

[20.1.12] Shares in subsidiary member of group (S.625)

12.1 **Section 625** counters a method of avoidance under which the company reconstruction and amalgamation provisions in **Sections 586** and **587** (see **Tax Instruction Part 19-04-10 & Part 19-04-11**) are used to transfer a company out of a group without the increase in its value being caught for capital gains. The device is countered by re-imposing the charge deferred by **Sections 586 or 587**.

12.2 The section applies if any company (the subsidiary company) ceases to be a member of a group and, on an earlier occasion, the shares in it were disposed of by another company (the chargeable company) then in the group in the course of an amalgamation or reconstruction within the group, provided that the disposal was within ten years before the subsidiary company ceased to be a member of the group.

The reference to a “company ceasing to be a member of a group” does not apply where a company ceases to be a member because -

- (i) it is wound up or dissolved; or
- (ii) another member of a group (e.g., an immediate parent) is wound up or dissolved.

For the purpose of **Section 625** there is a “disposal of shares on an earlier occasion” if **Section 586** or **587** applies to shares or debentures in a company so as to equate them with other shares or debentures of another company in the same group or where shares are cancelled and replaced by a new issue (see **Tax Instruction 19.4.10 & 11**).

12.3 The effect of the section is to re-impose the charge deferred by **Section 586** or **587**. There is a deemed disposal and re-acquisition of the shares at market value by the chargeable company (see **Par. 2**) immediately before it disposed of the shares to another member of the group.

12.4 If the chargeable company has been liquidated or dissolved before the subsidiary company ceases to be a member of the group, any Corporation Tax which would have been charged on the chargeable company under this section may be assessed and charged (in the name of the chargeable company) on the company which is the principal company of the group at the time the subsidiary company leaves the group.

12.5 Tax which is not paid within six months of the payable date may be recovered by assessing and charging (in the name of the chargeable company), within two years of the tax becoming payable, either -

- a) the company which on the payable date or at the time of the deemed disposal and re-acquisition is the principal company of the group; or
- b) any company taking an interest in the subsidiary as part of the amalgamation and reconstruction.

[20.1.12]

The company paying such tax is empowered to recover the tax from the chargeable company, or from the company which becomes chargeable upon the liquidation, etc., of the chargeable company.

Assessments may be made at any time within ten years of the subsidiary company's ceasing to be a member of the group. Where the deemed disposal and re-acquisition affects other computations, any necessary adjustments of tax, by assessment or otherwise, are to be made.

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

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