

Company ceasing to be member of group (S.623)

Part 20-01-10

This document should be read in conjunction with section 623
of the Taxes Consolidation Act 1997

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Introduction

Section 623 of the Taxes Consolidation Act 1997 (“TCA 1997”) provides for a charge to tax on one or more group members leaving a group of companies in respect of assets which 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. **Section 623 TCA 1997** effectively reinstates the charge which was deferred by **section 617 TCA 1997**.

10.1 Company ceasing to be member of group

Section 623 TCA 1997 prevents the avoidance of tax on capital gains by a company transferring assets with a built-in gain to a newly formed subsidiary company and then disposing of the shares in that company in circumstances in which no liability, or a reduced liability, to Capital Gains Tax (“CGT”) arises. The avoidance is countered at the time the company leaves the group by effectively re-instating the charge deferred under **section 617 TCA 1997**. See Tax and Duty Manual (TDM) [Part 19-04-13](#) regarding non-resident group of companies.

The avoidance device in its simplest form is illustrated in the following example.

Example 1

A Ltd. has assets costing €100,000 but worth €500,000.

A Ltd. forms a new subsidiary company, B Ltd., and subscribes €10,000 for 10,000 shares. The assets are sold by A Ltd. to B Ltd. for €500,000 (the true value) but under **section 617 TCA 1997**, the disposal for CGT purposes is at the cost of €100,000. A Ltd. then sells the shares in B Ltd. to an outsider C. Ltd. for €10,000 but as the shares cost A Ltd. €10,000 no capital gain arises. A Ltd. has therefore managed to take its gain of €400,000 without attracting tax on the gain.

C Ltd. is left with a company with shares costing €10,000 and an asset worth €500,000 but with a cost of €100,000 for CGT purposes. If C Ltd. wishes to dispose of the asset without B Ltd. attracting liability, it merely has to follow the same avoidance device.

10.2 Companies leaving the group

Section 623 TCA 1997 applies to any company (the “chargeable” company) ceasing to be a member of a group of companies in respect of any asset which it had acquired from another member of the group of companies, provided that the acquisition was within ten years before the date the company left the group.

If more than one associated company leaves the group at the same time, then the provision does not apply to acquisitions by one of those companies from another. Associated companies are defined as “companies which by themselves would form a group of companies”. However, where two or more associated companies leave a group at the same time, and

- a dividend has been paid or a distribution made by one of the associated companies to a company which is not one of the associated companies wholly or partly out of profits which derive from the transfer of an asset between the associated companies then,
- the amount of the dividend or the amount of the distribution, to the extent that it is paid out of such profits, shall be treated as additional consideration received by the member of the group in respect of a disposal, which gave rise to or was caused by the associated companies ceasing to be members of the group.

Under **section 624 TCA 1997** certain company mergers are relieved from the charge to tax which could arise because of **section 623 TCA 1997** - see TDM [Part 20-01-11](#).

10.3 Exceptions

The reference to a “company ceasing to be a member of a group” does not generally apply where a company ceases to be a member because –

- (i) it is wound-up or dissolved; or
- (ii) another member of a group (e.g., an immediate parent) is wound up or dissolved.

However, where the winding up or dissolution is part of an avoidance plan the reference in **section 623 TCA 1997** to a “company ceasing to be a member of group” will continue to apply.

Example 2

A group of companies consists of:

A Ltd., the principal company,
B Ltd., a 100 per cent. subsidiary of A Ltd., and
C Ltd., a 100 per cent subsidiary of B Ltd.

On 1 December 2021, A Ltd. sells its shares in B Ltd. The following transactions had previously taken place:

On 1 April 2020, A Ltd. acquired an asset (not development land) by purchase outside the group for €100,000. On 1 April 2021, A Ltd. sold the asset to B Ltd. for €130,000 and on the same date B Ltd. sold the asset to C Ltd. for €200,000.

Section 623 TCA 1997 applies to the transfer from A Ltd. to B Ltd. but not to the transfer from B Ltd. to C Ltd.

10.4 Withdrawal of section 617 TCA 1997

When a company (the “chargeable” company) leaves the group, the benefit of a transfer within **section 617 TCA 1997** is withdrawn in respect of:

- (a) the asset so transferred, or
- (b) any property in respect of which a chargeable gain on such an asset has been deferred on a replacement of business assets (see TDM [Part 19-06-02](#) and TDM [Part 20-01-07](#)),

which is owned by the chargeable company or associated company on leaving the group. This is done by deeming the asset to have been disposed of and re-acquired at its market value immediately after its acquisition by the chargeable company leaving the group. Assets owned as trading stock are excluded from the charge.

An asset acquired by a company chargeable under this provision is to be treated the same as an asset owned at a later time if the value of the second asset is derived in whole or in part from the first asset. This refers in particular to cases in which the first asset was a leasehold and the lessee has acquired the reversion.

10.5 When the tax is due and payable

Section 41 Finance Act 2014 amended **section 623(4) TCA 1997** to clarify that the tax is due and payable by reference to the accounting period in which the company leaves the group. Such tax will be due and payable in accordance with the rules for payment of preliminary tax and balance of tax as set out in **Chapter 7 of Part 41A TCA 1997**, including **section 959AS (6) and (7) TCA 1997**. For the sole purpose of determining when the tax is due and payable the chargeable gain should be treated as arising from a disposal of assets on the date on which the company leaves the group. However, as the sale and immediate reacquisition referred to in **section 623(4) TCA 1997** is treated as arising immediately after the intra-group transfer, referred to in **section 623(2)(a) TCA 1997**, of the asset referred to in **section 623(4)(a) TCA 1997**, the rate of tax is determined by reference to the CGT rate applying at the date of that intra-group transfer.

If any Corporation Tax assessed on a company in accordance with **section 623 TCA 1997** is not paid within six months from the date when it becomes payable, any tax on capital gains included in the unpaid tax may, within two years of the tax becoming payable, be assessed and charged in the name of the chargeable company upon either:

- (a) the company which on the date the tax became payable, or immediately after the chargeable company left the group, was the principal company of the group; or
- (b) a company which owned the assets on the date the tax became payable or when the chargeable company left the group.

The company paying such tax is empowered to recover the tax from the chargeable company.

Assessments may be made at any time within ten years of the chargeable company's ceasing to be a member of the group. Where the deemed disposal and re-acquisition affects other computations, any necessary adjustments of tax, by assessment or otherwise, are to be made.

10.6 Patents

Where a patent has been transferred within a group and is subject to an election under **section 312 TCA 1997** a charge to tax may arise when the transferee company leaves the group and again when the transferee company sells the patent.

10.7 Companies chargeable to CGT

See **section 649 TCA 1997** for the provisions relating to companies chargeable to CGT on chargeable gains.