

Company reconstructions and amalgamations (S.587)

Part 19-04-11

This document should be read in conjunction with section 587
of the Taxes Consolidation Act 1997

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Introduction

Section 587 of the Taxes Consolidation Act 1997 (“TCA 1997”) adapts **section 586 TCA 1997** to the situation where, under a scheme of reconstruction or amalgamation, a company issues shares to the shareholders of another company in respect of and in proportion to their existing holdings in shares or debentures, those holdings being retained by them or cancelled. The transaction is treated as an exchange of shares and this comes within the rules applicable to a reorganisation of share capital so that the new holding is treated in the hands of the shareholder as if it were the original holding with no consequent charge to Capital Gains Tax (“CGT”) at the time of the exchange.

11.1 Availability and definitions

Section 587 TCA 1997 deals with special types of company reconstruction and amalgamation under schemes of arrangement under the **Companies Act 2014**, which may not technically involve an exchange of shares and also with certain reconstructions and amalgamations, using the procedure set out in that Act.

Section 587(2) TCA 1997 deals with the effect of the above arrangements on the shareholders concerned. **Section 587(1) TCA 1997** is concerned with the definition of some of the terms used.

This relief is only available where the reconstruction or amalgamation is effected for bona fide commercial reasons and is not part of a tax avoidance scheme (**section 587(4) TCA 1997**).

Prior to 4 December 2002, section 587 TCA 1997 also applied where a shareholder or debenture holder received shares or debentures in the acquiring company.

Section 587 TCA 1997 does **not** apply where the company issuing the shares or debentures is an investment undertaking within the meaning of **section 739B TCA 1997**.

11.2 Application

Where, under a scheme of reconstruction or amalgamation, a company issues shares to the shareholders of another company in respect of and in proportion to their existing holdings in shares or debentures, those holdings being retained by them or cancelled, the transaction is treated as an exchange of shares. This comes within the rules applicable to a reorganisation of share capital so that the new holding is treated in the hands of the shareholder as if it were the original holding with no consequent charge to CGT at the time of the exchange. For this purpose, “shares” include stock, debentures and interests in a company with no share capital, held by members of the company. It also includes options in relation to such “shares”.

Section 82 and Sch 2(1)(ab) Finance Act 2017 provides that references in **section 587(2) TCA 1997** to shares being cancelled are deemed to include references to shares which are extinguished as a result of a merger or division under the **Companies Act 2014**.

A reconstruction takes place where ‘an undertaking’ carried on by a company is in substance preserved and transferred to another company consisting substantially of the same shareholders (“substantial identity of shareholding”). It is only required that substantial identity of shareholding exists immediately after the transfer. It is not necessarily significant that as a next step the shares in the new company are sold. However, it is essential that the reconstruction must not be in any way contingent on the subsequent sale or transfer of shares. Furthermore, the contract for the sale of shares must not be in existence prior to the issue of shares by the new company.

Examples of schemes where the identity of the shareholders, between old and new companies, is lost are:-

- (a) By an arrangement under the **Companies Act 2014**, two businesses of a single company are transferred, each to a separate new company, in consideration of shares issued by the new companies to the shareholders of the old company. In one case it may be found that the shares of one new company are issued to one set (e.g. one family) of the old shareholders and the shares in the other new company to another set (but see [Tax and Duty Manual \(TDM\) Part 19-04-11A](#))
- (b) In another case although shares in both the new companies are issued to all the shareholders of the old company the shares in one of the new companies are, as part of the scheme, immediately at the time of disposal sold to an outsider.

Any case in which relief is claimed although not all the members of the old company (or companies) are members of the new company (or companies) should be examined by reference to the specific facts and documentation governing the scheme.

The application of **section 587 TCA 1997** should not be rejected merely because the shares in the transferee company under a scheme of reconstruction under the **Companies Act 2014** are issued to the liquidator of the transferor company for distribution to the shareholders, rather than directly to the shareholders.

Revenue will accept that the transfer of a 100% shareholding constitutes the transfer of an undertaking.

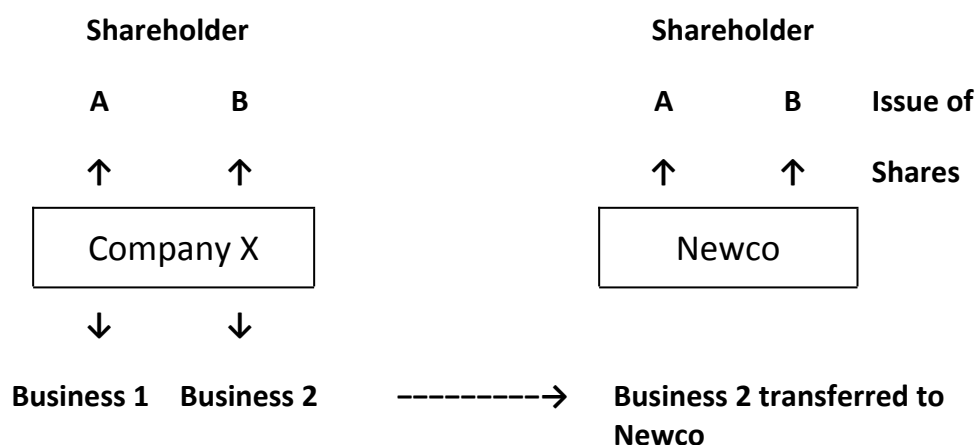
An amalgamation is the blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company, which carries on the blended undertaking.

A reconstruction or amalgamation would also take place where the transfer is a transfer of part of a business; provided that the part can exist as a business in its own right. However, there must be a segregation of trades or businesses and not merely the segregation of assets.

The basic philosophy behind schemes of reconstruction and amalgamation is that the original shareholders keep an interest in the original business.

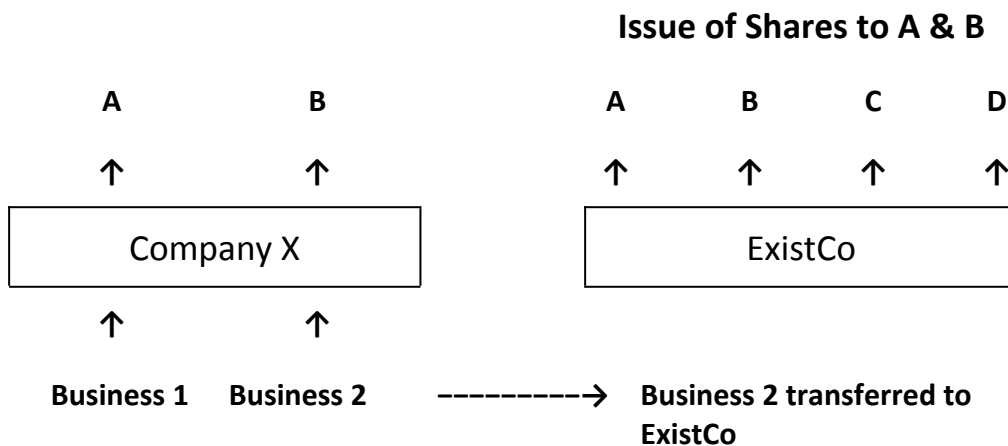
Example 1 - Reconstruction:

Company X carries on two businesses. Its shareholders are A and B. Newco issues shares to the shareholders of Company X, in proportion to their existing shareholding, in exchange for the transfer of Business 2 to Newco. This constitutes a reconstruction since Business 2 is carried on by a company, which has the same shareholders as Company X.



Example 2 - Amalgamation:

Again, Company X carries on two businesses. Its shareholders are A and B. An existing company (ExistCo), whose shareholders are C and D, issue shares to the shareholders of Company X in exchange for the transfer of Business 2 to ExistCo. This constitutes an amalgamation as Business 2 is carried on by a company, whose shareholders are an amalgamation of the participating companies.



Where a bona fide reconstruction takes place to which the provisions of **sections 587 and 615 TCA 1997** apply, it is not the practice of Revenue to invoke a distribution charge under **section 130 TCA 1997**.

Guidelines for those seeking an opinion on whether a proposed transaction falls within the provisions of **section 587 TCA 1997** are contained in [TDM Part 37-00-00a](#)