treated as tax resident in a relevant territory (i.e. an EU Member State other than the State or a third country which is party to the EEA Agreement that has concluded an agreement with the State or the European Union equivalent to the mutual assistance provided for in Council Directive 2010/24/EU of 16 March 2010) throughout the period covered by the return. ***(5)(b)***

In the case of companies electing to pay tax by instalments, annual statements are due within 21 days of the end of each of the 5 calendar years following the event giving rise to the charge to tax under ***section 627(2).***

***Information to be supplied by companies***

Companies electing to pay tax on the disposal of assets are required to supply the following additional information in their annual statement: ***(5) & (6)***

- whether any tax became due and payable during the relevant period,
- the amount of tax, interest and whether the tax and interest has been paid, and
- the computation of such tax liability.

***Circumstances in which deferral will be discontinued***

The deferral of exit tax will be discontinued on the occurrence of any of the following events: ***(6) & (7)***

- where assets referred to in ***section 627(2)*** are sold or otherwise disposed of;
- where assets referred to in ***section 627(2)*** are transferred to a third country, but this is subject to ***subsection (8);***
- where the company ceases to be resident in a Member State and becomes resident in a third country or the business carried on by a permanent establishment of the company is transferred to a third country, but this is subject to ***subsection (8);***
- where the company becomes insolvent or a liquidator is appointed to the company; or
- where the company fails to pay the instalments referred to in ***subsection (2)*** on the due date and this failure has not been rectified within 12 months of that date.

Any tax which has not been paid at the time of the relevant event referred to in ***subsection (7)*** and any interest charged on that tax will become due and payable on the occurrence of that event.

***References to third country***

The reference in ***subsection (7)(b)*** or ***(c)*** to a third country does not include a reference to a third country that is a party to the EEA Agreement if it has concluded an agreement with Ireland or the European Union equivalent to the mutual assistance provided for in Council Directive 2010/24/EU of 16 March 2010. ***(8)***

***Interest payable on outstanding tax***

Simple interest at the rate of 0.0219% per day or part of a day is payable on an amount of outstanding tax from the specified date (as defined) to the date of payment. Such interest is added to each of the instalments and is payable at the same time as such instalment of tax is due. ***(9)***

***Guarantees required in certain circumstances***

A guarantee may be required from a company where there is a risk of non-recovery of tax. ***(10)***

***Non-application of requirement for guarantee***

The requirement for a company to provide a guarantee does not apply where the tax debt can be recovered from another taxpayer who is a member of the same group as provided for in ***section 629A***. ***(11)***

***Interest and tax to be paid to Collector-General***

All amounts of interest and tax are to be paid to the Collector-General. ***(12)***

***Tax and interest to be payable without making of assessment***

Any amount of tax and interest payable in accordance with the section shall be payable without the making of an assessment. ***(13)***

***Provision for collection from Irish-resident controlling director where company defaults***

Where a company defaults on its obligation to pay tax, provision is made for its collection from an Irish-resident member of the same group or an Irish-resident controlling director ***(14)***

***Collection and recovery provisions of Corporation Tax Acts and Capital Gains Tax Acts to apply***

The collection and recovery provisions of the Corporation Tax Acts and the Capital Gains Tax Acts apply to the collection and recovery of tax and interest. ***(15)***

## 629A Tax on non-resident company recoverable from another member of group or from controlling director

Summary

This section provides a tax collection mechanism from an Irish-resident associated company or a controlling director in the event of default by a company in paying tax due in accordance with ***section 627(2).***

Details

***Definitions***

Certain terms are defined for the purposes of the section. ***(1)***

***Time when collection procedure initiated***

The collection procedure is initiated (generally within 3 years of the due date for the making of the return by the defaulting company) by the inspector if the tax is not paid within 6 months of the return date: ***(2) & (3)***

- serving a notice on the group company or controlling director,
- stating the amount of tax outstanding, and
- requiring payment within 30 days.

It is sufficient for the relationship to the defaulting company to have existed at any time within the 12-month period preceding the time when the gain accrued.

***Collection of tax from Irish-resident group member or controlling director***

Where a migration results in the non-payment of tax due and payable under ***section 627(2),*** provision is made for its collection from – ***(4)***

- an Irish-resident group member company, or
- an Irish-resident controlling director of the defaulting company.

It is sufficient for the relationship to the defaulting company to have existed at any time within the 12-month period preceding the time when the gain accrued.

***Amount required to be paid recoverable from person on whom notice served***

Any amount which a person is required to pay by a notice under the section may be recovered from the person as if it were tax due by that person. That person can recover any such amount paid on foot of a notice under the section from the taxpayer company. ***(5)***

***Payment made on foot of notice not allowed as deduction***

A payment made on foot of a notice under the section will not be allowed as a deduction in computing income, profit or losses for any tax purposes. (6)

## 629B Transitional provision (power to serve notice under former section 629 not affected)

This section is a transitional provision to ensure that the power to serve notice on a group company or a controlling director under ***subsection (3)*** of the former ***section 629*** is not affected by ***section 629A***.

## 629C Company ceasing to be resident on formation of SE or SCE

This section re-states the former ***section 629A***, which relates to companies ceasing to be resident in the State on formation of an SE (a European public liability company) or an SCE (a European Cooperative Society). Such companies are deemed to continue to be resident in the State or, if the company has ceased to exist, as if the SE or SCE were the company for the purposes of liabilities accruing or matters arising before the date of cessation.