

Company amalgamations by exchange of shares (S.586)

Part 19-04-10

Document last reviewed May 2017

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- 10.1** **Section 586** provides that, subject to certain restrictions (see **Par. 2**), the rules in **Section 584** relating to the reorganisation of a company's share capital (see **Tax Instruction Part 19-04-06 Par. 4** et seq.) are applicable, with any necessary adaptations, to company amalgamations (see definition in **Tax Instruction Part 19-04-11 Par. 2**). If, for example, A Ltd. issues its shares to a person in exchange for shares or debentures in B Ltd., that person should be treated as having acquired the shares of A Ltd. at the same time and for the same cost as his original holding in B Ltd. There is no disposal for capital gains tax purposes on the occasion of the exchange.

The rule applies to a person who accepts new shares in whole or part satisfaction for giving up his original shares, notwithstanding that he is given the option to take the whole of the consideration in cash.

Subject to certain limited circumstances, section 586 does not apply on or after 4 December 2002 where debentures, loan stock or other similar securities are issued in exchange for shares.

The section does not apply where the company issuing the shares or debentures is an investment undertaking within the meaning of section 739B.

Section 586(1) provides that **Section 584** is to apply "as if the two companies were the same company". Thus where, on the amalgamation of two companies, the shareholders of the one company receive cash or other consideration in addition to shares in the other company, such cash or other consideration is a capital distribution for the purpose of **Section 583**.

- 10.2** In general, the special treatment applicable to company amalgamations should be confined to the case where a company issuing the shares has, or will have, control of the other company. Thus it will apply where the issuing company -
- (a) acquires part or all of the minority share or debenture holdings in an existing subsidiary company; or
 - (b) makes a successful take-over bid for the other company; or
 - (c) rounds off a successful take-over bid for the other company by acquiring the remainder of its shares or debentures.

It will also apply, however, where the issuing company has made unconditional a general offer which was in the first instance conditional on its acquiring control of the other company. If, for example, A Ltd., in pursuance of a take-over bid, offers to acquire the shares of B Ltd. on condition that the offer is accepted in respect of more than 50 per cent of the company's share

capital and then, in the course of negotiations, makes its offer unconditional, the special treatment is still applicable even though the take-over bid proves to be unsuccessful.

In the following two examples, it is assumed that -

- (i) in 2006, X buys 3,600 ordinary shares in B Ltd. at €1.15 each, including expenses (€4140)
- (ii) in 2008, A Ltd., by letter addressed to the shareholders of B Ltd., offers to acquire their shares in B Ltd. on condition that the offer is accepted in respect of 90 per cent of the ordinary share capital of B Ltd.

Example 1

The offer of A Ltd. is to issue two €1 shares in A Ltd. in exchange for every three shares in B Ltd. In due course, X accepts the offer which has by this time become unconditional. The acceptance by X establishes an unconditional contract.

The exchange is not a chargeable transaction and X is treated as having acquired 2,400 shares in A Ltd. for €4,140.

Example 2

The offer of A Ltd. is to issue two €1 shares in A Ltd. plus a cash payment of €0.25 for every three shares in B Ltd. In due course, X accepts the offer which has by this time become unconditional.

X should be treated as if X's new holding has been acquired in 2006, and as if on the date of acceptance of the offer X had disposed of an interest in the original shares of a market value equal to the cash which he was entitled to receive.

The market value of the shares of A Ltd. on that date (computed as in **Tax Instruction 19.4.2**) is €2.15, so that the value of the new holding is €5,160 ($3,600 \times \frac{2}{3} = 2,400 @ €2.15$). X is also entitled to cash of €300 ($3,600 \times \frac{1}{3} = 1,200 @ €0.25$).

The notional cost of the interest disposed of is therefore:-

$$\begin{array}{rcl} \text{€4,140} \times & \frac{\text{€300.}}{\text{€300} + \text{€5,160}} & = \text{€227} \end{array}$$

For the purposes of a subsequent disposal, the cost of the new holding is deemed to be €3,913 (€4,140 less €227).

This relief does not apply if the exchange forms part of an avoidance scheme (**Section 586(3)**).

- 10.3** In **Tax Briefing 48** Revenue published guidelines for those seeking an opinion on whether a proposed transaction falls within the provisions of section 586. Those guidelines have been superseded by “The Guidelines on Revenue’s Service to Practitioners and Business Taxpayers”.