



Participation exemption from capital gains tax

A participation exemption on capital gains tax is available to Irish resident companies on the disposal of a shareholding interest if a number of conditions are met.

For the purposes of this factsheet, the company whose shares are being disposed of is referred to as the 'investee company' while the company making the disposal is referred to as the 'investor company'.

The conditions for the participation exemption to apply are set out in detail in S626B of the Taxes Consolidation Act. Below we outline a number of the key conditions for the participation exemption to apply to a disposal of shares.

Shareholding requirement

The investor company must hold at least a 5% shareholding in the investee company for a continuous period of at least 12 months at any time within the two years prior to the disposal. The investor company should be entitled to at least 5% of the profits available for distribution to equity holders in the investee company and be beneficially entitled to at least 5% of the assets of the investee company available for distribution to equity holders.

If the Irish holding company is unable to meet the minimum holding requirement but is a member of a group (that is, a parent company and its 51% worldwide subsidiaries), the gain arising on the disposal should still be exempt if the holding requirement can be met by including holdings of other members of the group. Thus, the Irish company may be exempt from capital gains tax on a disposal of shares even if it does not directly hold a significant shareholding.

Residence requirement

The investee company must be tax resident in either an EU member state (including Ireland) or in a country with which Ireland has a Double Taxation Agreement.

Trading requirement

The investee company's business consists wholly or mainly of the carrying on of a trade or trades, or in the case of group the activities of the group companies taken together as a whole consists wholly or mainly of carrying on a trade or trades.

Wholly or mainly trading definition:

For the purposes of the trading requirement, Revenue have stated that 'wholly or mainly' means greater than 50%. In illustrating that the test is met, the primary tests applied are to net trading profits and net trading assets, although other matters such as the amount of employee time being devoted to the trading activity may also be considered.

The exemption may apply to a disposal of assets related to shares, such as options and convertible debt, but will not apply to the disposal of either shares or related assets that derive the greater part of their value from Irish real property or Irish situated minerals or mining rights or on the disposal of shares that derive their value or the greater part of their value from exploration and exploitation rights of the sea bed and subsoil in the State or the Continental Shelf.

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