

[20.1.8] Depreciatory transactions in group (S.621)

8.1 **Section 621** is designed to counter various devices whereby groups of companies strip value out of one member's shares into another member or members of the group and follow this by a disposal of the shares in the "stripped" company in respect of which an allowable loss is claimed. Such devices are known as depreciatory transactions. The counter measures deal with any of the following transactions where the effect is to reduce materially the value of the shares or securities of the company the shares of which are being disposed of:

- a) The disposal of assets by one member to another at other than market value.
- b) Any transaction satisfying the conditions set out in **Section 621(4)**.
- c) The cancellation of the shares or securities of one member of a group under Section 72, Companies' Act, 1963 (**Section 621(5)**).

For the purposes of this section, a group of companies may consist of companies some or all of which are non-resident in a relevant Member State ([Tax Instruction 20.1.3](#)).

8.2 The section applies where the value of shares or securities has been materially reduced by a depreciatory transaction effected on or after 6 April 1974. It does not apply to any transaction (including a disposal of assets or a distribution) to the extent that it consists of a payment which has to be taken into account in computing a chargeable gain or allowable loss for corporation tax on the company or companies making the disposal of the shares in the "stripped" company.

8.3 For the purposes of **Section 621** -

- a) securities include any loan stock or similar securities whether secured or unsecured;
- b) references to the disposal of assets include references to any method by which one company appropriates the goodwill of another member of the same group;
- c) references to a disposal of shares include references to a claim under **Section 538(2)**.

8.4 If the company making the disposal is, or has at any time been, a member of the group of companies concerned in the depreciatory transaction, then any loss arising on disposal is restricted to such an amount as appears to the inspector or, on appeal, the Appeal Commissioner or a Circuit Court Judge to be just and reasonable. A minority shareholder (possibly a member of another group of companies) who has suffered from the depreciatory transaction, is, however, excluded from the operation of **Section 621**, provided that such a shareholder was not a member of the group at the time of the depreciatory transaction.

[20.1.8]

The amount of the allowable loss is to be restricted without giving credit for any increase in the value of the assets of another member of the group as a result of the deprecatory transaction. Any other transaction on or after 6 April 1974, which has enhanced the value of the company being disposed of while depreciating the value of another group member's assets may, however, be taken into account when restricting the amount of the allowable loss.

The object of the inspector should be to ensure that the loss restriction is of such an amount that the final figures in the capital gains computation are the same as they would have been if the assets had been disposed of by the transferring company at market value.

8.5 Any reduction in the value of shares or securities in a company caused by a deprecatory transaction may be balanced by an increase in the value of the shares or securities in the company benefiting from the transaction. No allowance is to be made for this when restricting the loss claim (see **Par 8.2**) but if within ten years of the deprecatory transaction a chargeable gain arises on the disposal of shares or securities in the company benefiting from the transaction, some reduction of the gain may be due. Such reduction is the amount considered just and reasonable by the inspector (or the Appeal Commissioners or Circuit Court Judge on appeal) having regard to the effect of the deprecatory transaction on the value of the shares or securities at the time of their disposal. The total amount of any reduction of the gain is not to exceed the amount of the loss restriction.

8.6 The definition of "deprecatory transaction" (see **Par 8.1**) covers transactions which do not consist of a disposal of assets. Such transactions may include, for example

- a) payments for group relief in excess of the tax advantages obtained;
- b) cancellation of loans or debts;
- c) liabilities transferred;
- d) rents or other payments at non-commercial rates.

The above list is not exhaustive.

The treatment of the restricted loss or reduction of certain chargeable gains should follow the same pattern as in **Pars 8.4 & 8.5**.

If one company in a group has a shareholding in another member of the group and these shares are cancelled under **Section 72** of the **Companies Act, 1963** (which includes also any cancellation under Sections 201 and 202 of that Act), then such a cancellation is treated as a deprecatory transaction.

8.7 See **Section 649** for the provisions relating to companies chargeable to capital gains tax on chargeable gains.

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