

[20.1.7] Replacement of Business Assets by Members of Group (S.620)

- 7.1** **Section 620** modifies the provisions of **section 597** in the context of groups of companies. **Section 597** provides for rollover relief where a person disposes of trading assets and uses the proceeds to acquire other trading assets within a given period. Under the rules, the person may claim that the chargeable gain on the old assets is not charged to tax until the person disposes of the replacement assets. This section provides that for the purposes of **section 597** all trades carried on by members of a group of companies are to be treated as a single trade. **Relief under Section 597 (and hence Section 620) was discontinued for disposals on or after 4 December 2002. Gains arising on disposals before that date may continue to be “rolled over” while the vendor continues to invest the consideration for subsequent disposals of qualifying assets in replacement qualifying assets.**
- 7.2** **Section 620** applies to trades carried on by resident companies and trades carried on in the State through a branch or agency by companies not resident in the State (but which are resident in other EU Member States or in EEA Member States with which Ireland has a tax treaty. In the case of companies which are not resident in the State the assets concerned must be chargeable assets in relation to the company if this section is to apply.
- 7.3** Subject to **par 7.4** below, all the trades carried on by the members of a group are treated as a single trade carried on by the same person. For example, a group will not lose the benefit of **Section 597** where, on a reorganisation of its business, one company of the group acquires new machinery from outside the group in order to take over a process previously carried on by another company in the group which has disposed of its machinery outside the group. Similarly, if one trading company in a group disposes of an asset outside the group and another company in the group acquires an asset from outside the group, rollover relief is available (subject to the other conditions of **Section 597** - see **Tax Instruction 19.6.2 Par. 2** et seq.) even though there is no transfer of funds between the members of the group and, therefore, no direct application of the disposal proceeds by the company which made the disposal.
- 7.4** The single trade concept outlined in **par. 7.3** above does not apply where either the person acquiring the old asset (from the group member who disposed of it) or the person disposing of the new asset (to the group member who acquired it) is also a member of the same group. For example, if A, B and C are trading members of a group and A has a gain from the disposal of a qualifying asset to a company which is not in the group, whilst B acquires another qualifying asset from C, A's trade is not treated as one with B's for the purpose of rolling-over A's gain against the asset which B has acquired from C, so that there is no postponement of the charge on A's gain.

[20.1.4]

- 7.5** In practice, a property holding company within a group should, in relation to properties used for the purposes of any of the trades carried on by trading members of the group, itself be treated as if it were a trading company. Consequently, if land held by a holding company in a group and used for trade by a trading company in the group is sold and replaced by land similarly used, then relief under **Section 597** is available (subject to the other conditions of the Section) whether the purchase is made by the holding company or by a trading company within the group and whether or not funds are transferred between the companies concerned.
- 7.6** If any gain becomes assessable, it is assessable on the member of the group which holds the asset on the occurrence of the occasion of a charge.

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