

Shares in subsidiary member of group (S.625)

Part 20-01-12

This document should be read in conjunction with section 625
of the Taxes Consolidation Act 1997

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Introduction

Section 625 of the Taxes Consolidation Act 1997 (“TCA 1997”) 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 TCA 1997**.

12.1 Anti-avoidance provision to counter transfers out of a group

Section 625 TCA 1997 counters a method of avoidance under which the company reconstruction and amalgamation provisions in **sections 586 and 587 TCA 1997** (see [Tax and Duty Manual \(TDM\) Part 19-04-10](#) & [TDM Part 19-04-11](#)) are used to transfer a company out of a group without the increase in its value being caught for capital gains. The device is countered by re-imposing the charge deferred by **sections 586 or 587 TCA 1997**.

12.2 Application

The section applies if any company (the subsidiary company) ceases to be a member of a group and, on an earlier occasion, the shares in it were disposed of by another company (the chargeable company) then in the group in the course of an amalgamation or reconstruction within the group, provided that the disposal was within ten years before the subsidiary company ceased to be a member of the group.

The reference to a “company ceasing to be a member of a group” does not 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.

For the purpose of **section 625 TCA 1997**, there is a “disposal of shares on an earlier occasion” if **section 586 or 587 TCA 1997** applies to shares or debentures in a company so as to equate them with other shares or debentures of another company in the same group or where shares are cancelled and replaced by a new issue (see [TDM Part 19-04-10](#) & [TDM Part 19-04-11](#)). **Section 82** and **Sch 2(1)(ah) Finance Act 2017** extended the cancellation of shares to the situation where shares are extinguished as a result of a merger or division under the Companies Act 2014.

12.3 Re-imposition of charge deferred by section 586 or 587 TCA 1997

The effect of the section is to re-impose the charge deferred by **section 586 or 587 TCA 1997**. There is a deemed disposal and re-acquisition of the shares at market value by the chargeable company (see **paragraph - 12.2**) immediately before it disposed of the shares to another member of the group.

12.4 Liquidation or dissolution

If the chargeable company has been liquidated or dissolved before the subsidiary company ceases to be a member of the group, any Corporation Tax which would have been charged on the chargeable company under this section may be assessed and charged (in the name of the chargeable company) on the company which is the principal company of the group at the time the subsidiary company leaves the group.

12.5 Recovery of tax which is not paid

Tax which is not paid within six months of the payable date may be recovered by assessing and charging (in the name of the chargeable company), within two years of the tax becoming payable, either -

- (a) the company which on the payable date or at the time of the deemed disposal and re-acquisition is the principal company of the group; or
- (b) any company taking an interest in the subsidiary as part of the amalgamation and reconstruction.

The company paying such tax is empowered to recover the tax from the chargeable company, or from the company which becomes chargeable upon the liquidation, etc., of the chargeable company.

Assessments may be made at any time within ten years of the subsidiary 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.

12.6 Companies chargeable to Capital Gains Tax

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