



Ireland's Holding Company Regime – relief for the disposal of shares in a subsidiary

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This article discusses one of the key features of Ireland's holding company regime, the section 626B Tax Consolidation Act (TCA) 1997 capital gains tax relief for the disposal of shares in a subsidiary. This article is of interest to students of Professional 2 Advanced Taxation.

Participation Exemption (PE)

Section 626B TCA 1997 provides that, in certain circumstances, gains from the disposal of shareholdings by 'parent companies' are exempt from tax. There are a number of conditions that must be satisfied by the investor company and the investee company for the exemption to apply.

Conditions for the investor company:

1. The investor company is required to have a minimum holding of at least 5%. Specifically, the parent (investor company) must have been beneficially entitled to:
 - Not less than 5% of the investee company's ordinary share capital;
 - Not less than 5% of the profits available for distribution to equity shareholders of the investee company and
 - Not less than 5% of the assets available for distribution on a winding-up of the investee company.
2. The investor company must have the minimum holding in the investee company for a continuous period of at least 12 months in the 2 years prior to the disposal.

Conditions for the investee company:

1. The investee company must carry on a trade or trades. Alternatively, the business of the investor company and the investee company, taken together, must consist wholly or mainly of carrying on a trade or trades.

Irish Revenue's Tax Briefing 66 (July 2007) clarifies that 'wholly or mainly' means greater than 50%. Revenue views that the primary tests which should be used are the proportion of net trading profits and the proportion of net trading assets, though other factors may be taken into account. These lesser considerations would include trading turnover as a proportion of gross receipts and the proportion of employees' time devoted to trading and non-trading activities.

2. At the time of the disposal, the investee company must be resident in a Member State of the EU or a country with which Ireland has a tax treaty.

The PE applies automatically if the relevant conditions for the relief are met. It is important to note that if a loss is incurred by a parent company and the conditions for the PE are met, then there is no relief for the loss on the basis that if there had been a gain, it would not be taxable.

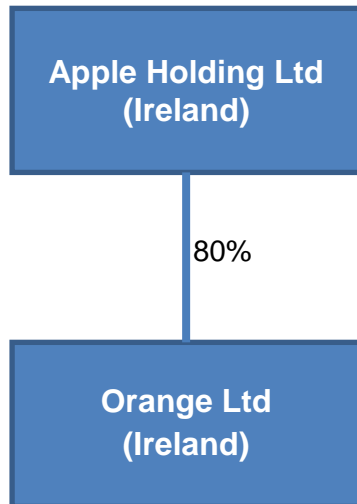
The PE does not apply where the shares in the investee company derive the greater part of their value from land in Ireland or from minerals, or rights or interests in relation to mining or minerals or the searching of minerals in Ireland or exploration and exploration rights of the seabed. As a result of this

exclusion, it is essential to review the statement of financial position of the investee company and identify if more than 50% of the company's value is derived from, for example, land and buildings in Ireland,.

If an investor company is selling only part of its shareholding in an investee company, the PE may be available as long as the relevant conditions are met.

Examples where PE applies

Example 1

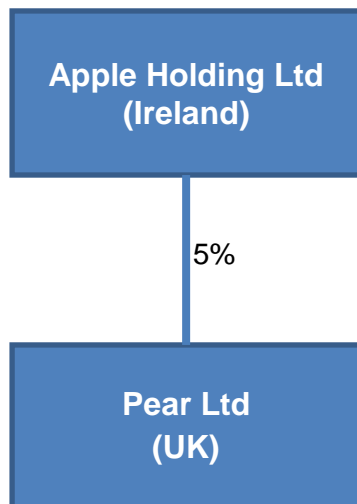


Orange Ltd (Investee Company) is a trading company and its shares have been held by Apple Holding Ltd for 3 years.

Apple Holding Ltd has been approached to sell its 80% shareholding to a UK company.

If Apple Holding Ltd sells its shares in Orange Ltd, any gain will be exempt under the PE.

Example 2

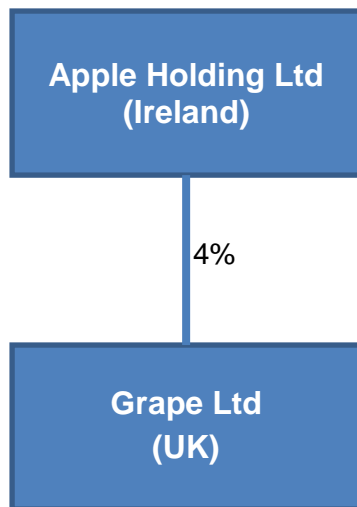


Pear Ltd (Investee Company) is a UK trading company and its shares have been held by Apple Holding Ltd for 1 year.

Apple Holding Ltd has been approached to sell its 5% shareholding to a US multinational company.

If Apple Holding Ltd sells its shares in Pear Ltd, any gain will be exempt under the PE.

Example 3

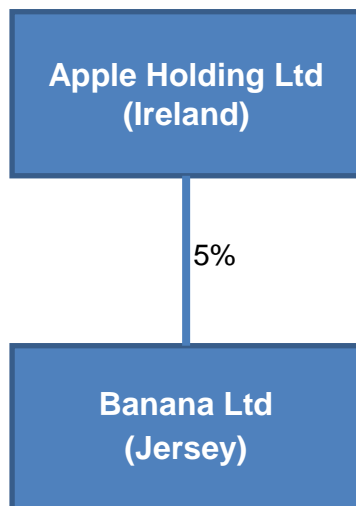


Grape Ltd (Investee Company) is a UK trading company. Apple Holding Ltd acquired an 8% shareholding in Grape Ltd in September 2005. Apple Holding Ltd sold 4% of its 8% shareholding on 1 August 2012.

In May 2013, Apple Holding Ltd was approached to sell its remaining 4% shareholding. If Apple Holding Ltd sells its shares in Grape Ltd, any gain will be exempt under the PE. Although, Apple Holdings Ltd did not own a 5% shareholding at the date of disposal, the company did own a 5% shareholding in Grape Ltd for 12 months out of the last 2 year period of ownership.

Examples where PE does not apply

Example 4

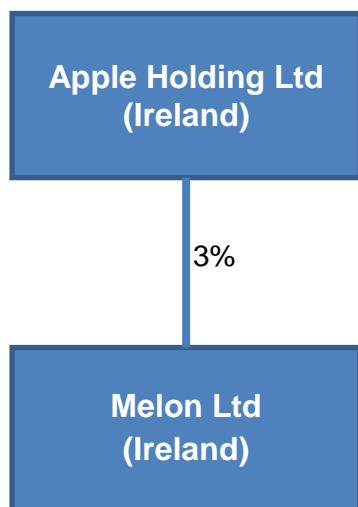


Banana Ltd (Investee Company) is a trading company in Jersey and its shares have been held by Apple Holding Ltd for 10 years.

Apple Holding Ltd has been approached to sell its 5% shareholding to a US multinational company.

If Apple Holding Ltd sells its shares in Pear Ltd, any gain will be subject to tax in Ireland as Jersey is not in the EU nor is it a country with which Ireland had a double taxation treaty.

Example 5

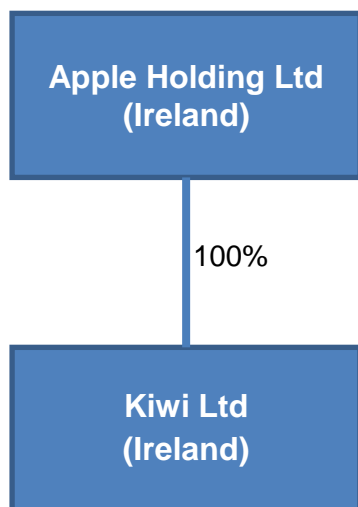


Melon Ltd (Investee Company) is a trading company in Ireland and its shares have been held by Apple Holding Ltd for 10 years.

Apple Holding Ltd has been approached to sell its 3% shareholding to a US multinational company.

If Apple Holding Ltd sells its shares in Melon Ltd, any gain will be subject to tax in Ireland as at least a 5% holding is required for the PE to apply.

Example 6



Kiwi Ltd (Investee Company) is a trading company and its shares have been held by Apple Holding Ltd for 15 years.

Kiwi Ltd's statement of financial position for the year ended 31 December 2012 had a net asset value of €1,000,000. €700,000 of this relates to the value of land held by the company in Cork.

Apple Holding Ltd has been approached to sell 50% of its shareholding to a UK company. Apple Holding Ltd will be subject to tax in Ireland on any gain made on the shares. Apple Holding Ltd cannot avail of the PE as the greater part of the value of Kiwi Ltd's assets relate to land in Ireland.

Summary of the key points of PE

Irish holding (investor) companies can benefit from a full exemption from Irish capital gains tax in respect of gains arising on the disposal of shares in certain subsidiary (investee) companies if a shareholding, trading, assets and jurisdictional tests are met.

- **Shareholding test** – investor company has held at least **5%** of the ordinary shares (and had similar level of rights to profit distributions and assets) in the investee company for a continuous period of 12 months at any time within 2 years prior to the disposal **AND**
- **Trading test** – the investee company is an active trading company or when viewed as part of a group (taken with the investor company and other 5% subsidiaries), that group is mainly (>50%) carrying on trading activities **AND**
- **Asset test** – the investee company does not derive the greater part of its value from land in Ireland or from minerals, or rights or interests in relation to mining or minerals or the searching of minerals in Ireland or exploration and exploration rights of the seabed **AND**
- **Jurisdictional test** – the investee company is tax resident in an EU country or a country with which Ireland has signed a double taxation treaty.