

[20.1.11] Exemption from charge under S623 in the case of certain mergers (S.624)

- 11.1** In order to facilitate bona fide company mergers **Section 624** provides that **Section 623** is not to apply if all the following conditions are satisfied when a company (referred to in these instructions as “company A”) leaves the group as part of a merger:
- a) There are bona fide commercial reasons for the merger.
 - b) Avoidance of tax is not the main or one of the main purposes.
 - c) The merger is within the definition in **Section 624(2)**.
- 11.2** For the purposes of the section a merger is defined as being an arrangement or series of arrangements:
- a) whereby a company, or companies, outside a group of companies acquires, or acquire, one or more interests in the whole or part of the business carried on by company A (the company leaving the group); and
 - b) whereby the group of companies of which A was a member acquires an interest in the business carried on by each acquiring company or, in the case of a consortium operating through a joint operating company, by a company 90 per cent or more of whose ordinary share capital is owned by the acquiring companies; and
 - c) in respect of which the conditions in **Par. 11.4** are satisfied.
- 11.3** For the purposes of the section it is provided that -
- (i) the acquisition must be otherwise than with a view to disposal;
 - (ii) a member of a group shall be treated as carrying on as one business the activities of the group;
 - (iii) the word “company” can include a company not resident in a relevant Member State ([Tax Instruction 20.1.3](#))
- 11.4** The conditions referred to in **Par. 11.2** are as follows:
- a) Not less than 25 per cent by value of the interests acquired by each party are to be by way of ordinary share capital, the balance (as regards the acquisition by A or its group) being by way of debentures or shares.
 - b) The value or aggregate values of the interests acquired by both parties to the merger are to be substantially of the same value.
 - c) The consideration received by the group of companies of which A ceases to be a member is to be applied in the acquisition of the

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interest in the other group of companies. The words of the Act ensure that the consideration may be wholly in shares or partly in cash and partly in shares provided that the part in cash is applied to purchase the relevant shares.

- 11.5** It should be borne in mind that when both sets of companies are resident in the State then both are “acquiring companies” for the purpose of **Section 624(2)(a)** i.e., each will be in an “a” group for one part of the transaction, and in the other group for the counterpart of the transaction.
- 11.6** See **Section 649** for the provisions relating to companies chargeable to capital gains tax on chargeable gains.