

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

Part 20-01-14

This document should be read in conjunction with section 626B
of the Taxes Consolidation Act 1997

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Does not reflect current Revenue position.
Most recent version of this manual.

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Introduction

Section 626B Taxes Consolidation Act 1997 (“TCA 1997”) provides for an exemption from tax in respect of certain capital gains arising from the disposal of holdings in subsidiaries. Certain conditions must be met before a gain can be exempt.

14.1 Disposal by an investor company in an investee company

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) TCA 1997**) 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, '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 branch for approval.

14.2 Circumstances in which the exemption does not apply

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 disposer,
- gains which are not chargeable gains by virtue of any provision other than those contained in this section or **section 626C TCA 1997**,

- 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 under the provisions of **section 627 TCA 1997**.

14.3 Anti-avoidance

Section 626B TCA 1997 was amended by **section 44 Finance Act 2014** to provide that the exemptions provided by this section and **section 626C TCA 1997** do not apply where any of the provisions of the anti-avoidance **section 590 TCA 1997** apply, except where the participator (within the meaning of that section) is a company. The section was further amended by **section 27 Finance Act 2017** which provides that, in calculating the portion of the value of shares attributable directly or indirectly to shares which derive the greater part of their value from land or minerals, etc. in the State, etc., account will not be taken of any arrangement that:

- involves a transfer of money or other assets (apart from land or minerals, etc. in the State) from a person connected with the company in which those shares are held, and
- is made before a disposal of such assets, and the main purpose or one of the main purposes of which is the avoidance of tax.

14.4 Sections 626B TCA 1997, 626C TCA 1997 and certain other reliefs

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