

Partition of Family Trading Companies – CGT

ITCGTCT Manual – Part 19-04-11A

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Extract from Tax Briefing 44

11A.1 Introduction

The intention of this Instruction is to explain the relief available in the case of a partition of a family trading company together with the circumstances in which the relief may be granted. It essentially sets out how precedent 701* is to be applied.

*Precedent 701 reads:

“Where a family trading company (or group of companies) is broken up into separate individual trading companies, such an event will not be regarded as a disposal for CGT purposes provided that the value of each individual’s holding in the company or group remains strictly unaltered and also provided certain other conditions are met.”

11A.2 Background

There are occasions where a family carries on separate identifiable trades under the umbrella of a single company (or a single trade which is capable of division into more than one separate trade). Similarly, the trades may be carried on by more than one company or within a group structure. This might arise, for instance, where the original corporate structure was put in place by a deceased parent and inherited by the various family members. For commercial or other reasons the family members may now wish to divide the separate trades between the family members so that each trade can be owned and carried on wholly by individual members.

11A.3 Partition

Where, in the case of a family trading company

- shares are reorganised into separate classes
- new companies are formed to take over the separate trades allocated to the different classes
- with each group of shareholders receiving shares in a different company

the reliefs provided by section 587 and 615 will apply, if the conditions set out below are satisfied. The desired separation must occur on the transfer of a trade to another company, in exchange for the issue of shares by that company.

11A.4 Conditions

- No money or money's worth changes hands
- No value shifting takes place, i.e. the value of each shareholder's holding before and after the partitioning is identical
- Acceptance that assets transferred between companies pass to the transferee company at the original date of acquisition and cost to the transferor company
- Acceptance that new shares received in exchange take on original date of acquisition and cost of old shares
- Applies to 'family' partitions only ['family' as defined in section 598(1)(a) TCA 1997]
- Applies to 100% family companies only
- All parties must be Irish tax resident
- Applies to separation of trading companies only i.e. trades capable of division into separate trading entities, e.g. a number of retail outlets, two distinct trading activities such as manufacturing and distribution/sales. In practice where the value of non-trade assets does not exceed 10% of the value of the trading entity as a whole relief will be given
- The separate trades must continue post partition /not available as an alternative to a partial winding up or to be used as a mere separation into trade assets and investment assets
- Where the partition involves the division of a group of companies, the entity to be transferred can be a 100% trading subsidiary of a 100% family company. The provisions of section 623 TCA 1997 will, however apply
- Relief does not extend to stamp duty
- Must be for bona fide commercial reasons and not to secure a tax advantage of any kind.

11A.5 Advance Approval

As advised in Tax Briefing 44 advance approval should be sought for this relief. Requests for approval should identify the parties involved (quoting full tax references) and outline the existing structure, the reasons for the partitioning and the proposed new structure together with the proposed steps to achieve the new structure. Undertakings may be sought in relation to some of the conditions above. **Requests for approval should be made by reference to “The Guidelines on Revenue’s Service to Practitioners and Business Taxpayers”.**

11A.6 Example

A & B hold shares 50/50 in Co. X, which carries on two trades, T1 & T2. The following steps could be put in place to achieve the relief under this precedent:

1. Co. X reorganises its share capital into two separate classes to reflect the trades, which are to belong to the respective shareholders post partition. [There would then be two classes of shares, one class held by A which derives its value solely from the assets and trade of T1, and the other class held by B, which derives its value solely from the remaining trade, T2.]
2. B sets up Newco which he owns 100%
3. Co. X transfers trade T2 to Newco in return for Newco issuing new shares to B in respect of his holding in Co. X
4. B’s shareholding in Co. X is cancelled.
5. A holds all the shares in Co. X, which now carries on the trade of T1. B holds all the shares in Newco, which now carries on the trade of T2.

If the conditions outlined above are satisfied, the relief provided by section 587 will apply to the shares issued by Newco and the transaction will be treated as an exchange of shares. The new holding will be treated in the hands of the shareholder as if it was the original holding. Additionally, the relief provided by section 615 will apply to the transfer of the trade by Co. X to Newco, so that no corporation tax will be charged in respect of chargeable gains accruing to Co. X, but Newco will be treated as if it had acquired the assets at the time and the price, at which they were acquired by Co. X.

