Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2024 edition

Part 19

Principal Provisions Relating to Taxation of Chargeable Gains

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TAXATION OF CHARGEABLE GAINS

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PRINCIPAL PROVISIONS RELATING TO TAXATION OF CHARGEABLE GAINS

CHAPTER 1
Assets and acquisitions and disposals of assets

Overview

This Chapter provides for such matters as the meaning of "assets" for the purposes of the Capital Gains Tax Acts and the rules for the determination of the location of certain assets. It also contains rules to extend the concept of what constitutes a "disposal" for capital gains tax purposes.

532 Assets

A charge to capital gains tax can only arise where there is a disposal of an asset. All forms of property are assets for the purposes of the Capital Gains Tax Acts whether situated in or outside the State. The following are specifically included as assets —

- options, debts and incorporeal property generally, ***(a)***
- any currency other than the currency of the State, and ***(b)***
- any property which has not been acquired by the person owning it (for example, business goodwill or copyright). ***(c)***

533 Location of assets

Summary

This section sets out the rules for determining the location of certain assets, such as rights attaching to assets, other incorporeal assets, ships and aircraft, the location of which might otherwise be difficult to determine. The section is expressed to be subject to ***section 29*** because under that section gains accruing on assets in the State's area of the Continental Shelf are deemed to accrue from the disposal of assets situated in the State.

Normally, the question of determining the location of an asset should not give rise to difficulty and, in the case of a person who is resident or ordinarily resident in the State, is largely immaterial. This is because under ***section 29(2)*** such a person is liable to capital gains tax on all chargeable gains irrespective of where the assets are situated. Location is of importance, however, in the case of a person who is neither resident nor ordinarily resident in the State. Such a person is chargeable under ***section 29(3)*** only in respect of chargeable gains accruing on the disposal of certain specified assets situated in the State. Similarly, in the case of a person who is resident or ordinarily resident in the State but not domiciled in the State, the location of assets is of importance. Under ***section 29(4***) such a person is liable to tax in respect of gains on the disposal of assets situated outside the State only on so much of the gains as are remitted to the State and, in addition, losses on disposals of assets so situated are not allowable losses.

Details

The situation of rights or interests (otherwise than as security) in or over immovable property (that is, land and buildings) is that of the immovable property. ***(a)***

Subject to the following rules, the situation of rights or interests (otherwise than as security) in or over tangible movable property (chattels) is that of the tangible movable property. ***(b)***

Subject to the following rules, a debt, either secured or unsecured, is situated in the State only if the creditor is resident in the State. ***(c)***

Shares or securities issued by any municipal or governmental authority, or by any body created by such an authority, are situated in the country of that authority. ***(d)***

Shares or securities of an Irish-incorporated company are treated as being located in the State. “Shares” includes any instrument or security which derives its value from or is calculated by reference to shares. ***(da)***

Subject to the previous rule, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated. ***(e)***

A ship or aircraft is situated in the State only if the owner is resident in the State. An interest or right in or over a ship or aircraft is situated in the State only if the person entitled to the interest or right is resident in the State. ***(f)***

The situation of goodwill as a trade, business or professional asset is the place where the trade, business or profession is carried on. ***(g)***

Patents, trade marks and designs are situated where they are registered and, if registered in more than one register, where each register is situated. Copyright, franchises, rights and licences to use any copyright material, patent, trade mark or design are situated in the State if they, or any rights derived from them, are exercisable in the State. ***(h)***

A judgment debt is situated where the judgment is recorded. ***(i)***

534 Disposals of assets

The term “disposal” is not defined. Thus, it must take its ordinary natural meaning, namely, a transfer of ownership in an asset whether by means of sale, gift or otherwise. This section provides that —

- references to a disposal of an asset include references to a part disposal of an asset, except where the context requires otherwise, and ***(a)***
- there is a part disposal where an interest or right in or over an asset is created by the disposal (for example, a sub-lease granted out of a lease) and also, in general, where the person making the disposal retains some form of property derived from the asset, whether a physical part of the asset or an interest in the whole asset. ***(b)***

Special rules apply in calculating the chargeable gain or allowable loss arising on a part disposal – ***sections 557*** and ***558*** refer.

535 Disposals where capital sums derived from assets

Summary

This section extends further the concept of disposal. It provides that there is a disposal of an asset where any capital sum is derived from the asset, even if no asset is acquired by the person paying the capital sum. The section is expressed to be subject to ***section 536*** which provides that the receipt of certain compensation or insurance monies is not to be treated as a disposal in certain circumstances, and ***section 537(1)*** which provides that the transfer of an asset as security (for example, a mortgage of property) or a retransfer on redemption of the security is not a disposal of an asset.

Details

A "capital sum" is any money or money's worth which is not excluded from being taken into account as consideration in the computation of the gain on the disposal of an asset. An example of receipts so excluded is a case where a capital gain would be treated as a trading receipt for income tax purposes. ***(1)***

Subject to the exceptions already mentioned, there is a disposal of an asset where any capital sum is derived from the asset. This rule applies even if no asset is acquired by the person paying the capital sum. [It should be noted, however, that ***section 613(1)*** provides an exemption from capital gains tax for capital sums received as compensation or damages for any wrong or injury suffered by an individual to his/her person or in his/her profession.] ***(2)(a)***

Without taking from the generality of this rule, the receipt of the following capital sums is in particular treated as being a disposal —

- compensation for damage to assets or for the loss or destruction or depreciation of assets (for example, an infringement of copyright);
- insurance payments on account of the damage to or loss or depreciation of an asset (there is, however, a roll-over type relief (deferral of the gain) provided by ***section 536*** in certain cases);
- moneys received for the forfeiture or surrender of rights (for example, a release from a contract);
- consideration for the use or exploitation of assets (for example, a premium for a lease over land).

Notwithstanding that the receipt of an insurance payment on account of the damage to or loss or depreciation of an asset is treated as a disposal, the rights of the insurer or insurer under an insurance policy do not constitute chargeable assets. Policies of insurance on human life are excluded from this provision because such policies are specially dealt with in ***sections 593*** to ***595***. ***(2)(b)***

Provision is made, however, to prevent avoidance of the charge on capital sums receivable under a policy of insurance through assignment of rights before the compensation is paid over. Such an assignment could otherwise take advantage of ***subsection (2)(b)*** which provides that the disposal of rights under a policy does not give rise to a chargeable gain. ***(2)(c)***

Example

A building which cost €100,000 is insured for the full value against all risks. The asset is totally destroyed by fire and compensation is agreed at €100,000. Before payment of the compensation the policyholder assigns his rights under the policy to a third party for €100,000. Under ***subsection (2)(b)*** the assignment does not give rise to a chargeable gain or an allowable loss. The building has been destroyed and under ***section 538*** this is a disposal of the asset, and as no compensation can be obtained a capital loss accrues, thus —

Consideration received on disposal	Nil
Cost of asset	€100,000
Loss	€100,000

To counteract such schemes, the assignment of the rights in the circumstances described is treated as a chargeable occasion, and this prevents the creation of an artificial loss when in fact the person concerned suffered no loss.

536 Capital sums: receipt of compensation and insurance moneys not treated as a disposal in certain cases

Summary

Under ***section 535*** capital sums derived from an asset may be treated as giving rise to a disposal of the asset. ***Section 536*** allows deferment of the charge on the receipt of compensation or insurance money for damage to or destruction of assets, or of sums for the forfeiture or surrender of rights or for the use or exploitation of assets, if the money received is used in restoring or replacing the asset. The amount received is treated as reducing the cost of the asset (or, in the case of the loss or destruction of the asset, the cost of replacing it), and the charge on the compensation money is not imposed until the asset or the asset replacing it has been disposed of. The relief must be claimed – it does not apply automatically.

Details

There are three separate aspects to the relief.

Asset not wholly lost or destroyed

A person may claim that the receipt of a capital sum as compensation or insurance for damage to assets which are not lost or destroyed is not to be a disposal of that asset in whole or in part. Instead of a charge to capital gains tax being imposed at the time of receipt of the compensation or other sum, the amount received is treated as reducing the cost of the asset so that when the asset comes to be disposed of only the cost as so reduced will be deductible from the consideration in computing any capital gain. To qualify for the relief the amount received must — ***(1)(a)***

- be applied wholly in restoring the asset, or
- be so applied except for a part which is not required for that purpose and which is small as compared with the whole amount.

In the latter situation, in order to prevent the possibility of the amount allowable on the disposal of an asset becoming a negative or a minus quantity, the relief does not apply if immediately before the receipt of the capital sum there is no remaining allowable expenditure or the amount of the capital sum exceeds any such expenditure. In these circumstances the normal charge to capital gains tax applies. ***(1)(b)***

Compensation for loss or destruction of asset entirely reinvested

Where an asset is lost or destroyed and any capital sum received in compensation or under an insurance policy is used in replacing the asset, the owner may claim to be treated as if — ***(2)***

- no gain or loss had accrued on the disposal of the old asset, and
- the cost of the new asset were reduced by any notional gain.

The notional gain is the sum of the compensation money and any scrap value of the asset reduced by the cost price of the asset. The capital sum must be used to replace the asset within 1 year of the receipt of that sum or within such longer period as the inspector may allow.

Compensation for loss or destruction of asset partly reinvested

A claim for relief under ***subsection (2)*** cannot be made if part only of the compensation money is used in replacing the asset. If, however, the part withheld is less than the gain (even if this is not all chargeable), the owner may claim that — ***(3)***

- the gain be reduced to the amount of the part withheld (or a proportion of it where the gain is not all chargeable), and
- the cost of the new asset be reduced by the amount of the reduction in the chargeable gain.

Example

(A)	Compensation received	€100,000	
	Gain	€20,000	
	Reinvested	€90,000	
	Amount of compensation withheld	€10,000	(less than gain €20,000)
	Reduce gain chargeable to	€10,000	
	Reduce cost of new asset by	€10,000	(from €90,000 to €80,000)
(B)	If amount reinvested is only	€70,000	
	Amount of compensation withheld	€30,000	(greater than gain €20,000)
	Charge gain in full	€20,000	
	No adjustment in cost of new asset	€70,000	

The relief does not apply to wasting assets (defined in ***section 560***). ***(4)***

The relief does not apply to a disposal or a deemed disposal of a property, or of an interest in a property, located in the State, to an authority possessing compulsory purchase powers, where such a disposal would not have been made but for the exercise by the authority of those powers, or but for the authority giving formal notice of its intention to exercise those powers. ***(5)***

538 Disposals where assets lost or destroyed or become of negligible value

Summary

The occasion of the complete destruction or extinction of an asset is treated as a disposal of the asset for capital gains tax purposes, even where no capital sum is received by way of compensation or otherwise. This may give rise to a loss, or a gain if compensation is received.

If, on a claim being made by the owner, the inspector is satisfied that the value of an asset has become negligible, the inspector may allow a loss. The loss is computed as if the asset had been sold for an amount equal to the value specified by the owner in the claim.

Where a person makes such a claim in respect of a holding of shares in a company which has been dissolved and the person becomes entitled to the assets of the company by way of Ministerial waiver under section 31 of the State Property Act, 1954, the section provides that the loss arising to the person cannot be utilised for capital gains tax purposes until such time as the assets are disposed of.

An owner of a building or structure may claim a loss when its value has become negligible by treating it as separate from the land on which it is situated. In order to allow for the possibility that the land could have increased in value, the site is deemed to have been sold separately at the same time and reacquired at market value, and any gain arising on this deemed disposal is set off against the loss on the building or structure.

Details

The entire loss, destruction or extinction of an asset is treated as a disposal of the asset, even when no capital sum is received by way of compensation, and relief for the loss may ***(1)*** be claimed. This rule is subject to ***section 540*** which lays down detailed rules for the treatment of options.

The owner of an asset may make a claim to the inspector for the allowance of a loss on an asset the value of which has become negligible even though the asset remains in existence. Where the inspector is satisfied as to the merits of the claim, a loss should be allowed. The loss is computed as if the asset had been sold and immediately reacquired by the owner for an amount equal to the value specified in the claim. That value then forms the base cost of the asset for the purposes of the computation of any gain or loss on a later disposal of the asset. ***(2)***

Where a person, who held shares in a company which has become dissolved, acquires property of the company by way of Ministerial waiver under the State Property Act, 1954, any allowable loss accruing to the person as a result of a claim under ***subsection (2)*** in respect of those shares is allowed to be deducted from chargeable gains accruing in a year of assessment not earlier than the year of assessment in which the acquired property is disposed of. ***(2A)(a)***

Where a company has no share capital the references in ***subsection (2A)(a)*** to “shares” includes a reference to any interest possessed by a member in that company. ***(2A)(b)***

Provision is made for apportionment of the loss on the shares where only part of the property acquired under a Ministerial waiver is disposed of. ***(2A)(c)(i)***

Where a person who acquired an asset under Ministerial waiver disposes of it to his/her spouse or civil partner the capital loss on the shares is not allowed at the time of that disposal. ***(2A)(c)(ii)***

The treatment in ***subsections (1)*** and ***(2)*** is extended to buildings and structures on land by treating them as assets separate from the land on which they are situated. This is necessary to bring buildings and structures within the scope of the section because in law the asset is the land and cannot be destroyed or reduced to negligible value. The treatment of a building or structure as an asset separate from the land on which it is situated enables relief to be given under ***subsection (1)*** or ***(2)*** where necessary. To provide for the possibility that the land could have increased in value, the site is deemed to have been sold separately at the same time and reacquired at market value, and any resultant gain is set off against the loss on the building or structure. ***(3)***

539 Disposals in cases of hire purchase and similar transactions

A hire purchase of an asset is treated, as regards both parties to the agreement, as an outright disposal of the asset at the beginning of the period of hire. However, if the hire terminates without the property in the asset passing to the person having the use or enjoyment of the asset (for example, by repossession for failure to pay the instalments), the necessary capital gains tax adjustments, whether by way of repayment of tax or discharge, is to be made on the basis that there was in fact no disposal of the asset in the first instance. This treatment also applies to other transactions under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to the person. ***(1)***

Notwithstanding the general time limit for making a claim for a repayment of tax set out in ***section 865,*** any excess tax paid may be repaid by the Revenue Commissioners where a claim for the relevant adjustments is made within 4 years from the end of the chargeable period in which the termination referred to in ***subsection (1)*** occurs. ***(2)***

540 Options and forfeited deposits

Summary

An option is specifically included as an asset for capital gains tax purposes – see ***section 532(a)***. ***Section 540*** sets out a number of detailed rules for the treatment of options, including double options and option payments, whether options to buy or sell or to enter into any transaction which is not a sale (for example, the grant of a lease).

An option is treated as a separate chargeable asset in the hands of the grantor but not in the hands of the person to whom it is granted. If an option is not exercised, the grantor is not put to any expense and the consideration the grantor received for giving the option is a gain. The abandonment of an option by the person (the grantee) entitled to exercise it is treated as a disposal by the grantee of an asset, namely, the option. With 3 exceptions, the abandonment of an option cannot give rise to an allowable loss by the grantee. The exceptions are – a quoted option (one quoted and dealt in on a stock exchange in the same manner as shares) to subscribe for shares in a company, a traded option (one which is quoted on a stock exchange or a futures exchange) and an option to acquire assets exercisable by a person intending to use the assets, if acquired, in the person's trade. The abandonment of an option in these 3 cases gives the grantee the right to claim an allowable loss equal to the amount of the allowable expenditure on the option.

Where an option is exercised, the option and its exercise merge into a single transaction. If it is an option binding the grantor to sell, the option consideration is treated as part of the sale consideration in the hands of the grantor, while for the grantee the cost of the option is treated as part of the cost of the acquisition of the asset. If the option binds the grantor to buy, the grantor must deduct the option consideration from the cost of acquisition while the grantee is allowed to deduct the cost of the option as an incidental cost of the disposal of the asset to the grantor.

In the case of a double option where the grantor is bound both to sell and to buy, the option consideration is divided equally and the rules in the section apply as if there were 2 separate options.

Details

Definitions

"quoted option" is an option which at the time of abandonment or other disposal is quoted on any stock exchange in the same manner as shares. ***(1)***

"traded option" is an option which at the time of abandonment or other disposal is quoted on any stock exchange or futures exchange.

References to an option include references to an option binding the grantor to grant a lease for a premium or to enter into any other transaction which is not a sale, and references to buying and selling in pursuance of an option are to be construed accordingly.

Grant of option is generally a disposal

The grant of an option is a disposal of an asset even where the grantor does not own the asset which the grantor binds himself to sell or, because the option is abandoned, never has occasion to own. Similarly, where the grantor binds himself to buy, the granting of such an option is a disposal of an asset even though the grantor never acquires the asset because the option is abandoned. ***(2)***

Merging of transactions where option is exercised

However, where an option is exercised, then, in so far as the grantor is concerned, the sale or purchase, as the case may be, is treated as one transaction with the option itself. Thus, ***(3)*** the option consideration is added to the main consideration in computing a gain or loss on the sale or, if it is a purchase, deducted from the cost of acquisition.

The exercise of an option is not treated as a disposal by the person entitled to exercise it. If the option is exercised, it is treated as a single transaction with the acquisition or sale of the asset. Thus, where the grantor is bound to sell, the option consideration is added to the grantee's cost of acquiring the asset and, where the grantor is bound to buy, the option consideration is treated as an incidental cost to the grantee of the sale of the asset. ***(4)***

Example 1

Exercise of option to sell

A grants B an option for €10,000 which binds A to sell land to B for €200,000 if required to do so within 1 year of the date of the option. B exercises the option and the land is sold to B for the agreed price.

Treatment of grantor (A)

The total sales proceeds of the disposal of the land is calculated as follows —

Sale price of land	€200,000
Sale price of option	€10,000
Total sale proceeds	€210,000

Treatment of grantee (B)

B has paid €10,000 to A for the option and a further €200,000 to A for the purchase of the land. The capital gains tax cost to B in acquiring the land is the cost of the option, €10,000, plus the price paid for the land, €200,000, that is, a total of €210,000.

Example 2

Exercise of option to buy

X grants an option to Y for €10,000 binding X to buy land from Y for €200,000 if required to do so within 1 year of the date of the option. Y exercises the option and X buys the land for the agreed price.

Treatment of grantor (X)

The cost of the acquisition of the land for capital gains purposes is calculated as follows —

Purchase price	€200,000
Less amount received for option	€10,000
Base cost for capital gains tax purposes	€190,000

Treatment of grantee (Y)

Y has sold land to X for €200,000. In determining the gain or loss on the disposal, Y will take the actual cost of the land into account and is also allowed to treat the €10,000 paid for the option as an incidental cost of the disposal of the land.

Abandonment of options – general

The abandonment of an option by the person entitled to exercise it constitutes the disposal of an asset (the option) by that person. ***(5)(a)***

The abandonment of an option by the person entitled to exercise it cannot generally give rise to an allowable loss for capital gains tax purposes. This general rule does not apply in the case of certain options covered by ***subsections (7)*** and ***(8)(a)***. ***(5)(b)***

Certain options treated as wasting assets

Certain options are treated as wasting assets and the period over which wastage takes place is treated as running to the date the right to exercise the option ends or the date the option becomes valueless, whichever is the earlier. This rule applies in relation to the disposal by means of transfer of an option binding the grantor to sell or buy shares which have a quoted market value on a stock exchange. Accordingly, on any disposal of such an option its base cost is written down on a uniform basis. Thus, if an option cost €600 and has 6 months to run, one-sixth is written off each month to bring its value steadily down from the initial €600 to nil at the end of the 6 months. The value of the option may be reduced to nil earlier than the end of the 6 months if at any time the option becomes valueless (for example, because of a change in market prices). ***(6)***

Options to acquire business assets, quoted options and traded options

Special treatment applies to the exercise or abandonment of an option to acquire assets for the purpose of a business. If such an option is abandoned, the normal rule (***subsection (5)(b)***) that abandonment of an option cannot give rise to an allowable loss is disapplied. Also, whether the option is abandoned or exercised, the normal wasting assets rule provided by ***section 560(3)*** does not apply. This special treatment applies where a person is already carrying on a business and intends to use the assets subject to the option in that business and also where a person intends to use those assets in a business which the person proposes to set up. In the latter case the business must be set up within 2 years of acquiring the option. ***(7)***

Similar special treatment also applies to the exercise or abandonment of a quoted option to subscribe for shares in a company or of a traded option. Thus, if such an option is abandoned, the normal rule (***subsection (5)(b)***) that abandonment of an option cannot give rise to an allowable loss is disapplied. Also, whether the option is abandoned or exercised, the wasting asset treatment set out in ***subsection (6)*** and in ***section 560(3)*** does not apply. ***(8)(a)***

There is a further special rule to deal with the case where a quoted option to subscribe for shares in a company is dealt in within 3 months of a reorganisation or reduction of share capital, the conversion of securities, a company amalgamation by exchange of shares or a company reconstruction or amalgamation to which ***section 584***, ***585***, ***586*** or ***587*** applies. In such a case the option is treated in exactly the same way as the shares which could be acquired by the exercise of the option, and the market value rules for determining the value of quoted shares (***section 584(3)***) apply for determining the market value of the option. ***(8)(b)***

Double options

A double option (binding the grantor to both buy and sell) is treated as 2 options with half the consideration being attributed to each option. ***(9)***

Forfeited deposits

The same treatment as is applied to options also applies to forfeited deposits or other transactions which are abandoned. ***(10)***

540A Disposal of certain emissions allowances

Summary

The EU Emissions Trading Scheme (ETS), established under Directive 2003/87/EC, is a scheme that enables reductions in EU emission of greenhouse gases, committed to under the Kyoto agreement, to be achieved in a cost-effective way. The scheme operates by setting an overall limit on the level of emissions allowed in the EU, allocating emission allowances to enterprises operating within the scheme and requiring these enterprises to surrender sufficient allowances each year to cover their emission levels. Within the overall EU limit, enterprises can buy and sell emission allowances depending on their current and projected needs. An emission allowance gives the holder the right to emit one tonne of CO_2 or the equivalent amount of another greenhouse gas.

Section 43 of the Finance Act 2012 introduces two new sections to clarify the direct tax implications of two important aspects of the scheme. A new ***section 81C*** is also inserted into the Act to confirm that a tax deduction is available for expenditure incurred on the purchase of emission allowances under the EU scheme and that the consideration for the disposal by a company of such allowances, for the purposes of its trade, is deemed to be a trading receipt of the trade – see ***Part 4***.

Section 540A provides that where a permit holder sells, transfers or disposes of allowances acquired free of charge from the Environmental Protection Agency under the ETS scheme, or an interest in or rights over such allowances, the transaction will be treated as the disposal of an asset for capital gains tax purposes and chargeable to tax at the CGT rate. The tax charge will also apply to the disposal of such an allowance acquired by a company under the capital gains tax deferral provisions of ***section 617*** in the case of intra-group transfers, ***section 615*** in the case of the transfer of business assets under a scheme of reconstruction or amalgamation, or ***section 631*** in the case of the transfer of a trade. The section applies to disposals made on or after 8th February 2012.

Details

Definitions

This subsection is a definitions subsection and defines, for the purposes of the section, the following terms: ***(1)***

- "Agency";
- "aircraft operator";
- "Directive";
- "emissions allowance";
- "installation" and "operator";
- "permit";
- "relevant person"; and
- "relevant scheme".

Sale, transfer or disposal of emissions allowance

Subsection (2)(a) provides that, subject to ***paragraphs (b), (c) and (d)*** and notwithstanding ***section 110*** or any other provision of the Tax Acts, where a relevant person sells, transfers or otherwise disposes of an emissions allowance - in this section referred to as a 'relevant emissions allowance' - received or receivable free of charge by that person from the Agency in accordance with the Directive, such a sale, transfer or disposal constitutes the disposal of an asset for capital gains tax purposes and shall be treated as not being a disposal of trading stock. In addition, the subsection, in ***paragraph (a)(ii)***, provides that where any other company sells, transfers or otherwise disposes of a relevant emissions allowance which it acquired under, or as part of a relevant scheme, as defined, such sale transfer or disposal shall also constitute a disposal of an asset for capital gains tax purposes and shall be treated as not being a disposal of trading stock. ***(2)***

Interest or rights in or over emissions allowance

Subsection (2)(b) provides that the sale, transfer or disposal of a relevant emissions allowance shall include the sale, transfer or disposal of any interest or rights in or over such an allowance.

Surrender and cancellation of emissions allowance

Subsection (2)(c) provides that the surrender and cancellation of an emissions allowance in accordance with Article 12 of the Directive shall not constitute a sale, transfer or disposal for the purposes of ***paragraph (a)***.

Previous transfers

Subsection (2)(d) provides that the provisions of ***paragraph (a)(ii)*** shall not apply to any sale, transfer or disposal of a relevant emissions allowance where, at any time before that event, such allowance was previously transferred in circumstances where the transfer was not made under, or as part of, a relevant scheme, [being a scheme of reconstruction or amalgamation to which ***section 615*** applies, a transfer of an asset in relation to which ***section 617*** applies or a transfer of a trade, or part of a trade, in relation to which ***section 631*** applies.] This paragraph will ensure that, once the disposal of an emission allowances has been subject to a capital gains tax charge there will be no charge to CGT on subsequent disposals of that allowance.

Chargeable amount

Subsection (3)(a) provides that, in computing any chargeable gain on a disposal referred to in ***subsection (2),*** no sum shall be allowed as a deduction from the consideration for the disposal apart from incidental costs to the person making the disposal. Since the allowances in question were acquired free of charge, capital gains tax will be charged on the full disposal proceeds less any incidental costs to the disponer. ***(3)***

Purchased allowances deemed to have been disposed of first

Subsection (3)(b) provides that, in computing any chargeable gain on a disposal referred to in ***subsection (2),*** any purchased allowances will be deemed to have been disposed of before free allowances are disposed of by a company.

Non-application of section 596

Subsection (4) provides that the relieving provisions of ***section 596*** will not apply where a relevant emissions allowance acquired by a person is appropriated as trading stock of the trade carried on by that person. ***(4)***

541 Debts

Summary

A debt is an asset for capital gains tax purposes (***section 532(a)***). However, where an original creditor disposes of a debt no chargeable gain or allowable loss arises on the disposal. This treatment also applies where the disposal of the debt is made by the original creditor's personal representative or legatee. It follows, therefore, that only debts which have been purchased from the original creditor (or his/her personal representative or legatee) are regarded as chargeable assets.

The treatment outlined above does not apply to a debt on a security within the meaning of ***section 585***. The term "security" as set out in that section includes any loan stock or similar security of any government or of any public authority or of any company, whether secured

or unsecured, but excludes securities within ***section 607*** (for example, Irish Government stocks, loan stocks of Irish local authorities, etc.).

Details

Gain on disposal of debt by original creditor not chargeable

A chargeable gain does not accrue on a disposal of a debt by the original creditor or his/her personal representative or legatee. Thus, an original creditor cannot get relief on the creation of capital losses by the assignment of bad debts for a small sum. ***(1)(a)***

The above rule does not apply to debts in the form of loan stock of a government, public authority or a company, and such debts are dealt with under the ordinary rules of disposal. (Certain Government and other securities are, however, exempt from capital gains tax under ***section 607***). ***(1)(b)***

Transfer of debt in the course of a merger or division under the Companies Act 2014

For the purposes of ***subsection (1)(a),*** a successor company will be deemed to be the original creditor in respect of a debt where that debt is transferred from a transferor company to a successor company in the course of a merger or a division under the Companies Act 2014 and the transferor company was the original creditor in respect of the debt. ***(1A)***

Satisfaction of debt by creditor (other than original creditor)

The satisfaction of a debt or part of a debt is treated as a disposal by a creditor (other than the original creditor) thus giving rise to a chargeable gain or an allowable loss. This general rule is subject to ***subsection (1)*** and to the treatment in ***sections 585*** and ***586*** that certain conversions of securities or issues of shares or debentures by a company on an amalgamation in exchange for other shares or debentures do not constitute disposals. ***(2)***

Property acquired in satisfaction of debt

When a debt (or part of a debt) is satisfied by the acquisition of property by a creditor, the property is not treated as having been disposed of by the debtor or acquired by the creditor for an amount greater than its market value at the time of the acquisition in satisfaction of the debt, irrespective of the value of the debt. However, where an original creditor acquires property in satisfaction of a debt and later disposes of it making a chargeable gain, the amount of the chargeable gain is not to be greater than the gain which would have resulted if the base cost of the original creditor's acquisition were the amount of the debt (or its part) and not the market value of the property. This adjustment ensures that an original creditor is not treated as making a chargeable gain unless the amount received exceeds the amount of the debt. ***(3)***

Example 1

A owes €10,000 to B who accepts freehold property (market value €9,000) in satisfaction of the debt. A is treated as disposing of the property for €9,000 and A's chargeable gain is calculated on that figure. B's acquisition price is €9,000. If B sells the property and makes a loss – this loss is allowable. If B sells for more than €9,000, the gain is calculated by reference to €10,000 (the amount A owed).

Example 2

X is an original creditor for €10,000 and Y is the debtor. Y gives property to X in satisfaction of the debt and the market value of the property is €8,000. Y is deemed to have disposed of the property for €8,000 and not €10,000 and X is treated as having acquired it for €8,000 and not €10,000. Thus, if Y has made a capital gain on the disposal of the property, the amount of the gain is computed not by reference to €10,000 but €8,000. However, on a subsequent disposal of the property by X for €12,000 the chargeable gain (disregarding any indexation relief under ***section 556***) will be €2,000 (not €4,000 which is €2,000 capital gain and €2,000 recovery of bad debt).

Loss on disposal of debt acquired from connected person

An original creditor (or his/her personal representative or legatee) cannot get relief for a loss by transferring a debt on which a loss is likely to arise to a person connected with the original creditor (or his/her personal representative or legatee). This measure also applies to a series of purchases directly or indirectly through a number of connected persons. ***(4)***

Example

A (original creditor) transfers a debt of €10,000 (now worth €5,000) to her son for €7,500 and the son sells the debt to a collecting agency for €5,000. The son would be able to claim relief in respect of the loss €2,500 were it not for ***subsection (4)***.

Trustees

The exemption in ***subsection (1)*** and the loss provision in ***subsection (4)*** are extended to cover the remainderman where the original creditor is a trustee and the debt is settled property. A disposal by the remainderman or his/her representatives on becoming absolutely entitled as against the trustee to the debt on its ceasing to be settled property will therefore not be liable to charge nor can it give rise to an allowable loss. ***(5)***

Bank balance in foreign currency

Provision is made to prevent the application of the section so as to exempt gains derived from currency speculation. Foreign currency lodged to a bank account would apart from this provision represent a debt due to an original creditor and gains on conversion would not be chargeable were it not for this provision. The section applies, however, if the currency is for personal expenditure outside the State by a person, his/her family, dependants or civil partner or any child of his or her civil partner. ***(6)***

Bank balance in foreign currency transferred to another bank account held by the same person

Provision is made to prevent the situation whereby the same foreign currency transferred between bank accounts held by the same person would apart from this provision crystallise a chargeable gain or an allowable loss without an accompanying economic capital gain or loss. It provides that transfers between accounts of the same person in the same foreign currency do not give rise to a gain or a loss. The base cost of that foreign currency for capital gains tax purposes will be its original base cost, i.e. the cost of the foreign currency before any transfers between bank accounts of the same person took place. This provision applies to disposals on or after the passing of the Finance Act 2020. ***(6A)***

Issue of certain debentures treated as a security

Provision is made to put beyond doubt that in certain specified circumstances a debenture issued by a company is a security within the meaning of ***section 585***. Hence the disposal of such a debenture constitutes a chargeable event for the purposes of capital gains tax. ***(7)***

The specified circumstances are where the debenture —

- is issued on foot of a reorganisation of share capital (that is, in an amalgamation, take-over, etc) as provided for in ***section 584(2)***, ***(7)(a)***
  [***Section 584(2)*** describes what constitutes a reorganisation of a company's share capital. Basically, it arises where a person, whether for payment or not, is allotted shares in, or debentures of, a company in proportion to the person's holding of shares in the company. It can also arise where there is more than one class of shares and the rights attached to shares of any class are altered.]
- is issued in exchange for shares in, or debentures of, another company where the requirements of ***section 586(2)*** are satisfied in relation to the exchange, ***(7)(b)***

[***Section 586(2)*** provides that where a company issues shares or debenture to a person in exchange for shares or debentures of another company ***section 584*** applies as if the 2 companies were the same company. ***Section 586*** only applies where the company issuing the shares or debentures has, or will have, control of the other company or the issue results from a general offer made to members of the other company.]

- is issued under any arrangements referred to in ***section 587(2)***, ***(7)(c)***

  [***Section 587(2)*** provides that where a company reorganisation takes place and shareholders of the company are issued with shares and debentures of another company in respect of their original shares or debentures but those original shares or debentures are either retained by the shareholders or cancelled, the new shares or debentures will be treated as if they were the original shares or debentures.]

- is issued in connection with any transfer of assets referred to in ***section 631***, ***(7)(d)***

  [***Section 631***, which is concerned with implementation of the EU Council Directive on the Common System of Taxation applicable to Mergers, Divisions, Transfers of Assets and Exchanges of Shares concerning Companies of Different Member States ("the Mergers Directive"), applies where a company transfers a trade carried on by it in the State to another company in exchange for securities in that other company.]

- is issued in connection with any disposal of assets referred to in ***section 632***, ***(7)(e)***

  [***Section 632***, which is also concerned with implementation of the Mergers Directive, applies in the case of the transfer of assets by a company to its parent company.]

- is issued in the course of a transaction which is the subject of an application under ***section 637***, ***(7)(f)***

  [***Section 637***, which again concerns the implementation of the Mergers Directive, deals with transactions of a type specified in the Directive to which ***Part 21*** does not apply.]

- is issued in pursuance of rights attached to any debenture covered by ***paragraphs (a)***, ***(b)***, ***(c)***, ***(d)***, ***(e)*** or ***(f)*** above. The purpose of this provision is to ensure that the provisions of those paragraphs are not subject to tax avoidance devices whereby a taxpayer could claim not to have received a debenture in exchange for shares on an reorganisation, etc, but in fact receives benefits on foot of a debenture issued pursuant to the reorganisation, etc. ***(7)(g)***

Paragraphs (d), ***(e)*** and ***(f)*** of ***subsection (7)*** and, in so far as it relates to debentures covered by those paragraphs, ***paragraph (g)*** of ***subsection (7)*** apply as respects the disposal of a debenture on or after 26 March, 1997. ***(8)***

541A Treatment of debts on a change in currency

Summary

This section sets out the tax treatment of a bank account denominated in a foreign currency which on 1 January, 1999 became a bank account denominated in euro. (A bank account is essentially a debt due to the holder by the bank.) The exchange gains and losses which would have arisen on the disposal of that account on 31 December, 1998 are, for capital gains tax purposes, deemed to arise on that day. However, with some exceptions, any gains so arising are not liable to capital gains tax until the account is disposed of, i.e. the funds are withdrawn from the account. Provision is made for the tax treatment of partial withdrawals of funds from the account.

Details

Where a person held a bank account in the currency of a foreign State, the disposal of which would not be exempt from capital gains tax by virtue of ***section 541(6)***, and that ***(1)*** account becomes denominated in euro because of the introduction of the euro on 1 January, 1999 in both the foreign State and Ireland, then for capital gains tax purposes the account (a debt owed by the bank) is deemed to be disposed of, and reacquired, at market value on 31 December, 1998.

Any chargeable gain which accrues by virtue of this deemed disposal cannot be assessed and charged on the person until funds are withdrawn from the account or the debt is otherwise wholly or partly satisfied. ***(2) & (3)***

Special provision is made for life assurance companies and undertakings for collective investment, which entities have their own regime for the treatment of both realised and unrealised gains and losses which involves a seven year spread. These provisions ensure that that regime also applies to gains and losses arising from the conversion of foreign currency bank debts to euro on 1 January, 1999. For these entities there is no deemed disposal and reacquisition under ***subsection (1)*** of such a debt where it is an asset of an assurance company's life business fund, or as the case may be, a debt which is an asset of an undertaking. If the accounting date of an assurance company or a corporate undertaking is 31 December, then such a debt will be deemed to be disposed of and reacquired in any event on 31 December, 1998 under ***sections 719(2)*** and ***738(4)*** respectively. If the accounting date is not 31 December, then a deemed disposal and reacquisition of the debt is imposed on 31 December, 1998 as if it where the accounting date in accordance with those sections. Gains and losses thereby accruing are aggregated with gains and losses accruing and deemed to accrue at the end of the actual accounting period in accordance with those sections. ***(4)(b)***

In the case of a collective investment undertaking which is not a company, ***subsection (1)*** applies so that there is a deemed disposal and reacquisition of the debt on 31 December, 1998. However the deemed gains or losses thereby accruing are treated as accruing by virtue of ***section 734(a)***. ***(4)(c)***

Since the seven year spread of gains and losses does not apply to assets of a special investment fund nor to assets which are subject to any trust created pursuant to a special investment scheme their foreign currency bank accounts are deemed to be disposed of, and reacquired, on 31 December, 1998 under ***subsection (1)*** and no deferral, under ***subsection (2)***, of the tax charge is allowed. ***(4)(d)***

541B Restrictive Covenants

This section ensures that any amount paid to a person in consideration of the person giving or fulfilling an undertaking which restricts the person as to their conduct or that person's activities will, if not chargeable as income or included as consideration for the disposal of an asset, be treated as an amount of chargeable gain.

For example where a person disposes of a business there is sometimes an agreement with the purchaser that he or she will not, for a certain period of time, or within a certain radius, compete with the new owners of that business. This is sometimes called a restrictive covenant or a non-competition agreement. In most situations, the consideration which the person receives for entering into that agreement forms part of the consideration for the disposal of an asset (i.e. s the goodwill of the business) and is brought into account for capital gains tax purposes. However, there can be situations where such a payment cannot be associated with a disposal of goodwill – for example where it can be successfully argued that the business has no goodwill as might be the case where a company had not yet commenced trading. In such a situation, this section will treat the amount of the non-competition payment as an amount of chargeable gain liable to capital gains tax. (See ***section 127*** regarding the tax treatment of payments made under a restrictive covenant to an individual in respect of his or her office or employment.)

541C Tax treatment of certain venture fund managers

This section ensures the share of profits of an investment that a venture fund manager receives for managing an investment in a venture capital fund is deemed to be an amount of chargeable gains to which ***section 28(1)*** applies. These profits are known as "carried interest" and are separate from the profits made by the investors in a venture capital fund. A rate of 15 per cent applies to "carried interest" received by individuals or partnerships and a rate of 12.5 per cent applies to "carried interest" received by companies.

In order to qualify for the reduced rates of tax, investments must be made on or after 1 January 2009 for a period of at least 3 years from the date of the initial investment in private trading companies which are engaged in carrying on a business of research, development and innovation activities. "Innovation activities" mean new technological, telecommunications, scientific or business processes.

Relief will be given in respect of the total investments of the qualifying venture capital fund. However, relief will only apply to relevant investments in an EEA State (including the United Kingdom).

542 Time of disposal and acquisition

Summary

This section sets out rules in certain cases for determining the time at which an acquisition and disposal of an asset takes place. For a disposal under contract the time of disposal and acquisition is normally the time the contract is made, but where the contract is subject to a condition, the time of disposal and acquisition is when the condition is satisfied. On a compulsory acquisition of land by an authority possessing the relevant powers, the time of disposal and acquisition is the time at which the compensation is agreed on or, if earlier, the time when the authority enters on the land under its powers. However, where the disposal is under a compulsory purchase order the chargeable gain (if any) will be deemed to accrue either on the date the compensation is received or immediately before a person's death if the compensation has not been received at the date of that person's death. Where compensation or insurance money is received in respect of damage to an asset, this is treated as a disposal of the asset under ***section 535(2)(a)***. In this case the time of disposal is the time the money is received.

In other cases not specifically mentioned in the section, the time of disposal and acquisition is determined on the relevant facts. In the case of a gift (including a gift in settlement), the time of disposal and acquisition will normally be the time the property effectively passes.

Details

In the case of a disposal of an asset by way of an unconditional contract, the time of disposal and acquisition is the time at which the contract is made and not, if different, the time the asset is conveyed. ***(1)(a)***

If the contract is subject to a condition, the time of disposal and acquisition is the time when the condition is satisfied. ***(1)(b)***

Notwithstanding ***subsections (1)(c)*** and ***(1)(d)***, the time of the disposal of land which as been compulsorily acquired and the time of the deemed accrual of a chargeable gain will be the time when the compensation amount is received, where that amount is received on or after 1 January 2016. ***(1A)& (1B)***

Where an interest in land is acquired by an authority under compulsory purchase powers, the time of disposal and acquisition is the time at which the compensation is agreed on or, ***(1)(c)*** if earlier, the time when the authority enters on the land under its powers. If, failing agreement between the parties, the amount of the compensation is fixed at arbitration, the time of the disposal is the time when the arbitrator makes his determination. In such a case, the time of the disposal does not change even though the amount of the compensation may be varied on appeal at a later date.

Where the disposal is under a compulsory purchase order, the chargeable gain (if any) will be deemed to accrue — ***(1)(d)***

- on the day on which the payment of the compensation is received by the person who made the disposal, or
- immediately before the person's death if the compensation had not been received by him or her at the date of his or her death.

In the case of capital sums received as compensation or insurance payment in respect of damage to an asset or capital sums received for forfeiture of rights or for the use or exploitation of an asset, the time of the deemed disposal (under ***section 535***) is the time of the receipt of the capital sum. ***(2)***

543 Transfers of value derived from assets

Summary

This section provides that in 3 types of transaction in which value or valuable rights pass from one person to another the transfer of value is regarded as a disposal and acquisition for the purposes of capital gains tax. This rule applies even where there is no consideration involved. Where there is no consideration or the consideration is not for full value, the transaction is treated as a disposal at market value.

The first situation dealt with is the exercise of power of control by a person in control of a company so that rights are transferred from shares owned by that person or a person connected with that person into other shares.

The second situation is where the lessee of property, who had previously been the owner of the property, makes an arrangement by which there is an adjustment in the terms of the lease in favour of the lessor. In such a case, the adjustment is treated as a further disposal of the interest in the property by the lessee.

The third situation is where a person entitled to enforce a right over an asset extinguishes or abrogates the right. The extinction or abrogation is treated as a disposal of the right.

Details

Substitution of market value

If in the situations dealt with in ***subsections (2)*** to ***(4)*** no consideration was obtained or additional consideration could have been obtained, the transaction is treated as not being at arm's length and market value must be substituted for the actual consideration (if any) passing. The market value is the amount (if any) obtained plus the consideration or additional consideration which could have been obtained if the transaction had been at arm's length. ***(1)***

Shares or rights in companies

Where a person who has control of a company takes action or fails to take action with the result that value passes from the shares owned or rights exercisable by that person or by persons connected with that person into other shares in or rights over the company, the person is treated as having made a disposal of the shares or rights. ***(2)***

Example

A bought 2,000 €1 shares in K Ltd for €100,000 and the purchase gave him control. A later arranged for the issue of 1,000 new class of €1 shares to his son. Immediately after this the rights attaching to the original ordinary shares were reduced to the status of preference shares carrying only a small fixed dividend and all other rights (in voting, profits and on liquidation) passed to the new class of shares. The value of the original shares are thus reduced and value has passed to the new shares.

If the value of the old shares immediately before the arrangement was €150,000 and immediately after €50,000, the computation of the chargeable gain on A (subject to expenses and disregarding indexation relief under ***section 556***) is —

Value of shares before change	€150,000
Value of shares after change	€500,000
Value passing from old shares to new	€100,000
Part cost allowable —	
$100{,}000 \times \dfrac{€100{,}000}{100{,}000 + 50{,}000}$	€66,666
Chargeable gain	€33,334
The acquisition price of the shares to the son is	
€100,000 + €1,000 =	€101,000

Land and other property

A disposal of an interest in property is treated as having been made where the former owner of land or property, having become the lessee, agrees to an adjustment of the rights and liabilities under the lease in a manner generally favourable to the lessor. ***(3)***

Example

M buys freehold property for €200,000. He gives his daughter N the freehold subject to a 99 year lease reserved to himself, the rent payable by M to his daughter being merely a nominal amount. The transaction leaves M with virtually the whole property as N is entitled only to a reversion at the end of 99 years and this has little value.

Subsequently, M agrees to pay N a rent equivalent to the true economic rent for the remainder of the term of the lease. The real value has by this transaction passed out of M's leasehold interest into the reversion of N and M is treated as making a disposal at market value of the interest passed to N. If that value was €250,000, the gain chargeable on M (subject to expenses and disregarding indexation relief under ***section 556***) is —

Value transferred	€250,000
Cost of freehold	€200,000
Chargeable gain	€50,000

The acquisition price of N's interest is €250,000.

Rights over assets

The extinction or abrogation, wholly or partly, of a right over an asset is a disposal by the person entitled to enforce the right. ***(4)***

Example

The owner A of a piece of land (cost €80,000) gives it to a friend B subject to A's continuing occupation on a tenancy. If the market value of the land subject to that tenancy is €100,000, the gain chargeable on A at the date of the gift will be computed by reference to that value. If A subsequently gives up the tenancy, there is a further disposal by A of her rights in the property. If the value of the right to occupy is €20,000 at the end of the tenancy, the chargeable gains (subject to expenses and disregarding indexation relief under ***section 556***) will be —

On the gift

Market value of land subject to tenancy	€100,000
Part cost allowable —	
$80{,}000 \times \dfrac{100{,}000}{100{,}000 + 20{,}000} =$	€66,667
Chargeable gain =	€33,333

On A giving up the tenancy

Market value of right to occupy =	€20,000
Balance of cost €80,000 less €66,667 =	€13,333
Chargeable gain =	€6,667

CHAPTER 2

Computation of chargeable gains and allowable losses

Overview

This Chapter sets out the rules for the computation of chargeable gains and allowable losses for capital gains tax purposes.

By virtue of ***section 566*** the provisions of ***Schedule 14***, which sets out the rules which apply to the capital gains tax treatment of leases, are brought within the Capital Gains Tax Acts.

544 Interpretation and general (Chapter 2)

Summary

This section contains interpretational provisions and a number of general rules relating to the computation of chargeable gains and allowable losses. These rules include the provision that no deduction is allowable more than once and the provision relating to apportionments of consideration and expenditure where necessary.

Details

A "renewals allowance" is defined as a deduction which has been obtained for income tax purposes by reference to the replacement basis where capital allowances have not been claimed. A renewals allowance is treated for capital gains tax purposes as a deduction allowable against expenditure incurred on the asset which is being replaced although it is in fact expenditure on the acquisition of a new asset. ***(1)***

For the purposes of the capital gains tax computational rules, references to sums taken into account in computing profits, gains or losses for income tax purposes include sums which would have been taken into account but for the fact that any profits of the relevant trade, profession or employment do not come within the charge to income tax or that losses are not allowable for income tax purposes. ***(2)***

Income or profits taxed by deduction rank as income or profits charged or chargeable to tax. ***(3)***

Where expenditure qualifies for deduction under different headings, only one deduction is allowable in the capital gains tax computation. ***(4)***

Apportionments of consideration or expenditure may be made where necessary and, subject to any express provision of the Chapter, the method of apportionment is to be such method as appears just and reasonable. ***(5)***

Section 557, which deals with part disposals, and all other provisions for apportioning deductible expenditure on a part disposal are to operate without regard to ***section 1028(5)*** (transfers between spouses) and ***section 597*** (roll-over relief in the case of replacement of business assets) and any other provision which secures that neither a gain nor a loss arises on a disposal. ***(6)***

Any income tax determination is conclusive for the purposes of capital gains tax in cases where liability to tax depends on the provisions of the Income Tax Acts. Thus, for example, a person cannot claim to have an item of expenditure allowed as a revenue expense for income tax purposes and then claim in relation to capital gains tax that it is capital expenditure which should be allowed so as to increase the cost of acquisition of the relevant asset. ***(7)***

The provisions of the Capital Gains Tax Acts, including the provisions fixing the amount of consideration deemed to be given on a disposal or acquisition of an asset, are to be treated as having effect before 6 April, 1974 where it is necessary to compute a chargeable gain by reference to events and circumstances before that date. ***(8)***

545 Chargeable gains

If an asset is not a chargeable asset for capital gains tax purposes, no chargeable gain can arise on its disposal. The amount of any gain arising on the disposal of an asset is computed in accordance with this Chapter, subject to the other provisions of the Capital Gains Tax Acts. All gains are chargeable gains unless otherwise provided for by those Acts.

546 Allowable losses

Summary

All the rules used in computing gains apply in computing losses. The principles by which a gain is determined to be a chargeable gain apply in deciding whether a loss is an allowable loss. Thus, a loss cannot be an allowable loss if a gain on the same transaction would not be a chargeable gain.

Relief for losses by a person who is neither resident nor ordinarily resident in the State is confined to losses on the disposal of those assets in respect of which such a person would be liable to tax on chargeable gains if a gain instead of a loss had resulted from the transaction. These assets are land and mineral assets in the State, trading assets of a branch or business in the State and rights of exploration or exploitation in the Irish Continental Shelf area.

An allowable loss may not be carried back and set against a gain in an earlier year of assessment (except on a death as provided in ***section 573***). Relief may not be given more than once in respect of any loss. Where relief in respect of a loss has been or may be given under the Income Tax Acts, no relief is given for the loss against capital gains.

Where a person is chargeable to capital gains tax for a year of assessment at 2 or more rates, the losses are to be deducted, as far as possible, from the gains chargeable at the higher, or highest, of the rates and then from gains chargeable at the lower rate or, if chargeable at 3 or more rates, from the next highest rate and so on.

Details

Where an asset is not a chargeable asset, no allowable loss can accrue on disposal of the asset. ***(1)***

Except where otherwise expressly provided, the amount of a loss on the disposal of an asset is computed in the same way as the amount of a gain on the disposal of an asset is computed. ***(2)***

Except where otherwise expressly provided, the question of whether a loss (or part of a loss) is an allowable loss is decided on the same principles on which a gain (or part of a gain) is determined to be a chargeable gain. Thus, where it is provided that gains on the disposal of an asset are not chargeable gains, losses on the disposal of the asset are not allowable losses. ***(3)***

Subsections (2) and ***(3)*** are qualified by the words "Except where otherwise expressly provided" in order to protect provisions of the Capital Gains Tax Acts which deal with losses in special cases. For example, under ***section 602(4)*** a loss on the disposal of tangible movable property sold for less than €2,540 is restricted by treating the consideration as being equal to €2,540, having regard to the corresponding exemption for gains on such property. ***(2) & (3)***

A person who is neither resident nor ordinarily resident in the State is liable to capital gains tax only in respect of gains on the disposal of such assets as are mentioned in ***section 29(3)***, namely, land and mineral assets in the State, trading assets of a branch, business or agency in the State and exploration and exploitation rights in the Irish Continental Shelf area. In the same manner relief for losses by such a person is confined to losses on similar assets. ***(4)***

With one exception, an allowable loss cannot be carried back to an earlier year of assessment. The exception is a loss incurred by an individual in the year of his/her death which under ***section 573(3)*** may be carried back for offset against chargeable gains accruing in the 3 years of assessment before the year of assessment in which the death occurs. Also, relief may not be given more than once in respect of any loss or part of a loss and, if relief has been given for a loss or part of a loss under the Income Tax Acts, no relief can be given for that loss or part of a loss under the Capital Gains Tax Acts. ***(5)***

Where a person is chargeable to capital gains tax for a year of assessment at 2 rates, losses are to be deducted as far as possible from gains chargeable at the higher of the 2 rates and then from the gains chargeable at the lower rate. Similarly, where a person is chargeable at 3 or more rates, losses are to be deducted as far as possible from the gains chargeable at the highest rate and then from the gains chargeable at the next highest rate and so on. The set-off is, therefore, made in the order which best benefits the taxpayer. ***(6)***

546A Restrictions on allowable losses

Summary

This section disallows capital losses if they arise from arrangements whose main purpose or one of whose main purposes is to secure a tax advantage.

Details

The following definitions apply in this section:

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not they are legally enforceable); ***(1)***

"tax advantage" means —

- relief or increased relief from tax,
- repayment or increased repayment of tax,
- the avoidance or reduction of a charge to tax or an assessment to tax, or
- the avoidance of a possible assessment to tax;

"tax" means capital gains tax or corporation tax on chargeable gains;

A loss will not be an allowable loss for capital gains tax purposes if — ***(2)***

- it accrues to a person directly or indirectly in consequence of any arrangements, and ***(a)***
- the main purpose or one of the main purposes of the arrangements is to secure a tax advantage. ***(b)***

For the purposes of ***subsection (2)***, it will not be relevant— ***(3)***

- whether or not the loss accrues at a time when there are no chargeable gains from which it could otherwise have been deducted, or
- whether or not the tax advantage is secured for the person to whom the loss accrues or for any other person.

547 Disposals and acquisitions treated as made at market value

Summary

For the purposes of capital gains tax, market value is in certain situations substituted for the consideration (if any) given or received on the transfer of an asset. This is because either there is no actual purchase and sale price or the price does not represent the true value of the asset. Market value is so substituted in the case of transfers under bargains not at arm's length, including gifts, capital distributions from a company to its shareholders, transactions where consideration cannot be valued, and acquisitions in connection with loss of employment or diminution of emoluments or in recognition for past services. Market value does not apply where an asset is acquired by way of Ministerial waiver under section 31 of the State Property Act, 1954.

The rule that market value is substituted for the consideration given on the transfer of an asset does not apply to the acquisition of an asset where there is no corresponding disposal of the asset and either there is no consideration given for the asset or the consideration given is less than the market value of the asset. Special rules also apply to determine the cost for capital gains tax purposes of an asset where a company allots shares to a person connected with the company at a price other than their true value.

Details

Acquisitions deemed to be made at market value

The cost of acquisition of an asset is deemed to be equal to the market value of the asset in the following situations — ***(1)***

- where the asset is not acquired by way of a bargain at arm's length, including in particular a gift;
- where the acquisition of the asset is by way of a distribution from a company to a shareholder;
- where the acquisition of the asset is wholly or partly for a consideration that cannot be valued (such as an acquisition in consideration of natural love and affection or in consideration of marriage, or on discharge of a personal undertaking or a right to unliquidated damages) or the acquisition is on the occasion of the loss of employment, the reduction of emoluments, or in consideration of past services.

An exception to this rule is made in circumstances where a person acquires an asset by way of Ministerial waiver under section 31 of the State Property Act, 1954. Provision is ***(1A)*** made that, for capital gains tax purposes, such an acquisition shall be for the amount which the person pays to the Minister for Finance in respect of the waiver.

Allotment of certain shares

The intention of ***subsection (1)*** is to substitute, in the cases mentioned in that subsection, the market value of the asset for the consideration (if any) on the acquisition. In the absence of a preventive measure, this rule could be abused by persons connected with a company, who intend to dispose of their shares at a profit, arranging for the issue to themselves of additional shares in the company at a very low price and then claiming, on a subsequent disposal of all of the shares, that the true market value of the new shares should be deducted in determining the chargeable gain on the disposal. The rule could also be abused through the use of ***section 584(3)***, which deals with a reorganisation of a company's share capital (for example, bonus issues or rights issues) and which excludes the operation of the market value principles. ***Subsection (2)*** prevents these abuses. ***(2)***

The term "shares" is defined as including stock, which the term already includes under ***section 5(1)***. It also includes debentures and interests in companies which have no share capital which are dealt with in ***section 587(3)***. It also covers the granting of options to subscribe for shares in a company. These extensions of the meaning of the term are necessary to prevent avoidance by the use of debentures, options, etc rather than shares or stock. The extension of the meaning of "allotment" covers the giving of an interest or the granting of an option, which might not be covered by the normal meaning of "allotment" or "allots" which are used in ***subsection (2)***. ***(2)(a)***

Where shares are issued by a company to a person connected (***section 10***) with the company otherwise than by means of a bargain at arm's length (that is, not at their true value), the base cost (the cost of the acquisition) of the shares for the purposes of a future disposal of the shares is the lesser of two values, namely — ***(2)(b)***

- the actual price paid for the shares, and
- the additional value of the entire holding of shares (including the new shares) over the value of the previous holding of shares.

Acquisitions where there is no corresponding disposal

The rule (in ***subsection (1)***) that market value is substituted for the consideration given on the acquisition of an asset would, in the absence of a preventive measure, be open to abuse in cases where an asset is acquired for less than market value but the person from whom the asset is acquired is not regarded as having made a disposal of the asset for capital gains tax purposes. In such a case, notwithstanding that there is no corresponding charge to capital gains tax on the donor of the asset, the person would invoke ***subsection (1)*** so as to be treated as acquiring the asset at market value in order to eliminate or reduce any charge to tax which arises on a subsequent sale of the asset. ***(3)***

An example of the type of case envisaged is shares acquired under a share option scheme. In such a case a company grants share options to an employee and the price paid for the shares is usually less than the market value of the shares on the day they are acquired. The issue by the company of the shares is not regarded as a disposal for capital gains tax purposes so no charge arises on the company. When the shares are subsequently sold by the employee, he/she invokes ***subsection (1)*** to substitute the market value of the shares on the date of acquisition as the cost price of the shares instead of the actual price paid for them. This, of course, would reduce or even eliminate any capital gains tax liability.

To counter such potential abuse, ***subsection (1)*** is disapplied, that is, a person is not to be regarded as having acquired an asset at market value where —

- there is no corresponding disposal of the asset, and

- there is no consideration paid, in money or money's worth, for the asset or the value of the consideration is less than the market value of the asset

Disposals deemed to be made at market value

The consideration for the disposal of an asset is deemed to be equal to the market value of the asset in the following circumstances — ***(4)(a)***

- where the disposal is otherwise than by means of a bargain at arm's length including in particular a gift, and
- where the consideration cannot be valued.

The above rule does not apply to a disposal by means of a gift made before 20 December, 1974, which is the date on which the Capital Gains Tax Bill, 1974 was made public, and any loss on such a disposal is not an allowable loss. ***(4)(b)***

548 Valuation of assets

Summary

This section contains rules for determining market value where this is required for capital gains tax purposes. The situations where the market value of an asset is of importance for capital gains tax purposes include transfers by gift and other transfers by means of bargains not at arm's length, certain disposals and reacquisitions of trust assets and cases where gains or losses on the disposal of an asset are to be computed by reference to market value at 6 April, 1974. The basic rule is that market value is the price which an asset might reasonably be expected to fetch on a sale in the open market. In the case of shares or securities quoted on a stock exchange in the State or in the United Kingdom, market value is to be based on the quotations as published in official lists. For unquoted shares it is to be assumed that in arriving at the market value full information about the shares is available to the prospective purchaser.

Details

General rule

The general rule is that market value means the price which an asset might reasonably be expected to fetch on a sale in the open market. ***(1)***

Provision is made to meet any contention that the value of a large block of assets is necessarily reduced because of the "flooding" effect which would be produced by putting them all on the market at one time. In general, the value of, say, shares is to be taken as the value for one share which emerges from bargains of normal size and condition in those shares, multiplied by the number of shares. ***(2)***

Irish and UK quoted shares

For shares or securities listed in the Irish Stock Exchange Official List the valuation to be taken is the lower of — ***(3)(a)(i)***

- the price at which bargains in the particular shares or securities were last recorded (the previous price), and
- where bargains (other than special bargains) in the particular shares or securities were recorded in that list for the relevant date, the price at which the bargains were so recorded or, in a case where more than one price was so recorded, a price halfway between the highest and the lowest prices recorded.

For shares or securities listed on the London Stock Exchange Daily Official List the valuation to be taken is the lower of — ***(3)(a)(ii)***

- the lower of the prices shown in the quotations plus 25 per cent of the difference between the 2 prices, or
- where bargains (other than special bargains) were recorded for the relevant date, the price recorded or, in a case where more than one price was recorded, a price halfway between the highest and lowest prices recorded.

Where shares or securities are listed on both lists on the same date, the lower relevant valuation is taken. If some other stock exchange affords a more active market for the shares or securities in question, the valuation is to be based on the quotations in that stock exchange. Where any of the stock exchanges concerned is closed on the relevant date, the market value is to be based on the quotation for the latest previous date or the earliest subsequent date on which that stock exchange is open whichever affords the lower market value. ***(3)(b)***

Unquoted shares

The market value of unquoted shares and securities is to be determined on an arm's length basis on the assumption that in the open market postulated there is such information available to the buyer as the buyer might reasonably expect from a willing seller. ***(4)***

Unit trusts

The market value of units in a unit trust (whether established in the State or outside the State) the prices of which are published is to be the buying price published by the managers of the trust. The buying price is the lower of the 2 prices published. In the absence of a published price on the relevant date, the figure to be taken is that on the latest previous date. ***(5)***

549 Transactions between connected persons

Summary

This section provides measures to prevent avoidance of capital gains tax by the use of arrangements entered into by connected persons. (The rules for determining if persons are connected are set out in ***section 10***.) Firstly, an acquisition or disposal between connected persons is treated as not being a bargain made at arm's length and, accordingly, market value is substituted for the actual consideration. Secondly, a loss on the transfer of an asset between connected persons is allowable only against a gain made on a disposal to the same person. A further measure provides that restrictive covenants imposed on an asset transferred from one connected person to another are given only limited weight in valuing the asset transferred.

Details

Application

The section applies where a person acquiring an asset and the person making the disposal are connected persons. ***(1)***

Transfers treated as made at market value

A transfer between such persons is not to be considered as having been at arm's length. Thus, the asset is treated as passing at market value instead of the value put on it under the arrangement between the 2 persons. ***(2)***

Restriction of losses

In general, relief for a loss on a disposal to a connected person is restricted so that the loss may be allowed only against a chargeable gain on some other disposal by the disponer to the same connected person. ***(3)***

Where a gift in settlement and the income from it is applied in providing educational, cultural or recreational benefits for members of an association, there is no restriction on the loss allowable; but this provision does not apply if most of the members of the association are connected persons. ***(4)***

Options and losses

Where the asset involved is an option to enter into a sale or other transaction granted by the person making the disposal, a loss is not allowable to the person who acquires the asset unless it arises on a disposal of the option by means of an arm's length bargain to a person who is not connected with the person who acquires the asset. ***(5)***

Rights or restrictions over assets

In general, where a restrictive covenant is imposed on an asset which is the subject of a transaction between connected persons, the restriction is to be disregarded or given only limited weight in putting a value on the asset. The rule is that the market value is to be taken as what it would be if there was no restriction less the smaller of the market value of the right or restriction and the amount by which its extinction would enhance the value of the asset to its owner or by the market value of the right or restriction where the market value of the right or restriction and the amount by which its extinction would enhance the value of the asset to its owner are equal. ***(6)***

Example

A farmer transfers part of his farm to his younger brother. The land has an agricultural value of €200,000 but has outline planning permission for residential development. The full market value of the land is €1.5 million. The farmer wants his brother to continue to farm the land and imposes a restrictive covenant on the transfer prohibiting the building of houses on the land. Assuming the value of the restriction is €1 million, the deemed consideration for the disposal by the farmer and the acquisition cost for his brother is —

Market value of land	€1,500,000(disregarding restriction)
Less the lower of —	
market value of restriction	€1,000,000
and	
increase in value of land without restriction €1,300,000	€1,000,000
Deemed consideration/ acquisition cost	€500,000

Subject to certain exceptions, provision is made to treat certain rights or restrictions as if they did not exist. The provision is designed to leave out of account rights or restrictions which would effectively reduce the value of the asset transferred to nil. Such rights or restrictions could otherwise enable the person disposing of the asset to claim a loss. The rights or restrictions covered by the provision are — ***(7)***

- those of such a nature that they effectively negate the transfer of ownership so that there has not really been any transfer (in substance) at all (merely the semblance of a transfer to achieve a loss); enforcement of such a right or restriction would destroy or substantially impair the value of the asset without bringing off-setting advantage to the person making the disposal or a person connected with that person,

- an option or other right to acquire the asset, and
- in the case of incorporeal property, a right to extinguish the asset in the hands of the person giving the consideration by forfeiture, merger or otherwise.

Subsection (7) applies where the asset mentioned in ***subsection (1)*** is subject to any right or restriction enforceable by the person making the disposal or by the person connected with that person and the market value of the asset at the date it was acquired is greater than the consideration, in money or money's worth, paid for that asset. For this purpose, the right or restriction is ignored. ***(7A)(a)***

Where an asset is subsequently disposed of by the person who acquired that asset and ***subsection (7)*** has the effect of — ***(7A)(b)***

- increasing a loss, or
- substituting a loss for a gain,

then ***subsection (7)*** will not apply.

Circumstances could arise whereby the intended effect of ***subsection (7)*** (which disregards certain rights and restrictions) would be reversed so that it would not prevent, but rather assist, the creation of artificial losses. Those circumstances are where the disponer of an asset is indifferent to the amount of the sale proceeds deemed to have been received on the disposal of the asset because the disponer is not chargeable to capital gains tax on any gain accruing on the disposal. In the absence of provision to the contrary, the only result of the operation of ***subsection (7)*** would be to increase the deemed cost of acquisition of the person acquiring the asset, thus facilitating the creation of an artificial loss by a further sale of the asset. Accordingly, to prevent such an eventuality, where a person disposes of an asset to another person in circumstances where — ***(8)(a)***

- ***subsection (7)*** would otherwise apply in determining the market value of the asset, and
- the person who makes the disposal is not within the charge to capital gains tax in respect of the disposal,

the other person's acquisition of the asset is, in relation to a subsequent disposal of the asset, deemed to be for the market value of the asset determined without regard to ***subsection (7)***. Thus, full account is to be taken of any right or restriction over the asset enforceable by the disponer in determining the cost of acquisition to the purchaser. This prevents the purchaser from using ***subsection (7)*** to create an artificial loss.

The anti-avoidance provisions of ***subsection (8)(a)*** apply to disposals made on or after 25 January, 1989. Also, in so far as losses have been created artificially under ***subsection (7)*** by disposals made before that date, those losses may not be carried forward and set off against gains accruing on or after that date. Claims may be made to have such losses set off against gains accruing on disposals made before that date. ***(8)(b)***

Rights of forfeiture on breach of a covenant in a lease and rights under charges such as mortgages are not to be disregarded in calculating the market value of an asset. These rights are taken into account at full value. ***(9)***

550 Assets disposed of in series of transactions

This section contains an anti-avoidance measure to prevent schemes whereby property could be disposed of in separate parts to connected persons so that the sum of the total of each part is less than what the property would command as a whole. In such circumstances the amount to be taken as consideration for the transactions is the greater value apportioned rateably over the separate disposals.

Example

A piece of land is worth €500,000. It is sold in five equal lots to connected persons at €80,000 each. Thus, the aggregate consideration on sale of the land is €400,000 which is €100,000 less than it would be if the land had been sold in one lot at market value. The market value rule available under ***section 549*** is not sufficient in itself to deal with the situation as each plot is worth no more than €80,000. Accordingly, ***section 550*** provides that the value to be placed on each plot for the purposes of computing chargeable gains is one-fifth of €500,000, namely, €100,000.

551 Exclusion from consideration for disposals of sums chargeable to income tax

Summary

This section provides the basic rule whereby any part of the consideration for the disposal of an asset which is chargeable to income tax, or taken into account in computing income, profits, gains or losses for income tax purposes, is not to be taken into account again in computing chargeable gains for the purposes of capital gains tax.

Details

Any money or money's worth charged to income tax or taken into account in computing income, profits, gains or losses for the purposes of income tax is excluded from the charge to capital gains tax. By virtue of ***section 78(6)***, any part of the consideration for a disposal which is taken into account as income for corporation tax purposes is similarly excluded from the charge to capital gains tax. However, where a life assurance company is not charged in respect of its life assurance business under Case I of Schedule D, the mere inclusion of profits from the realisation of investments in a computation for the purposes of restricting management expenses relief under ***section 707*** will not prevent a charge to capital gains tax on gains from disposals of life fund investments. ***(2)***

The basic rule set out in ***subsection (2***) is not to apply so as to exclude from the consideration any amount which is taken into account in making a balancing charge for capital allowances purposes under ***Part 9*** or ***Chapter 1*** of ***Part 29***. ***(3)***

The basic rule set out in ***subsection (2)*** also does not apply so as to preclude the taking into account in a capital gains tax computation of the capitalised value of a rent (including any rent charge, fee farm rent and any payment in the nature of a rent) or other periodic payments despite the fact that the payments constitute income for income tax or corporation tax purposes. ***(1) & (4)***

552 Acquisition, enhancement and disposal costs

Summary

This section sets out the basic rules for determining the expenditure to be allowed in computing chargeable gains. Allowable expenditure includes cost of acquisition of an asset, enhancement expenditure incurred during the period of ownership of the asset and costs incurred in disposing of the asset. It provides, in relation to the cost of assets acquired with borrowings where the borrower is released from payment of all or part of the debt, that the cost of acquisition is to be restricted by the amount of any debt released where a loss arises on the disposal of the asset.

Details

The type of expenditure which is allowable as a deduction from the consideration in computing a chargeable gain on the disposal of an asset is as follows — ***(1)***

- the cost of acquisition of the asset or its value given wholly and exclusively by the taxpayer or on his/her behalf, together with any incidental costs of the acquisition.

Where the asset was created by the person making the disposal the expenditure incurred in creating it is allowable;

- expenditure which adds to the value of the asset and which is reflected in the state or nature of the asset at the time of disposal, and expenditure to establish, preserve or defend legal title;
- costs incidental to the disposal.

To come within the second-mentioned type of expenditure, the expenditure must not prove futile or have wasted away before disposal. Thus, expenditure on an abortive planning application, or on an unsuccessful attempt to dig a well, would not be reflected in the state or nature of the asset.

Example

A person buys for €50,000 (expenses included) a piece of land (not the garden of a house) and at a cost of €3,000 lays out a tennis court. Some years later she does away with the tennis court and in its place has a swimming pool built at a cost of €30,000. She then sells the land with the swimming pool for €100,000 (after expenses). The €3,000 which she spent on the tennis court would not be allowable as it was not reflected in the state of the land at disposal. Thus, disregarding indexation relief under ***section 556***, the gain would be computed as follows —

Cost of land	€50,000
Cost of swimming pool	€30,000
Allowable expenditure	€80,000
Sale price (net)	€100,000

The demolition of a tennis court is not the "entire loss, destruction, dissipation or extinction of the asset" within ***section 538(1)*** because it is not an "asset" being only part of an asset (the land) and it is not within ***section 538(3)*** because it would not be regarded as a structure in the nature of a building.

Where expenditure, allowed as a deduction, was incurred in a foreign currency, it must be converted to Irish currency at the exchange rate pertaining at the date the expenditure was incurred. This could involve a conversion to Irish pounds followed by a conversion to euro. ***(1A)***

Subsection (1B)(b) contains definitions necessary for the purposes of the subsection. ***(1B)(a)***
Subsection (1B) applies to disposals on or after 1 January 2014.

Where the cost of acquisition or expenditure on the enhancement of an asset was borrowed and all or any part of the debt related to the borrowings are released, whether before, on or after the disposal of the asset, the amount of the debt released is to be deducted from the expenditure otherwise allowable in computing a gain or loss under the section. This restriction is not to apply so as to create a chargeable gain, where a loss would arise if this subsection did not apply. ***(1B)(b)***

The date on which a debt is released for the purposes of this section is to be determined by reference to the same factors as in ***section 87B(4).*** ***(1B)(c)***

Where a debt is released in a year of assessment after that in which the disposal of an asset takes place, a deemed chargeable gain equal to the amount of the debt released is deemed to arise where an allowable loss arose on the disposal of the asset. The allowable loss is effectively clawed back by means of this deemed chargeable gain - but only to the extent of the reduction in the allowable cost that would have been made under ***subsection (1B)(b).*** ***(1B)(d)***

Also, if the disposal giving rise to the allowable loss is to a connected person, any deemed gain under this subsection is to be treated as if it acquired on the disposal of an asset to that connected person – so that the loss in the earlier year can be offset against the deemed gain in the later year.

Subsection (1B)(d) cannot operate to create a chargeable gain where the underlying asset disposed of is not a chargeable asset. ***(1B)(e)***

Subsection (1B)(f) provides that ***subsection (1B)*** will not apply to the release of a debt in respect of borrowing by one member of a group of companies from another member of the group because loans funded from within a group and subsequently released are neutral as regards the group as a whole. ***(1B)(f)***

To qualify as incidental costs of acquisition or disposal, the expenditure must be wholly and exclusively incurred on the acquisition or disposal and must be within the following categories — ***(2)***

- fees, commission or remuneration for the professional services of a surveyor or valuer, auctioneer, accountant, agent or legal advisor,
- costs of transfer or conveyance (including stamp duty), and
- costs of advertising and, in the case of a disposal, costs reasonably incurred in making any valuation or apportionment required for the purposes of computing the gain arising on the disposal.

No deduction is allowable in respect of interest except in the case of a company incurring interest on money borrowed to defray expenditure on the construction of any building, structure or works. To qualify, the company must have charged the interest to capital and there must be no possibility that the interest could be allowed against income or profits for income tax or corporation tax purposes. The relief, therefore, applies only to the case of a company which is not trading or has no income during the period when a building is being constructed. Where the company is trading, the interest is deductible from profits for corporation tax purposes. ***(3)***

Section 554 is concerned with the general exclusion of revenue type expenditure from allowance as a deduction in computing chargeable gains. Provision is made to ensure that premiums or other amounts paid under a policy of insurance to cover risks of damage or depreciation to an asset which are not within this general exclusion are nevertheless not allowable as a deduction in computing chargeable gains. ***(4)***

Where property, which was transferred to a legatee or to a person absolutely entitled to it as against the trustee, is subsequently disposed of, certain costs of the transfer may be allowable as a deduction in computing any chargeable gain on the disposal. The costs so allowable are of a kind which would otherwise be allowed but for the fact that the expenditure was incurred by the trustee and not by the person making the disposal although ultimately borne by him/her. ***(5)***

553 Interest charged to capital

This section deals with a case where a company incurs expenditure on the construction of a building, structure or other works and that expenditure is allowable as a deduction under ***section 552*** in computing a gain on the disposal of the building, structure or works. In any such case, if the expenditure in question is met out of borrowed money, any interest on that borrowed money which accrued before the disposal is, to the extent to which the company has charged it to capital, allowed as a deduction in computing the gain on the disposal of the building, structure or works.

554 Exclusion of expenditure by reference to income tax

Summary

This section sets out the principle that allowable expenditure in computing chargeable gains is confined to expenditure incurred on capital account. This is achieved by excluding from allowable expenditure any expenditure which is allowable in computing income, profits, gains or losses for income tax purposes. By virtue of ***section 78(6)***, any expenditure which is taken into account for corporation tax purposes is similarly excluded.

Details

The sums allowable under ***section 552*** (acquisition, enhancement and disposal costs) do not include any items allowable as a deduction in computing income, or the profits, gains or losses of a trade or profession, for the purposes of income tax (or, by virtue of ***section 78(6)***, corporation tax), or any items which would be so allowable but for an insufficiency of income or profits. ***(1)***

Provision is made to ensure that where a trade or profession is not involved allowable expenditure is nonetheless confined to capital outlay. This is done by excluding any expenditure which would be allowable as a deduction in computing income or profits if the asset had been used for the purposes of a trade or profession. Thus, outlay such as expenditure incurred in decorating a house is not allowable because, if the house were used for the purposes of a trade, the expenditure would be allowable in computing the profits of the trade. ***(2)***

Example

A person buys a cottage (not his main residence) and spends €10,000 in making good dilapidations. Later he has the cottage rewired for €2,000 and has it completely redecorated for €4,000. He also adds a garage at a cost of €12,000. When he comes to sell the property the following are not allowed in the computation of his chargeable gains —

Rewiring	€2,000
Redecoration	€4,000
Total not allowable	€6,000

This is because if the cottage were a fixed asset of a trade the expenditure would have been revenue expenditure and not capital expenditure.

The other expenditure would be of a capital nature and therefore allowable, namely —

Making good dilapidations	€10,000
New garage	€12,000
Total allowable	€22,000

These items are not in the course of the enjoyment of the property but as fixed expenditure incurred to obtain an asset or enhance the value of an asset.

555 Restriction of losses by reference to capital allowances and renewals allowances

Summary

Special treatment is provided in respect of expenditure which, although indirectly allowable for income tax or corporation tax in the form of capital allowances or renewals allowances, is nevertheless capital outlay. Notwithstanding ***section 554***, such capital outlay is an allowable deduction for capital gains tax purposes. However, where a loss accrues on the disposal, the amount of the loss allowable is restricted to the extent that it has been covered by the amount of capital allowances or renewals allowances granted for income tax or corporation tax purposes.

Regard shall also be had any allowances forgone by a lessor in respect of an asset by reason of letting that asset on such terms set out in ***section 299(1)***.

Details

Expenditure which has qualified for capital allowances (defined in ***section 5***) or renewals allowances (defined in ***section 544***) is not on that account ineligible for deduction in computing chargeable gains. Thus, irrespective of capital allowances or renewals allowances granted in respect of an asset for income or corporation tax purposes, the full cost of the asset is deductible in computing chargeable gains. Where, however, a loss arises on the disposal of the asset, the amount of the loss available for set-off against chargeable gains is restricted by any capital allowances or renewals allowances granted. ***(1)***

Certain transfers of assets are treated as made at the written down value of the asset for income tax or corporation tax purposes. These are transfers — ***(2)***

- to which ***section 289(6)*** (assets gifted or sold under an agreement to use income tax or corporation tax written down values) applies;
- by means of a sale in relation to which an election under ***section 312(5)*** (arrangements where the buyer is under the control of the seller) was made;
- to which ***section 295*** (succession to a trade under a will or intestacy) applies.

In such cases the asset is deemed for capital gains tax purposes to have been acquired at market value. However, the written down value of the asset for income tax or corporation tax purposes may be less than the amount of the consideration applicable for capital gains tax purposes and the second owner may only have entitlement to a small amount of capital allowances. The result of this would be that the restriction of losses for capital gains tax purposes by reference to the capital allowances of the second owner on the disposal by that owner of the asset would not in itself be sufficient to prevent the emergence of artificial losses for capital gains tax purposes. To prevent artificial losses emerging in such cases, it is provided that in the restriction of losses for capital gains tax purposes account is taken of the capital allowances granted to the first owner as well as those of the second owner. The provision also covers a series of similar transfers.

Example

Asset – cost to A	€100,000
Capital allowances allowed to A	€15,000
Written down allowances allowed to B	€85,000
Capital allowances allowed to B	€15,000
B's written down value	€70,000
B sells the asset for	€50,000
Balancing allowance to B	€20,000

If at the time of the transfer to B the market value of the asset is €90,000 —

A's capital gains tax position is —	
Cost	€10,0000
Consideration on disposal	€90,000
Loss	€10,000
Restrict by capital allowances granted	€15,000
The result is treated as no gain and no loss.	

B's capital gains tax position is —		
Cost		€90,000
Consideration on disposal		€50,000
Loss		€40,000
Restrict by capital allowances granted		
B's allowances (€15,000 + €20,000)	€35,000	
A's allowances	€15,000	€50,000

The result is treated as no gain and no loss.

Provision is made to put beyond doubt that the capital allowances to be taken into account for the purposes of restricting capital gains tax losses arising on disposal of the asset include balancing allowances. However, the capital allowances to be so taken into account are to be reduced by the amount of any balancing charge arising on the disposal of the asset, including a balancing charge which is not brought into assessment because the taxpayer elects under ***section 290*** to have it applied by reducing the cost of a replacement asset for capital allowance purposes. ***(3)***

Example

Industrial building cost		€200,000
Capital allowances granted		€160,000
Written down value		€40,000
Building sold for		€190,000
Cost allowable		€200,000
Loss on disposal		€10,000
Capital allowances granted	€160,000	
Less balancing charge	€150,000	

Where the disposal is of an asset of machinery or plant that is (or was previously) let out on such terms as described in ***section 299(1)***, the amount of capital allowances to be excluded from the sums allowable as a deduction shall also include the capital allowances that would have been (or could have been) made in respect of that expenditure had the burden of wear and tear had not transferred to the lessee. ***(4)***

556 Adjustment of allowable expenditure by reference to consumer price index

Summary

This section is designed to provide a measure of relief for capital gains which are attributable purely to inflation. It provides that, in computing the chargeable gain on the disposal of an asset, the cost of acquisition of the asset (and any other expenditure allowable in computing the gain) are to be indexed, that is, they are to be adjusted by applying to it a multiplier based on the All Items Consumer Price Index as compiled by the Central Statistics Office. However for years 2003 and following, this indexation has been abolished. For disposals occurring in the year of assessment 1997–98 and the year of assessment 2004 and subsequent years, the relevant multipliers are specified in ***subsections (5)*** and ***(6A)*** respectively. For disposals occurring between the years of assessment 1998–99 and 2003 inclusive, the relevant multipliers are prescribed by regulations. Where an asset was held on 6 April 1974, the market value of the asset as at that date is deemed to be the cost of acquisition and indexation is applied to this base "cost".

Indexation is available to all taxpayers. It cannot, however, operate to create an artificial loss or to augment an actual monetary loss. Expenditure incurred within one year before the date of disposal of the asset cannot be indexed. There is also a restriction on the amount of indexation available on the disposal of development land (see ***section 651***).

Details

Definitions

"the consumer price index number" means the All Items Consumer Price Index Number compiled by the Central Statistics Office. ***(1)***

"the consumer price index number relevant to any year of assessment" means the index number at the mid-November before the start of the year of assessment. All index numbers are expressed to the same base, that is, that the index number at mid-November, 1968 is 100.

Indexation – general

In computing a chargeable gain on a disposal, each sum allowable under ***paragraphs (a)*** and ***(b)*** of ***section 552(1)*** as a deduction from the consideration for the disposal is adjusted for inflation by multiplying it by the figure (the "multiplier") either specified in ***subsection (5)*** (which deals with disposals in the year of assessment 1997–98), determined under ***subsection (6)*** (which allows Revenue to make regulations prescribing the multipliers for each subsequent year of assessment up to and including the year of assessment 2003) or specified in ***subsection (6A)*** (which deals with disposals in the year of assessment 2004 and subsequent years). The Table included in ***subsection (6A)*** reflects that adjustments for inflation in 2003 and subsequent years have been abolished. ***(2)(a)***

Example

A house purchased on 1 August 1974 for €10,000 (including cost of sale) was converted into flats in the year of assessment 1975–76 at a cost of €12,000. The house was sold on 1 December 2003 for €200,000 net of costs of sale. The chargeable gain is computed as follows —

Net proceeds			€200,000
Deduct —			
(i)	base cost €10,000 multiplied by 7.528, the appropriate multiplier for a disposal in 2003 in relation to allowable expenditure incurred in 1974/75	€75,280	
(ii)	enhancement expenditure €12,000 multiplied by 6.080, the appropriate multiplier in relation to allowable expenditure incurred in 1975/76	€72,960	€148,240
Chargeable gain			€51,760

No adjustment for inflation is to be made in relation to allowable expenditure incurred within the 12 months ending on the date of disposal. ***(2)(b)***

Assets held on 6 April, 1974

For capital gains tax purposes all assets which are held on 6 April, 1974 (the commencement date for capital gains tax) are deemed to have been sold and immediately reacquired on that date at their market value. The object of the provision is to fix, in relation to such assets, market value at that date for the purposes of indexation. ***(3)***

Indexation cannot increase actual gain/loss or convert gain to loss or loss to gain

Indexation (***subsection (2)***) and the application of market value at 6 April 1974 (***subsection (3)***) do not apply where their operation would increase an actual gain or convert an actual loss into a gain, or increase an actual loss or convert an actual gain into a loss. Where the indexation and market value rules would otherwise convert an actual loss into a gain or an actual gain into a loss, the transaction is treated as giving rise to no gain and no loss. ***(4)***

Example 1

Shares purchased in 1970 for	€20,000
Market value 6/4/74	€2,000
Sale price December 2003	€60,000
Computation	
Sale proceeds	€60,000
Market value 6/4/74, that is, €2,000, x 7.528	€15,056
Gain using indexation rules	€44,944
Actual gain (€60,000 – €20,000)	€40,000

The rules cannot operate to increase the actual gain and so the chargeable gain is reduced to the actual gain of €40,000.

Example 2

Shares purchased in 1970 for	€17,000
Market value 6/4/74	€2,000
Sale price December 2003	€16,000
Computation	
Sale proceeds	€16,000
Market value 6/4/74 that is, €2,000 x 7.528	€15,056
Gain using indexation rules	€944
Actual loss (€17,000 – €16,000)	€1,000

The rules cannot operate to convert an actual loss into a gain. In any such case the transaction is treated as giving rise to no gain and no loss.

Example 3

Shares purchased 6/4/1990	€10,000
Sale price December 2003	€9,000
Computation	

Sale proceeds	€9,000
Cost, that is, €10,000 x 1.442	€14,420
Loss using indexation rules	€5,420
Actual loss (€10,000 – €9,000)	€1,000

The rules cannot operate to increase the actual loss and so the allowable loss is reduced to the actual loss of €1,000.

Example 4

Shares purchased 6/4/1990	€10,000
Sale price December 2003	€11,000
Computation	
Sale proceeds	€11,000
Cost, that is, €10,000, x 1.442	€14,420
Loss using indexation rules	€3,420
Actual gain (€11,000 – €10,000)	€1,000

The rules cannot operate to convert an actual gain into a loss. In any such case the transaction is treated as giving rise to no gain and no loss.

Multipliers for indexation

The appropriate multipliers to be used in the case of any disposal made in the year 1997–98 are set out in tabular format in ***subsection (5)***. Assets acquired by the disponer before 6 April, 1974 are, in accordance with ***subsection (3)***, to be revalued on that date, so that multipliers are prescribed for deductible expenditure incurred (or deemed under ***subsection (3)*** to have been incurred) in the years of assessment 1974–75 to 1996–97 inclusive. Neither the cost price of an asset acquired in 1997–98, nor enhancement expenditure incurred in 1997–98, is to be increased for deduction against the consideration for a disposal in that year. In effect, indexation does not apply to deductible expenditure incurred in the year of assessment in which the disposal occurs or, as provided in ***subsection (2)(b)***, within the period of 12 months ending on the date of the disposal. ***(5)***

The multipliers for the years of assessment 1998–99 to 2003 inclusive are prescribed by the Revenue Commissioners by regulations made annually. The multipliers for the years of assessment 1998–99 to 2003 inclusive are the quotients (rounded up to 3 decimal places) obtained by dividing the consumer price index number relevant to the year of assessment in which the disposal is made by the consumer price index number relevant to the year of assessment in which the expenditure was incurred. ***(6)***

The appropriate multipliers to be used in the case of any disposal made in the year of assessment 2004 and subsequent years are set out in tabular format in ***subsection (6A)***. The provisions laid out at ***subsection (5)*** above also apply to this subsection. ***(6A)***

Laying of regulations before Dáil Éireann

The standard requirement for the laying of regulations before Dáil Éireann is set out. ***(7)***

Indexation where compensation money used to restore asset

Any compensation or insurance money which under ***section 536(1)(a)*** is to be deducted from the allowable expenditure in computing a gain on the disposal of an asset is to be deducted from the amount spent in restoring the asset before applying indexation to that ***(8)*** amount. In effect, this means that for indexation purposes the whole of the original cost of the asset is to be indexed.

[***Section 536(1)(a)*** allows a person to claim that the receipt of a capital sum as compensation for damage to assets which are not lost or destroyed is not to be a disposal of that asset in whole or in part. It is a condition of the relief that the amount received be applied in restoring the asset (or be so applied except for a part which is not required for that purpose and which is small as compared with the whole amount).]

Example

A person buys an asset on 6 April, 1992 for €100,000 and insures it. On 6 April, 1996 it is damaged by fire. Its value has increased by that time to €160,000. She receives compensation of €40,000 and immediately spends €50,000 on restoring the asset. She makes a claim under ***section 536(1)(a)*** and is, accordingly, treated as if she had not made a part disposal of the asset for €40,000. On 1 December 2003 she sells the asset for €180,000.

In the absence of a provision to the contrary, the position under ***section 536(1)(a)*** following the sale of the asset, would be —

Cost of asset €100,000

Deduct recovery (part disposal but ***section 536*** applies)

€40,000

€60,000

Add expenditure on restoration

€50,000

Adjusted cost €110,000

For indexation purposes, €60,000 (balance of cost) would be treated as expended on 6 April, 1992, and €50,000 (restoration cost) on 6 April, 1996. As, however, the full compensation was spent on restoring the asset it is obvious that indexation should apply to the original cost, €100,000, as at 6 April, 1992.

The purpose of ***subsection (8)*** is to remedy this situation and it achieves this by providing that the compensation is deducted from the cost of restoration, thus leaving the original cost to be indexed.

The computation then becomes —

Cost 6 April, 1992		€100,000
Additional expenditure 6 April, 1996	€50,000	
Less compensation	€40,000	€10,000

That is, the full base cost is indexed as from 6 April, 1992, and €10,000 of the restoration expenditure is indexed from 6 April, 1996.

Market value on 6 April, 1974 is net of grants

Where the market value of an asset at 6 April, 1974 is to be used in the computation of a gain, that value is to be reduced by the amount of any grants received from any government, statutory body or public or local authority in respect of the acquisition of the asset. Thus, indexation applies only to the net of grant amount. ***(9)***

557 Part disposals

Summary

Where only part of an asset is disposed of, only a portion of the cost is deductible in computing a chargeable gain or an allowable loss on the part disposal. Where the expenditure attributable to each part of the asset is known, the amount deductible is the expenditure attributable to the part disposed of. Where the expenditure cannot be so quantified, it is apportioned in accordance with the rules laid down in this section and only the amount apportioned to the part disposed of is deductible.

Details

There is to be an apportionment of the costs allowable in computing a gain or a loss where there is a part disposal of an asset. (***Section 534(b)*** defines what is meant by a part disposal.) ***(1)***

A simple apportionment rule is set out under which the amount allowable on a part disposal is, in terms of a fraction of total expenditure, the amount determined by the fraction — ***(2)***

$$\frac{A}{A + B}$$

where A is the consideration for the disposal and B is the market value of the remainder. It is also provided that the balance of the expenditure is to be attributed to the property remaining and this in terms of a fraction of total expenditure can be stated as —

$$\frac{A}{A + B}$$

where A and B have the same meanings as above.

Example

An asset cost €50,000. A part is sold for €40,000 at a time when the remainder is valued at €60,000. The chargeable gain is computed thus —

Proportion of cost attributable to the part sold is-

$$\frac{€40{,}000}{€40{,}000 + €60{,}000} \quad x \quad €50{,}000 \quad = \quad €20{,}000$$

The gain (disregarding any indexation relief under ***section 556***) is therefore €40,000 less €20,000, that is, €20,000. The balance of the expenditure, €30,000 (that is, €50,000 less €20,000) is attributable to the remainder of the asset.

Apportionments are to be made before the operation of ***section 555*** which deals with the restriction of losses by reference to capital allowances and renewals allowances. Where the expenditure attributable to each part is known, the capital allowances to be taken into account for the purposes of that restriction are those attributable to the part disposed of. Where the expenditure attributable to the parts has to be determined by the apportionment rule, the full capital allowances are taken into account for the purposes of the restriction. To the extent that any allowances have been taken into account to restrict a loss on a disposal, they will not be taken into account for restricting a loss on a subsequent disposal. ***(3)***

Thus, in the case of an asset which attracts capital allowances or renewals allowances, the apportionment is to be made first and capital allowances are to be taken into account under ***section 555*** only to the extent that they relate to the part of the asset disposed of. If there has been a previous part disposal at a loss and on that disposal capital allowances or renewals allowances have been used to restrict the allowable loss, then, only the balance of the allowances is to be used to restrict any further loss on the disposal of the asset in full or in part.

Where the actual expenditure on the different parts of an asset is known there is to be no apportionment. This occurs where expenditure is wholly attributable either to the part of the asset disposed of or the remainder of the asset. ***(4)***

558 Part disposals before 6th day of April, 1978

Summary

This section contains special computational rules for the purpose of determining the base cost of the remainder of an asset where there was a part disposal of the asset in the period from 6 April, 1974 to 5 April, 1978 and the remainder of the asset is disposed of on or after 6 April, 1978. In the case of a part disposal of an asset in the period from 6 April, 1974 to 5 April, 1978, the capital gains tax liability would have been determined by reference to cost of acquisition or, in the case of an asset acquired in consequence of a death after 6 April, 1974, market value on 6 April, 1974.

With effect from 6 April, 1978, 2 concepts were introduced into the capital gains tax code for the purposes of determining the base cost of assets. Firstly, any assets held on 6 April, 1974, including assets acquired in consequence of a death before that date (and therefore held by the successor on that date), are to have as their base cost the market value on that date (see ***section 556(3)***). Secondly, if the assets were acquired on a death on or after 6 April, 1974, the base cost is to be the market value at the date of death (see ***section 573(2)(a)***). ***Section 558*** provides for a special rule to avoid the distortion which would arise if the cost of acquisition, including a deceased's cost of acquisition, were used in relation to part disposals of assets before 6 April, 1978, while in relation to disposals of the remainder of those assets on or after that date a different basis for determining base cost is to be used, namely, market value on 6 April, 1974 or on date of death. The rule is that, in relation to part disposals before 6 April, 1978, there is a notional recomputation of the base cost by reference to market value on 6 April, 1974 or on the date of death, whichever is appropriate. This notional computation does not affect liability to tax on part disposals effected before 6 April, 1978. It is made solely for the purpose of determining the appropriate balance of the base cost which will be used in the computation of the gain or loss on a disposal of the balance of the assets.

Details

The first subsection is concerned with assets held on 6 April, 1974 and applies where there was a part disposal of such an asset by a person in the 4 year period from 6 April, 1974 to 5 April, 1978, and — ***(1)***

- the time apportionment rules (paragraph 18 of Schedule 1 to the Capital Gains Tax Act, 1975) for determining the amount of the chargeable gain, which were based on cost of acquisition, were applied, and
- some part of the asset remained undisposed of on 6 April, 1978.

In any such case, in order to have a uniform basis for determining under ***section 557*** the correct balance of allowable expenditure (before indexation under ***section 556***) in respect of a disposal of the balance of the asset on or after 6 April, 1978, it is to be assumed that time apportionment (which was abolished in respect of disposals on or after 6 April, 1978) did not apply on the earlier disposal. Instead, it is to be assumed that the gain on the earlier disposal had been determined on the basis that the base cost of the asset was equal to the market value on 6 April, 1974.

The second subsection deals solely with assets acquired on a death which occurred on or after 6 April, 1974. It applies where there was a part disposal of such an asset by a personal representative or legatee or successor in the 4 year period from 6 April, 1974 to 5 April, 1978, and — ***(2)***

- the chargeable gain on that disposal had been determined on the basis of the base cost of the asset at a date before the date of death of the deceased person on whose death the asset was acquired, [This would be the case where the death occurred on or after 6 April, 1974 and the base cost to the deceased (or to trustees) was used, with time apportionment, or where the death was after 6 April, 1974 and market value as at that date was used because the asset was acquired by the deceased (or trustees) before 6 April, 1974] and

- some part of the asset remained undisposed of on 6 April, 1978.

In any such case, the base cost applicable to a disposal on or after 6 April, 1978 is to be determined under ***section 557*** as if the earlier disposal had been governed by section 14(1) or 15(4)(b) of the Capital Gains Tax Act, 1975, as respectively amended by section 6 or 7 of the Capital Gains Tax Act, 1978. In other words it is to be determined as if the asset was acquired at its market value at the date of death of the owner or life tenant.

559 Assets derived from other assets

Summary

Expenditure can be followed through changes in the form or nature of assets due to the merging of assets, the creation of rights in or over assets or the extinction of rights in or over assets. A proportion of the expenditure attributable to the original asset is apportioned to the asset derived from it.

Details

Where the value of an asset is derived from another asset in the same ownership, a proportion of the allowable expenditure referable to the original asset is to be attributed to the asset derived from it. An asset can be derived from another through the merger of assets or the creation of rights or interests in or over an asset. ***(1)***

The basis of apportionment by reference to which expenditure is to be attributed to an asset derived from another asset is set out. The apportionment is to be made by reference to the following factors at the time of disposal — ***(2)***

- consideration received (a),
- market value of asset or interest retained (b),

and the fraction of the original expenditure to be deducted in computing the gain on the disposal is —

$$\frac{(a)}{(a) + (b)}$$

Thus, shares acquired under a rights issue or as a bonus shares are derived from the original shares, and an apportionment of the cost of the original shares is to be made in the event of a disposal of the rights or shares.

Example

A bought 600 shares costing €600. He becomes entitled to rights to subscribe at €2 a share for one share for every 3 shares he holds. He disposes of his rights for €1 per share and at that time the market value of the shares is €3 each. The cost of the rights is, by apportionment —

$$€600 \times \frac{€200}{€200 + €1{,}800} = €60$$

His gain on the disposal of the rights is therefore €200 less €60, that is, €140. The cost of these shares to the recipient of the rights when he has exercised those rights will be €200 plus the subscription of €2 per share or €400 – total €600. The cost of A’s remaining interest (600 shares) is €600 less €60, that is, €540.

560 Wasting assets

Summary

This section provides a formula for the treatment of allowable expenditure in the computation of a gain or loss on the disposal of wasting assets. In general, a wasting asset is an asset which has a predictable life not exceeding 50 years but freehold land is not to be a wasting asset whatever its nature. Because a wasting asset is one whose useful life is limited so that over a period of time it gradually becomes either valueless or worth only scrap value, when such an asset is disposed of the disposal comprises only what is in substance a diminished part of the asset, the other part having been worn out by use or passage of time. Thus, if the original outlay were to continue to qualify in full, artificial losses would result on the disposal of the asset. To prevent this, it is provided that the original expenditure is to be restricted on the assumption that it wastes away at a uniform rate over the predictable life of the asset. Further outlay on the asset is similarly to be treated as wasting away over the remaining life of the asset from the time it is reflected in the value of the asset. [It should be noted, however, that under ***section 603*** all chattels which are wasting assets are exempt from capital gains tax except where capital allowances were or could have been claimed in respect of them. It should also be noted that ***section 566*** and ***Schedule 14*** provide for special rules to deal with the computation of gains and losses on disposals of leases which are wasting assets.]

Works of Art

This section was amended by Section 46 of the Finance Act 2014 in relation to a weakness in the interaction between Section 560 (wasting assets and CGT) and Section 603 (wasting chattels) insofar as works of art are concerned.

Section 560 of the Taxes Consolidation Act 1997 provides that items of plant and machinery are **in every case to be regarded as having a predictable life of less than 50 years, or in other words "wasting assets" for capital gains tax purposes.** This is so that in computing any gain or loss on a disposal of plant or machinery, the cost of the item is treated as written off at a uniform rate to NIL at the end of its life, thus ensuring that claims for losses cannot arise.

Section 603 of the Taxes Consolidation Act 1997 also provides that an asset that is tangible movable property **and a wasting asset** is exempt from capital gains tax except where it is used in a trade or profession and eligible for capital allowances.

The effect of the interaction of these two provisions is that valuable works of art can be treated as items of plant in certain circumstances and therefore exempt from capital gains tax. It was not the intention that such valuable items should be exempt from capital gains tax. Accordingly, Section 46 amended the definition of wasting asset in Section 560(1)(c) to provide that the section only applies to plant (other than plant that is a work of art). Work of art is defined as including a picture, print, book, manuscript, sculpture, piece of jewellery, furniture or similar object.

Details

A "wasting asset" is an asset with a predictable life not exceeding 50 years but freehold land, no matter what its nature and no matter what buildings are on it, is not to be treated as a wasting asset. A life interest in settled property is treated as a wasting asset when the expectation of life of the life tenant is 50 years or less, and life expectations are to be ascertained from actuarial tables approved by the Revenue Commissioners. In any case in ***(1)*** which predictable expectation of life requires to be ascertained by reference to actuarial tables Income & Capital Taxes Division should be consulted.

The remainder of this guidance note deals with plant (that is not a work of art) and machinery. Plant (other than plant that is a work of art) and machinery is always treated as a wasting asset and its life is regarded as ending when it is finally unfit for further use. In estimating the life of plant and machinery, it is to be assumed that the plant and machinery will be used in the normal manner and to the normal extent throughout its life. The significance of this provision in relation to plant and machinery is limited in that the exemption of wasting chattels does not apply to assets which have qualified for capital allowance and in that the straight-line write off of expenditure provided by ***section 560*** does not apply to such assets. "Life", in relation to tangible movable property, is defined as useful life having regard to the purpose for which the assets were acquired or provided.

The term "the residual or scrap value" means the predictable value, if any, which a wasting asset has at the end of its predictable life.

The predictable life and predictable scrap value depends on the nature of the asset (as for example its legal period of existence). Unless immediately apparent from the nature of the asset, predictable life and predictable scrap value are to be taken in relation to any disposal as they were known or ascertainable at the time the asset was acquired or provided by the person making the disposal. ***(2)***

Expenditure on the cost of a wasting asset, less the expected scrap value at the end of its life, is to be written off at a uniform daily rate. The write off expressed as a formula is — ***(3)(a)***

$$\frac{(E-S)T_1}{L}$$

E is the amount of expenditure (cost plus expenses of acquisition).

S is the predictable scrap value.

T_1 is the period from time of acquisition to time of disposal.

L is the predictable life at the time of acquisition.

Where during the period of ownership further expenditure is incurred in improving the asset which is reflected in the value of the asset at the time of disposal, that expenditure is also to be treated as written off at a uniform daily rate. The corresponding formula is — ***(3)(b)***

$$\frac{(E)T_2}{L-T_1+T_2}$$

E_1 is the additional expenditure on improving the asset.

T^2 is the period from the time the expenditure is first reflected in the value of the asset to the time of disposal.

If the additional expenditure results in a new scrap value for the asset, the write off of initial outlay is modified and the revised formula reads — ***(4)***

$$\frac{(E-S_1)T_1}{L}$$

S_1 is the new scrap value.

Any expenditure written off under the section does not qualify as a deduction under ***section 552*** in computing chargeable gains. ***(5)***

Example

Indexation relief under ***section 556*** is ignored in this example.

On 1 July, 2002 a woman buys an asset costing €20,000. Its predictable life is 30 years and scrap value €2,000. On 1 July 2007 she incurs expenditure of €5,000 which enhances its value from the end of the sixth year and increases the scrap value by €1,000. The asset is sold in 2016 at a price of €16,000.

Consideration for disposal			€16,000
Cost of acquisition	€20,000		
Less scrap value	€3,000	(that is €2,000 + €1,000)	
	€17,000		

Restriction under ***subsection (3)(a)*** by amount applicable to period of use (14 years) —

$$\frac{14}{30} \times €17{,}000 – €7{,}933$$

Deduct as allowable		(€20,000 – €7,933)	€12,067
Gain			€3,933
Expenditure enhancing the value		€5,000	

Reduce under ***subsection (3)(b)*** by amount applicable to period of use (9 years) out of 25 years left at the time —

$\frac{9}{25} \times €5{,}000 – €1{,}800$	€3,200
Chargeable gain	€733

Works of Art are not treated as wasting assets (see note above).

561 Wasting assets qualifying for capital allowances

Summary

Wasting assets used for the purposes of a trade or profession, in respect of which capital allowances have or could have been claimed, do not qualify for exemption from capital gains tax under ***section 603***. ***Section 561*** ensures that the provisions of ***section 560*** for writing off expenditure at a uniform rate do not apply to such assets. This is because of the special provisions of ***section 555*** restricting losses by reference to capital allowances. Thus, in the case of wasting assets qualifying for capital allowances, ***section 555*** applies instead of ***section 560***.

Details

Subsections (3) to ***(5)*** of ***section 560*** do not apply in the case of the disposal of an asset where the asset was used for a trade or profession during the full period of ownership of the asset by the disponer, and capital allowances have been given or could have been claimed in respect of the expenditure on the asset. The same exclusion is made where expenditure was incurred which had otherwise qualified in full for any capital allowance (as, for example, on leased machinery). ***(1)***

In the case of assets which qualify only in part for capital allowances, the expenditure and consideration are to be apportioned and the part corresponding to the expenditure which has qualified for capital allowances is to be dealt with under ***section 555*** while the remainder comes within the ambit of ***section 560*** or is exempt under ***section 603***. Any ***(2)*** apportionment of the consideration agreed for the purposes of a balancing allowance or balancing charge is to apply also for capital gains tax but otherwise consideration is to be apportioned in the same way as expenditure.

Example 1

On 1 December, 2002 X bought a machine for €50,000. The asset is used partly () in X's trade and partly () for personal use. Thus, only () of the expenditure qualifies for capital allowances. He sells the asset for €60,000 on 1 December, 2004. The computation of the gain (disregarding indexation relief under ***section 556***) is as follows —

Consideration for the disposal €60,000 x 3/4	€45,000
Less cost €50,000 x 3/4	€37,500
Gain	€7,500

The part of the asset not qualifying for capital allowances is a wasting chattel and is exempt from capital gains tax under ***section 603***.

Example 2

X owns a plant hire business. In July 2002 she bought a boat for €120,000 which she uses privately for 3 months of the year. The predictable life is 40 years and the scrap value is €4,000. She gets capital allowances for income tax purposes on of the cost, X sells the boat in July 2009 for €100,000. For income tax purposes the capital allowances given amount to of (€120,000 less €100,000), that is €15,000. For capital gains tax the part of the expenditure to which the capital allowances relate is considered without reference to the wasting assets provisions, as follows —

Cost price €120,000 x 3/4	€90,000
Sale price €100,000 x 3/4	€75,000
Loss	€15,000
Capital allowances granted for income tax	€15,000

The result is no gain and no loss.

The balance of the asset comes within the ambit of ***section 603***.

562 Contingent liabilities

Summary

This section is primarily an anti-avoidance provision directed against the introduction into a contract for the disposal of an asset of a contingent liability on the person disposing of the asset which both parties know is unlikely to materialise. The method of dealing with the device is to disregard the contingent liability in computing the gain or loss on the disposal in the first instance and to give an adjustment only if the liability is actually paid.

This section may also apply to transactions which are not designed to avoid tax as, for example, under ***subsection (1)(b)***, where the "other obligation" is an agreement to buy back in certain genuine circumstances such as failure to get planning permission. Such a contract differs very little from a conditional contract covered by ***section 542(1)(b)*** and concessional treatment may be granted to remove any genuine hardship.

Details

The contingent liabilities to which the section applies are — ***(1)***

- a liability assumed by the lessor under a lease in respect of a default by the lessee as, for example, a failure to comply with by-laws relating to property,

- a liability assumed by the vendor of land for quiet enjoyment or other obligation as, for example, where a grocer sells a shop to butcher and covenants not to start a butcher's shop himself in adjoining property which he owns, and
- a contingent liability in respect of a warranty on a sale or lease of any property other than land.

In the first instance no allowance is to be made under ***section 552*** in the computation of a chargeable gain or allowable loss for the fact that the person disposing of an asset may have retained or assumed a contingent liability of a kind mentioned above.

Where, however, the contingent liability is enforced, any expenditure incurred by reason of its enforcement is to be deducted from the consideration and the gain or loss recomputed accordingly. An adjustment of the charge to tax as a result of the recomputation is to be made by discharge of tax, repayment or set off. A claim for an adjustment must be made within 4 years from the end of the chargeable period in which the contingent liability is enforced. No adjustment will be made unless the contingent liability is actually paid. ***(2), (2A)***

Subsection (2) is to apply notwithstanding the general time limit for making a claim for a repayment of tax contained in ***section 865***. ***(3)***

563 Consideration due after time of disposal

This section provides that the computation of a chargeable gain for both capital gains tax and corporation tax purposes is to be made without taking into account any discount for the postponement of payment, and without regard to any risk that any part of the payment may prove to be irrecoverable or to the right to receive any part of the payment being conditional. If, however, it is later shown to the satisfaction of the inspector that any part of the consideration has become irrecoverable, any necessary adjustment of the charge to tax is to be made. The adjustment may be made by repayment or discharge of tax or otherwise. The general time limit for making a claim for a repayment of tax set out in ***section 865*** shall not prevent the Revenue Commissioners from making a repayment of tax on foot of an adjustment.

564 Woodlands

This section provides that where an individual makes a disposal of woodland, the consideration for the disposal of the trees growing on the land and saleable underwood are not taken into account for capital gains tax purposes. Thus, where land held by an individual is sold with standing timber on it, the consideration for the disposal is to be apportioned and the part of the consideration attributable to the trees or saleable underwood excluded. Insurance proceeds received by an individual in respect of the destruction of or damage to standing timber or saleable underwood are also excluded for capital gains tax purposes.

As the consideration for standing timber and saleable underwood are excluded from the sales proceeds of woodland, in computing any gain or loss on the disposal of the woodland that part of the cost of the woodland attributable to standing timber and saleable underwood is also to be excluded.

It should be noted that the section applies only to individuals. It does not apply to companies or other bodies of persons.

Example

A buys woodland for €100,000, €70,000 of which is attributable to growing timber. Some years later, he sells the land for €120,000, €80,000 of which is attributable to growing timber. The computation of the gain (disregarding indexation relief under ***section 556***) is —

Selling price of land	€120,000

Attributable to growing timber	€80,000	
Attributable to land		€40,000
Cost price of land	€100,000	
Attributable to growing timber	€70,000	
Attributable to land		€30,000
Chargeable gain		€10,000

565 Expenditure reimbursed out of public money

This section provides that, in computing a gain or loss on a disposal, no deduction is to be made in respect of any expenditure which has been or is to be met directly or indirectly by a Government grant or out of the funds of any other government or public body or local authority whether foreign or domestic.

566 Leases

This section provides that ***Schedule 14*** applies for the purposes of the Capital Gains Tax Acts. That Schedule sets out detailed rules for the capital gains tax treatment of leases.

CHAPTER 3
Assets held in a fiduciary or representative capacity, inheritances and settlements

Overview

This Chapter sets out the rules for the capital gains tax treatment of disposals of assets held in a fiduciary or representative capacity. It also sets out the capital gains tax treatment of inheritances and settled property.

567 Nominees, bare trustees and agents

Summary

This section deals with the position where assets are held by a person as nominee for another person, or as bare trustee for another person who is absolutely entitled to the assets or who would be so entitled but for the fact of being an infant or a person under disability. In such cases disposals and acquisitions by the nominee or trustee are to be treated as if they were made by the beneficial owner.

Details

The meaning of an asset held by a trustee for a person absolutely entitled to the asset as against the trustee is set out. A person is so entitled if he/she has the exclusive right (or would have but for being an infant or a person under disability) to direct how the asset should be dealt with, subject only to the right of the trustees to resort to the asset for payment of taxes, costs or other outgoings. ***(1)***

In cases where assets are held for a person by a nominee or as trustee for a person who is absolutely entitled to the assets as against the trustee (or who would be so entitled but for being an infant or under disability), transactions by the nominee or trustee are to be treated as transactions by the beneficial owner of the assets. As a corollary, transfers of property between the nominee or trustee and the person absolutely entitled to the property are not to be treated as disposals from one to the other. ***(2)***

If exploration or exploration activities are carried on by a person on behalf of a licence holder or lessee under the Petroleum and Other Minerals Development Act, 1960, the licence holder or lessee is treated as the agent of that person for the purposes of assessment to capital gains tax. ***(3)***

The provisions of ***Schedule 1*** apply to supplement ***subsection (3)*** (***Schedule 1*** contains supplementary provisions on the extension of the charge to tax to profits and income from activities on the Continental Shelf). ***(4)***

568 Liability of trustees, etc

Summary

This section makes special provision relating to the assessment of the trustees of a settlement and the personal representatives of a deceased person.

Details

Where an assessment to capital gains tax is to be made on trustees or personal representatives, the assessment may be made on any one or more of the trustees or personal representatives. ***(1)***

Where trustees or personal representatives are chargeable to tax on gains accruing to them, the charge rests on them alone and there is no "looking through" to the beneficiary except in the case of a beneficiary absolutely entitled as against the trustee (***section 567(2)***). Thus, the exemption of gains of €1,270 and under which is available to individuals does not apply in the case of trustees or personal representatives. ***(2)***

569 Assets of insolvent person

Summary

This section deals with the position of a trustee or assignee in bankruptcy, under a deed of arrangement, a Debt Settlement Arrangement or a Personal Insolvency Arrangement. It provides that the vesting of the assets in the trustee or assignee in bankruptcy or the holding of assets by a personal insolvency practitioner and any subsequent retransfer of assets to the bankrupt, debtor or insolvent person are to be disregarded for capital gains tax purposes. Any chargeable gains accruing on disposals by the trustee or assignee in bankruptcy or by the personal insolvency practitioner are to be assessed on the trustee or assignee in bankruptcy or the personal insolvency practitioner. Where the bankrupt, debtor or insolvent person dies, the trustee or assignee in bankruptcy or the personal insolvency practitioner is regarded as acquiring the assets as personal representative of the deceased.

Details

A "deed of arrangement" is a deed made under the Deeds of Arrangement Act, 1887. ***(1)***

"Insolvent person" means an individual who is insolvent and who has entered into a Debt Settlement Arrangement or a Personal Insolvency Arrangement (within the meaning of the Personal Insolvency Act 2012) with his or her creditors.

"Relevant person" means a personal insolvency practitioner (within the meaning of the Personal Insolvency Act 2012) who holds the assets of an insolvent person in trust for the benefit of creditors of that insolvent person under a Debt Settlement Arrangement or a Personal Insolvency Arrangement.

In relation to assets held by a trustee or assignee in bankruptcy, under a deed of arrangement, a Debt Settlement Arrangement or a Personal Insolvency Arrangement, the ***(2)*** assets are to be treated as if they were vested in the bankrupt, debtor or insolvent person and any transactions in the assets are deemed to be those of the bankrupt, debtor or insolvent person. The vesting of the assets and any retransfer to the bankrupt, debtor or insolvent person is to be disregarded for capital gains tax purposes. The trustee or assignee in bankruptcy or the personal insolvency practitioner is chargeable in respect of any chargeable gains that accrue to the trustee or assignee in bankruptcy or the personal insolvency practitioner.

Where the bankrupt, debtor or insolvent person dies while his/her assets are still vested in a trustee or assignee in bankruptcy or held by a personal insolvency practitioner, ***subsection (2)*** will not apply after the death. Instead, the provisions relating to death in ***section 573(2)*** will apply, the assets being treated as having passed from the deceased to the trustee or assignee in bankruptcy or the personal insolvency practitioner as if the trustee or assignee in bankruptcy or the personal insolvency practitioner were a personal representative of the deceased. Accordingly, there is no charge to capital gains tax where assets pass from the trustee or assignee in bankruptcy or the personal insolvency practitioner to legatees of the deceased. ***(3)***

Where the assets of a deceased person are vested in a trustee in bankruptcy or a personal insolvency practitioner after death, ***subsection (2)*** does not apply and the trustee or personal insolvency practitioner takes the assets as the personal representative of the deceased. ***(4)***

570 Company in liquidation

This section provides that a liquidator of a company is to be treated for capital gains tax purposes as the nominee of the company. Transactions in the assets by the liquidator are to be treated as transactions by the company so that any chargeable gains or allowable losses are deemed to be gains or losses of the company. The transfer of the assets from the company to the liquidator on vesting is not regarded as a disposal from one to the other. The words “or otherwise” are used in the section to cover, for example, the case where on a voluntary liquidation the liquidator might apply to the court for a formal vesting of assets of the company by virtue of section 614 of the Companies Act 2014.

571 Chargeable gains accruing on disposals by liquidators and certain other persons

Summary

This section imposes a liability to pay capital gains tax or, where appropriate, corporation tax on chargeable gains, on persons designated in the section as “accountable persons”, that is, liquidators, receivers (whether appointed under a fixed or a floating charge), mortgagees or any other persons entitled to assets by means of security. The liability affects tax on any disposal made by an accountable person where ***section 537(2)*** (or ***section 78(8)*** or ***570*** in the case of a liquidator) would make a different person (who might have no funds to pay the tax) chargeable on the disposal by the receiver, mortgagee, liquidator, etc. The accountable person is assessable to the tax referable to the chargeable gain and that tax is recoverable from the accountable person. The tax must be paid by the accountable person out of the proceeds of the disposal in priority to charges and encumbrances on the property.

Details

Definitions

An "accountable person" includes not just a liquidator of a company but also persons whose disposals of certain assets are treated for capital gains tax purposes as being disposals by the owner of the assets so that the owner is the chargeable person (even though the asset is being dealt with, for example, by a liquidator, mortgagee or receiver), and tax is computed by reference to the owner's entitlement to indexation, exemptions and reliefs. The relevant provisions which "look through" the receiver, liquidator, etc are ***sections 78(8)***, ***537(2)*** and ***570***. ***(1)***

Definitions of "referable capital gains tax" and "referable corporation tax" are provided for respectively by reference to ***subsections (2)*** and ***(3)*** which contain rules for computing the amount of tax payable by an accountable person (the "referable" tax), while "the debtor" and "the company" are given the meaning set out in ***subsections (5)*** and ***(6)***, respectively.

A definition of "relevant disposal" is also provided by reference to ***section 648*** which deals with the taxation of chargeable gains on the disposal of development land. As these gains are treated in a special way under that section, they must be distinguished from "normal" gains in many of the provisions of this section. For instance, where such gains accrue to companies they are charged to capital gains tax (rather than corporation tax) so that they are within the provisions of ***subsections (2)*** and ***(5)*** which deal with capital gains tax but must be excluded from ***subsections (3)*** and ***(6)*** which deal with corporation tax.

Referable capital gains tax

The definition of "referable capital gains tax" must necessarily take account of various circumstances in which different rules for the computation of capital gains tax are provided in the Capital Gains Tax Acts. ***(2)***

The simple case is where in a year of assessment no gain arises to "the debtor" other than chargeable gains ("the referable gains" dealt with in ***subsection (5)***) on disposals by the accountable person. In such a case the provisions of ***section 31*** (under which tax is to be levied on the net amount determined by deducting all allowable losses from the amount of the chargeable gains) apply without modification and, thus, the "referable capital gains tax" is the tax on the referable gains as if they were the debtor's gains and before the set-off provided for in ***subsection (5)(c)***.

Example

An accountable person disposes of a debtor's property (no development land) for €300,000 on 1 September, 2002. The property had been bought by the debtor on 1 August, 1993 for a total cost of €100,000 (including expenses). The debtor made no other disposals in the year 2002. The "referable capital gains tax", payable by the accountable person, is the amount which, apart from ***subsection (5)***, would be assessable on the debtor, namely, €33,146, computed as follows —

	€	€
Proceeds of sale		300,000
Less expenses of sale say	5,000	
Expenses of receiver attributable to sale say	1,000	6,000
Net proceeds		294,000
Less cost price €100,000 with indexation		

adjustment (x 1.270)	127,000	
Chargeable gain		167,000
Less annual exemption		1,270
Taxable amount		165,730
Capital gains tax at 20%		33,146

A special rule is needed to determine "referable capital gains tax" in a case where there are a number of chargeable gains accruing to the debtor in the year of assessment, including referable gains, and all of those gains are taxable at the same rate so that allowable losses and the annual exemption, if the debtor is an individual, do not fall to be allocated in priority to any one gain under ***sections 546(6)*** and ***601(3)***. Because loss relief is restricted under ***section 653*** in the case of "relevant disposals" (that is, disposals of development land), this rule operates only where none of the disposals is a relevant disposal or all of the disposals are relevant disposals. ***(2)(b)***

The rule provides a formula A/B x C to apportion the full capital gains tax (after all deductions and reliefs) of the debtor on all gains, including referable gains, by reference to the proportion which the accountable person's tax (as if no deductions or reliefs were available) bears to the total tax (as if no deductions or reliefs were available). It thus allocates to the accountable person his/her correct share of the net tax for the year of assessment, after all allowances and reliefs have been taken into account (but before reducing that tax by the set-off under ***subsection (5)(c)***).

Example

An accountable person disposes of a debtor's property for €300,000 on 1 September, 2002. The property had been bought by the debtor on 1 August, 1993 for a total cost of €100,000 (including expenses). The chargeable gain computed as in the example relating to ***subsection (2)(a)*** is €167,000.

Also in the year 2002, the following chargeable gains accrued on other disposals —

1 August, 2002	€30,000
1 November, 2002	€20,000

All 3 chargeable gains are taxable at the same rate, namely 20 per cent. The debtor's overall capital gains tax liability is €43,146 computed as follows —

	€	€
Chargeable gains	167,000	
	30,000	
	20,000	217,000
Less annual exemption		1,270
		215,730
Capital gains tax at 20%		43,146

In accordance with the formula A/B x C in ***subsection (2)(b)***, the "referable capital gains tax" payable by the receiver is €33,205 computed as follows —

$$\frac{167{,}000}{217{,}000} \times \quad 43{,}143 = \quad 33{,}205$$

A further special rule deals with all cases other than those dealt with in ***subsections (2)(a)*** and ***(b)***. Essentially, this further rule deals with cases where different rates of tax apply to gains. This provision is now largely redundant. ***(2)(c)***

Referable corporation tax

The definition of "referable corporation tax" is modelled somewhat on the definition of "referable capital gains tax" with additional wording similar to that in ***section 78(2)*** which provides for the determination of a "notional amount" of capital gains tax in charging companies to corporation tax. The definition is, however, necessarily more complex than its capital gains tax counterpart because, where corporation tax applies to chargeable gains of companies, there may be (unlike the position of capital gains tax) a spill-over of trading losses, charges on income or group relief which would reduce or wipe out corporation tax on chargeable gains. Thus, in determining "referable corporation tax", a number of different scenarios have to be catered for. ***(3)***

The simple case is where no chargeable gain accrues to the company in the accounting period other than the chargeable gain, the tax in respect of which the accountable person is liable (or any development land gains which are liable to capital gains tax even when made by companies and, as a result, are outside the scope of ***subsections (3)*** and ***(6)*** but come within ***subsections (2)*** and ***(5)***.) In any such case, the referable corporation tax is normally the notional amount of capital gains tax, computed as if capital gains tax applied (following the precedent set in ***section 78(2)***). However, it is also provided that the referable corporation tax is a lesser amount if the company's overall corporation tax liability for the period is less than the tax on the gains – that is, because of a spill-over of a surplus of losses, etc which cannot be set against income of the company. ***(3)(a)***

Example

A receiver disposes of a company's property for €200,000 in August, 2002 (in a 9 month accounting period ending on 31 December, 2002. The chargeable gain on the disposal (taking indexation relief and expenses into account) is €43,200. No other chargeable gains accrued in the accounting period.

The amount of the "referable corporation tax" is either the amount computed as if the gain were chargeable to capital gains tax, thus —

Chargeable gain	€43,200
Tax @ 20%	€8,640

or, if less, the amount of the company's corporation tax for the accounting period.

For example, if, in the example quoted, the company had incurred trading losses of €6,000 in the accounting period and had no profits, other than the chargeable gains, against which the losses could be set off, its total corporation tax liability (apart from ***subsection (6)***) would be €7,680 (after giving, effectively, relief of €960 i.e. tax at the corporation tax rate of 16% in respect of the losses of €6,000).

A special rule is necessary to deal with the case where a number of gains (including the chargeable gain for the tax on which the accountable person is liable) liable to corporation tax accrue in the accounting period and all of these fall to be taxed at the same rate in the notional capital gains tax computation under ***section 78(2)***. ***(3)(b)***

In any such case, the referable corporation tax is determined by the formula —

$$D \times \frac{F}{E}$$

This formula apportions the tax due by the company (F) by reference to an amount of capital gains tax on the accountable person's gains (D) and an amount of capital gains tax on the entire (non-development land) gains of the company (E), both of the latter amounts being computed without allowing deductions or reliefs. The amount at F is either the "notional amount" (see note on ***subsection (3)(a)*** above) or, if less, the amount of the company's overall corporation tax (taking account of trading losses etc).

Example

A receiver disposes of a company's property in October, 2002 (in its 9 month accounting period ending on 31 December, 2002). The chargeable gain accruing on the disposal (taking indexation relief and expenses into account) is €24,300. Other chargeable gains totalling €94,000 accrue to the company in the same accounting period. A loss of €15,000 was incurred by the company on the disposal of another property in June, 2002.

The "referable corporation tax" determined by the formula

$D \times \frac{F}{E}$ would be as follows—

$$\frac{(24{,}300 \times 20\%)}{(118{,}300 \times 20\%)} \times €[(118{,}300 - 15{,}000) \times 20\%]$$

$$\text{i.e. } \frac{4{,}860}{23{,}650} \times €20{,}660 - €4{,}246$$

However, if the company had incurred trading losses of €16,000 which could be offset only against chargeable gains, the figure at F would be €18,100 [€20,660 – (€16,000 x 16% – the corporation tax rate for the accounting period)], being the corporation tax for the accounting period after taking account of "corporation tax" deductions and reliefs. The portion of this "referable" to the liquidator would be —

$$\frac{4{,}860}{23{,}650} \times €18{,}100 - €3{,}719$$

A further special rule is necessary to deal with cases where, in effect, different capital gains tax rates apply to the various gains liable to corporation tax. However, this provision is now effectively redundant. ***(3)(c)***

Where an amount of tax is to be ascertained under ***subsection (2)(c)*** or ***(3)(c)***, that is, where more than one rate of tax is applicable to the gains of the debtor or company and a number of those gains are taxable at the same rate, it is necessary to apportion deductions (losses and annual exemption) over gains which have equal priority under ***section 546(6)*** or ***601(3)***. However, this provision is now effectively redundant. ***(4)***

Where ***section 537(2)*** (which deals with disposal by mortgagees, receivers, etc) or ***section 570*** (which deals with disposals by liquidators) applies in respect of the disposal of an asset by an accountable person, any referable capital gains tax in respect of any chargeable gains which accrue on the disposal is assessable on and recoverable from the accountable person. In the absence of such a provision, the person disposing of the asset would be deemed to do so as nominee of the owner of the asset so that the tax charge would fall on the owner. The reference to "any chargeable gains which accrue on the disposal" include chargeable gains on earlier disposals of the asset the accrual of which was deferred under ***section 597*** (roll-over relief on replacement of business assets). ***(5)(a)***

The referable capital gains tax is treated as a necessary disbursement out of the proceeds of the disposal and must be paid by the accountable person out of those proceeds. The words "necessary disbursement" are used to ensure that the referable capital gains tax must be paid out of the proceeds before those proceeds are applied in satisfaction of charges or encumbrances on the property disposed of. ***(5)(b)***

A double charge to tax is avoided by permitting the set-off of tax paid by an accountable person, which apart from this section would be payable by the debtor (that is, the owner of the assets who is the chargeable person), against the debtor's tax bill. ***(5)(c)***

Where ***section 78(8)*** (which deals with disposals of a company's assets by a liquidator) or ***section 537(2)*** (which deals with disposals by mortgagees, receivers, etc) applies in respect of the disposal of an asset by an accountable person, any referable corporation tax ***(6)(a)*** in respect of any chargeable gains which accrue on the disposal is assessable on and recoverable from the accountable person. In the absence of such a provision, the person disposing of the asset would be deemed to do so as nominee of the company owning the asset so that the tax charge would fall on the company. The reference to "any chargeable gains which accrue on the disposal" include chargeable gains on earlier disposals of the asset the accrual of which was deferred under ***section 597*** (roll-over relief on replacement of business assets).

The referable corporation tax is treated as a necessary disbursement out of the proceeds of the disposal and must be paid by the accountable person out of those proceeds. The words "necessary disbursement" are used to ensure that the referable corporation tax must be paid out of the proceeds before those proceeds are applied in satisfaction of charges or encumbrances on the property disposed of. ***(6)(b)***

A double charge to tax is avoided by permitting the set-off of tax paid by an accountable person, which apart from this section would be payable by the company (that is, the owner of the assets who is the chargeable person), against the company's tax bill. ***(6)(c)***

Any referable capital gains tax or referable corporation tax which is assessable on an accountable person is recoverable by way of an assessment to income tax on that person under Case IV of Schedule D for the year of assessment in which the disposal giving rise to the referable tax occurred. Any such assessment is to be on an amount the income tax on which at the standard rate for the year of assessment in question would equal the amount of the referable capital gains tax or the referable corporation tax, as the case may be. For example, if the referable tax due in relation to a disposal in the year 2002 is determined as being €520, an income tax assessment of €2,600 at 20 per cent is to be made to recover it. ***(7)***

Any excessive tax paid by an accountable person under the section may be repaid to that person (or set off against other tax due by that person in the same capacity). ***(8)***

The basic charge to capital gains tax or corporation tax on disposals is preserved, subject to the set-off against the liability of the person normally chargeable on a disposal of any tax paid by an accountable person under this section. This ensures that the amount of "referable" tax is determined by reference to the circumstances of the chargeable person and enables tax to be assessed on and recoverable from the chargeable person to the extent (if any) to which the accountable person fails to pay the tax in accordance with this section. ***(9)***

572 Funds in court

Summary

This section deals with the treatment of capital gains realised on investments representing funds administered by the Accountant of the Courts of Justice. Any capital gains tax liability on gains so realised is the liability of the person on whose behalf the funds are invested.

Details

The necessary definitions for the section are set out, including in particular the definition of "funds in court" which specifies the funds to which the section applies. ***(1)***

Any liability to tax on capital gains realised on investments representing funds administered by the Accountant is the liability of the beneficiary on whose behalf the funds are invested. The Accountant is to be treated merely as the nominee of the persons entitled to or interested in the funds or, as the case may be, of their trustees. Thus, the accountant does not have to account for tax on gains arising on the disposal of assets representing funds administered by him/ her and individual beneficiaries get the direct benefit of any reliefs, such as the exemption for gains of €1,270 and under. ***(2)***

If in the course of administration of the funds under his control the Accountant makes a transfer of investments from one account to another, the transfer is treated as a disposal from one beneficiary to the other for the purposes of capital gains tax despite the fact that the Accountant has not realised the investments *(3)*

The provisions of the section apply also to funds administered in the Circuit Court. Thus, the Accountant attached to the Circuit Court is not liable to account for capital gains tax on any gains that may arise in the course of the administration of funds under his/her control. *(4)*

573 Death

Summary

The transfer of assets on death is not regarded as a disposal and, consequently, death is not an occasion of charge to capital gains tax. The assets of which a deceased person was competent to dispose are deemed to be acquired on his/ her death by the personal representatives or legatee at their market value at the date of death. Thus, in relation to a disposal of the assets by the personal representatives or legatee, the period of ownership of the assets for indexation purposes commences from that date.

Personal representatives are chargeable on any gains made on sales of assets during the course of the administration of the estate but there is no charge at the time they hand over assets in specie to the legatees. To facilitate family arrangements after death, there is provision that any variation made by deed of family arrangement in the disposition of the deceased’s assets between the members of the family within 2 years of the death (or such longer period as the Revenue Commissioners may allow) is to be regarded as made by the deceased at the time of his/her death, and the family arrangements are not to be treated as the occasion of a disposal of the assets.

Details

Construction

Assets of which a deceased person was competent to dispose are assets which if the deceased were of full age and capacity he/she would have been able to dispose of by will on the assumption that all the assets were situated in the State and that he/she was domiciled in the State. Such assets include assets in which immediately before death the deceased had a severable share of a joint interest. In some countries immovable property cannot be transferred by will. To cover this case the assumption is made, for the purpose of deciding what assets pass on death, that all assets of the deceased were situated in the State. *(1)*

Assets passing on death

On death the assets of which the deceased person was competent to dispose are deemed to be acquired by the personal representatives or other person on whom they devolve at their market value at the date of death. (If, however, the death occurred before 6 April, 1974, market value as at that date is to, under ***section 556(3)***, normally replace the market value at date of death for indexation purposes.) Also death is not to be treated as involving a disposal of the assets by the deceased and, thus, no charge to capital gains tax arises on the change of ownership on the death. *(2)*

Carry back of allowable losses

Relief for allowable losses sustained by the deceased in the year of assessment in which he/she dies which cannot be deducted from chargeable gains accruing in that year may be *(3)* carried back and set off against chargeable gains which accrued to the deceased in the previous 3 years of assessment.

Personal representatives – single continuing body

The personal representatives of the deceased are to be treated as a single body of persons although their personnel may change from time to time. The term "personal representative" is defined for the purposes of the Capital Gains Tax Acts in ***section 5*** by reference to the meaning of that term in ***section 799***. ***(4)***

Transfers from personal representatives to legatees

No chargeable gains are deemed to accrue at the time when the personal representatives transfer the assets to the legatee. Any gain on a later disposal by the legatee is to be calculated as if the personal representatives' acquisition of the assets had been the legatee's acquisition of the assets. The term "legatee" is defined for the purposes of the Capital Gains Tax Acts in ***section 5***. ***(5)***

Deeds of family arrangement

The execution of a deed of family arrangement or similar instrument relating to the assets of the deceased not more than 2 years after a death (or such longer period as the Revenue Commissioners may allow) is to be treated as if the arrangement had been made by the deceased. Such arrangement is not, therefore, to be treated as constituting a disposal, and is not the occasion of a charge to capital gains tax. The purpose of the provision is to regard a family arrangement made after death as being for capital gains tax purposes an extension of the terms of a will or intestacy and so to relieve the family of a possible charge to the tax. ***(6)***

The provision allowing the Revenue Commissioners to extend the period beyond 2 years is to cater for cases in which it is not possible for the beneficiaries to complete a deed of family arrangement within 2 years of death. This would occur for example where there is delay due to difficulty of proving title or where there is a large family with some members living abroad. Where an application for an extension is made to the inspector on grounds which are considered reasonable, the inspector may grant an extension for a period which is not to exceed 12 months. The period of extension allowed should be notified to the applicant in writing.

574 Trustees of settlement

Summary

Under the ordinary meaning of disposal the creation of a trust (other than a case within ***section 567(2)***) constitutes a disposal and the settlor should be charged to tax by reference to the market value of the assets as at the date of settlement. ***Section 574*** treats the trustees of a settlement as a single and continuing body of persons distinct from the persons who may from time to time be trustees. As a result they are chargeable to capital gains tax on any chargeable gains made by them on the disposal of trust assets. The trustees as a body are to be regarded as resident and ordinarily resident in the State unless the administration of the trust is carried on outside the State and all the trustees or a majority of them are not resident or not ordinarily resident in the State.

Details

Trustees – general

In relation to settled property, the trustees are to be treated as a single and continuing body of persons distinct from the persons acting as trustees and are to be treated as resident and ***(1)(a)*** ordinarily resident in the State unless the trust is administered outside the State and the trustees or a majority of them are not resident or not ordinarily resident in the State.

A person carrying on a business of trust management is treated on a different basis from the general rule. Such a person is not to be treated as resident in the State in relation to a trust if the whole of the settled property of the trust was provided by a person not domiciled, resident or ordinarily resident in the State. Thus, an overseas trust does not become chargeable to capital gains tax merely because the management of the affairs of the trust are entrusted to an Irish bank or an Irish professional trustee. ***(1)(b)***

Recovery from beneficiaries of tax due by trustees

If capital gains tax assessed on trustees is not paid within 6 months of the due date and the asset, or part of the proceeds from the sale of the asset, in respect of which the chargeable gain accrued is transferred by the trustees to a person absolutely entitled to it as against the trustees, then, that person may be assessed and charged on the amount of the capital gains tax proportionate to the asset or proceeds so transferred. The assessment may be made within 2 years from the time the tax charged on the trustees became payable. ***(2)***

Settled property vested partially in one trust and partially in another

Where part of the settled property is vested in a trustee or set of trustees and part in another trustee or set of trustees, the trustees are to be treated as a single body even where they act separately. ***(3)***

575 Gifts in settlement

A gift in settlement, whether revocable or irrevocable, is a disposal of all the property becoming settled property. This rule applies even if the person making the settlement is himself or herself a beneficiary under the settlement. The effect of the section is that on a gift in settlement a charge to capital gains tax arises based on the market value of the whole property put into the trust.

576 Person becoming absolutely entitled to settled property

Summary

Provision is made for a charge to capital gains tax on the occasion when a person becomes absolutely entitled to any settled property as against the trustee. Even though the assets remain in the settlement, a disposal of the assets concerned is deemed to take place on that occasion at the market value of the assets, and as a consequence a charge to capital gains tax may arise.

Details

Where a person becomes absolutely entitled to any settled property as against the trustee, the property is deemed to be disposed of by the trustee to that person at its market value with a consequent charge to capital gains tax. From that time on the trustee is then to be treated as the nominee of that person (in accordance with ***section 567(2)***) and any subsequent transfer of the property by the trustee to that person will not mean a further capital gains tax charge. The manner in which this result is achieved is to treat the trustee as disposing of the property and immediately reacquiring it as bare trustee for a consideration equal to its market value at the date when the beneficiary became absolutely entitled to it. ***(1)***

Where a person becomes absolutely entitled to any settled property, any accumulated losses which have accrued on that property and which cannot be set against gains accruing ***(2)*** to the trustee are to be treated as allowable losses accruing to the person who became entitled to the property and available for set off against any gains accruing to that person.

577 Termination of life interest on death of person entitled

Summary

This section modifies the application of ***section 576(1)*** where the occasion on which a person becomes absolutely entitled to property as against a trustee is the termination of a life interest by the death of the person entitled to that interest. In any such case the deemed disposal by the trustees of the assets forming part of the settled property does not give rise to any chargeable gain or allowable loss and the deemed reacquisition by the trustees of that property is deemed to be at the market value of the assets at the date of death.

Where there is a termination of a life interest in possession in settled property in circumstances that the property remains settled property, the property is deemed to be disposed of and reacquired by the trustee at market value, thus resulting in a charge to capital gains tax. Such a charge does not arise in respect of heritage assets exempted from inheritance tax under section 77 of the Capital Acquisitions Tax Consolidation Act 2003. However, if the exemption from inheritance tax ceases to apply in a year of assessment, the capital gains tax liability which but for that exemption would have arisen is deemed to arise in that year of assessment.

Details

Definition

The definition of "life interest" in relation to a settlement is set out. The definition specifically excludes discretionary interests and certain annuities. A life interest is to include an entitlement to an annuity payable out of a specific fund with no recourse to any other property of the settlement. The specific fund out of which the annuity is payable is in these circumstances to be treated as if it were a separate settlement. ***(1)***

Termination of life interest

Under ***section 576(1)*** when a person becomes absolutely entitled to any settled property as against the trustee, all the assets forming part of the settled property to which the person becomes so entitled are deemed to have been disposed of and immediately reacquired by the trustee at their market value, thus giving rise to a chargeable gain or an allowable loss. However, this rule is modified where any such occasion is the termination of a life interest by the death of the person entitled to that interest. In those circumstances no chargeable gain or allowable loss arises on the deemed disposal and the deemed reacquisition is treated as made at the market value of the assets at the date of death. ***(2)***

Where a life interest in possession in all or part of settled property terminates, the whole or the part of the settled property which at the time remains settled property is treated as being disposed of and immediately acquired by the trustee for a consideration equal to the market value of the whole or part of the property. This, of course, may give rise to a chargeable gain or an allowable loss in the hands of the trustee. ***(3)***

For the purposes of ***subsection (3)*** —

- where a life interest is a right to income of the trust, it is to be treated as a life interest in the corresponding property, and ***(4)(a)***
- where there is a life interest in part of the property and the life interest is a life interest in income with no recourse to the remainder of the property, the part of the property in which the life interest subsists is to be treated as if it were a separate settlement. [This treatment is similar to that under the definition of "life interest" in ***subsection*** ***(4)(b)***

(1) where an annuity payable out of a specific fund with no recourse to any other property of the settlement is treated as a separate settlement. Any case where the provisions of ***subsection (1)*** and this subsection apply to the same assets should be submitted to the Revenue Commissioners for instructions.]

Where ***subsection (3)*** applies on the termination of a life interest in settled property caused by the death of the person entitled to that interest and the property in question remains settled property, the property is deemed to have been disposed of by the trustee and as a result a charge to capital gains tax may arise on the trustee of the settlement. However, if any asset forming the whole or part of the settled property is comprised in an inheritance taken on death and is exempt from inheritance tax under section 55 of the Capital Acquisitions Tax Act, 1976 or that section as applied by section 39 of the Finance Act, 1978, then, that asset is not to be treated as having been disposed of by the trustee. ***(5)(a)***

Where in any year of assessment the exemption from inheritance tax in respect of an asset ceases to apply, any capital gains tax liability which would have arisen under ***subsection (3)*** but for that exemption will be deemed to arise in that year of assessment. ***(5)(b)***

577A Relinquishing of a life interest by the person entitled

Summary

This section provides relief from the capital gains tax liability which would accrue to a trustee of settled property, where a person entitled to a life interest in the property relinquishes that life interest. The relief given is the retirement relief which would have been given to the person entitled to the life interest if that person had owned the property absolutely since the commencement of the life interest.

Details

On relinquishing a life interest the asset will then pass, via the trustee, to the ultimate beneficiary. When this occurs the asset is deemed to have been disposed of and immediately reacquired by the trustee and as such gives rise to a capital gains tax charge on the trustee. This section provides such relief to the trustee as the person with the life interest would be entitled to if that person had owned the asset for the period of the life interest.

The person entitled to the life interest is regarded as having owned the property for the period of that life interest, and ***(a)***

that person is regarded as having acquired, altered and fulfilled any obligations with respect to the property in so far as was done by the trustee. ***Section 552(1)*** referred to in this paragraph deals with allowable deductions for acquisition, enhancement and disposal costs in the calculation of chargeable gains. ***(b)***

578 Death of annuitant

This section applies the rules in ***section 576(1)*** and ***577(3)*** regarding the termination of a life interest to an annuity (not being a life interest) which terminates on the death of the annuitant.

Thus, if the property out of which the annuity is paid goes to some person absolutely, the assets forming the property are deemed under ***section 576(1)*** to have been disposed of and immediately reacquired by the trustee as a bare trustee of that person. By virtue of ***section 577(2)***, no charge to capital gains tax arises on this deemed disposal and the deemed reacquisition is treated as being for a consideration equal to the market value of the assets at the date of death.

However, if the property reverts into the settlement, the assets forming the property are deemed under ***section 577(3)*** to have been disposed of and immediately reacquired by the trustee at their market value at the date of death of the annuitant and this may give rise to a capital gains tax charge on the trustee.

579 Non-resident trusts

Summary

Sections 579 to ***579F*** address the capital gains tax position of trusts and their beneficiaries where the trust is "off-shore", becomes "off-shore" or ceases to be subject to Irish capital gains tax in respect of settled property because of double taxation relief treaties.

This section is designed to prevent the avoidance of capital gains tax by a person who is either resident or ordinarily resident in the State through the device of putting assets into non-resident trusts. A beneficiary of a trust so created who is domiciled and either resident or ordinarily resident in the State is chargeable on his/her proportionate share of capital gains made by the trust. In the case of a trust set up before 28 February 1974 (the date of issue of the Government White Paper on capital taxation), the provision does not apply where the beneficiary's interest is in income only and he/she cannot obtain any part of the capital of the trust. Where a beneficiary has a reversionary interest in capital, payment of any tax charged under the section may be postponed until he/she becomes entitled to the property or disposes of part or all of his/her interest.

Details

Application

The section applies to chargeable gains accruing to a settlement the trustees of which are not resident and not ordinarily resident in the State if the settlor or one of the settlors is either resident or ordinarily resident in the State, or was either resident or ordinarily resident in the State when he/she made the settlement. ***(1)***

Taxation of beneficiary

A beneficiary under such a settlement who is domiciled and either resident or ordinarily resident in the State is to be taxed on his/her proportionate share of any gains accruing to the non-resident trustees. The measure of the chargeable gains accruing to the trustees is the amount of the gains which, given the same facts and circumstances, would have been treated as accruing to them if they had been domiciled and either resident or ordinarily resident in the State. In determining chargeable gains, allowable losses are to be taken into account. ***(2)(a)***

Where a beneficiary under a settlement was neither resident nor ordinarily resident in the State in a year of assessment during which a gain accrued to the trustees, but was so resident or ordinarily resident in an earlier or subsequent year of assessment, the gain which would have accrued to that beneficiary if ***paragraph (a)*** had applied will be treated as accruing in the first year of assessment in which that beneficiary subsequently became resident or ordinarily resident. ***(2)(b)***

Where a person was excluded as a beneficiary under the settlement for a period of time but was subsequently included as a beneficiary of that settlement and a gain accrued to the trustees during a year of assessment when that beneficiary was so excluded, a gain which would have accrued to the beneficiary if ***paragraph (a)*** had applied will be treated as accruing in the first year of assessment in which that person was subsequently included as a beneficiary of the settlement concerned. ***(2)(c)***

If a beneficiary is not treated under ***paragraph (a), (b)*** or ***(c)*** as if any apportioned part of the gain accrued to him or her in a year of assessment and — ***(2)(d)***

- the trustees have earlier realised a chargeable gain, and ***(i)***
- the beneficiary receives a capital payment within the meaning of ***section 579A(1)*** from the trust during a year of assessment in which he or she is either resident or ordinarily resident in the State, ***(ii)***

then the beneficiary will be treated as if an amount equal to —

- the capital payment, or ***(I)***
- the apportioned gain which would have accrued to him or her if ***paragraph (a), (b)*** or ***(c)*** had applied, ***(II)***

whichever is less, were a chargeable gain accruing to him or her in the year of assessment in which the capital payment is received.

The proportionate share of a beneficiary is to be determined in such manner as is just and reasonable between persons having interests in the settled property according to the respective values of their interests in the settled property according to the respective values of their interests, whether for life or in reversion. In valuing an interest, no account is taken of the possibility that the interest may become worthless on the happening of a contingent event. Such a provision might be included in the settlement in order to avoid the provisions of ***section 579***. ***(2)(e)***

Example

A person who was resident in the State settled assets on trustees to A for life and to B on A's death. The trustees are non-resident and not ordinarily resident and the trust is administered abroad. The trust makes a gain of €15,000. A is resident in the State and the value of his life interest in the gain is determined to be €50,000 and B's interest in the reversion to be €25,000. The amount of the gain chargeable on A is —

$$€15{,}000 \times \frac{€50{,}000}{€50{,}000 + €25{,}000} = €10{,}000$$

Valuation of interests in discretionary trusts

The rules for valuing interests in a trust which depend on the exercise of discretion are set out. There are 2 types of case. The first is where the discretionary interest is in income and, in this case, the average of the income received by the exercise of the discretion in the 5 years ending with that in which the chargeable gain accrues is treated as if it were an annuity for the period of the trust (or for the period of expectation of life of the beneficiary) equal to that average amount and the discretionary interest is to be valued accordingly. ***(3)(a)***

[This paragraph was deleted by section 66 of the Finance Act 2012 as respects disposals made on or after 8 February 2012.] ***(3)(b)***

Pre-28 February, 1974 trusts

The rules relating to non-resident trusts are modified in relation to trusts created before 28 February, 1974. The first modification is that a beneficiary of such a trust is not chargeable under ***subsection (2)*** if his/her interest is in income only and he/she cannot obtain for himself or herself any part of the capital of the trust. ***(4)(a)***

The second modification is that, in the case of a beneficiary with a reversionary interest in capital who cannot obtain any part of the capital at an earlier date, payment of the tax may ***(4)(b)*** be postponed until he/she becomes absolutely entitled to the property or disposes of his/her interest in whole or in part.

For the purposes of ***subsection (4)***, the addition of property to a settlement after the settlement is made is to be treated as a new settlement.

Payment of tax by trustees

If the trustees of a non-resident trust pay the tax on chargeable gains apportioned to a beneficiary under the section, that payment is not to be treated for the purposes of income tax or capital gains tax as a payment to the beneficiary. ***(5)***

Losses accruing to trustees

If the trustees of a non-resident trust make a capital loss, that loss is not to be apportioned to a beneficiary. Losses of the trust are set off against gains of the trust in determining the amount to be apportioned between beneficiaries. If in any year of assessment such losses exceed the gains, the excess is available for set-off against gains of a subsequent year in computing the net gains of that year for apportionment. ***(6)(a)***

The section will not apply where it is shown in writing or otherwise to the satisfaction of the Revenue Commissioners that, at the time when the capital gains tax charge arises, the settlement is carrying on genuine economic activities in a relevant Member State (within the meaning of ***section 806(11)(a)***) which includes the United Kingdom. ***(6)(b)***

[It should be noted that ***section 917*** empowers the Revenue Commissioners to request beneficiaries to supply information about non-resident trusts and their chargeable gains.]

579A Attribution of gains to beneficiaries

Summary

Where the trustees of a settlement are at no time in a year of assessment resident or ordinarily resident in the State gains accruing to the trustees (the trust gains) may be attributed to the beneficiaries for assessment to capital gains tax. The trust gains are attributed to those beneficiaries to whom the trustees make a capital payment. A beneficiary can only be assessed to tax on the gains attributed to him or her in a year of assessment if at some time during that year the person is domiciled in the State.

Section 579 applies in respect of a settlement with an Irish settlor who retains an interest in the settlement. In such cases, the capital gains tax liability falls on the settlor for disposals by the trust on or after 7 March 2002. This section applies to trusts with an Irish settlor who does not retain an interest in the trust, and to trusts with a foreign settlor.

Details

"capital payments" are defined as payments which are either not chargeable to income tax on the recipient, or in the case of a recipient who is neither resident nor ordinarily resident, any payment received otherwise as income – but excluding any payment received under an arm's length transaction. ***(1)(a)***

Payment includes the transfer of an asset, the conferring of any benefit, or any occasion on which settled property becomes held by a trustee as bare trustee or nominee for another person. ***(1)(b)***

Where a capital payment is a loan or any other benefit which is not the payment of money, its amount is taken to be the value of the benefit conferred by it. ***(1)(c)***

A beneficiary is treated as receiving a capital payment if — ***(1)(d)***

- the beneficiary receives the payment from the trustees directly or indirectly;

- the trustees, directly or indirectly apply the payment in settlement of any debt of the beneficiary or otherwise for the benefit of the beneficiary; or
- a third party receives the payment at the beneficiary's direction.

This section applies for a year of assessment — ***(2)(a) - (f)***

- to foreign trusts of which the settlor does not retain an interest in the trust at any time in that year, and
- to foreign trusts of which the settlor does retain such an interest but the settlor was neither domiciled nor ordinarily resident in the State in that year of assessment or when the settlor made the settlement.

Where this section applies for a year of assessment to a foreign trust, then the provisions of ***section 579*** will not also apply.

Section 579, therefore, applies for a year of assessment to foreign trusts the settlor of which retains an interest in the trust and the settlor is resident or ordinarily resident in the State, either in the year of assessment or at the time the settlor made the settlement. Furthermore, the charge to capital gains tax under ***section 579*** falls on the settlor in respect of disposals made on or after 7 March 2002, whether or not there are other beneficiaries of the settlement.

A settlor has an interest in a settlement where —

- any property which is or may at any time become comprised in the settlement and which originates from the settlor is or may become applicable for the benefit of or payable in any circumstances to, a relevant beneficiary; or
- any income which arises, or may arise under the settlement, and which originates from the settlor, is, or will or may become, applicable for the benefit of or payable in any circumstances to, a relevant beneficiary; or
- a relevant beneficiary enjoys a benefit directly or indirectly from property originating from the settlor and which is comprised in the settlement or so enjoys any income originating from the settlor and arising under the settlement – this does not include a situation where the settlement has an obligation to repay a loan to the settlor, or repays that loan.

A "relevant" beneficiary is defined to mean —

- the settlor;
- the spouse or civil partner of the settlor;
- a company controlled by the settlor; and
- a company associated with a company controlled by the settlor.

("associated" and "control" have the meanings assigned to them by ***section 432***)

Property originates from a person where the property is provided by the person or represents property so provided i.e. where the original property is substituted by new property.

Income originates from a person where it arises from property originating from the person or the income is provided by the person.

For a year of assessment the "trust gains for the year of assessment" are computed. This is done by aggregating — ***(3)***

- the amount of the gains for the year which would have been chargeable on the trustees under ***section 31*** if they had been resident and ordinarily resident in the State in that year, and
- the corresponding amount of gains for earlier years, which have not yet been attributed to beneficiaries.

The trust gains for a year of assessment are treated as chargeable gains accruing in that year to beneficiaries of the settlement who receive capital payments from the trustees in that year or who have received such payments in any earlier year. The gains are attributed to the beneficiaries in proportion to, but not exceeding, the amounts of capital payments received by them. A capital payment which has given rise to the attribution of trust gains to beneficiaries in an earlier year of assessment is left out of account. ***(4), (5) & (6)***

A beneficiary who at no time in a year of assessment is domiciled in the State cannot be charged with trust gains of that year attributed to him or her. ***(7)***

(Under ***section 29(3),*** a person who is neither resident nor ordinarily resident in the State is not chargeable to gains accruing to that person – subject to the exceptions as set out in that section.)

A settlement arising under a will or intestacy is treated as made by the testator/ intestate at the time of death. ***(8)***

If the trustees pay the capital gains tax of the beneficiary, that payment is not to be regarded as a payment to the beneficiary for the purposes of income tax or capital gains tax. ***(9)***

The section will not apply where it is shown in writing or otherwise to the satisfaction of the Revenue Commissioners that, at the time when the charge to capital gains tax arises, the settlement is carrying on genuine economic activities in a relevant Member State (within the meaning of ***section 806(11)(a))*** which includes the United Kingdom. ***(9A)***

579B Trustees ceasing to be resident in the State

Summary

This section imposes a charge to capital gains tax where a "resident" trust becomes "non-resident".

Details

Definitions are provided for "arrangements", "the new assets" and "the old assets"; "arrangements" are double taxation relief treaties between the State and other jurisdictions. ***(1)***

Where at any time (the relevant time), on or after 11 February, 1999, trustees of a settlement become neither resident nor ordinarily resident in the State, they are deemed for capital gains tax purposes to have disposed of "the defined assets" immediately before the relevant time and to have reacquired them, at their market value at that time. ***(2) & (3)***

The defined assets are all assets constituting settled property of the settlement immediately before the relevant time. However, if immediately after the relevant time, the trustees carry on a trade in the State through a branch or agency and any assets are situated in the State and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency, those assets are not defined assets. Furthermore, assets are not defined assets if they are of a description specified in any double taxation relief treaties, and should the trustees dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the treaties as not liable in the State to tax on gains accruing to them on the disposal. ***(4), (5) & (6)***

Roll-over relief, provided by ***section 597*** does not apply where old assets are disposed of before the relevant time and are replaced by new assets acquired after that time. Furthermore, a chargeable gain which has been deferred under that section comes into charge immediately before the relevant time unless the new assets are situated in the State and either used in or for the purposes of a trade or used or held for the purposes of a branch or agency in the State. ***(7) & (8)***

The trustees have the option of paying capital gains tax in 6 equal annual instalments. The first such instalment is due and payable on 31 October in the year following the year in which the deemed disposal occurred. The remaining instalments are due and payable on 31 October in each of the years following the year in which the first instalment became due and payable. ***(9)***

579C Death of trustees: special rules

Special rules apply where ***section 579B*** has application as a result of the death of a trustee of the settlement, and within the period of 6 months beginning with that death, the trustees of the settlement again become resident and ordinarily resident in the State. In such circumstances ***section 579B*** is to apply as if the defined assets were restricted to such assets which were disposed of by the trustees in the period which begins with the death and ends when the trustees again become resident and ordinarily resident in the State.

Where the trustees of a settlement become resident and ordinarily resident in the State as a result of the death of a trustee, and within 6 months of that death ***section 579B*** has application, the defined assets are restricted to assets which were acquired after the death.

579D Past trustees: liability for tax

Summary

Where under ***section 579B*** a chargeable gain accrues to trustees of a settlement and the resulting capital gains tax is not paid within 6 months from the time when it became payable, the Revenue Commissioners can seek to recover that tax from certain trustees.

Details

The section has application where on or after 11 February, 1999 a chargeable gain accrues to trustees of a settlement under ***section 579B*** and the tax thereby due for the year of assessment concerned has not been paid within 6 months of the date on which it is due and payable. ***(3)***

Where the section applies the Revenue Commissioners may, at any time before the end of the specified period in relation to the year of assessment concerned, serve on certain persons a notice requiring the person to pay the tax outstanding within 30 days. ***(4)***

The specified period in relation to a year of assessment is the period beginning with the date on which the self assessment return was due and ending 3 years after the date on which the return for the chargeable period is delivered to the Collector-General. ***(1)***

The person on whom the Revenue Commissioners may serve a notice is any person who at any time within the relevant period was a trustee of the settlement other that a person who — ***(5)***

- ceased to be a trustee before the end of the relevant period, and
- shows that when he or she so ceased, there was no proposal that the trustees might become neither resident nor ordinarily resident in the State.

The relevant period means — ***(2)***

- where the settlement migrates offshore in the period of 12 months ending on 10 February, 2000, the period beginning on 11 February, 1999 and ending with the date of migration; and
- in any other case, the period of 12 months ending with the date of migration.

Tax which a person is required by notice to pay — ***(6)***

- can be recovered by the payer from the offshore trustees;

- is not allowable as a deduction for any tax purpose; and
- may be recovered by the Revenue Commissioners from that person as if it was actually tax due by that person.

579E Trustees ceasing to be liable to Irish tax

Where at any time ("the time concerned"), on or after 11 February, 1999, the trustees of a settlement, while continuing to be resident and ordinarily resident in the State, become trustees who fall to be regarded for the purposes of any double tax relief treaty as resident outside the State and as not liable to Irish tax on gains accruing on the disposal of assets ("relevant assets") which constitute settled property of the settlement and fall within descriptions specified in the treaty, they are deemed for capital gains tax purposes to have disposed of the relevant assets immediately before the time concerned, and immediately to have reacquired them, at their market value at the time.

Roll-over relief under ***section 597*** will not apply where the disposal of new assets within the meaning of that section would not give rise to a charge to Irish tax because of treaty provisions. Furthermore any chargeable gain deferred under that section will crystallise at the time that the trust falls out of charge to Irish tax because of treaty provisions.

579F Migrant settlements

A capital payment made to a beneficiary in a period (a resident period) of one or more years of assessment for each of which ***section 579A*** does not apply to the settlement is disregarded provided that the payment is not anticipatory of a disposal by the trustees in a succeeding period (a non-resident period) of one or more years of assessment for which ***section 579A*** does apply to the settlement. Where a resident period follows a non-resident period and all or part of the trust gains for the last year of assessment of the non-resident period have not yet been attributed and charged to beneficiaries, the outstanding trust gains are, to the extent, each year, that the beneficiaries receive capital payments, attributed and charged on them for the first year of the resident period and so on for successive years, until the outstanding gains are exhausted.

CHAPTER 4
Shares and securities

Overview

This Chapter provides special rules for the capital gains tax treatment of shares and securities. The Chapter covers such matters as the identification of shares (***sections 580*** and ***581***), calls on shares (***section 582***), capital distributions (***section 583***), reorganisation of share capital (***section 584***), conversion of securities (***section 585***), company reconstructions and amalgamations (***sections 586*** and ***587***), demutualisation of assurance companies (***section 588***), close companies transferring assets at undervalue (***section 589***), attribution to shareholders of gains accruing to non-resident companies (***section 590***), roll-over relief on reinvestment of proceeds of disposals of shares (***section 591***) and the reduced rate of tax for individuals on disposals of certain shares (***section 592***).

580 Shares, securities, etc: identification

Summary

When shares are sold it is necessary to identify the shares sold so that the base cost and acquisition date can be determined for indexation purposes. This section gives rules for the identification of shares or securities of the same class or kind and other assets (for example, commodity futures) which are of such a nature that they can be dealt in without the necessity to identify the particular assets disposed of or acquired. Generally, where such assets are disposed of, they are to be identified with assets acquired on the principle of "first in, first out".

Provisions are included for dealing with shares which were covered by the general "pooling" rule contained in paragraph 13 of Schedule 1 to the Capital Gains Tax Act, 1975 and which were purchased between 6 April, 1974 and 5 April, 1978. Briefly, under the pooling rule shares of a particular company of the same class which were acquired in the 4 year period mentioned were regarded as a single asset which grew or diminished when additional shares were acquired or some of the shares in the pool were disposed of. The pooling system took the average cost of the shares in the pool as the base cost of each share sold and did not take the period of ownership into account. The pooling system would not have been acceptable in relation to the provisions for indexation (see ***section 556***) because the date of acquisition and period of ownership of each asset must be identified for the purposes of those provisions. Accordingly, the pooling system was discontinued as from 6 April, 1978, the date from which indexation was originally introduced. ***Section 580*** contains rules for identifying shares disposed of before 6 April, 1978 with shares acquired between 6 April, 1974 and 5 April, 1978 so that the date of acquisition and cost price of shares acquired on different dates and remaining in the pool on 6 April, 1978 are available for the purpose of identifying them with disposals made after that date.

Details

Shares of same class identified on first in, first out basis

In so far as they are of the same class, shares disposed of are to be identified with shares acquired on a "first in, first out" (FIFO) basis. ***(1)***

Example

An individual owns 500 shares in a quoted company, 200 of which she acquired in February, 2002 for €1,000 (€5 each) and 300 of which she acquired in February, 2004 for €1,800 (€6 each). Her total holding is 500 shares which cost €2,800. On 1 August 2006. she sells 300 shares for €3,000 (€10 each). The 300 shares are identified for the purposes of indexation with the 200 shares acquired in 2003 and 100 of the shares acquired in 2004. The chargeable gain on the disposal is computed as follows —

(i)	200 shares sold for	€2,000
	Less acquisition cost indexed €1,000 x 1.081	€1,081
	Chargeable gain	€919
(ii)	100 shares sold for	€1,000
	Less acquisition cost indexed €600 x 1.037	€623
	Chargeable gain	€377
	Total chargeable gain	€1,296

The test for determining whether shares are to be treated as being of the same class is whether if the shares (whether quoted or unquoted) were dealt in on a stock exchange (anywhere) they would be so treated. That classification once made is to prevail against any different description given in the form of disposal, transfer or delivery. Thus, even though shares may, for example, be identified by numbers, they are to be treated as being of the same class if that is how stock exchange practice would treat them. ***(2)***

Application to securities and certain other assets

The section applies to securities as it applies to shares. ***(3)***

The rules laid down in the section (excluding the provisions of ***subsection (2)***) apply also to such assets as can be dealt in without identifying individual items such as, for example, commodities. ***(4)***

Shares formerly dealt with on the pooled basis

The rules by which shares which were dealt with on a pooled basis under paragraph 13 of Schedule 1 to the Capital Gains Tax Act, 1975 are to be identified with shares disposed of on or after 6 April, 1978 are set out. ***(5)***

Where between 6 April, 1974 and 5 April, 1978 shares were acquired on different dates and a disposal takes place on or after 6 April, 1978, that is, there was no disposal between 6 April, 1974 and 5 April, 1978, the shares disposed of, even though they were pooled, must be identified on a "first in, first out" basis. Where, however, there was a disposal between those 2 dates out of pooled shares, this identification is not possible without a special provision because the shares acquired on different dates became indistinguishable parts of a single asset. The disposal in question was not related to any specified acquisition but was treated as having an acquisition cost based on the average cost of the shares in the pool.

Rules are therefore laid down for identifying the shares so disposed of before 6 April, 1978, with the shares acquired so that the date of acquisition and cost price of the various parcels of shares acquired on different dates and remaining in the pool on 6 April, 1978 are available for the purpose of identifying them with disposals after that date. In effect, this is done by abolishing the pooling rules and treating disposals made between 6 April, 1974 and 5 April, 1978 as if they had been made proportionately out of each of the blocks of shares acquired on different dates.

Thus, it is provided that ***subsection (5)*** is to apply to the disposal on or after 6 April, 1978 of any pooled assets where the pool consisted of assets acquired on different dates and a disposal had been made out of the pool before 6 April, 1978. ***(5)(a)***

For the purpose of applying the FIFO rule laid down in ***subsection (1)*** — ***(5)(b)***

- pooled shares acquired on different dates are to be treated as distinguishable parts of a single asset acquired on the dates on which they were in fact acquired and for the actual consideration for which they were acquired,
- it is to be assumed on each occasion on which there were a disposal before 6 April, 1978 out of pooled shares that each of the distinguishable parts of those shares held immediately before the disposal was reduced as regards both the number of shares and the expenditure attributable to them in the proportion which the number of shares disposed of bears to the total number of shares in the pool immediately before the disposal, and
- the number of shares in each block held on 6 April, 1978 and the deductible expenditure attributable to them is, in relation to a disposal made on or after that date, to be the number and amount determined in accordance with this subsection.

The treatment provided for in this subsection is not to affect the computation of any gain or loss under the normal pooling rules in respect of disposals made before 6 April, 1978. ***(5)(c)***

Example

Purchased	5 May, 1974	100 @ €1	€100	(100 in pool)
Purchased	20 June, 1974	500 @ €1.10	€550	(600 in pool)

Sold	10 March, 1975	300 @ €1.25	€375 (300 left in pool)
Purchased	30, June, 1976	700 @ €1	€700 (1,000 in pool)
Sold	15 March, 1977	300 @ €1.20	€360 (700 left in pool)
Sold	30 December, 1997 (After 6 April, 1978)	600 @ €10	€6,000

Date of purchase	5/5/1974		20/6/1974		30/6/1976	
	No.	Cost	No.	Cost	No.	Cost.
		€		€		€
Purchases	100	100	500	550	500	700
Sales						
10/3/1975 sold 300 out of 600, that is,	50	50	250	275	–	–
Balance at 10/3/1975	50	50	250	275	700	700
15/3/1977 sold 300 out of 1,000, that is, 3/10	15	15	75	82.5	210	210
Balance at 15/3/1977 and						
6/4/1978	35	35	175	192.5	490	490

On the "first in, first out" basis, the 600 shares sold on 30 December, 1997 are treated as comprising —

35 shares – balance of those bought on 5 May, 1974

175 shares – balance of those bought on 20 June, 1974

390 shares out of the 490 still held on 6 April, 1978, from the 700 shares bought on 30 June, 1976

Computation of chargeable gain on the sale of 600 shares on 30 December, 1997 —

Purchases			Sales		Gain
No.	Cost	Indexed Cost	No.	Proceeds	
	€	€		€	€
35	35 x 6.112	213.92	35	350	136.08
175	192.50 x 6.112	1176.56	175	1,750	573.44
390	390 x 4.253	1658.67	390	3,900	1,341.33
			600	6,000	2,050.85

There is a balance on hand of 100 shares purchase on 30 June, 1976 with a base cost (unindexed) of €100.

It is made clear that the special rules in ***section 581*** relating to acquisitions and disposals within a 4-week period take precedence over ***section 580***. ***(6)***

581 Disposals of shares or securities within 4 weeks of acquisition

Summary

This section is an anti-avoidance measure which is designed to limit the manipulation of capital losses by disposals and reacquisitions within a short time. It applies to shares and securities of the same class which are acquired and disposed of by the same person in the same capacity within 4 weeks. Under ***section 580*** an asset purchased first is treated as the first asset sold, the first in first out (FIFO) rule, but under ***section 581***, where there is a sale of shares or securities of the same class as shares or securities acquired within the previous 4 weeks, the FIFO rule is set aside and the shares or securities treated as sold are those acquired within the 4 week period and not those acquired earlier. ***Section 581*** also prevents the manipulation of losses by the device of selling shares on securities with the intention of realising a loss for set-off against gains on other disposals and thereafter reacquiring the shares or securities within 4 weeks of their disposal.

Details

In the case of a disposal by a person of shares of the same class as shares which the person acquired in the 4 weeks preceding the disposal, the normal first in first out rule does not apply. Instead, the shares acquired in the 4 week period are treated as the shares actually disposed of. ***(1)***

Where the number of shares disposed of exceeds the number of shares acquired within the 4 week period, the excess comes within the normal first in first out rule. ***(2)***

If shares are disposed of and shares of the same class are reacquired within 4 weeks after the disposal, any loss arising on the disposal is only allowable against any gain that may accrue on the disposal of the shares reacquired in the 4 week period. In a case where the number of shares so reacquired is less than the number of shares disposed of, a proportion of the loss is available for set-off in the normal manner. This proportion is the same proportion of the loss on the disposal as the number of shares not reacquired bears to the number of shares disposed of. ***(3)***

Example

A bought 1000 shares on 1 January, 2002 for €5,000. On 1 October 2009 the shares were valued at €4,000. He sold the shares for that price but on 8 October 2009 purchased 1000 shares in the same company for €4,200.

Computation —

Sale proceeds	€4,000
Cost €5,000 x 1.171	€5,855
Loss	€1,855
Reduce to actual loss	€1,000

The loss of €1,000 may only be used against a gain arising on a disposal of the shares acquired on 8 October, 2009.

If A had purchased only 500 shares on 8 October, 2009, half of the loss, that is, €500 would be available for set-off as normal; the other €500 would be available only for set-off-against a gain arising on the disposal of the 500 shares acquired on 8 October, 2009.

In the case of a married couple/civil partners living together, ***subsections (1)*** and ***(2)*** apply where shares are acquired by one spouse/civil partner and shares of the same class are disposed of within 4 weeks by the other spouse/civil partner. Similarly, the rules of ***subsection (3)*** apply also where a loss on a disposal accrues to one spouse/civil partner and the acquisition after the disposal is made by the other spouse/civil partner. These provisions are necessary to prevent the circumvention of those subsections through disposals and acquisitions between spouses/civil partners. ***(4)***

The section applies to securities in the same way it applies to shares. ***(5)***

582 Calls on shares

Shares of a nominal value may sometimes be issued at par but only a proportion of the cost of the shares may be paid up at the date of issue of the shares, the balance not being due to be paid up until the company calls on the shareholders to pay the balance. ***Section 582*** provides that where the cost price of shares or debentures of a company is not fully paid up at the time of issue, and a call is made more than 12 months later, indexation under ***section 566*** is to be applied to the cost of the call on the shares or debentures only from the date of payment of the call.

If the call took place before 6 April, 1974, ***section 582*** does not apply as the shares are normally treated under ***section 566*** as having been acquired on that date for their market value on that date, which value reflects the call made on the shares. Also, ***section 582*** does not apply to calls on shares or debentures within 12 months of original issue in order to exclude the common case of payment for shares by way of a part payment on application followed some weeks or months latter by a payment on allotment.

Example

A applies for 1000 €5 shares in a company on 1 January, 2002. The payment on application for the shares was €1 per share, that is, €1,000, and on allotment on 1 April, 2002 €3 per share, that is, €3,000. The shares were thus issued as €5 shares (€4 paid up), that is, the base cost is €4,000. On there was a call on the shares of €1 per share and A paid over €1,000. On 1 September 2009 A sold the shares for €8 each, that is, €8,000.

Computation of chargeable gain —

Sale proceeds		€8,000
Less deductible expenditure		
€4,000 (paid in 2002) x 1.171 =	€4,684	
plus		
€1,000 (paid in 2005) x 1.081 =	€1,081	€5,765
Gain		€2,235

583 Capital distributions by companies

Summary

This section provides the general rule that where a shareholder receives a capital distribution from a company, other than a distribution of certain new shares dealt with in ***section 584***, the distribution is treated as if for its value the shareholder had disposed of part of his/her holding of shares. A "capital distribution" is defined as any distribution from a company (including a distribution on a winding-up) other than a distribution which is treated as income in the hands of the recipient, as, for example, an option to take shares instead of a cash dividend.

Most distributions from Irish resident companies, including capital distributions, are now subject to income tax under the rules of Schedule F (see ***section 20***). However, distributions made in a winding-up of a company are not within the charge to income tax (see ***section 130(1)***). For capital gains tax purposes, capital distributions arise mainly on the winding-up of a company and also in the context of the disposal of rights issues (see

section 584(8)) and the provisions dealing with the buy back by a company of its own shares (see ***Chapter 9*** of ***Part 6***).

Details

The term "capital distribution" means any distribution from a company, including a distribution in the course of a winding-up, whether it is in money or money's worth. A distribution which is chargeable to income tax is not to be regarded as a capital distribution. ***(1)***

Where a person receives or becomes entitled to receive in respect of shares in a company a capital distribution from the company (other than a distribution of new shares for old shares dealt with under ***section 584***), the person is to be treated for capital gains tax purposes as if he/she had made a disposal of an interest in the shares in consideration for the value of the capital distribution made by the company. ***(2)***

Example

A shareholder has 1000 €1 shares in a company which cost her €2,000. The company which is being wound up makes a capital distribution of 25c per share. The chargeable gain is computed by reference to the sum of €250 less a proportion of the cost of the shares (in other words the normal part disposal rules set out in ***section 557*** apply). That proportion is calculated by reference to the value of the distribution and the current value of the shares (say €2,750) thus —

$$€2000 \quad x \quad \frac{€250}{€250\ +\ €2{,}750} \quad = \quad €167$$

Disregarding indexation under ***section 556***, the chargeable gain on the part disposal is €83 (€250 less €167) and, in the event of a future disposal of the shares (including a further capital distribution), the balance of the cost to be allowed will be €1,833 (€2,000 less €167).

584 Reorganisation or reduction of share capital

Summary

This section contains special rules to be applied on reorganisation or reduction of the share capital of a company as, for example, when persons are allotted shares in a company in proportion to their existing shareholdings or when rights attaching to different classes of shares are altered. In the absence of a provision to the contrary, the reorganisation or reduction would represent a disposal of the old shares and an acquisition of the new shares with a consequent liability to capital gains tax. The central principle in ***section 584*** is that the mere exchange of one block of shares for another, on a capital reorganisation by a company, is not to be treated for capital gains tax as a disposal of the old shares or an acquisition of the new shares. Instead, the new holding is treated as if it had been acquired at the same time and cost as the original holding was acquired, and a gain or loss on the old shares is not regarded as accruing until the new holding is disposed of in whole or in part.

Section 584 also provides for the case where as part of the reorganisation scheme some consideration other than the shares is given or received by the shareholder. Where such consideration is given, it is treated for the purposes of indexation relief as expenditure incurred on the date the consideration was given. Where such consideration is received, the shareholder is charged to capital gains tax by reference to the amount of the consideration as if it were a disposal of part of the shares. Rules are also given for apportionment of the cost of the original shares in computing a capital gain or loss on the disposal of any part of the new shares. In addition, where rights issues are not taken up but are disposed of, there is a special rule that the cash received is treated as if it were a capital distribution received from the company and ***section 583*** applies accordingly.

The section also applies where the new holding comprised debentures allotted before 4 December 2002 or where they were allotted pursuant to a written binding agreement made before that date.

The section shall not, however, apply where the new holding comprises units in an investment undertaking, being a company. 'Investment undertaking' and 'unit' have the same meaning as in ***section 739B***.

Details

Definitions

References to a reorganisation or reduction of a company's share capital include any case where persons receive an allotment of shares or debentures in respect of or in proportion to their existing holdings and any case where there is an alteration of the rights attaching to any class of shares. ***(1)***

References to a reduction of share capital do not include the paying off of redeemable share capital, and the redemption of redeemable shares (otherwise than by the issue of shares or debentures or in a liquidation) is to be treated as a disposal of the shares by the shareholder.

The term "original shares" means shares held before the reorganisation or reduction of capital and "new holding", in relation to any original shares, means the shares in and debentures of the company which, as a result of the reorganisation or reduction of capital, were allotted in exchange for the original shares. (See ***subsection (9)*** regarding the issue of debentures on or after 4 December 2002)

Application

The section applies for capital gains purposes in relation to any reorganisation or reduction of a company's share capital. ***(2)***

Reorganisation/reduction of share capital not a disposal

A reorganisation or reduction of share capital is not regarded as a disposal of the original shares or an acquisition of new shares. Instead, the original shares and the new holding are treated as the same asset acquired as the original shares were acquired as respects cost and date of acquisition. The consequence of this rule is that any gain or loss on the original shares is treated as accruing only when the new holding or part of it is disposed of. ***(3)***

Example

On 6 April, 1997 A bought 1,000 ordinary shares in a company for €1,000. In April, 1999 a reorganisation of the company's share capital took place. In exchange for the 1,000 ordinary shares, A received 1,500 preference shares. He sold those shares on 1 December, 2002 for €2,500. The reorganisation in April, 1999 is not treated as a disposal of the ordinary shares or an acquisition of the preference shares. Instead, capital gains tax is payable on the disposal on 1 December 2002 and the chargeable gain is computed as follows —

Sale price of preference shares	€2,500
Cost of ordinary shares	€1,000
Indexed @ 1.037	€1,037
Chargeable gain	€1,463

Consideration given as part of reorganisation/reduction

Where a person gives or becomes liable to give any new consideration as part of the reorganisation or reduction scheme, then, in computing the gain on a disposal or part ***(4)(a)*** disposal of the new holding, that consideration is treated for the purposes of indexation relief under ***section 556*** as enhancement expenditure incurred on the date the consideration was given. If the new holding or part of it is disposed of with a liability for that consideration attached to it, the consideration for the disposal is adjusted to take account of the liability.

New consideration does not include — ***(4)(b)***

- any surrender, cancellation or other alteration of the original shares or of the rights attached to those shares, or
- any consideration consisting of any application, in paying up the shares or debentures or any part of them, of any assets of the company, or of any dividend or other distribution declared out of those assets but not made.

The purpose of ***paragraph (b)(ii)*** is to prevent a company providing, out of its own resources, consideration for the new holding which would artificially increase the base cost of the shares. The main application of the rule would be in relation to rights issues in respect of which the shareholder pays or is liable to pay something for the allotment of the new shares or debentures.

There is an exception to the rule to take account of ***section 816***. That section imposes an income tax charge on a shareholder who exercises an option to take shares in an unquoted company instead of a cash dividend. Where such an option is exercised, the cash foregone is deemed to be an allowable expense in computing a gain or loss on the subsequent disposal of the new holding of shares.

Example

A bought 1,000 ordinary shares in a company on 1 July, 1997 for €1,000. On a reorganisation of the company on 1 July, 1998 A acquired 1,000 preference shares in the company of €1 each in exchange for his ordinary shares and a cash payment of €500. On 1 December, 2002 A sold the 1,000 preference shares for €2,500. The chargeable gain on this disposal is computed as follows —

Sale price of preference shares		€2,500
Cost price of ordinary shares (€1,000)		
Indexed @ 1.037	€1,037	
plus		
Expenditure of €500 on 1/7/96		
Indexed @ 1.016	€508	€1,545
Chargeable gain		€955

Consideration received as part of reorganisation/reduction

Where a person receives or is deemed to receive consideration in addition to the new holding, and in particular where the consideration is given by the company as a capital distribution or by the other shareholders for the surrender of rights derived from the original shares, the recipient is treated as disposing (for the consideration given to the recipient) of an interest in the original shares and the new holding is treated as the residue of the original holding. ***(5)***

Part disposals

Provision is made for the apportionment of the cost of the original shares when any part of the new holding is disposed of or where under ***subsection (5)*** any consideration received is deemed to be a part-disposal of the original shares. In such cases the normal part disposal rule (***section 557***) applies by reference to market value at the date of disposal. ***(6)***

Example

On 6 April, 1997 X bought 1,500 ordinary €1 shares for €1,500. On 1 July, 1998, as part of a reorganisation of the company's share capital, X received 1,000 A ordinary shares and 1,000 preference shares in exchange for the 1,500 ordinary shares. He sold the A ordinary shares on 1 December, 2002 for €2,000 and the market value of the preference shares on that date was €2,500. None of the shares are quoted. The computation of the chargeable gain is as follows —

Sale proceeds of A ordinary shares		€2,000
Less cost	$1{,}500 \times \frac{2{,}000}{2{,}000 + 2{,}500}$	
Indexed @ 1.037		€692
Chargeable gain		€1,308

The apportionment rule set out in ***subsection (6)*** is modified where the new holding consists of more than one class of shares or debentures and not later than 3 months (or longer if the Revenue Commissioners allow) after the reorganisation one or more of these classes is quoted on a recognised stock exchange. In any such case the apportionment is to be made by reference to the market value of the separate classes immediately after the reorganisation instead of at the time of the first part disposal. In this way the same basis of apportionment applies to all the shareholders concerned. This rule also applies where a new holding is in a unit trust which consists of more than one class of rights and the prices for one or more of those classes are published regularly by the managers of the unit trust scheme. It is also provided that, where there is an allotment of shares, debentures or unit rights, the reorganisation is treated as taking place on the day following that on which the shareholders' right to renounce the allotment expires, which will normally bring it into line with the end of the 3 months time limit mentioned above. ***(7)***

Example

On 1 July, 1995 a woman acquires 1,000 ordinary shares in a private company for €900. On 1 June, 1997 in a share capital reorganisation she receives (at no charge) 500 founders' shares and 250 ordinary shares. The 250 ordinary shares are quoted on 1 June 1997 at €2 (thus worth €500). On 1 December, 2002 she sells 250 ordinary shares for €1,250. The market value at 1 June, 1997 of the founders' shares is agreed between the Revenue and the taxpayer at €4,000.

The chargeable gain is computed as follows —

Amount realised on sale	€1,250
Apportioned cost of original holding	
$900 \times \frac{300}{500 + 4{,}000} = 100$	
Indexed @ 1.081	€108
Chargeable gain =	€1,142

Sale of rights

Where a person sells rights in respect of shares instead of taking up those rights, the amount received for the disposal of those rights is treated as a capital distribution and ***section 583*** applies accordingly. ***(8)***

New holding comprising debenture

The section also applies where the new holding comprised debentures, loan stock or other similar securities so long as they were issued or allotted before 4 December 2002, or were issued on or after that date pursuant to a written binding agreement made before that date. ***(9)***

Exclusion of investment undertakings

The section shall not, however, apply where the new holding comprises units in an investment undertaking, being a company. 'Investment undertaking' and 'unit' have the same meaning as in ***section 739B***. ***(10)***

585 Conversion of securities

Summary

This section provides that the rules of ***section 584*** relating to a reorganisation or reduction of share capital also apply to the conversion of securities.

Details

Definitions

"conversion of securities" includes — ***(1)***

- the conversion of securities into shares,
- a conversion, at the option of the holder of the securities, as a alternative to the redemption of the securities for cash, where the conversion takes place before 4 December 2002 or where the conversion takes place after that date pursuant to a written binding agreement made before that date, and
- an exchange of securities made in pursuance of any law providing for the compulsory acquisition of shares or securities in return for the issue of securities or other securities.

"Investment undertaking" and "unit" have the same meaning respectively as in ***section 739B***.

"security" includes any loan stock or other similar securities, whether of a government, public authority or company and whether secured or unsecured, but does not include securities which are exempt from capital gains tax under ***section 607***.

A conversion of securities shall not, however, include a conversion of securities into units in an investment undertaking, being a company. ***(1A)***

Application of section 584

Section 584 applies in relation to the conversion of securities in the same way as it applies to the reorganisation or reduction of a company's share capital. Consequently, such a conversion is not treated as a disposal for capital gains tax purposes. ***(2)***

586 Company amalgamations by exchange of shares

Summary

This section provides that, with the necessary modifications, the rules in ***section 584*** relating to the reorganisation or reduction of a company's share capital apply also in the case where a company issues shares to a person in exchange for shares or debentures of another company. The exchange is treated as if the 2 companies were one and the same company and the exchange of shares were a reorganisation of its share capital. Thus, the exchange is not a disposal for capital gains tax purposes. In general, the section is concerned with the situation where, after the exchange, the company issuing the new shares has control of the second company. The exchange must be for *bona fide* commercial reasons and not part of a tax avoidance scheme. The section also applies where debentures, loan stock or other similar securities are allotted or issued prior to 4 December 2002 and in certain limited circumstances where they are issued on or after that date. The section shall not apply where the company issuing the shares or debentures is an investment undertaking within the meaning of ***section 739B***.

Details

Application of section 584

Where a company issues shares or debentures to a person in exchange for shares and debentures of another company, the rules of ***section 584*** relating to a reorganisation of capital apply with any necessary modifications as if the 2 companies were the same company and the exchange were a reorganisation of its share capital. ***(1)***

Thus, for example, if X Ltd issues its shares to a person in exchange for shares in Y Ltd, that person is treated as having acquired the shares in X Ltd at the same time and for the same cost as his original holding in Y Ltd, and there is no charge to capital gains tax on the occasion of the exchange. The rule applies to a person who accepts new shares in whole or part satisfaction for giving up the original shares, even where the person is given the option to take the whole of the consideration in cash. It applies to an exchange of debentures for shares and vice versa as well as to an exchange of shares for shares.

The rule applies as if the 2 companies were the same company so that if, on the amalgamation, the shareholders of one company receive cash in addition to shares, the cash is treated as a capital distribution and chargeable accordingly. (See ***subsection (3)(c)*** regarding the issue of debentures on or after 4 December 2002)

Conditions for relief

The section applies only where the company issuing the shares or debentures has or, in consequence of the exchange, will have control of the other company, or makes the issue as a result of a general offer to members of the other company or any class of them on a condition such that if it were satisfied it would have control of the other company. ***(2)***

Thus, the condition for the section to apply is in general that the company issuing the shares or debentures will have control of the other company. The section, therefore, applies where the issuing company —

- acquires part or all of the minority share or debenture holdings in an existing subsidiary,
- makes a successful take-over bid for the other company, or
- completes a successful take-over bid for the other company by acquiring the rest of its shares or debentures.

The section also applies where the issuing company has made unconditional a general offer which was previously conditional on its acquiring control of the other company. Thus, if X Ltd as part of a take-over bid made an offer to acquire the shares of Y Ltd on condition that the offer is accepted as to more than 50 per cent of that company's share capital and then, during the negotiations, makes the offer unconditional, the section applies even if the take-over bid fails.

Exchange must be for bona fide commercial reasons

The section does not apply to the issue of shares by a company by means of an exchange referred to in ***subsection (1)*** unless the exchange is for *bona fide* commercial reasons and is not part of a tax avoidance scheme. For this purpose, "shares" includes stock, ***(3)(a)&(b)***

debentures, and the interests in a company with no share capital held by members of the company, and also options in relation to such "shares".

Examples

In the following 2 cases the facts are taken to be —

1. In 2000 A buys 4,000 ordinary shares in X Ltd at €1.20 each (cost therefore €4,800).
2. In 2002 Y Ltd by letter circulated to shareholders of X Ltd. offers to acquire shares on condition that there is a 90 per cent acceptance.

Example 1

The offer of Y Ltd is 3 €1 shares in Y Ltd in exchange for every 4 shares in X Ltd The offer is accepted by A at a time when it has become unconditional. The exchange of shares does not constitute a chargeable disposal and A is treated as acquiring 3,000 shares in Y Ltd in 2000 for €4,800.

Example 2

Y Ltd offers 3 €1 shares plus cash of 25c for every 4 shares in X Ltd and A accepts at a time when the offer has become unconditional. A's new holding is treated as acquired in 2000 and the cash constitutes a disposal of his interest. Taking market value of the shares in Y Ltd at €2.25, the value of the new holding is €6,750 (3,000 @ €2.25). A also gets cash €250 (1,000 @ 25c).

The cost of the interest treated as disposed of is —

$$€4,800 \times \frac{€250}{€250 + €6,750} = €172$$

and the chargeable gain (disregarding indexation relief under ***section 556***) is €250 less €172 = €78. For the purpose of any subsequent disposal the cost of the new holding is treated as €4,628 (that is, €4,800 less €172).

Issue of debentures

The section also applies where debentures, loan stock or other similar securities are allotted or issued prior to 4 December 2002 and in certain limited circumstances were they are issued on or after that date. The circumstances are where the debentures are issued on or after 4 December 2002 — ***(3)(c)***

- pursuant to a written binding agreement made before that date;
- by one company to another where both companies are members of the same group (within the meaning of ***section 616***) throughout the period commencing one year before and ending one year after the date of issue; or
- to a company quoted on a recognised stock exchange and its board of directors had, before 4 December 2002, made a public announcement that they had agreed the terms of a recommended offer to be made for the company's entire issued, and to be issued, ordinary share capital.

Exclusion of investment undertakings

The section shall not apply where the company issuing the shares or debentures is an investment undertaking within the meaning of ***section 739B.*** ***(3)(d)***

587 Company reconstructions and amalgamations

Summary

This section adapts ***section 586*** to the situation where, under a scheme of reconstruction or amalgamation, a company issues shares to the shareholders of another company in respect of and in proportion to their existing holdings in shares or debentures, those holdings being retained by them or cancelled. The transaction is treated as an exchange of shares and this comes within the rules applicable to a reorganisation of share capital so that the new holding is treated in the hands of the shareholder as if it were the original holding with no consequent charge to capital gains tax at the time of the exchange. The rule applies irrespective of whether or not the company issuing the new shares has, after the transaction, control of the other company. It does not apply, however, unless the transaction is for *bona fide* commercial reasons and not part of a tax avoidance scheme. The section also applies where debentures, loan stock or other similar securities are allotted or issued prior to 4 December 2002 and in certain limited circumstances where they are issued on or after that date. This section shall not apply where the company issuing the shares or debentures is an investment undertaking within the meaning of ***section 739B***.

Details

Definitions

A "scheme of reconstruction or amalgamation" is a scheme for the reconstruction of a company or companies or the amalgamation of 2 or more companies. ***(1)***

References to shares and debentures being retained include their being retained with altered rights or in an altered form whether as a result of reduction, consolidation, division or otherwise.

Reconstruction/amalgamation treated as exchange of shares

A scheme of reconstruction or amalgamation involving the issue of shares by one company to the shareholders of another company in proportion to their existing shareholdings is treated as an exchange of shares. Thus, it comes under the same rule as an internal reorganisation of share capital. The shareholders are not therefore to be treated as if they had disposed of their old shares and acquired the new shares. Instead, the new shares are to be treated as in ***section 586***, that is, as if they were acquired at the time the old shares were acquired and at the same cost. It is not a condition for the application of this provision that the scheme of reconstruction or amalgamation should result in the control of one company by the other company. (See ***subsection (4)(c)*** regarding the issue of debentures on or after 4 December 2002) ***(2)***

The treatment in ***subsection (2)*** is applied to a company without share capital as if an "interest" in the company were the equivalent of shares. ***(3)***

Reconstruction/amalgamation must be for bona fide commercial reasons

The section does not apply to the issue of shares by a company under a scheme of reconstruction or amalgamation unless that scheme is effected for *bona fide* commercial reasons and not as part of a tax avoidance scheme. For this purpose, "shares" includes stock, debentures and the interests in a company with no share capital held by members of the company, and also options in relation to such "shares". ***(4)(a)&(b)***

Issue of debentures

The section also applies where debentures, loan stock or other similar securities are allotted or issued prior to 4 December 2002 and in certain limited circumstances where they are issued on or after that date. The circumstances are where the debentures are issued on or after 4 December 2002 — ***(c)***

- pursuant to a written binding agreement made before that date;
- by one company to another where both companies are members of the same group (within the meaning of ***section 616***) throughout the period commencing one year before and ending one year after the date of issue; or
- pursuant to a scheme or arrangement, the principal terms of which had been brought to the attention of the Revenue Commissioners and the Revenue Commissioners had acknowledged in writing before 4 December 2002, to the effect that the scheme or arrangement was a scheme of reconstruction and amalgamation.

Exclusion of investment undertakings

The section shall not apply where the company issuing the shares or debentures is an investment undertaking within the meaning of ***section 739B***. ***(d)***

588 Demutualisation of assurance companies

Summary

This section addresses the tax aspects of rights which a member of a mutual assurance company receives following a demutualisation of the company. These are the rights to acquire —

- shares in a successor company in priority to other persons,
- shares in the successor company for consideration of an amount or value lower than the market value of the shares, or
- free shares in the successor company.

Members who receive such rights will have them regarded as an option and the effect of this is to ignore the transaction for capital gains tax purposes and to treat the acquisition of the right and the acquisition of the shares when the right is exercised as a single transaction.

The section also provides that where a member of an assurance company which demutualises receives shares in the successor company, the cost of those shares for capital gains tax purposes is to be restricted to the amount of any new consideration paid by the person. This ensures that on disposal of those shares the gain or loss will be computed by reference to the actual amount paid for shares.

Details

Definitions

"assurance company" means — ***(1)***

(a) an assurance company within the meaning of section 3 of the Insurance Act, 1936, or

(b) a person that holds an authorisation within the meaning of a person that holds an authorisation within the meaning of –

(i) the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994), or

(ii) the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015).

"free shares" are shares issued for no new consideration.

"member" is a person who is or was a member of the assurance company and includes a member of any class or description.

"new consideration" does not include any amount paid out of the assets of the assurance company or the successor company or out of the member's shares or rights in those companies.

Application

The section applies as on and from 21 April, 1997 where an assurance company which carries on a mutual life business makes an arrangement to which ***section 587(2)*** applies by virtue of ***section 587(3)***. In summary, ***section 587(2)*** provides that where an arrangement is entered into by a company with its shareholders for the purpose of ***(2)*** reconstructing or amalgamating the company and, as part of the arrangement, another company issues shares to the shareholders in proportion to their original holdings and the original holdings are either retained or cancelled, ***section 586(1)***, which deems such exchanges to be a reorganisation of share capital (and hence not giving rise to a charge to capital gains tax), will apply.

Section 587(2), therefore, applies to companies and persons holding shares or debentures in companies. As policy holders of mutual life assurance companies are not strictly shareholders, it is necessary to apply ***section 587(3)*** in this situation. ***Section 587(3)*** applies ***section 587(2)***, as described above, in situations where a company has no share capital but its members have interests in the company.

Right to acquire shares deemed to be an option

The right of a member of an assurance company to acquire shares in the successor company is treated for capital gains tax as an option. This applies where the right is to receive shares free or for less than their market value, or if the member is entitled to the shares in priority to other members. The effect of treating the acquisition of the right as an option is to ignore that transaction for tax purposes and to treat the acquisition of the right and the acquisition of the shares when the right is exercised as a single transaction. ***(3)***

Zero base cost or cost equal to consideration given

Where a member of an assurance company receives shares in the successor company and those shares are treated under ***section 587*** as having been obtained by the member in exchange for the interest in the company possessed by the member, the cost of those shares for capital gains tax purposes is restricted to the amount of any new consideration paid by the person. Their value on acquisition is taken to be the amount of any new consideration paid by the person. This ensures that on disposal of the shares the gain is computed by reference to the actual amount paid for the shares. ***(4)***

Where shares are acquired by the member pursuant to a right to acquire them either at less than market value or in priority to others, no part of the cost of the shares to that person can be attributed to the acquisition of the rights.

Trustees and beneficiaries of trusts

A special rule applies to deal with cases where shares in the successor company are issued to trustees for transfer to the members of the society for no new consideration, and the shares are held in trust by the trustees. ***(5)***

In any such case — ***(6)(a)***

- the trustees are regarded as having acquired the shares for no consideration,
- the members' interest in the settled property (being the shares) is regarded as acquired for no consideration, and
- when a member becomes absolutely entitled as against the trustees to any of the shares the trustees are regarded as having disposed of those shares for consideration which would give rise to neither a gain nor a loss. The member is treated as having acquired the shares for the consideration at which they were acquired by the trustees.

This rule also applies to a person becoming absolutely entitled as against the trustees to any of the shares even if that person, being a minor or for any other legal disability, might not in general law become so entitled. ***(6)(b)***

An assurance company that demutualises is required to make a return to the Revenue Commissioners setting out in respect of each of its members — ***(7)***

- the name and address,

- the number of shares in the successor company which the member has a right to acquire,
- the amount of new consideration which the member is required to give for those shares,
- the value of any assets of the assurance company to which the member has a right, and
- such other information that the Revenue Commissioners require.

589 Shares in close company transferring assets at undervalue

Summary

This section covers the situation where a close company (defined in ***section 5*** by reference to ***section 430***), or a company which would be a close company if resident in the State, transfers an asset to any person other than by means of an arm's length bargain and for a price which is less than its market value. In any such case the difference between the consideration received for the asset and its market value is to be apportioned among the issued shares of the company so that, in the event of a disposal of any of those shares, the cost of acquisition of those shares is to be reduced by the proportionate part of that difference.

Details

Apportionment of difference to shares

Where a close company transfers an asset at undervalue, otherwise than by means of a bargain made at arm's length, the amount by which the consideration for the disposal of the asset is less than its market value is to be apportioned over the issued shares of the company. ***(1)***

Base cost adjustment

Any amount so apportioned to shares is to be excluded from the expenditure allowed to be deducted in computing a gain on any disposal of the shares by a person owning them at the time of the transfer of the asset. ***(2)***

Shareholder is itself a close company

To deal with the position where a shareholder affected is itself a close company, the amount apportioned to that close company under ***subsection (1)*** is to be apportioned among the issued share capital of that company and, in the event of a disposal of any of that share capital, the holders are to be treated in accordance with ***subsection (2)***. Essentially, this provision looks through a close company which is a shareholder of another close company so that the adjustments provided by the section carry through to the shareholders of that company and so on through any number of close companies if necessary. ***(3)***

Application to non-resident companies

The section also applies to non-resident companies which if resident in the State would be close companies. ***(4)***

Example

A buys 200 ordinary shares in a close company for €5,000 (1,000 ordinary shares is the issued share capital of the company). Some time later the company sells to a connected person for €10,000 a chargeable asset the value of which is €25,000. The sale is treated as being made for €25,000 and the company is charged accordingly. When A later sells her shares for €12,000, her chargeable gain (disregarding any indexation relief due under ***section 556***) is computed as follows —

Sale proceeds		€12,000
Deduct: Cost of shares	€5,000	
Less undervalue of shares		
$\frac{€200}{€1,000}$ x €15,000	€3,000	
Adjusted cost		€2,000
Chargeable gain		€10,000

590 Attribution to participators of chargeable gains accruing to non-resident company

Summary

This section makes provision to prevent persons avoiding capital gains tax by transferring property to controlled companies abroad. It enables Revenue to look through the non-resident controlled company to its resident participators and, subject to certain exceptions, to assess them to capital gains tax on their share of the gains made by the company. The exceptions are gains distributed to shareholders within 2 years of the relevant disposal, gains on the disposal of assets where it is shown to the satisfaction of the Revenue Commissioners that the disposal was made for *bona fide* commercial reasons and not for the purpose of the avoidance of tax, gains on tangible property or on a lease of such property or specified intangible assets used only for the purposes of a trade carried on abroad, gains on the disposal of foreign currency or a credit in a foreign bank if used for a trade carried on wholly outside the State, gains chargeable on the company itself as, for instance, gains on the disposal of land or mineral rights in the State.

Details

For the purposes of the section — ***(1) & (2)***

- participator in relation to a company has the same meaning as in ***section 433(1)***;
- a person's interest as a participator in a company means the interest in the company which is represented by all the factors by reference to which the person falls to be treated as such a participator;
- the extent of such an interest means the proportion of the interests as participators of all the participators in the company which on a just and reasonable basis is represented by that interest;
- where the interest of any person in a company is wholly or partly represented by an interest which the person has under any settlement and the person's beneficial interest is a factor by reference to which the person would otherwise be treated as having an interest as a participator in the company, then the interest of the person as participator in the company is deemed to be the interest of the trustees of the settlement, and not an interest of the person concerned.

The section has application as respects chargeable gains accruing to a company on or after 11 February, 1999 where the company is not resident in the State and if it were so resident, it would be a close company. The amount of the gain is computed as if the company were resident in the State. ***(3) & (15)***

Every person who at the time when the gain accrues to the company is resident or ordinarily resident in the State, who, if an individual is domiciled in the State, and who is a participator in the company, is treated for capital gains tax purposes as if part of the chargeable gain had accrued to him or her. The part of the chargeable gain is the proportion of the gain that corresponds to the extent of the participator's interest as a participator in the company. A chargeable gain is not treated as accruing to a participator if the aggregate of the amount which would be so treated as so accruing, and the amount which is treated as accruing to persons connected with the participator does not exceed one twentieth of the gain accruing to the company. ***(4), (5) & (6)***

The section does not apply in relation to — ***(7)***

- a gain accruing on the disposal of tangible property (or a lease thereof) or specified intangible assets within the meaning of ***section 291A(1)*** used solely for a trade carried on by the company, or by a company which is a member of the same group (within the meaning of ***subsection (16)***), wholly outside the State;
- a gain on the disposal of assets where it is shown in writing or otherwise to the satisfaction of the Revenue Commissioners that, at the time of the disposal, the company is carrying on genuine economic activities in a relevant Member State (within the meaning of ***section 806(11)(a))***.
- a gain on the disposal of foreign currency or of a debt, within ***section 541(6)*** where the currency or debt is or represents money used for the purposes of a trade carried on by the company wholly outside the State; or
- a gain chargeable in the State by virtue of ***section 29*** or ***section 25(2)(b)***.

Where any amount of capital gains tax is paid by a participator as a result of the charge to tax arising under this section, and an amount in respect of the gain charged is distributed (either by way of capital or on the dissolution of the company) within 2 years from the time when the gain accrued to the company, that amount of tax (so far as neither reimbursed by the company nor applied as a deduction under ***subsection (9)***) can be used to reduce or eliminate any liability to tax in respect of the distribution. Where income tax is due in respect of the distribution, the distribution is treated as forming the highest part of the income of the person. ***(8) & (10)***

Any capital gains tax paid by a participator in a non-resident company under this section (so far as neither reimbursed by the company, nor used to reduce a liability to tax on a distribution) is treated as allowable expenditure in the capital gains tax computation of the gain arising on the disposal of the asset representing the participator's interest in the company. ***(9)***

Any loss arising on the disposal of assets by the non-resident company can be treated as accruing to participators but only insofar as the loss reduces or extinguishes gains accruing in the same year of assessment to the company, which gains are charged on participators. ***(11)***

Where the participator in the non-resident company is itself a non-resident company (which would be a close company if it were resident), an amount equal to the amount of gain apportioned to the participator is further apportioned among the participators of the participator, and so on through a chain of companies. ***(12)***

The persons treated by the section as if part of a chargeable gain accruing to a non-resident company (or any company in the chain referred to above) had accrued to them expressly include trustees who are participators, if when the gain accrues to the company, the trustees are neither resident nor ordinarily resident in the State. Such gain can then be attributed to beneficiaries of the trust under ***section 579A***. ***(13)***

Where any tax payable by a participator as a result of the charge under this section is paid by the non-resident company or a company in the chain referred to above, the payment is not subject to tax. ***(14)***

For the purposes of the section, group treatment is allowed in relation to transfers of assets between non-resident companies which are members of the same non-resident group. ***(16)***

The term "group" is to be construed in accordance with ***subsections (1)*** (apart from ***paragraph (a)***), ***(3)*** and ***(4)*** of ***section 616*** which define "a group of companies" for the purposes of ***Part 20*** (Companies Chargeable Gains). A "non-resident group" is essentially the members of a group that are not resident in the State. ***(16)(a)***

Sections 617 to ***620***, which respectively deal with transfers of assets, other than trading stock, within a group, transfers of trading stock with a group, disposals or acquisitions outside a group and the replacement of business assets by members of a group, are to apply to a non-resident company which is a member of a non-resident group as they apply to a company resident in the State which is a member of a group. However, requirements in those sections for a company to be EU resident before it can be considered as a member of a group are inappropriate in the context of a non-resident group and, accordingly, are disapplied for the purpose of this section. ***(16)(b)(i)***

For the same purposes, ***sections 623*** (company ceasing to be a member of group) and ***625*** (shares in subsidiary member of group) are to apply as if the references in those sections to companies and a group of companies were references to non-resident companies and a non-resident group of companies. This is done to prevent non-resident companies disposing of assets entirely out of the non-resident group in such a way that any gain arising on the disposal would escape a charge to capital gains tax. ***(16)(b)(ii)***

This provision does not apply where —

- the chargeable company is resident in the State at the time of acquisition of the asset, or the asset is a chargeable asset in relation to that company immediately after that time, and
- the other company is resident in the State at the time of that acquisition, or the asset is a chargeable asset in relation to that company immediately before that time.

591 Relief for individuals on certain reinvestment

Summary

This section provides for a relief which, subject to conditions, allows an individual to defer paying capital gains tax on any gains arising from the sale of shares or securities in his/her own company. The relief applies to a material disposal, before 4 December 2002, by an individual of shares in a company which, for the period of 3 years before the disposal (or, if shorter, from the date the company commenced to trade), has been a trading company or a holding company of a trading group and in which he/she has been a full-time employee, part-time employee, full-time director or part-time director of the company or, if the company is a member of a trading group, of one or more companies which are members of the trading group. Full relief is given where the entire proceeds from the disposal are reinvested, within the period of 3 years from that disposal, in acquiring a qualifying investment. Partial relief is available where part only of the proceeds are so reinvested.

The relief operates on the basis that the capital gain on the disposal of the original holding is "rolled over", that is, it is deemed not to arise until the qualifying investment is disposed of. Moreover, the gain, subject to the same conditions being satisfied, continues to be "rolled over" where the qualifying investment is disposed of and the proceeds from that disposal are reinvested in a further qualifying investment and so on. However, while gains arising on disposals before 4 December 2002 may be "rolled over" and continue to be "rolled over" while the individual continues to invest in qualifying investments, this entitlement will not apply to any gains arising on disposals on or after that date.

Details

Definitions

"director" has the meaning set out in ***section 116*** which is the interpretation section for the Schedule E provision dealing with the income tax treatment of expenses allowances and benefit in kind. ***(1)***

"eligible shares" and "ordinary shares" have the meanings set out in ***section 488***, which is the interpretation section for the legislation governing the Business Expansion Scheme. Thus, "eligible shares" are new ordinary shares which, throughout the period of 5 years beginning with the date on which they are issued, carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future right to be redeemed, while "ordinary shares" are shares forming part of a company's ordinary share capital.

"full-time director", "full-time employee", "part-time director" and "part-time employee" have the meanings set out in ***section 250*** which deals with income tax relief for interest paid by certain individuals on loans used to acquire an interest in a company. Essentially, "full-time" requires a person to devote substantially the whole of his/her time to the company; "part-time" does not.

"holding company" is a company whose business consists wholly or mainly in the holding of shares in, or securities of, one or more companies which are trading companies and which are its 51 per cent subsidiaries.

"ordinary share capital" has the meaning set out in ***section 2***. That section defines the expression as meaning all the issued share capital of a company, other than capital the holders of which have a right to dividend at a fixed rate but have no other right to shares in the profits of the company.

"trading company" is a company whose business consists wholly or mainly of the carrying on of a trade or trades, while "trading group" means a holding company and one or more trading companies which are 51 per cent subsidiaries of the holding company. The term "trade" includes a profession and "trading company", "trading group", "qualifying trade" and "qualifying trading operations" are to be construed accordingly.

"unquoted company" is a company none of whose shares, stocks or debentures are listed in the official list of a stock exchange or quoted on an unlisted securities market of a stock exchange.

"51 per cent subsidiary" has the meaning assigned to it by ***section 9***. Thus, a company is a 51 per cent subsidiary of another company if and so long as more than 50 per cent of its ordinary share capital is owned directly or indirectly by that other company.

Certain terms are defined by reference to other provisions of the section, namely, "material disposal" – ***subsection (5)***, "the original holding" – ***subsection (2)***, "qualifying company"

– ***subsection (7)***, "qualifying investment" – ***subsection (6)***, "qualifying trade" and "qualifying trading operations" – ***subsection (8)***, "the reinvestor" – ***subsection (2)***, and "the specified period" – ***subsection (6)(b)***.

The relief

If an individual (the reinvestor) makes a "material disposal" (see ***subsection (5)***), before 4 December 2002, of shares in, or securities of a company ("the original holding") and within 3 years of the disposal reinvests the entire proceeds in a "qualifying investment" (see ***subsection (6)***), the capital gain on the disposal of the original holding will be deemed not to arise until the qualifying investment is disposed of. Gains arising on disposals on or after this date will not qualify for the relief. ***(2)(a)***

Where the disposal of the qualifying investment is itself a material disposal and the proceeds from that disposal are within 3 years of the disposal reinvested in another qualifying investment, the gain on the original holding will continue to be deferred until that other qualifying investment, or any further qualifying investment which is acquired in a similar manner, is disposed of. ***(2)(b)***

Relaxation of conditions for relief in certain cases

An individual may fail to meet some of the conditions for acquiring a qualifying investment but still qualify for relief. The conditions in question are the acquisition of a 5 per cent holding in a qualifying company within one year of the disposal of the original holding and the requirement to take up within that 1 year period a full-time employment or a full-time directorship in the qualifying company. If the individual does not satisfy either or both those conditions, he/she may still qualify for relief if — ***(3)***

- all other conditions for the relief are satisfied,
- the capital gains tax on the disposal of the original shares or securities has been paid, and
- he/she has been a full-time director or a full-time employee of the qualifying company for a period of 2 years beginning within the 3 year period following the disposal of the original shares or securities.

If these new conditions are satisfied, the tax paid in respect of the original shares or securities is to be repaid; but any such repayment does not carry interest.

Only part of proceeds reinvested

In general, if part only of the proceeds from a material disposal before 4 December 2002 are reinvested in acquiring a qualifying investment, relief does not apply. If, however, the amount not so reinvested is less than the gain accruing on the disposal, it follows that a part of the gain has been reinvested and that part qualifies for the relief. ***(4)***

Material disposal

The disposal of shares in or securities of a company by an individual is a material disposal if, for the period of 3 years ending with the date of the disposal or, where the company commenced trading at any time in that period, for the period beginning at that time and ending with the date of the disposal — ***(5)***

- the company was a trading company or a holding company, and
- the individual was either a full-time or part-time director or employee of the company or, if that company is a member of a trading group, of one or more companies which are members of that group.

Qualifying investment

An individual is regarded as acquiring a qualifying investment where he/she acquires eligible shares in a qualifying company, and — ***(6)***

- he/she holds at least 5 per cent of the ordinary share capital of the company at any time in the period from his/her acquisition of the eligible shares to the date which is 1 year after the date of the disposal of the original shares or securities ("the initial period"),
- he/she holds at least 15 per cent of the ordinary share capital of the company at any time in the period from his/her acquisition of those shares to the date which is 3 years after the date of the disposal of the original shares or securities ("the specified period"),
- within that specified period the company uses the money it raises through issuing the eligible shares to enable it to undertake or increase its ability to undertake qualifying trading operations,
- the qualifying company is not the company in which the original shares or securities subsisted or a company that was a member of the same trading group as that company, and
- he/she becomes, at any time within the initial period, a full-time director or a full-time employee of the company and continues in that capacity throughout the period beginning at that time and ending at the end of the specified period or, where the company is wound up or dissolved and the conditions set out in ***subsection (7)(d)*** are satisfied, at the time of the commencement of the winding up or dissolution.

Qualifying company

The necessary conditions for qualification as a qualifying company are set out. The company must be incorporated in the State. It must, throughout the specified period, be an unquoted company which is resident in the State and not resident elsewhere, and which exists wholly for the carrying on wholly or mainly in the State of a qualifying trade (see ***subsection (8)***). In addition, the company must not, at any time in the specified period, be under the control of another company (or of another company and any person connected with that other company) or be a 51 per cent subsidiary of another company. ***(7)(a)***

A company will not cease to be a qualifying company solely because its shares become quoted on the Developing Companies Market during the specified period. ***(7)(b)***

In general, a company will cease to be a qualifying company if at any time in the specified period it commences to wind up or dissolve. However, if the winding-up or dissolution is for *bona fide* commercial reasons and the company's net assets are distributed to its members within 3 years of the commencement of the winding up or dissolution, the company will not cease to be a qualifying company as a result of the winding up or dissolution. ***(7)(c) & (d)***

Qualifying trade and qualifying trading operations

The term "qualifying trading operations" means all trading operations except dealing in shares, securities, land, currencies, futures or traded options. ***(8)(a)***

A trade is a qualifying trade if throughout the specified period it is conducted commercially with a view to realising profits and consists wholly or mainly of qualifying trading operations. If the trade consists only partly of qualifying trading operations, it will not be regarded as consisting wholly or mainly of such operations unless the total amount receivable in the specified period from sales and services in the course of the qualifying trading operations is not less than 75 per cent of the total amount receivable by the company from all sales and services in the specified period. ***(8)(b)***

Claim for relief

Claims for relief may be made at any time after the making of a material disposal and the acquisition of eligible shares in a qualifying company. In effect, relief may be given in advance of the conditions of the section being met but provision is made for a withdrawal of the relief if it subsequently transpires that the conditions have not been satisfied and that the claimant was not entitled to the relief claimed. ***(9)***

Withdrawal of relief

The withdrawal of relief is to be made for the year of assessment in which the event or non-event giving rise to the withdrawal of the relief occurred and is to be made in accordance with ***subsection (11)***. In addition, an individual who is to suffer the withdrawal of relief must include in his/her tax return for that year both details of the event or non-event giving rise to the withdrawal of the relief and the amount to be treated under ***subsection (11)*** as a gain accruing to him/ her in that year. ***(10)***

Method of withdrawing relief

The amount ("the relevant amount") of the chargeable gain which accrued to the reinvestor on the disposal of the original holding as was treated under ***subsection (2)*** or ***(4)*** as not accruing at that time is to be treated as accruing in the year of assessment for which the relief is to be withdrawn, subject to adjustments. ***(11)(a)***

These adjustments are for the relevant amount is to be reduced by the aggregate of — ***(11)(b)***

- the excess of the amount of losses which would have been deducted under ***section 31*** in the year of assessment in which the disposal of the original holding occurred, if relief under ***section 591*** had not been claimed, over the amount of losses which were so deducted in that year, but only to the extent that that excess has not already been so deducted in years of assessment subsequent to the year of assessment in which the disposal of the original holding occurred, and
- any amount of chargeable gains in the year of assessment in which the disposal of the original holding occurred in respect of which the reinvestor would not, by virtue of ***section 601*** (which provides for an annual exemption limit in computing chargeable gains), have been charged to capital gains tax, if relief under ***section 591*** had not been claimed.

The relevant amount as so reduced is then to be increased by any amount determined by the formula — ***(11)(c)***

$$G \times \frac{R}{100} \times M$$

where —

G is the relevant amount as so reduced.

R is the rate per cent specified in ***section 1080(1)*** (the rate at which interest is chargeable on overdue tax).

M is the number of months in the period beginning on the date on which capital gains tax for the year of assessment in which the disposal of the original holding occurred was due and payable and ending on the date on which capital gains tax for the year of assessment for which the withdrawal of the relief is to be made is due and payable.

Deferred gains not treated as deferred for indexation purposes

A gain or part of a gain which is treated as accruing at a date later than the date of the disposal on which it accrued will not be so treated for the purposes of ***section 556***, which provides for indexation relief in computing chargeable gains. ***(12)***

Apportionment

There is to be a just a apportionment in cases where consideration is given for the acquisition or disposal of any assets and only some or part of those assets are shares or other securities in respect of the acquisition or disposal of which a claim under ***section 591*** relates.

Acquisition of qualifying investment must be for bona fide commercial reasons

The relief does not apply unless the acquisition of the qualifying investment was made for *bona fide* commercial reasons and not wholly or partly for the purposes of realising a gain from the disposal of the qualifying investment. ***(14)***

591A Dividends paid in connection with disposal of shares

Summary

This section prevents the avoidance of capital gains tax on certain disposals by a company of shares in another company. The capital gains tax is avoided by the payment by the company whose shares are being sold of an abnormal dividend in connection with the disposal of the shares. That dividend is exempt in the hands of the receiving company because it is a dividend paid by an Irish resident company to a company that is within the charge to corporation tax. As a result of the payment of the dividend, a much smaller amount is payable for the shares, thus reducing the capital gains tax on the transaction.

The section provides that where there is an abnormal dividend paid to a company in connection with the disposal of shares in a company, the amount of the dividend is to be treated for tax purposes as proceeds for the disposal of the shares rather than a dividend. This ensures that the gain arising will be subject to capital gains tax.

Details

Meaning of "abnormal dividend"

A dividend paid in connection with a disposal of shares or securities in a company will be regarded as abnormal if the amount of the dividend exceeds what could reasonably have been expected to be paid in respect of the shares or securities if there were no such disposal. This would involve taking a reasonable view as to the amount of dividend that might have been paid in the absence of a disposal. Where the dividend exceeds that, it will be regarded as being abnormal. ***(1)***

The explanation is phrased in terms of dividends and distributions. A dividend is self-explanatory. A distribution includes a dividend but is broader. It includes any distribution out of the assets of a company, whether in cash or otherwise, in respect of shares in the company.

Tax consequences

The section applies where, in connection with a disposal of shares or securities of a company, there is a scheme, arrangement or understanding for the payment of an abnormal dividend to a company. The company to whom the payment is made must be a company as described in the following two situations: ***(2)***

The first situation is where a company is making the disposal. In this case the section will apply only where the company to whom the abnormal dividend is paid is the company making the disposal or a company connected with that company.

The second situation is where a person other than a company is making the disposal. In this case the payment must be made to a company connected with that person.

The question as to whether a company is connected with any person is set out in ***section 10***.

Where the above criteria are met. The amount or value of the dividend or distribution is to be treated for tax purposes as consideration received by the person disposing of the shares or securities and not as a dividend for the purposes of the Tax Acts.

Bona-fide commercial transactions

The section does not apply if it is shown that the scheme, arrangement or understanding is effected for bona fide commercial reasons and is not any part of scheme, arrangement or understanding a main purpose of which is avoidance of liability to tax. ***(3)***

592 Reduced rate of capital gains tax on certain disposals of shares by individuals

Section 592 repealed by section 70 of the Finance Act, 1998 as respects disposals made on or after 3 December, 1997.

CHAPTER 5

Life assurance and deferred annuities

Overview

This Chapter provides for the capital gains treatment of life assurance policies and contracts for deferred annuities.

593 Life assurance and deferred annuities

Summary

This section deals with gains and losses from the disposal of or of an interest in a life assurance policy or a contract for a deferred annuity on the life of any person. Where the person making the disposal is the original beneficial owner of the policy or contract, any gain accruing on the disposal is not a chargeable gain and, consequently, any loss arising on the disposal is not an allowable loss. This treatment does not extend to gains or losses on disposals by persons other than the original beneficial owners.

Details

Application

The section applies to any policy of assurance or contract for a deferred annuity on the life of a person. ***(1)***

Exemption for original beneficial owners only

No chargeable gain (and consequently no allowable loss) accrues on the disposal of or of an interest in rights under life assurance policies or contracts for deferred annuities except in a case where the person making the disposal is not the original beneficial owner and acquired the rights or interests for a consideration in money or money’s worth. ***(2)***

Time of disposal and valuation

The time of disposal for the purposes for the charge to tax is when the assurance money or the first instalment of the annuity is due or when the surrender of the policy or contract takes place. The current value of future annuity instalments is to be included in the consideration for a disposal of a contract for a deferred annuity. Any questions concerning the valuation of interests in deferred annuities should be referred to the Office of the Chief Inspector of Taxes for instructions. ***(3)***

Transfer of investments treated as payments

A transfer of investments or other assets to the owner of a policy of assurance is to be treated as a payment of the sum assured under the policy. Thus, the value of investments which are part of the proceeds of an investment linked policy are to be included in the amount of the consideration in cases where the proceeds are chargeable. *(4)*

594 Foreign life assurance and deferred annuities: taxation and returns

Summary

In general, for domestic life assurance policies, issued up until 31 December 2000, taxation investment in Ireland is based on 2 key concepts —

- no tax is charged at the level of the policyholder, that is, the original policyholder is not liable for capital gains tax on the proceeds from the life assurance policy;
- instead, the life assurance company is liable to tax every year on the income and gains arising from its investment of the policyholders' premiums. (This is known as the "I – E" taxation regime.)

For policies issued on or after 1 January 2001 the investment return on premiums is allowed to grow tax free, and it is only when payments are made to policy holders that tax applies. This is known as "the gross-roll-up" taxation regime.

Section 594 provides, however, that the exemption from capital gains tax given under ***section 593*** in respect of the proceeds of a life assurance policy or a deferred annuity contract received by the original policyholder does not apply in the case of a policy issued or a contract made on or after 20 May 1993 —

- where the insurer is not within the charge to Irish corporation tax, that is, it is not an Irish resident assurance company or a non-resident assurance company operating through a branch in the State, or
- where the policy or contract is issued or made by an International Financial Services Centre (IFSC) life assurance company and is made with or issued to, as the case may be, a person who did not continuously reside outside the State throughout the period of 6 months beginning on the date of issue or the date of contract, as the case may be. (The taxation regime for IFSC life companies has always been "gross-roll-up".)

In contrast to the general rate of capital gains tax, the rate of tax applying in these circumstances is 40 per cent.

Thus, Irish residents taking up foreign life assurance policies or deferred annuity contracts on or after 20 May, 1993 are fully chargeable to capital gains tax on the profit of their investment or in respect of the growth in value of the policy from 20 March, 2001 where such a policy was taken out prior to 20 May, 1993. In addition, to match the regime of taxation at source which applies to life assurance policies issued in the State —

- the policyholders' costs are not to be indexed for inflation in computing the chargeable gain from foreign life policies,
- capital losses are not to be allowed as a deduction from chargeable gains on foreign life policies, and
- the annual exemption is not to apply to such gains.

A policy taken out before 20 May, 1993 is liable to capital gains tax in respect of the growth in value of the policy from 20 March, 2001.

The proceeds from a foreign life assurance policy on the death or disability of the policyholder are liable to tax to the extent that those proceeds are the profits from investment and not a payment in respect of the risk or death or disability which an assurance company assures against.

[However, a different taxation regime applies from 1 January 2001 in respect of policies issued from EU, EEA and treaty countries (see ***Part 26, Chapter 6***).]

The section further provides that Irish corporation tax cannot be avoided on the investment return accruing where an Irish life assurance company reinsures life assurance business (within the "I – E" taxation regime) with a foreign life assurance company. The charge to tax applies as respects reinsurance contracts relating to such life assurance business commenced on or after 1 January, 1995. However, payments on the occurrence of a risk covered by the reinsurance, as distinct from investment income and gains accruing in respect of the reinsurance contract, are not charged.

Details

Definitions and construction

A policy of life assurance or a contact for a deferred annuity on the life of any person, which is issued or made before 20 May, 1993, is treated as one issued or made after that date if there is a variation of the policy or contract on or after that date which enhances it or extends its term. This is intended to prevent the circumvention of ***section 594*** by the variation of agreements in existence on 20 May, 1993. ***(1)(a)(i)***

The substitution of a new policy or contract for one made before 20 May, 1993 or a change in the terms of such a policy or contract constitutes a variation for the purposes of ***subsection (1)(a)(i)***. This applies even where the substitution or changed terms were provided for in the policy or contract as made or issued before 20 May 1993. ***(1)(a)(ii)***

Subsections (3) and ***(4)*** of ***section 593*** apply for the purposes of construing ***section 594*** so as to specify transactions which will constitute a disposal of rights under a policy of assurance or a deferred annuity contract. However, the application of ***subsections (3)*** and ***(4)*** of ***section 593*** will not be subject to ***subsection (2)*** of that section which provides the capital gains tax exemption which is withdrawn from foreign policies and contacts by ***section 594***. ***(1)(b)***

"assurance company" means —

(a) an assurance company within the meaning of section 3 of the Insurance Act, 1936, or ***(1)(c)(i)(I)***

(b) a person that holds an authorisation within the meaning of ***(1)(c)(i)(II)***

  (i) the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994), or

  (ii) the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015).

A "relevant company" is a company resident in the State or an overseas life assurance company which is chargeable under Case III of Schedule D in respect of its income from the investment of its life assurance fund. An overseas life assurance company is (see ***section 706***) a non-resident assurance company carrying on life assurance business through a branch or agency in the State.

The definition of "relevant company" ensures that ***section 594*** does not apply, except in the case of excluded policies, to policies issued or contracts made by a resident company or a non-resident company carrying on a trade in the State through a branch or agency.

An "excluded policy" is defined such that ***section 594*** will apply to a policy issued or contract made by an IFSC company which is issued to or made with a person who from the date of issue or the date of contract did not continuously reside outside the State for a period of 6 months.

Subsection (2) applies to a policy of assurance or contract for a deferred annuity on the life of any person which is a policy issued or a contract made, as the case may be, otherwise than by an assurance company which is a relevant company. ***(1)(c)(ii)(I)***

The subsection also applies to a policy of assurance or contract for a deferred annuity on the life of any person which is a policy issued or a contract made, as the case may be, where such policy or contract is an excluded policy issued or made by a relevant company to which ***section 710(2)*** applies i.e. a company trading from the International Financial Services Centre (IFSC). ***(1)(c)(ii)(II)***

Subsection (2) is applied as if ***section 573(2)(b)*** had not been enacted. That provision ensures that death is not treated as involving a disposal of the assets by the deceased. ***(1)(c)(iii)***

For the purposes of ***subsection (2)***, there is a disposal of or of an interest in the rights of a policy of assurance where benefits are payable under the policy. Where, at any time, a policy of assurance or an interest in such a policy gives rise to benefits in respect of death or disability either on or before maturity of the policy, the amount or value of the benefits which are to be taken into account for the purposes of determining the amount of a gain under ***subsection (2)*** is the excess of the value of the policy, or the interest in the policy, immediately before that time over the value of the policy, or the interest in the policy, immediately after that time. ***(1)(c)(iv)(I) & (II)***

For these purposes the value of a policy, or an interest in a policy, at any time means — ***(1)(c)(v)***

- in the case of a policy which has a surrender value, the surrender value of the policy, or of the interest in the policy, at that time, and
- in the case of a policy which does not have a surrender value, the market value of the rights or other benefits conferred by the policy, or the interest in the policy, at that time.

Relevant gains

The definition of "relevant gain" makes the provisions of ***subsection (2)*** applicable not only to the chargeable gains arising on the disposal of a foreign policy or contract, or of an excluded policy by the original beneficial owner, but also to the gains arising on a disposal by a person who purchased the policy or contract and who is not the original beneficial owner. The latter disposal would be chargeable by virtue of ***section 593*** in any event – but not on the basis set out in ***section 594***. ***(2)(a)***

The exemption provided under ***section 593(2)*** in respect of capital gains arising from the disposal of life assurance policies and deferred annuity contracts is withdrawn where the policies and contracts are issued by companies not within the charge to corporation tax or are excluded polices issued by an IFSC life assurance company. ***(2)(b)***

Relevant gains are to be computed without indexation relief under ***section 556***. ***(2)(c)***

Relief in respect of allowable losses is restricted so as to ensure that the chargeable gain arising on "foreign" life assurance policies and deferred annuity contracts and excluded policies issued by an IFSC life assurance company is not reduced by such losses. ***(2)(d)***

Gains arising on a "foreign" life assurance policy or deferred annuity contract or on an excluded policy issued by an IFSC life assurance company are to be fully chargeable notwithstanding the annual small gains exemption.

The rate of capital gains tax which applies to relevant gains is 40 per cent. However refer to ***Part 26 Chapter 6*** for the tax treatment from 1 January 2001 of life policies issued from EU, EEA and treaty countries. ***(2)(f)***

Where a policy was issued or a contract was made before 20 May, 1993, only so much of the gain on disposal as accrued on or after 20 March, 2001 will be a chargeable gain. ***(2)(g)***

Charge on reinsurance gains

A "reinsurance contract" is defined as any contract or other agreement for reassurance or reinsurance in respect of any policy of assurance on a person's life or any class of such policies which are not new basis business within the meaning of ***section 730A***. The definition does not elaborate on the meaning of "reassurance" or "reinsurance" which are to have their ordinary meaning. Although "reassurance" is sometimes used with reference to life business, as distinguished from non-life insurance business, both "reassurance" and "reinsurance" are in common usage. Reinsurance arrangements or "treaties" would generally provide for the automatic transfer of a specific part of the risk in respect of business accepted by the primary insurer. Accordingly, the reinsurance contract would not, generally, be entered into in relation to particular policies. ***(4)(a)***

Under the new regime for the taxation of "new basis business" of life assurance companies under Case 1 of Schedule D contained in ***section 730A***, profits from such reinsurance business are automatically taken into account. That being so, it is no longer necessary to have specific provision to tax reinsurance business falling within "new basis business". However, under the I – E taxation regime of life companies, profits on reinsurance are not taken into account. Hence, they are charged to capital gains tax under this section.

Provision is made to put beyond doubt that for the purposes of the Capital Gains Tax Acts a reinsurance contract is a policy of life insurance on human life. ***(4)(b)***

It would be inappropriate to allow ***subsection (2)(d)*** – which restricts the set-off of losses against "foreign" life policy gains – to apply to reinsurance contracts. Thus, the provisions of ***subsection (2)*** are deemed not to apply to reinsurance contracts (but see ***paragraph (d)*** in relation to the partial reinstatement of ***subsection (2)***). ***(4)(c)***

It is also provided that a tax credit does not attach, by virtue of ***section 595***, to foreign reinsurance contract gains. [***Section 595*** gives Irish companies credit for the Irish tax, charged at source under the I – E regime on Irish life assurance policy gains, while charging those gains to full corporation tax.]

The basic provision of ***subsection (2***) – which is to withdraw the capital gains tax exemption of life assurance policies in the case of foreign life assurance policies – is reinstated in the case of reinsurance contracts. This is not done by further reference to ***subsection (2)*** but rather by direct reference to the exemption set out in ***section 593(2)***. The reference to "where ***subsection (2)*** (apart from ***paragraph (c)***) would apply to a reinsurance contract" is intended to ensure that the reinsurance contracts affected are those with a foreign reinsurer. ***(4)(d)(i)***

Section 719(2) deems "each asset of the life business fund of an assurance company" to be disposed of and immediately reacquired at market value at the end of each accounting period. Reinsurance contacts are assets of the life business fund. The words "disposal or deemed disposal" are intended to confirm that the exemption of gains on life assurance policies from tax is to apply to neither actual disposals nor deemed disposals of foreign reinsurance contracts.

The reinstated "chargeability" of reinsurance contracts applies to those contracts only to the extent that they reinsure risks accepted on or after 1 January, 1995, and that the reinsurance of the original life assurance policy is in the nature of an investment policy, that is, the insured company should have the prospect, or even the possibility, of receiving more under that part of its reinsurance treaty than it will pay out under that part.

The reinsurance of policies issued after 1 January, 1995 is chargeable to tax even if the reinsurance contract predates the effective date of ***subsection (2)*** (see ***subsection (1)(c)(iii)***), that is, 20 May, 1993. The chargeability is ensured in such cases by deeming reinsurance contracts made before 20 May, 1993 to have been made on that date. ***(4)(d)(ii)(I)***

Where the reinsurance contract is negotiated or renegotiated after 1 January, 1995, the reinsurance gains are chargeable to tax regardless of the date of the policies which are reinsured. ***(4)(d)(ii)(II)***

Where a life assurance policy was issued before 1 January, 1995 but varied on or after that date, the policy is treated for the purposes of the charge on reinsurance contracts as having been issued on or after 1 January, 1995. ***(4)(d)(iii)***

Risk benefit payments under a reinsurance contract are exempted from the charge to tax by deeming disposals resulting from the death, disablement or disease of a policyholder covered by the reinsurance to be disposals of an exempt life assurance policy. The reference to "rights" rather than to "the rights" under a reinsurance contract in the opening lines of ***paragraph (e)*** is intended to confirm that such disposals would normally be a disposal of "rights" in the sense of part of the insured company's rights under a reinsurance contract rather than a disposal of "the" rights under the reinsurance contract in the sense of the whole of those rights. ***(4)(e)***

In computing gains or losses on disposals or deemed (under ***section 719(2)***) disposals of rights under reinsurance contracts, premia in respect of risk reinsurance are not an allowable deduction under ***section 552***. ***(4)(e)(i)***

Risk reinsurance or risk cover is expressed as an "entitlement to a payment" in the event of the risk. The insured company pays premia in order to be entitled to receive a payment on the death, etc of a policyholder of the insured company. The risk premium is referred to as "so much" of any payment because the provision governing the non-deductibility of premia is applied to mixed investment/protection products and it is necessary to determine how much of each premium payment is paid in respect of risk cover. Given that risk cover is sold separately, it should be possible to impute an amount per premium to the risk cover included in a mixed investment/risk product. Alternatively, it should be possible to identify the part of a recurring or single premium required to produce a promised investment return. ***(4)(e)(ii)***

Provision is made to deter life assurance companies from engaging in relatively artificial arrangements to take reinsurance of risks in place of a normal investment return. Investment returns increase the market value of a reinsurance contract at the end of each accounting period when the contract is deemed to be disposed of. They also increase the actual payout on the maturity of the reinsurance. Reinsurance cover on the other hand is "used up" or "wasted" as the period of cover progresses. At the end of the period the reinsurance cover will have no value since it will have ceased.

Example

A life company reinsures 2 policies with a UK insurer – a €10,000 single premium investment bond yielding a 5 per cent return and a pure risk policy with an annual premium payable of €500. Apart from ***subsection (4)(e)(ii)***, it would be possible for tax to be avoided on the investment bond if the UK insurer were to provide free reinsurance of the risk policy instead of the 5 per cent return on the investment bond. There would be a "nil" return on the bond and no tax would be payable. The net effect of the arrangements would be that an Irish company could use non-chargeable risk premia receipts to provide "gross" or untaxed investment returns on investments products.

To deter such arrangements, in computing gains or losses on disposals or deemed (under ***section 719(2)***) disposals of rights under reinsurance contracts, the market value of an entitlement for any period, commencing on or after the most recent acquisition or deemed (under ***section 719(2)***) acquisition of those rights, to risk benefit payments on the death, etc of a policyholder covered by the reinsurance is to be treated as consideration. This provision applies to the extent that the insured company held that entitlement for the period in question in pace of any return which would otherwise have accrued under the reinsurance contract and increased the consideration for the disposal or deemed disposal of rights under the contract.

"Market value" is defined for the purposes of Capital Gains Tax Acts by ***section 548***. The words in relation to the period "commencing on or after the most recent acquisition, etc." are intended to prevent any double-counting of risk cover taken in place of investment return. Reference is made to the "most recent" acquisition because the reinsurance rights are deemed (under ***section 719(2)***) to be reacquired by the insured company annually. "Return" is intended to encompass investment income or gains.

595 Life assurance policy or deferred annuity contract entered into or acquired by company

Summary

This section provides that where a company enters into a life assurance-based investment which suffers tax under the I – E regime, the return on that investment is to be charged to tax at the standard rate of corporation tax. This charge is reduced by the credit for the tax at the standard rate of income tax paid by the life assurance company effectively on behalf of the corporate policyholder. The charge at the standard rate of corporation tax applies only where the return on a life assurance product is received as a return on an investment. Where the proceeds of a policy are paid on the death, disablement or illness of a party insured under the policy, no chargeable gain is deemed to accrue to the company. (For policies issued after 1 January 2001, see ***Part 26, Chapter 5***).

Details

Definitions and construction

"relevant disposal" is a disposal of the rights under a relevant policy or of an interest in those rights. It does not, however, include a disposal by a person who is not the original beneficial owner of those rights and who acquired them or an interest in them for money or money's worth (such a disposal would already be chargeable under ***section 593(2)***). Neither does it include a disposal resulting from the death, disablement or disease of a person, or one of a class or persons, specified in the terms of the policy. (This is intended to limit the charge on life assurance policy gains to gains arising from the use of life assurance products for investment rather than protection purposes.) The phrase "one of a class of persons" is intended to cover contracts issued in respect of a specific class of persons such as, for example, the employees of the company which is entering into the contract. ***(1)(a)***

"relevant gain" is a chargeable gain arising on a relevant disposal.

"relevant policy" means a policy of life assurance or a contract for a deferred annuity on the life of a person, entered into or acquired by a company on or after 11 April, 1994 which is not —

- a policy to which ***section 594*** applies, or
- new basis business within the meaning of ***section 730A***.

Under the new taxation regime for policyholders, which was introduced in the Finance Act, 2000, tax is deducted from payments made to policyholders (see ***Part 26, Chapter 5***). There is no longer a need for the separate taxation regime for policyholders who are companies. Accordingly, a policy which is "new basis business" (viz. policies commenced on or after 1 January, 2001) are excluded from the tax regime in ***section 595***.

A policy of life assurance or a contract for a deferred annuity on the life of any person, which is issued or made before 11 April, 1994, is treated as one issued or made after that date if there is a variation of the policy or contract on or after that date which enhances it or extends its term. This is intended to prevent the circumvention of ***section 594*** by the variation of agreements in existence on 11 April, 1994. ***(1)(b)(i)***

The substitution of a new policy or contract for one made before 11 April, 1994 or a change in the terms of such a policy or contract constitutes a variation for the purposes of ***subsection (1)(b)(i)***. This applies even where the substitution or changed terms were provided for in the policy or contract as made or issued before 11 April, 1994. ***(1)(b)(ii)***

Subsections (3) and ***(4)*** of ***section 593*** apply for the purposes of construing ***section 594*** so as to specify transactions which constitute a disposal of rights under a policy of assurance or a deferred annuity contract. However, the application of ***subsections (3)*** and ***(4)*** of ***section 593*** are not subject to ***subsection (2)*** of that section which provides the exemption withdrawn by ***section 595***. ***(1)(c)***

Withdrawal of exemption

The exemption of life assurance or deferred annuity product gains provided by ***section 593(2)*** is withdrawn where those gains are enjoyed by companies. ***(2)***

Taxation of "relevant gains"

Any relevant gain made by a company is treated as having being made net of corporation tax applied at the standard rate of income tax. The gross amount of the gain (the net amount is regrossed at the standard rate of income tax) is then taxed as a chargeable gain of the company but the deemed corporation tax deducted at the standard rate of income tax is available for set off against the company's corporation tax liability for the accounting period in which the relevant gain arises. In effect, this provision acknowledges that the gain received by the corporate policyholder has suffered standard rate tax at source under the basis of charging life assurance companies to corporation tax. ***(3)(a)***

A loss arising on a relevant disposal is not to be subjected to the regrossing treatment provided by ***subsection (3)(a)***. ***(3)(b)***

Subsection (3) is to be construed together with the Corporation Tax Acts despite the fact that it is part of the Capital Gains Tax Acts. ***(3)(c)***

Transitional relief

The charge under the section applies only to policies of life assurance or contracts for deferred annuities entered into by a company on or after 11 April, 1994. To facilitate business that was in train, a contract for a life policy or deferred annuity is treated as having been entered into before 11 April, 1994 if — ***(4)***

- a contract document was served on the company before 11 April, 1994 and the company entered into the contract on or before 22 April, 1994, or ***(4)(a)***
- the contract was entered into before 30 June, 1994, ***(4)(b)(i)***
- before 11 April, 1994 a binding agreement was in existence under which the company was obliged to acquire land and the company had entered into a preliminary commitment to obtain a loan, secured on the land, to acquire the land and to enter into the contract to repay the loan, and ***(4)(b)(ii)***
- the loan agreement obliged the company to apply any payment made to it under the contract towards the repayment of the loan before any other application of such a payment. ***(4)(b)(iii)***

CHAPTER 6
Transfers of business assets

Overview

This Chapter contains provisions relating to the treatment, for capital gains tax purposes, of transfers of business assets and grants a number of reliefs in respect of such transfers, e.g.

the relief on the disposal of a business or farm on retirement (***section 598***), relief on disposals within the family of a business or farm (***section 599***) and relief on the transfer of a business to a company (***section 600***).

596 Appropriations to and from stock in trade

Summary

Where a person appropriates an asset as trading stock of a trade carried on by the person, the asset is deemed to have been disposed of for its market value at the time of appropriation. If such an appropriation gives rise to a chargeable gain, then, instead of paying the tax on the gain, the person may elect to deduct the gain from the market value in determining the value of the asset to be brought into trading stock for income tax purposes. In this way the gain is effectively charged as part of the profits of the trade and not as a capital gain.

Where a person appropriates an asset from the person's trade or retains it on ceasing to trade, the person is deemed for capital gains tax purposes to have acquired it at that time for the amount brought into the accounts of the trade for income tax purposes in respect of the asset.

Details

Appropriations to stock in trade

The appropriation of an asset as stock in trade constitutes a disposal for the purposes of capital gains tax and the consideration for the purposes of computing a gain or loss is the market value of the asset at the time it is so appropriated. This treatment may, however, be altered by an election under ***subsection (3)***. ***(1)***

Appropriations from stock in trade

If a person appropriates an asset which had been held as the person's stock in trade to some other use or retains such an asset on the trade ceasing, the person is treated for capital gains tax purposes as having acquired the asset at that time for an amount equal to the amount brought into account for the purposes of computing the trade profits for income tax purposes. ***(2)***

Election

A person may elect to have the amount any gain arising from an appropriation to trading stock deducted from the value of the asset to be brought into account as trading stock for income tax purposes. In such a case capital gains tax is not payable on the gain, but the effect of this election is to charge the gain to income tax as part of the profits of the trade. An election may not be made where the appropriation to trading stock gives rise to an allowable loss. Where the trade is carried on in partnership an election does not have effect unless made by all the partners. ***(3)***

597 Replacement of business and other assets

Summary

This section enables a person carrying on a trade to defer capital gains on the disposal, before 4 December 2002, of certain business assets, where the proceeds are reinvested in acquiring new assets for use exclusively in the trade. Both the asset disposed of (the "old asset") and the new asset must be within one (not necessarily the same one) of the following categories —

- plant or machinery used only for the purposes of the trade,

- land and buildings occupied and used only for the purposes of the trade,
- goodwill, and
- financial assets of certain sporting bodies.

The relief operates on the basis that the capital gain on the disposal of the old asset is "rolled over", that is, it is deemed not to arise until the new asset ceases to be used in the person's trade. Moreover, the gain, subject to the same conditions being satisfied, continues to be "rolled over" where the new asset ceases to be so used and the proceeds from that disposal are reinvested in a further new asset and so on. However, while gains arising on disposals before 4 December 2002 may be "rolled over", and continue to be "rolled over" while the person continues to invest in new assets, this entitlement will not apply to any gains arising on disposals on or after that date. However, provision is made to allow relief where a new asset is acquired before 4 December 2002 but the related old asset has not been disposed of before that date.

In calculating the tax on the deferred gain, the date of disposal of the old asset is the appropriate date for the purposes of determining indexation relief.

The investment in the new asset must be made within the period starting 1 year before the date of the disposal of the old asset and ending 3 years after that date. The relief must be claimed – it does not apply automatically.

A full deferral of the gain on the old asset is available only where the entire consideration for the disposal of the old asset is reinvested. If only part of that consideration is reinvested, a deferral is allowed up to the amount by which the gain exceeds the amount not reinvested. If the amount not reinvested exceeds the gain, no deferral is allowed.

In addition to trades, the relief also applies in the case of public authorities, the occupation of woodlands on a commercial basis, professions, offices and employments, trade protection associations, non-profit making bodies, amateur sports bodies and farming.

Subject to certain exceptions, the relief does not apply in the case of disposals of development land (see ***section 652***).

Details

Definitions

The terms "farming", "trade", "profession", "office" and employment" have the same meanings respectively as in the Income Tax Acts. This, however, does not entail the application of the provisions of those Acts regarding the circumstances in which a person is treated as having commenced or ceased to trade. ***(1)***

A "trade of dealing in or developing land" includes a business of dealing in or developing land treated as a trade under the Income Tax Acts.

Application to non-trading activities

The section is essentially cast in the context of persons who are trading but it also applies, subject to the same rules, to — ***(2)***

- the discharge of the functions of a public authority,
- the occupation of woodlands managed by the occupier on a commercial basis with a view to realising profits,
- professions, offices and employments,
- the activities of a non-profit making body which are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession,

- the activities of a non-profit making body whose activities are wholly or mainly carried on otherwise than for profit (in the case of land and buildings, the relief applies only where they are both occupied and used by the body and, in the case of other assets, only where they are used by the body),
- the activities of a body established for the sole purpose of promoting athletic or amateur games as are directed to that purpose,
- farming.

Qualifying assets

The assets which qualify for the relief are plant or machinery, land and buildings, goodwill and financial assets of bodies established for the sole purpose of promoting athletic or amateur games or sports. Land and buildings must be occupied (as well as used) only for the purposes of the trade. Where land is the stock in trade of a dealer in or developer of land, it does not qualify for the relief. ***(3)***

Full consideration for disposal reinvested

Where — ***(4)(a)***

- a trader disposes, before 4 December 2002, of assets (the old assets) used only for trade purposes throughout the period of ownership and applies the consideration in acquiring other assets (the new assets),
- the new assets are taken into use for trade purposes on their acquisition and are used only for those purposes, and
- the old assets and the new assets are qualifying assets (***subsection (3)***), namely, plant or machinery, land and buildings or goodwill,

the chargeable gain on the disposal of the old assets, on the due claim being made, is treated as if it did not arise until the trader ceases to use the new asset for trade purposes. The term “ceases to use” includes a disposal of any kind (for example, a sale or a gift, and also a cessation on death).

Where, however, the new assets cease to be used for trade purposes but the consideration for the disposal of those new assets is applied in acquiring other new assets taken into use in the trade and used only for trade purposes, the gain on the disposal of the old assets is deferred further until the other new assets (and any further new assets similarly acquired) cease to be used for trade purposes. ***(4)(b)***

[However, if a person has acquired new assets for the purpose of their trade (or any other activity of the person as referred to in ***subsection (2)***) before 4 December 2002, with the intention of disposing of the related old assets, but has not done so before 4 December 2002, they may still be eligible to avail of the relief if they dispose of the old assets on or before 31 December 2003 (section 67(2)(*a*) of the Finance Act 2003). In this situation any gain arising on such a disposal may be treated as if it did not arise until those new assets cease to be used for the purposes of the person’s trade or that other activity of the person (as referred to in ***subsection (2)***).]

Part only of consideration reinvested

Where only part of the consideration for the disposal, before 4 December 2002, of the old assets is reinvested in acquiring new assets, the relief under ***subsection (4)*** does not apply. However, where the amount not reinvested is less than the gain on the disposal of the old assets, that gain is deferred to the extent that it exceeds the amount not reinvested. The relief under this subsection must be claimed – it does not apply automatically. ***(5)***

Example

A trader disposed of his business premises on 28 November 2002 for €130,000 and made a chargeable gain of €20,000. He buys a new business premises for €125,000 on 4 March 2004 (within the 3-year time limit). As the trader has not reinvested €5,000 (less than gain of €20,000), he is treated as having made a gain of €5,000 and this is taxable in the normal manner.

The balance of the gain, i.e. €15,000 is deferred. If the amount not reinvested had exceeded the gain (say the new premises was bought for €105,000), no deferral is allowed and the full gain on the disposal would be chargeable in the normal manner.

[If a person acquired new assets before 4 December 2002 but had not disposed of the related old assets before that date, relief may still be available under this subsection if the disposal is made on or before 31 December 2003, and the acquisition cost of the new assets is less than the disposal proceeds of the old assets.]

No indexation relief for period for which gain is deferred

Where a gain or part of a gain is treated as deferred under ***subsection (4)*** or ***(5)***, it will not be so treated for the purposes of indexation relief under ***section 556***. In other words, the deferral of the gain does not qualify the owner for indexation based on a period of ownership longer than that during which the person in fact owned the old assets on the disposal of which the original chargeable gain arose. ***(6)***

Time limit for reinvestment

The relief applies only if the acquisition of the new assets takes place, or an unconditional contract for the acquisition of the new assets is entered into, in the period beginning 1 year before and ending 3 years after the disposal of the old assets. This time limit may be extended by the Revenue Commissioners. Where an unconditional contract is entered into within the time limit, the relief may be given provisionally and all necessary adjustments are to be made by way of making assessments (and without regard to the general time limits for making assessments) or repayments (notwithstanding the general time limit for making a claim for a repayment of tax in ***section 865***) or discharge of tax when all the facts as to the acquisition of the new assets are known. ***(7)***

Acquisition of new assets must be for trade purposes

The relief does not apply unless the new assets are acquired for trade purposes and not wholly or partly for the purpose of resale at a profit. ***(8)***

Part only of a building or structure used for trade purposes

Where only part of a building or structure has been used for trade purposes, that part and any land occupied for purposes ancillary to the occupation and use of that part is to be treated as a separate asset, and consideration for an acquisition or disposal is to be apportioned accordingly. ***(9)***

Old assets used partly for non-trade purposes

Where the old assets were used for trade purposes during part only of the period of ownership, the acquisition cost and disposal proceeds are to be apportioned as if there were 2 separate assets. The apportionment is to be made on the basis of the time and extent to which the old assets were and were not so used, and the relief applies only to the proportion of the gain attributed to the asset used for trade purposes. ***(10)***

Person carrying on 2 or more trades

The relief applies to a person who carries on 2 or more trades which are in different localities but which are concerned wholly or mainly with goods or services of the same kind. The relief applies as if the 2 or more trades were a single trade; thus, the disposal of old assets may be made in one trade and the acquisition of new assets in another trade. ***(11)(a)***

Cessation of trade and commencement of new trade

The relief also applies to a person who ceases to carry on a trade which the person had carried on for at least 10 years and who within 2 years of the date of cessation of that trade commences to carry on a new trade. In such a case the old trade and the new trade are treated as the same trade in relation to the disposal of old assets and the acquisition of new assets. ***(11)(b)***

Apportionment

Where consideration for a disposal or an acquisition relates to assets some of which are and others are not the subject of a claim for relief, the consideration is to be apportioned between the assets in such manner as is just and reasonable. ***(12)***

597A Entrepreneur Relief

Summary

Section 597A, inserted by Section 45, Finance (No 2) Act 2013 and further amended by Section 52, Finance Act 2014, introduced a relief for individual entrepreneurs who, in the period 1 January 2014 to 31 December 2018 reinvest the proceeds of disposals of assets made on or after 1 January 2010 in chargeable business assets in new business ventures. The relief is granted in the form of a tax credit against any capital gains tax liability arising on the ultimate disposal of the chargeable business assets more than 3 years after they were acquired. The section provides for a continuation of the relief where the proceeds of the disposal of those chargeable business assets are in turn reinvested in further new business ventures. **[This relief has been replaced by a revised relief which applies to disposals of chargeable business assets made on or after 1 January 2016.]**

Details

Definitions

Subsection (1) contains definitions used in the section. ***(1)***

"chargeable business asset" is defined to include assets used wholly for the purposes of a new business carried on by an individual or new ordinary shares issued on after the 1st of January 2014 in a qualifying company over which the shareholder has control and in which the shareholder is a full-time working director. There is a minimum investment requirement of €10,000. In the case of investment through a company each shareholder must own not less than 15% of the shares in the qualifying company carrying on the new business (or in a holding company which owns 100% of the ordinary share capital of a qualifying company carrying on new business) and must be a full-time working director in the qualifying company. The definition of chargeable business assets excludes assets that are held as passive investments.

"full-time working director", in relation to a qualifying company, is a standard definition to ensure that the relief is confined to genuine business persons. It means a director required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity.

"holding company" means a company, that is not listed on the official list of any stock exchange, whose business consists wholly of holding shares in a qualifying company.

"Initial risk finance investment" is defined as meaning the funding of the qualifying enterprise for the purpose of new business. The total funding must not exceed €15 million; it must be provided within 6 months of the commencement of the new business and can include equity or investment or both (investment in this context includes loan investment). ***(2)***

Essentially, an investor can invest an amount (not less than €10,000) equal to the consideration received on a disposal (made on or after 1 January 2010) of a chargeable asset, (after deducting any capital gains tax paid), up to the maximum of €15 million.

“new business’ is defined to mean relevant trading activities carried on –

(a) by a new qualifying enterprise that were not, prior to 1 January 2014, carried on by that qualifying enterprise or by any person connected (within the meaning of section 10) with that qualifying enterprise, or

(b) by an existing qualifying enterprise that were not, prior to 1 January 2014, carried on by that qualifying enterprise or by any person connected (within the meaning of section 10) with that qualifying enterprise. ***(3)***

The definition excludes products, goods or services that are substantially the same as products, goods or services previously provided by any individual claiming relief under this section or by any person connected with that individual.

“qualifying company” is defined as meaning a company that is a qualifying enterprise and which is not listed on the official list of any stock exchange at the time of making the initial risk finance investment;

“qualifying enterprise” is defined as meaning an enterprise which at the time of making the initial risk finance investment is a micro, small or medium-sized enterprise, as defined in Article 2 of the Annex to the Commission Recommendation of 6 May 2003 and which –

(a) has not been carrying on any trade or profession, or

(b) has been carrying on a trade or profession for less than 7 years.

“relevant trading activities” is given the same meaning as in section 489 and included farming within the meaning of section 655.

Subsection (2) is the relieving provision. It provides for relief to an individual, who has paid capital gains tax on the disposal, on or after 1 January 2010, of a chargeable asset and invests, as an initial risk finance investment, the proceeds of that disposal (not being less than €10,000 net of any CGT paid) in acquiring chargeable business assets, on or after 1 January 2014 and on or before 31 December 2018, which are used in a new business.

The relief is given on a subsequent disposal of those chargeable business assets (after a minimum period of 3 years) and takes the form of a tax credit equal to the lower of the capital gains tax paid on or after 1 January 2010 on the disposal of a chargeable asset (or a proportionate amount where less than the full amount is reinvested) or 50% of the capital gains tax that would otherwise be payable on the disposal of the chargeable business assets.

Where less than the full proceeds of a disposal on which capital gains tax has been paid are reinvested, only that proportion of the capital gains tax relative to the amount reinvested will qualify for relief.

Subsection (3) provides that if the individual further reinvests the proceeds of the disposal of the chargeable business assets as an initial risk finance investment in further new chargeable business assets, the relief can also be claimed on any capital gains tax payable on a subsequent disposal of those chargeable business assets.

Subsection (4) recognises that there may, as part of any disposal of chargeable business assets, be genuine commercial reasons for them to be transferred to a wholly owned company of the owners followed immediately by the disposal of the shares in that company to the person making the acquisition. Subsection (4) provides that where this happens the relief provided for by subsection (2) or (3), as appropriate, will apply to the disposal of the shares in the company to which the chargeable business asset was transferred as it would have applied if the chargeable business asset had been disposed of directly to the person making the acquisition.

Subsection (5) is an anti-avoidance provision. It provides that relief under the section will not be available, if a transfer of a chargeable business asset to a wholly owned company (as provided for in subsection (4)) is an arrangement or part of an arrangement the main purpose or one of the main purposes of which is to secure a tax advantage within the meaning of section 546A of the Taxes Consolidation Act 1997.

Subsection (6) is a provision dealing with the consequential amendment required to section 597A of the Taxes Consolidation Act 1997 arising from the insertion of a revised entrepreneur relief introduced in section 597AA TCA 1997 by section 35 of the Finance Act 2015 as respects disposals of chargeable business assets made on or after 1 January 2016.

[Note: Section 546A defines "tax advantage" as meaning –

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax or an assessment to tax,

(d) the avoidance of a possible assessment to tax.]

597AA Revised Entrepreneur Relief

This section provides that a reduced rate of CGT of 20% will apply in respect of a chargeable gain or chargeable gains in the case of a disposal or disposals of qualifying business assets made by an individual on or after 1 January 2016 up to a lifetime limit of €1m. The CGT rate applicable to disposals of qualifying assets on or after 1 January 2017 is 10%.

A qualifying business is a business other than the holding of securities or other assets as investments, the holding of development land or the development or letting of land. The qualifying business assets must have been owned by that individual for a continuous period of 3 years in the 5 years immediately prior to the disposal of those assets. Where the qualifying business assets consist of ordinary shares in a qualifying company or group of companies, an individual can qualify for relief in respect of disposals made on or after 1 January 2021 where the shares were owned by an individual for any continuous period of 3 years prior to the disposal of those shares.

The relief will not apply to disposals of shares (other than shares that qualify for relief under this section), securities or other assets held as investments, development land, assets on the disposal of which no chargeable gain would arise, goodwill which is disposed of to a connected company or shares or securities where the individual remains connected with the company following the disposal.

Where a business is carried on by a company, individuals seeking to qualify for the relief must own not less than 5% of the ordinary shares in the qualifying company or 5% of the ordinary shares in a holding company of a qualifying group. A holding company, for the purposes of the relief, is one that holds shares in other companies, all of which are its 51% subsidiaries, and whose business consists wholly or mainly of the holding of shares in those subsidiaries.

The individual must have been a director or employee of the qualifying company (or companies in a qualifying group) who is or was required to spend not less than 50% of his or her time in the service of the company or companies in a managerial or technical capacity and has served in that capacity for a continuous period of 3 years in the 5 years immediately prior to the disposal of the chargeable business assets.

Any period during which an individual owned shares in or was a director or employee of a company that qualified for relief under section 586 or 587 will be taken into account for the purpose of the 3-year ownership requirement and for the purpose of determining whether an individual was a director or employee of a company for the relevant period.

Relief under section 597A will apply where the amount of relief available under that section would be greater than the amount of relief available under this section.

Relief may be restricted where an individual transfers a business to a company pursuant to section 600. Relief is not available in respect of the proportion of the gain which relates to non-share consideration received out of the assets of the company in respect of the disposal.

Where an individual enters into arrangements to secure that they are not connected with a company for the purpose of the connected party restrictions in subsection (2)(b)(iv) or (2)(b)(v), relief will not be available.

598 Disposals of business or farm on "retirement"

Summary

This section provides for relief from capital gains tax in the case of an individual on the disposal of all or part of the chargeable business assets of his/her business or farm. The relief also applies to the disposal by an individual of all or part of the shares of a company which is a trading or farming company and the individual's family company or a member of a trading group of which the holding company is the individual's family company and certain personally owned assets used by the company. It also applies in the case of the disposal of land which has been leased under the 1992, 1999 or 2005 EU "Early Retirement from Farming" Schemes, where the land was for a period of 10 years or more prior to such a lease owned by the individual and used by him or her for the purposes of farming throughout that period. To qualify, the individual must be at least 55 years of age at the time of the disposal – it is not necessary that he/she retire from the business or farm.

Land which has been let qualifies for relief, subject to certain conditions, as do EU CAP Direct Payment Entitlements, where they are disposed of at the same time and to the same person as land, to the extent that the land would support a claim to payment in respect of such payment entitlements.

The assets (apart from tangible movable property) or shares in question must have been owned by the individual for a period of not less than 10 years ending on the date of the disposal and have been chargeable business assets throughout the 10-year period ending with the disposal. In addition, where the disposal is of shares, the company in which the shares were held must have been a trading or farming company and the individual's family company, or a member of a trading group of which the holding company is the individual's family company, during a period of not less than 10 years ending on the date of disposal. Moreover, in any such case, the individual must have been a working director of the company for a period of not less than 10 years during which he/she has been a full-time working director for not less than 5 years.

The period that an individual was a director of a company will be deemed to include the period during which the individual was a director of another company where, under a scheme of reconstruction or amalgamation, shares in that other company were exchanged for shares in the first-mentioned company.

Relief under the section is also allowed in respect of compensation made under the scheme for the decommissioning of fishing vessels implemented by the Minister for Agriculture, Fisheries and Food in accordance with Council Regulation (EC) No. 1198/2006 of 27 July 2006. In order to qualify for relief, the person who is entitled to compensation under the scheme must have owned and used the fishing vessel for the purpose of fishing for at least 6 years prior to receiving that compensation and be at least 45 years old at that time. Relief is also allowed in respect of certain payments made to a licence holder under the Brexit Voluntary Permanent Cessation Scheme established by the Minister for Agriculture, Food and the Marine in accordance with Regulation (EU) 2021/1755, and which provides for compensation payments to be made in respect of the decommissioning of fishing vessels in accordance with that scheme. In order to qualify for relief in respect of capital elements of the compensation payments made under the scheme, the licence holder must have owned and used the fishing vessel and related licence for the purpose of fishing for at least 6 years prior to receiving that compensation and be at least 45 years old at that time.

Full relief is available where the proceeds from the disposal do not exceed €750,000. In such a case, no tax is charged on the gains arising. If the proceeds exceed €750,000, marginal relief may apply. It should be noted that this limit is an aggregate limit, that is, the relief is limited to an aggregate consideration of €750,000 for all disposals of qualifying assets made after the individual has reached 55 years of age. In the case of disposals on or after 1 January 2014 by individuals aged 66 years or over, the limit is reduced to €500,000. For disposals of qualifying assets made on or after 1 January 2025, the reduced limit of €500,000 applies where such disposals are made by individuals aged 70 years or over.

The receipt by an individual of a payment made by a company on the redemption, repayment or purchase of its own shares which is not treated as a distribution for the purposes of ***Chapter 2*** of ***Part 6***, will come within the scope of the relief and will, therefore, be taken into account for the purpose of the €750,000 threshold.

Relief will only apply where the disposal is made for genuine commercial reasons and its sole or main purpose is not the avoidance of tax.

Details

Definitions and construction

“certificate” has the same meaning as it has for the purpose of Regulation 8(8)(c)(ii) of the European Communities (Milk Quota) Regulations 2000 (S.I. No. 94 of 2000), as amended and extended from time to time. That provision states that, where on an application in writing to the Minister for Agriculture and Food by a co-owner of agricultural lands which are to form part of the assets of a proposed milk production partnership to be exempted from the requirement of being one of the partners in a proposed milk production partnership, the Minister is satisfied that it is proper to do so, he or she may, by certificate in writing, grant such exemption. ***(1)(a)***

“chargeable business asset” is an asset which is, or is an interest in, an asset used for the purposes of farming, or a trade, profession, office or employment, carried on by the individual, the individual’s family company or a company which is a member of a trading group of which the holding company is the individual’s family company. Goodwill is specifically included as a chargeable business asset. However, goodwill which is disposed of to a connected company is excluded. Shares and securities and other assets held as investments are excluded, as are shares or securities where the individual remains connected to the company following the disposal. Also excluded are assets on the disposal of which no gain accruing would be a chargeable gain (for example, stock, cash at bank).

“family company” is a company in which the individual holds at least 25 per cent of the voting rights or, in a case where the individual and his/her family hold at least 75 per cent of the voting rights, the individual holds not less than 10 per cent of those rights.

"family" means the individual's spouse/civil partner, relatives of the individual and relatives of the individual's spouse/civil partner, while "relative" means a brother, sister, ancestor or lineal descendant.

'family of the civil partner' means any brother, sister, ancestor or lineal descendant of the civil partner.

'farm partnership' means a milk production partnership or a registered farm partnership (within the meaning of ***section 667C***)

"full-time working director" is a director who has to devote substantially the whole of his/her time to the service of the company in a managerial or technical capacity.

"holding company" is a company whose business (disregarding any trade it carries on) consists wholly or mainly of the holding of shares or securities in one or more 75 per cent subsidiaries.

"milk production partnership" has the meaning assigned to it by the European Communities (Milk Quota) Regulations 2000 (S.I No. 94 of 2000), as amended and extended from time to time. The European Communities (Milk Quota) (Amendment) Regulations 2002 (S.I. No. 97 of 2002) introduced the concept of milk production partnerships. In general terms, milk production partnerships involve up to 3 existing dairy farmers running their farming business in partnership (the Standard Partnership) or new dairy entrants acquiring milk quota in their own right which can then be produced in partnership in their parents' holding (the Family Partnership).

"payment entitlement" has the same meaning as it has for the purposes of Regulation (EU) No. 2021/2115 of the European Parliament and of the Council of 2 December 2021. These payments entitlements may be referred to as 'EU CAP Direct Payment Entitlements'.

"qualifying assets" includes —

- the chargeable business asset of the individual which (apart from tangible movable property) he/she has owned for a period of at least 10 years ending on the date of the disposal and which have been his or her chargeable business assets throughout that 10 year period,

- shares or securities held for at least the 10 year period ending with their disposal in a company which has been —

  - a trading or farming company and the individual's family company, or

  - a member of a trading group of which the holding company is the individual's family company,

  during at least the 10 year period ending with the disposal, and the individual has been a working director of the company for at least 10 years during which he/she has been a full-time working director for at least 5 years,

- payment entitlements, where they are disposed of at the same time and to the same person as land, to the extent that the land would support a claim to payment in respect of those payment entitlements,

- land and machinery or plant owned by the individual for at least 10 years ending with the disposal which land —

  - was used throughout that period for the purposes of the individual's family company (or member of the trading group), and

- is disposed of at the same time and to the same person as the shares concerned,

- land leased under the Scheme of Early Retirement from Farming, where for a period of not less than 10 years prior to the land being leased it was owned by the individual claiming relief and used by him or her for the purposes of farming throughout that period,

- land which was let during the 5 year period prior to its disposal under a compulsory purchase order provided that, prior to its first letting, it was farmed for 10 years by the person making the disposal, and

- land which was let at any time during the 25 year period prior to its disposal and which, prior to its first letting, was farmed for a period of not less than10 years by the individual making the disposal and:

  - the disposal is to a child (within the meaning of section 599) of the person concerned or,

  - the disposal is to an individual other than a child of the disponer and takes place on or before 31 December 2016 – **and** the land was let under conacre, or

  - the disposal is to an individual (other than a child as defined) **and** the land has been leased to an individual (other than under conacre) for the purposes of farming during the relevant 25-year period and each letting of the land is for a period of not less than 5 consecutive years, though not necessarily to the same individual.

Where land had been let under one or more conacre agreements before 31 December 2016, this will not affect entitlement to relief under this section, provided the land is let for a period of not less than 5 years commencing on or before 31 December 2016.

"relevant year of assessment" means the year of assessment in which a disposal in respect of which relief is claimed under this section, or under section 599, is made.

"the Scheme" means the Scheme of Early Retirement from Farming (Council Regulation (EEC) No. 2079/92 of 30 June 1992, Council Regulation (EC) No. 1257/99 of 17 May 1999 or Council Regulation (EC) No. 1698/2005 of 20 September 2005).

"trade", "farming", "profession", "office" and "employment" have the same meanings as in the Income Tax Acts.

"trading company" is a company whose business consists wholly or mainly of the carrying on of one or more trades or professions.

"trading group" is a group of companies consisting of a holding company and its 75 per cent subsidiaries, the business of whose members taken together consists wholly or mainly of the carrying on of one or more trades or professions.

"75 per cent subsidiary" has the meaning set out in ***section 9***.

Where a holding company would be a family company but for the fact that the individual had made a disposal of shares in the company to a child of the individual (or to certain nieces or nephews – see ***section 599***) in the period from 6 April, 1987 to 5 April, 1990, the company is treated as a family company for the purposes of the relief. ***(1)(b)***

References to the disposal of the whole or part of an individual's qualifying assets include the disposal of the whole or part of the assets provided or held for the purposes of an office or employment by the individual exercising that office or employment. ***(1)(c)***

In determining, for the purposes of the definition of "qualifying assets", the period of ownership of an asset and the period for which a directorship was held — ***(1)(d)***

- the period of ownership of a spouse or civil partner of an individual is treated as if it were the period of ownership of the individual and, where a spouse or civil partner of the individual has died, the period of use of an asset by the deceased spouse or civil partner is treated as if it were the period of use of the asset by the individual,

- the period of ownership of old assets which have qualified for roll-over relief under ***section 597*** is treated as if it were the period of ownership of the new assets acquired in pursuance of that section,

- the period for which the individual was a director or, as the case may be, a full-time working director of a company which is —

  - a company that was treated as being the same company as the relevant company for the purposes of ***section 586***, or
  - a company involved in the same scheme of reconstruction or amalgamation under ***section 587*** with the relevant company,

  is taken into account as if it were a period during which the individual was a director of a "relevant company",

- the period of use of land by an individual as a partner in a farm partnership is treated as if it were a period of use by the spouse or civil partner of that individual where the spouse or civil partner —

  - is a co-owner of the land,
  - used the land for a period ending on the date the farm partnership commenced, and
  - had received a certificate from the Minister for Agriculture and Food exempting him or her from becoming a member of the partnership.

- where the qualifying assets are shares or securities in a family company which were received in exchange for the transfer of a business to the company for which relief under ***section 600*** was obtained, the period of ownership of the business assets so exchanged is treated as the period of ownership of the shares or securities in the company.

- the period immediately before death during which the deceased spouse or civil partner of the individual was a full-time working director is treated as the individual's own period as a full-time working director.

Goodwill, and shares or securities referred to in ***clauses (II)*** and ***(III)*** in the definition of 'chargeable business asset', will be treated as chargeable business assets where it would be reasonable to consider that a disposal of such assets was made for bona fide commercial reasons and did not form part of a tax avoidance arrangement. ***(1)(f)***

The relief

The relief applies where an individual, who is at least 55 years of age at the time of disposal, disposes of the whole or part of his/her qualifying assets. ***(2)(a) – (cb)***

Where the consideration for the disposal is not more than €750,000, relief is given in respect of the full amount of capital gains tax chargeable on the disposal. In the case of disposals made in the period 1 January 2014 to 31 December 2024, inclusive, by individuals aged 66 years or over, the €750,000 limit is reduced to €500,000. For disposals of qualifying assets made on or after 1 January 2025, the reduced limit of €500,000 applies where such disposals are made by individuals aged 70 years or over.

Where the consideration exceeds €750,000, marginal relief applies so as to limit the amount of tax chargeable on the disposal to one-half of the difference between the amount of the consideration and €750,000.

Example

Consideration for disposal	€755,000
Chargeable gain (say)	€20,000
Tax at 30%	€6,000
Marginal relief (€755,000 – €750,000) ÷ 2 limits the tax to	€2,500

Marginal relief applies in the same manner to disposals which are subject to the reduced limit of €500,000.

For the purposes of computing marginal relief, the amount of the tax chargeable on the gain is the amount of tax which would not have been chargeable but for the gain. That amount of tax is the difference between the tax which would have been chargeable on all gains in the year in question, including the gains on the qualifying assets, and the tax on all gains excluding the gains on those assets. ***(2)(d)***

The entitlement to relief will not be affected by the fact that solar panels are installed on land which is suitable for farming, where the area of the land on which the solar panels are installed does not exceed half the total area of the land concerned. In this context, a solar panel means ground-mounted equipment used to capture solar energy and convert it into electrical energy, together with ancillary equipment used to harness, store and transfer the electrical energy. ***(2A)***

The amounts of the consideration on the disposal of qualifying assets are to be aggregated and the aggregate figure is to be used as the base for the calculation of the relief. Only disposals of qualifying assets are to be taken into account – any other assets disposed of are outside the scope of the relief and are to be separately charged. ***(3)***

Relief applies in respect of compensation made under the scheme for the decommissioning vessels implemented by the Minister for Agriculture, Fisheries and Food in accordance with Council Regulation (EC) No. 1198/2006 of 27 July 2006. In order to qualify for relief, the person who is entitled to the compensation must have owned and used the fishing vessel for the purpose of fishing for a period of 6 years before receiving the compensation and must be at least 45 years of age at that time. [This provision applies to disposals made on or after 1 May 2008 – came into effect by Ministerial Order.] ***(3A)***

Relief applies in respect of payments arising as a portion of a 'Brexit compensation sum' for the destruction of a 'relevant vessel', and the surrender of a 'sea-fishing boat licence', as defined in section 669L, Taxes Consolidation Act 1997, and made under the Brexit Voluntary Permanent Cessation Scheme, established by the Minister for Agriculture, Food and Marine, pursuant to Regulation (EU) 2021/1755. Such vessels will be decommissioned in the period 1 January 2022 to 31 December 2023. In order to qualify for relief, the ***(3B)*** individual who is entitled to the compensation must have owned and used the qualifying assets for the purpose of fishing for a period of 6 years before receiving the compensation and must be at least 45 years of age at that time. [This provision applies to disposals made on or after 05 April 2023, being the date of the relevant Ministerial Order commencing the provision (S.I. No. 135/2023 - Finance (Covid-19 and Miscellaneous Provisions) Act 2022 (Section 15(1)) (Commencement) Order 2023).]

Where there is a disposal of shares or securities of a family company, only a certain amount of the consideration for the disposal is taken into account for the purposes of the threshold for the relief of €750,000 as set out in ***subsection (2)***. Essentially, only the proportion of the consideration which relates to the company's or, as the case may be, the trading group's chargeable business assets is taken into account for the purposes of the relief. ***(4)***

Thus, in the case where the family company is not a holding company, the proportion of the sale proceeds on the disposal of the shares or securities to be measured against the relief threshold of €750,000 is the amount equal to — ***(4)(a)***

$$\text{Sale of proceeds of shares} \times \frac{\text{Value of company's chargeable business assets}}{\text{Value of total chargeable assets of company}}$$

In the case where the family company is a holding company, the proportion of the sale proceeds on the disposal of the shares or securities to be so measured is the amount equal to — ***(4)(b)***

$$\text{Sale of proceeds of shares} \times \frac{\text{Value of chargeable business assets of trading group of which the holding company is the family company}}{\text{Value of total chargeable assets of trading group}}$$

The liability to tax on any gains calculated by reference to the balance of the consideration is not affected.

For the purposes of the apportionment rules of ***subsection (4)***, every asset is a chargeable asset except one on the disposal of which by the company or member of the trading group, as the case may be, at the time of the disposal of the shares or securities no gain arising would be a chargeable gain. ***(5)***

The threshold limit of €750,000 is a lifetime limit for disposals of qualifying assets on or after 6 April, 1974 made at a time when the individual was at least 55 years of age. Thus, relief for any year is to be computed as if such disposals for that year and earlier years had all been made in that year. ***(6)(a)***

In effect, where the threshold limit of €750,000 is exceeded, any earlier relief given may be adjusted by means of assessment or amended assessment. In accordance with self-assessment principles, any taxpayer affected is required to make a full and true return – which includes details of the disposal and the necessary self-assessment to withdraw any excess relief previously claimed. ***(6)(b)***

For the purposes of ***subsection (6)***, a part disposal of qualifying assets between spouses/civil partners is to be taken into account at market value and ***section 1028(5)*** or ***section 1031M(3)*** (which would otherwise treat such a disposal on a no gain/no loss basis) does not apply. ***(6)(c)***

It should also be noted that the proceeds of any disposal qualifying for relief under ***section 599*** (disposals within family of business or farm) are not taken into account in calculating the €750,000 lifetime threshold limit (see ***section 599(5)***).

The relief also applies in the case of capital distributions received by an individual in the course of the dissolution or winding-up of a family company in the same manner as if the individual had disposed of the shares or securities in the company. However, the relief does not apply where the distribution is in specie of chargeable business assets. ***(7)***

The receipt by an individual of a payment made by a company on the redemption, repayment or purchase of its own shares which is not treated as a distribution for the purposes of ***Chapter 2*** of ***Part 6*** will come within the scope of the relief and will, therefore, be taken into account for the purpose of the €750,000 threshold. ***(7A)***

An individual will be deemed to be connected with a company where the individual enters into arrangements, the main purpose, or one of the main purposes, of which is to secure that they are not connected with the company for the purpose of the connected party exclusions in ***clauses (II)*** or ***(III)*** in the definition of "chargeable business asset". ***(7B)***

The proportion of a chargeable gain which qualifies for relief may be restricted where an individual transfers a business to a company pursuant to ***section 600***. Relief will not be available in respect of the proportion of the gain which relates to non-share consideration received out of the assets of the company in respect of the disposal. However, the restriction will not apply where it would be reasonable to consider that the disposal is made for bona fide commercial reasons and does not form part of a tax avoidance arrangement. ***(7C) &(7D)***

The relief will only apply to a disposal of qualifying assets where it is made for genuine commercial reasons and its sole or main purpose is not the avoidance of tax. ***(8)***

A claim for relief under this section must be made by an individual in the tax return which that individual is obliged to deliver for the relevant year of assessment (i.e. the year of assessment in which a disposal in respect of which relief is claimed under this section is made) in accordance with the provisions of Chapter 3 of Part 41A of the Taxes Consolidation Act 1997. ***(9)***

598A Relief on dissolution of farming partnerships

Summary

This section grants relief from capital gains tax to farming partnerships on the dissolution of such partnerships. The asset being disposed of must have been owned and used by the farming partnership for the period of 10 years prior to the dissolution of the partnership. Where one of the partners has acquired a share of the partnership by way of inheritance, the period of ownership and use of the asset will run from the date that the donor originally entered the partnership. The section provides that a gain will not be treated as accruing in respect of a partnership asset and also that the asset will be treated as having been acquired at the same time and for the same consideration as it was originally acquired by the partner who disposed of that asset. The relief will not apply if the asset formed part of the trading stock of the trade carried on by the farming partnership or of a trade carried on by the partner acquiring the asset.

The section applies to disposals made on or after 13 March 2008 and will cease on 31 December 2013.

Details

Definitions

"farming" and "trade" have the same meanings as in the Income Tax Acts. ***(1)***

"farming partnership" means a partnership comprised of individuals which carries on or has carried on the trade of farming.

"relevant asset" means an asset which is jointly owned by the partners in a farming partnership.

"relevant disposal" means a disposal which arises on the partition of a relevant asset.

Application of section

The section applies where a relevant asset has been owned and used for the purposes of farming by a farming partnership for a period of at least 10 years before the relevant disposal took place. ***(2)***

Commencement of period of ownership where partnership asset acquired by inheritance

Notwithstanding ***subsection (2),*** where one of the partners acquired his or her share of the relevant asset by way of inheritance, the period of ownership and use of the asset will be deemed to have commenced on the date that the person entered into partnership with the other partner or partners in the farming partnership. ***(3)***

Treatment of gain arising on disposal of a relevant asset

A gain will not be treated as accruing in respect of a disposal of a relevant asset. In addition, that asset will be treated as having been acquired at the same time and for the same consideration as it was originally acquired by the partner disposing of that asset. ***(4)***

Relief disallowed for trading stock

The relief provided for in ***subsection (4)*** will not apply if the asset disposed of formed part of the trading stock of the trade carried on by the farming partnership or of a trade carried on by the partner acquiring the asset. ***(5)***

599 Disposals within family of business or farm

Summary

Whereas ***section 598*** gives a general relief from capital gains tax for the disposal, by an individual who has attained 55 years of age, of certain business assets where the consideration does not exceed €750,000, ***section 599*** gives specific relief where such a disposal is to a child, as defined in the section, of the individual or of that individual's civil partner. Where an individual aged 55 years or more makes a disposal of qualifying assets to their child, or a child of that individual's civil partner, at any time up to and including 31 December 2024 there is no limit to the consideration to which relief under this section applies – however, where the individual making the disposal in the period from 1 January 2014 to 31 December 2024, inclusive, is 66 years or over and the market value of the qualifying assets is over €3million, the relief is limited to the gain on an amount of €3million. For disposals made on or after 1 January 2025, a lifetime limit of €10million applies to the market value of the qualifying assets to which relief under this section applies; in addition, the existing €3million cap will apply to disposals of qualifying assets by individuals aged 70 years and over from 1 January 2025 onwards.

The capital gains tax liability which arises to an individual on the transfer of qualifying assets to a child on or after 1 January 2025, the value of which exceeds the €10million lifetime limit, may be deferred by the individual making the transfer. Should the child dispose of the assets within 12 years of the transfer, then the child becomes liable for the individual's deferred capital gains tax liability, as well as any capital gains tax liability which arises to the child on their subsequent disposal of the assets.

For the purposes of this section, the meaning of "child" is extended to include a child of a deceased child, as well as a nephew or niece who has worked full-time in the business for the 5-year period ending on the date of the disposal. It also includes a foster child who was under the care of and maintained at the expense of the individual making the disposal for a period of 5 years (or periods which together amounted to 5 years) up to the time such foster child reached 18 years of age, but only if the claim for relief is not based on the uncorroborated testimony of one witness.

Where an individual is disposing of land used for farming to his or her child and the consideration for its disposal consists in whole or in part of other land, the individual acquiring this other land will be treated as having acquired the land at the time and for the consideration that the child originally acquired it and to have farmed it for the same period that the child farmed it.

There is provision for a clawback of the relief – this clawback applies in respect of the relief claimed by an individual on any transfer of qualifying assets to a child. That is, the clawback applies to relief claimed on transfers of qualifying assets to which limits on relief do not apply or transfers of qualifying assets, which are subject to such limits, but the value of assets transferred do not exceed such limits. The clawback applies where the assets transferred to the child are disposed of by the child within 6 years of the date of transfer. In any such case, the capital gains tax which would have been charged on the individual (if the relief had not applied) is assessed and charged on the child, in addition to the tax on any gain made by the child on his/her disposal of the assets.

A clawback of relief does not apply to the deferred capital gains tax liability arising on the transfer of qualifying assets, on or after 1 January 2025, to a child, the value of which exceeds the €10million lifetime limit. In this instance, the deferred tax is subject to a retention period such that, in the event the child disposes of such assets within 12 years of the date of transfer, the deferred capital gains tax, which would have been charged on the individual, is assessed and charged on the child, in addition to the tax on any gain made by the child on his/her disposal of the assets.

An individual who seeks to claim relief and/or defer the capital gains tax under this section must do so in the tax return which they are legislatively obliged to deliver to the Revenue Commissioners for the year of assessment in which the disposal to which relief under this section applies takes place.

Details

Definitions

The definitions in ***section 598(1)*** apply for the purposes of this section as they apply for the purposes of ***section 598***. ***(1)(a)***

For the purposes of the relief, "child" includes a child of a deceased child, as well as a nephew or niece of the individual making the disposal who has worked full-time in running or assisting in the running of the business or farm concerned for minimum of 5 years ending on the date of the disposal. It also includes a foster child who was under the care of, and was maintained at the expense of, the individual making the disposal for a period of 5 years (or periods which together amounted to 5 years) up to the time that such foster child attained the age of 18 years, but only if the claim for relief is not based on the uncorroborated testimony of one witness.

The relief

Where an individual who is at least 55 years of age makes a disposal to his/her child of all or part of the individual's qualifying assets at any time up to and including 31 December 2024, the capital gains tax chargeable on any gains arising on the disposal is fully relieved. An upper limit of €3million will apply to disposals made in the period 1 January 2014 to 31 December 2024, inclusive, by individuals aged 66 or over. Where an individual who is at least 55 years of age makes a disposal to his/her child of all or part of the individual's qualifying assets on or after 1 January 2025, a lifetime limit of €10million applies to the market value of such assets to which relief under this section applies; in addition, the existing €3million cap will apply to disposals of qualifying assets by individuals aged 70 years and over from 1 January 2025 onwards. ***(1)(b)***

The amount of the relief is the difference between the tax that would have been chargeable on all gains in the year in question, including the gains on the qualifying assets, and the tax on all gains excluding the gains on those assets. However, the relief does not affect the computation of gains on the disposal of assets which are not qualifying assets. ***(1)(c)***

Where an individual is disposing of land used for farming to his or her child and the consideration for its disposal consists in whole or in part of other land, the individual acquiring this other land will be treated as having acquired the land at the time and for the consideration that the child originally acquired it and to have farmed it for the same period that the child farmed it. ***(1)(d)***

The consideration on the disposal of qualifying assets by individuals aged 66 or over in the period 1 January 2014 to 31 December 2024, inclusive, will be aggregated for the purpose of the €3million limit on the relief available to such individuals. ***(2)(a)***

Where an individual, having reached the age of 66 or more, disposes of qualifying assets to their child in the period 1 January 2014 to 31 December 2024, inclusive, and makes further disposal(s) of qualifying assets to a child in the period 1 January 2025 onwards, the consideration on the disposal of qualifying assets in both periods must be aggregated for the purpose of the €10million lifetime limit on the relief available to such individuals from 1 January 2025 onwards. In aggregating the consideration for disposals of qualifying assets to a child in both periods, it may be that the consideration for such disposals in the period 1 January 2014 to 31 December 2024, inclusive, exceeds the €3million cap; in such circumstances, and only for the purpose of aggregation in these circumstances, the consideration for such disposals is deemed to be €3million. ***(2)(b)***

The consideration on the disposal of qualifying assets by individuals aged 55 or over in the period 1 January 2025 onwards will be aggregated for the purpose of the €10million limit on the relief available to such individuals. ***2(c)***

The apportionment rules of ***section 598(4)*** apply in determining the amount of the consideration to be taken into account for the purposes of the relief in the case of a disposal of shares or securities of a family company. Essentially, only the proportion of the consideration for the disposal which relates to the company's or, as the case may be, the trading group's chargeable business assets is taken into account for the purposes of the relief. ***(3)***

Clawback of relief

Where relief has been given in respect of a disposal of qualifying assets and, within 6 years of the date of disposal, the child in turn disposes of those assets, the relief given is subjected to a clawback. The clawback applies in respect of the relief claimed by an individual on a transfer of qualifying assets. That is, the clawback applies to relief claimed on transfers of qualifying assets to which limits on relief do not apply or transfers of qualifying assets, which are subject to such limits, but the value of assets transferred do not exceed such limits. The clawback operates to withdraw the relief not from the original disponer who benefitted from the relief, but by way of an assessment on the child to whom the assets were disposed. In effect, the capital gains tax which would have been charged on the original disponer (if the relief had not applied) is assessed and charged on the child, in addition to any tax chargeable on the gain accruing on the child's disposal of the qualifying assets. ***(4)(a)***

In the case of such a disposal that gives rise to a clawback, the child making the disposal is required, in accordance with self-assessment principles, to make a full and true return – which includes details of the disposal and the necessary self-assessment to clawback relief previously claimed.

Deferral of liability

Subsection (4A) provides for an option for an individual to defer the capital gains tax liability arising on the transfer of qualifying assets, on or after 1 January 2025, to a child, the value of which exceeds the €10million lifetime limit. ***(4A)***

Paragraph (a) provides for the definitions which are used in subsection (4A). These are; ***(4A)(a)***

“deferred capital gains tax” means the amount of capital gains tax arising on a relevant disposal (also defined in paragraph (a)) which is deferred in accordance with paragraph (c).

"relevant disposal" means a disposal of qualifying assets, as referred to in subsection (1)(b)(v) of section 599, in respect of which capital gains tax is chargeable, as the value of the assets exceed the €10million lifetime limit on relief granted under section 599. By virtue of the operation of subsection (1)(b)(v) of section 599, capital gains tax arising in respect of the disposal of qualifying assets on or after 1 January 2025, the (aggregated) value of which are up to €10million is relieved from capital gains tax in full; capital gains tax arises in respect of the disposal of qualifying assets, the value of which exceed €10million.

"retention period” means the period beginning on the date on which an individual makes a relevant disposal and ending on the twelfth anniversary of that date.

This subsection applies to relevant disposals made on or after 1 January 2025. ***(4A)(b)***

An individual has the option to make a claim to defer the payment of capital gains tax due on a relevant disposal (i.e., capital gains tax due on the disposal of qualifying assets, on or after 1 January 2025, the value of which exceeds €10million). A claim for deferral under this section must be made by an individual in the tax return that individual is obliged to deliver for the year of assessment in which the relevant disposal takes place, in accordance with the provisions of Chapter 3 of Part 41A of the Taxes Consolidation Act 1997. ***(4A)(c)***

Where a claim is made to defer the payment of capital gains tax arising on a relevant disposal, two possible outcomes are provided for; ***(4A)(d)***

(i) Where the child to whom the qualifying assets comprised in the relevant disposal were transferred disposes of such assets within 12 years of the date of the relevant disposal, the deferred capital gains tax is crystalised and becomes assessed and charged on the child, along with any capital gains tax arising to the child on their disposal of the assets.

(ii) Where the child to whom the qualifying assets comprised in the relevant disposal were transferred does not dispose of the assets within 12 years of the date of the relevant disposal, the deferred capital gains tax is no longer due and payable.

Relief not taken into account for section 598 purposes

The consideration for any disposals that qualify for relief under this section is not taken into account in calculating the €750,000 threshold limit for relief under ***section 598***. ***(5)***

Relief under this section may be claimed if all other conditions of the section have been met where a disposal is made to- ***(6)***

- a child of the civil partner of the individual,
- a child of the deceased civil partner of the individual,
- a child of the civil partner of a deceased child of the individual, or

- a child of the civil partner of a deceased child of the civil partner of the individual.

The consideration on a disposal of shares or securities of a family company by an individual to a child, in circumstances where the €3million cap on relief in the period 1 January 2014 to 31 December 2024, inclusive, and/or the €10million lifetime limit on relief on or after 1 January 2025, may apply, is to be aggregated with a disposal of shares or securities by the individual to a company controlled by that same child, for the purpose of calculating the relevant threshold limits for relief under section 598. ***(7)***

A claim for relief under this section must be made by an individual in the tax return which that individual is obliged to deliver for the relevant year of assessment (i.e., the year of assessment in which a disposal in respect of which relief is claimed under this section is made) in accordance with the provisions of Chapter 3 of Part 41A of the Taxes Consolidation Act 1997. ***(8)***

A claim for relief or deferral of capital gains tax under this section will only apply where the disposal of qualifying assets is made for genuine commercial reasons and does not form part of arrangements or a scheme, the main purpose, or one of the main purposes, of which is the avoidance of tax. ***(9)***

600 Transfer of business to company

Summary

Where a person (other than a company) transfers a business as a going concern to a company wholly or partly in exchange for shares in the company, relief from capital gains tax is available to the extent that the consideration for the transfer is taken in the form of shares. In effect, the gain on the transfer is apportioned between the consideration received in shares and any cash payment, and the part of the gain apportioned to the shares is deducted from the allowable cost of the shares in computing the gain on a future disposal of the shares. In this way the charge on that part of the gain is deferred until the shares are disposed of, while the part of the gain apportioned to the cash payment is chargeable immediately. The relief does not apply unless the transfer is for *bona fide* commercial reasons and not as part of a tax avoidance scheme.

Details

Definitions

“net chargeable gains” are chargeable gains less allowable losses. ***(1)***

References to the business, in relation to shares or consideration received in exchange for the business, include the assets of the business.

Application

The section applies where a person (other than a company) transfers a business as a going concern to a company wholly or partly in exchange for shares in the company. The whole of the assets of the business or all of those assets other than cash must be transferred. Any shares received are referred to as “the new assets”. ***(2)***

The section does not apply to a transfer of a business to a company unless the transfer is made for *bona fide* commercial reasons and does not form part of an arrangement or scheme to avoid tax. ***(6)***

The relief

The amount determined under ***subsection (5)*** (the amount of the gain not to be charged) is to be deducted from the aggregate of the net chargeable gains on the assets transferred. ***(3)***

The amount of the gain not to be charged is to be apportioned between the new assets as a whole and any sums allowable as a cost of acquisition of those new assets are to be reduced by the amount so apportioned. Where the shares comprising the new assets are not all of the same class, the apportionment between the shares is to be on the basis of market value at the time they were acquired by the person transferring the business. ***(4)***

The amount of the gain not to be charged is the part of the total net gain on the assets transferred which is attributable proportionately to the shares received in exchange for the business. ***(5)***

Example

A person, X, started in business on 6 April, 1980 having purchased a premises on that day for €20,000. On 1 December, 2002 she transfers the business with all its assets except cash to a company in exchange for 5,000 shares in the company and a cash payment of €50,000. The following were agreed market values on 1 December, 2002 —

Stock in trade	€20,000
Goodwill	€40,000
Premises	€150,000
Debtors	€10,000
Total value of assets	€220,000

The following liabilities of the business are to be paid by the company on behalf of X —

Creditors	€4,000
Tax liability	€6,000
Total	€10,000

The gains on the transfer are as follows —

Stock and debtors not chargeable

Goodwill		€40,000
Premises	€150,000	
Less €20,000 x 3.091	€61,820	€88,180
Total gain		€128,180

The non-share consideration received by X for the transfer is —

Cash	€50,000
Liabilities taken over (creditors and taxation)	€10,000
	€60,000

As the total value of the assets transferable is €220,000 the amount of the consideration received by X in shares is €220,000 less €60,000, that is, €160,000.

The total gain on the transfer, €128,180, is apportioned between the amount received in shares and the non-share consideration as follows —

$$\frac{160,000}{220,000} \times 128,180 = €93,222$$

$$\frac{60,000}{220,000} \times 128,180 = €34,958$$

The gain of €34,958 is taxable in the normal manner. The gain of €93,222 is attributable to the consideration received in shares and is not taxable. Instead, the cost of the shares in calculating any liability on a future disposal of the shares is reduced by the deferred gain —

Value of shares	€160,000
Less deferred sum	€93,222
Base cost	€66,778

600A Replacement of qualifying premises

Summary

This section provides capital gains tax "rollover" relief where a person disposes, before 4 December 2002, of certain residential rental property and reinvests the proceeds in certain other residential rental property. While the qualifying premises being disposed of can contain any number of residential units, the replacement premises must have at least the same number of residential units as the qualifying premises being disposed of, but not less than 3 such units. All properties must comply with the Housing Regulations. Full relief is given if all the proceeds from the disposal are reinvested in acquiring a replacement premises, and partial relief where part only of the proceeds are so reinvested. The relief will not apply if it does not meet certain time or profit requirements. If the premises was not a qualifying premises for a period of the person's ownership, or if other assets are included in the consideration for acquisition or disposal of the qualifying premises, then said consideration for acquisition or disposal will be apportioned according to what proportion of the consideration relates to the qualifying premises.

The relief operates on the basis that the capital gain on the disposal of the qualifying premises is "rolled over", that is, it is deemed not to arise until the replacement premises is disposed of. Moreover, the gain, subject to the same conditions being satisfied, continues to be "rolled over" where the replacement premises is disposed of and the proceeds from that disposal are reinvested in a further replacement premises and so on. However, while gains arising on disposals before 4 December 2002 may be "rolled over", and continue to be "rolled over" while the person continues to invest in replacement premises, this entitlement will not apply to any gains arising on disposals on or after that date. However, provision is made to allow relief where a replacement premises is acquired before 4 December 2002 but the related qualifying premises has not been disposed of before that date.

Details

Definitions

"qualifying premises" means a building / part of a building which consists of one or more residential units, generates a rent and complies with the Housing Regulations. ***(1)***

"Regulations" means —

- the Housing (Standards for Rented Houses) Regulations, 1993 (S.I. No. 147 of 1993),
- the Housing (Rent Books) Regulations, 1993 (S.I. No. 146 of 1993), and

- the Housing (Registration of Rented Houses) Regulations, 1996, as amended by the Housing (Registration of Rented Houses) (Amendment) Regulations, 2000 (S.I. No. 12 of 2000).

"replacement premises" means a building / part of a building acquired with the consideration realised from the disposal of a qualifying premises, generates a rent and complies with the Housing Regulations. It must contain at least 3 residential units, but if the qualifying premises consists of more than 3 rented residential units, the replacement premises must contain at least that number of units.

"residential unit" means a part of a residential premises which is self-contained and is used or suitable for use as a dwelling.

The relief

The relief afforded by the section is that where a person disposes of a qualifying premises before 4 December 2002, which was such a premises throughout the period of the person's ownership, and with the proceeds from the disposal acquires a replacement premises, then the chargeable gain on the disposal of the qualifying premises on a claim being made in that respect, is treated as if it did not arise until the person disposes of the replacement premises or those premises cease to be a replacement premises. ***(2)(a)***

If the proceeds from the sale of replacement premises are re-invested in further replacement premises there is a further deferral of the chargeable gain. ***(2)(b)***

[However, if a person has acquired a replacement premises before 4 December 2002, with the intention of disposing of the related qualifying premises, but has not done so before 4 December 2002, they may still be eligible to avail of the relief if they dispose of the qualifying premises on or before 31 December 2003. In this situation any gain arising on such a disposal may be treated as if it did not arise until the person disposes of the replacement premises or those premises cease to be a replacement premises.]

Only part of proceeds reinvested

Where only part of the consideration for the disposal, before 4 December 2002, of qualifying premises is re-invested in replacement premises there is capital gains tax deferral only where the amount not re-invested is less than the gain on the disposal, and then the gain is only deferred to the extent that it exceeds the amount not re-invested. Where replacement premises are acquired before 4 December 2002 but the qualifying premises were not disposed of before that date, relief under this subsection may be available where not all of the consideration is reinvested and the disposal is made on or before 31 December 2003. ***(3)***

Limits to relief

The deferral of a gain under this section gives no entitlement to any additional indexation relief under ***section 556***. ***(4)***

The relief only applies if the acquisition of the replacement premises takes place, or an unconditional contract for its acquisition is entered into, in the period beginning 1 year before and ending 3 years after the disposal of the qualifying premises. (This time limit may be extended by the Revenue Commissioners). Where an unconditional contract is entered into within this period, the relief may be given provisionally and all necessary adjustments made by way of making assessments (and without regard to the general time limits for making assessments) or repayments of tax (notwithstanding the general time limit for making a claim for a repayment of tax in ***section 865***) or discharge of tax when the full facts are known. ***(5)***

The relief only applies where the replacement premises are not acquired wholly or partly for the purpose of their resale for profit. ***(6)***

Apportionment

Where a premises was not a qualifying premises throughout the whole of the owner's period of ownership, the cost of acquisition of and consideration for the disposal of the premises is apportioned on a time basis and relief given to the proportion of the gain on disposal attributed to the time when the premises was a qualifying premises. ***(7)***

Where the consideration for an acquisition or disposal relates to assets some of which are and others which are not the subject of a claim under this section, the consideration is apportioned between such assets in a manner which is just and reasonable. ***(8)***

CHAPTER 6A

Relief for investment in innovative enterprises

Overview

This Chapter provides for Capital Gains Tax relief targeted at investment in innovative start-up SMEs. The relief aims to assist SMEs in attracting investment and to make Ireland a more attractive location for investors.

600B Interpretation

Summary

Section 600B gives the meaning for various expressions and terms used throughout this Chapter. Many of the terms used in this Chapter are rooted in the General Block Exemption Regulations (GBER). Both Part 16 TCA 1997 and this Chapter 6A of Part 19 provide relief for investments in companies and conform with the conditions for permissible forms of State Aid as set out in Articles 21 and 21a of GBER.

Details

Definitions

'accounting period' shall be determined in accordance with section 27;

'arrangement' includes any agreement, understanding, scheme, transaction or series of transactions (whether enforceable or not);

'associate' has the same meaning in relation to a person as it has by virtue of subsection (3) of section 433 in relation to a participator;

'authorised officer' means an officer of the Revenue Commissioners authorised under section 600Q(1);

'business plan' has the same meaning as in section 493, which is that it is a written business plan which contains details of product, sales and profitability development, establishing ex-ante financial viability and which includes both quantitative and qualitative details of the activities the investment is sought to support.

'certificate of going concern' has the meaning given to it by section 600F(3);

'certificate of commercial innovation' has the meaning given to it by section 600F(4);

'certificates of qualification' means—

(a) a certificate of going concern, and

(b) a certificate of commercial innovation;

'control' shall be construed in accordance with subsections (2) to (6) of section 432;

'date of investment' means the date of the issue of the eligible shares;

'director' shall be construed in accordance with section 433(4);

'EEA state' has the same meaning as in section 489. The EEA includes all EU Member states, Norway, Iceland, and Lichtenstein.

'employee' has the same meaning as in section 983. Broadly, this is any person who receives emoluments.

'enterprise' has the same meaning as in Annex I of the GBER. The term encompasses any entity engaged in an economic activity, irrespective of its legal form.

'eligible shares' shall be construed in accordance with section 494. The term eligible shares has the same meaning in both Part 16 and Chapter 6A.

'expansion risk finance investment' has the same meaning as in section 493, which is the issue of eligible shares to fund a new economic activity.

'follow-on risk finance investment' has the same meaning as in section 493, which is the issue of eligible shares subsequent to an initial risk finance investment or an expansion risk finance investment.

'General Block Exemption Regulation' has the same meaning as in Part 16;

'innovative enterprise' has the meaning given to it by Article 2(80) of the General Block Exemption Regulation. This may include an enterprise:

(a) that can demonstrate, by means of an evaluation carried out by an external expert, that it will in the foreseeable future develop products, services or processes which are new or substantially improved compared to the state of the art in its industry, and which carry a risk of technological or industrial failure,

(b) the research and development costs of which represent at least 10 % of its total operating costs in at least one of the three years preceding the granting of the aid or, in the case of a start-up enterprise without any financial history, in the audit of its current fiscal period, as certified by an external auditor, or

(c) which in the 3 years preceding the granting of the aid has received certain awards or investments.

'linked businesses' has the same meaning as in section 489. This definition is taken from Annex I of GBER.

'partner businesses' has the same meaning as in Part 16. This definition is taken from Annex I of GBER.

'partnership agreement' means any valid written agreement of the partners governed by the law of the State and subject to the exclusive jurisdiction of the courts of the State as to the affairs of a partnership and the conduct of its business as may be amended, supplemented or restated from time to time;

'qualifying company' shall be construed in accordance with section 600C;

'qualifying investment' shall be construed in accordance with section 600J;

'qualifying investor' shall be construed in accordance with section 600H;

'qualifying partnership' shall be construed in accordance with section 600N;

'qualifying subsidiary' shall be construed in accordance with section 600D;

'relevant trading activities' has the same meaning as in section 489. These are activities carried on in the course of a trade the profits or gains of which are charged to tax under Case I of Schedule D, excluding activities related to—

(a) adventures or concerns in the nature of trade,

(b) dealing in commodities or futures or in shares, securities or other financial assets,

(d) financing activities,

(e) the provision of professional services (within the meaning of section 128F(1)),

(f) dealing in or developing land,

(g) the occupation of woodlands within the meaning of section 232,

(h) operating or managing hotels, guest houses, self-catering accommodation or comparable establishments or managing property used as an hotel, guest house, self-catering accommodation or comparable establishment, except where such activity is a tourist traffic undertaking (within the meaning of section 491),

(i) operations carried on in the coal industry or in the steel and shipbuilding sectors, and

(j) the production of a film (within the meaning of section 481).

'relief group' means a company, its partner businesses and linked businesses, taken together, and includes any relief group of which a company is a member and any company that was, at any time, a member of a relief group with a qualifying company or its qualifying subsidiaries;

'SME' means a relief group that would fall within the SME category of Annex 1 of GBER. The category of micro, small and medium-sized enterprises ('SMEs') is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

'undertaking in difficulty' has the same meaning as in GBER. There are a number of tests to establish whether a business is an undertaking in difficulty. An undertaking is considered to be in difficulty when without intervention, it will almost certainly be condemned to going out of business in the short or medium term.

'unlisted' has the same meaning as in section 489 which means a company, none of whose shares, stock or debentures (within the meaning of section 2 of the Companies Act 2014) are listed in the official list of a stock exchange, or quoted on an unlisted securities market of a stock exchange other than—

(a) on the market known as the Euronext Growth market operated by the Irish Stock Exchange plc trading as Euronext Dublin, or

(b) on any similar or corresponding market of the stock exchange—

  (i) in a Member State,

  (ii) in an EEA state other than the State, or

  (iii) in the United Kingdom.

600C Qualifying company

Summary

This section sets out what a qualifying company is for the purposes of this Chapter.

Details

For the purposes of this Chapter, a company shall be a qualifying company if it holds valid certificates of qualification.

600D Qualifying subsidiary

Summary

This section sets out what a qualifying subsidiary is for the purposes of this Chapter.

Details

This section provides the definition of a qualifying subsidiary. A qualifying subsidiary must satisfy the requirements of section 600F(2)(a)(ii) and (iii) (i.e. it must be a company tax resident in the State, another EEA state or the United Kingdom (UK), and carries on, or intends to carry on relevant trading activities from a fixed place of business in the State. Further, the company must hold a tax clearance certificate within the meaning of section 1095). In addition to the above requirements, paragraphs (a) – (c) of section 600D provide for conditions that must be satisfied in order for a subsidiary to be considered a qualifying subsidiary.

The subsidiary must be either a 51 per cent subsidiary of— ***(a)***

(i) the applicant company (within the meaning of section 600F, which means it is the company making the application to the Revenue Commissioners in order to ascertain certificates of qualification), or ***(a)(i)***

(ii) the qualifying company. ***(a)(ii)***

No other person must have control of the subsidiary. ***(b)***

No arrangements must exist whereby the conditions in paragraphs (a) and (b) could cease to apply. ***(c)***

600E Qualifying investment (company perspective)

Summary

Section 600E sets out what constitutes a qualifying investment from the perspective of the company. This section sets out certain conditions that must be satisfied by the company raising the investment.

Details

Section 600E sets out what constitutes a qualifying investment from the perspective of the company.

The investment must be based on a business plan. ***(1)***

The investment cannot be an expansion risk finance investment or a follow-on risk finance investment. ***(2)***

An investment will not be a qualifying investment absent a copy of the certificates of qualification held by the qualifying investor, or the qualifying partnership, as provided by the company. ***(3)***

600F Certificates of qualification

Summary

This section provides for the certification process for a company to be issued certificates of qualification. In order to be eligible to claim this relief, amongst other conditions, a qualifying investor must hold a copy of the company's certificates of qualification which are valid at the time of investment. The certificate of qualification process is a two-step process, a company must obtain a certificate of going concern and a certificate of commercial innovation. This section also provides that the Revenue Commissioners may consult with Enterprise Ireland for the purposes of considering applications for certificates.

Details

A company (referred to in this section as the 'applicant company') that is seeking to raise investments from qualifying investors or qualifying partnerships may make an application to the Revenue Commissioners for the certificates of qualification. ***(1)***

An applicant company may apply to the Revenue Commissioners for— ***(1)(a)***

(i) a certificate of going concern, and ***(a)(i)***

(ii) a certificate of commercial innovation. ***(a)(ii)***

An applicant company is required to provide certain information to the Revenue Commissioners. The application under paragraph (a) must include— ***(1)(b)***

(i) a business plan in respect of which the company is seeking investment, ***(b)(i)***

(ii) relevant shareholder information of the company which includes details of the shareholders of the company (such as the name and address of the shareholders) and any shareholdings or ownership interests of the shareholders in linked businesses or partner businesses, and ***(b)(ii)***

(iii) any other information as requested by the Revenue Commissioners in order to determine if the company satisfies certain conditions as prescribed under subsection (2) of this section. ***(b)(iii)***

There are a number of conditions that a company must satisfy in order to be eligible to make an application to the Revenue Commissioners for the certificates of qualification, pursuant to subsection (1) of this section. In order to apply for a certificate of going concern and/or a certificate of commercial innovation, the applicant company must fulfil the conditions as set out in paragraphs (a) to (d) of subsection (2). ***(2)***

The applicant company must satisfy the conditions laid out in this paragraph. ***(2)(a)***

(i) The applicant company must be incorporated in the State, another EEA state or the UK; ***(a)(i)***

(ii) The applicant company must be tax resident in the State, another EEA state or the UK and carries on, or intends to carry on relevant trading activities from a fixed place of business in the State; ***(a)(ii)***

(iii) The applicant company must hold a tax clearance certificate within the meaning of section 1095; ***(a)(iii)***

(iv) The applicant company— ***(a)(iv)***

(I) does not control, either on its own or together with any person connected with the company, any company other than a qualifying subsidiary, and ***(a)(iv)(I)***

(II) is not under the control of another company, or of another company and any person connected with that company, other than NAMA, ***(a)(iv)(II)***

and there must not be arrangements in place that would cause the company to come under such control as referred to in clause (I) or (II) within 3 years from the issuance of a certificate of commercial innovation;

(v) The applicant company is a company that— ***(a)(v)***

(I) exists wholly for the purpose of carrying on relevant trading activities, or ***(a)(v)(I)***

(II) is a holding company whose business consists, or will consist, wholly of— ***(a)(v)(II)***

(A) the holding of shares or securities, or of making loans to one or more qualifying subsidiaries of the company, or ***(a)(v)(II)(A)***

(B) both the holding of shares or securities, or of making loans and the carrying on of relevant trading activities where relevant trading activities are carried on from a fixed place of business in the State, ***(a)(v)(II)(B)***

and the money raised through the issue of eligible shares for the purposes of the relevant trading activities which are being carried on by a qualifying subsidiary or which a qualifying subsidiary intends to carry on, shall be used only for the purpose of acquiring eligible shares in the qualifying subsidiary;

(vi) The applicant company must be an innovative enterprise, or one or more than one qualifying subsidiary of the company is an innovative enterprise; ***(a)(vi)***

(vii) The applicant company is— ***(a)(vii)***

(I) a company that it is reasonable to consider intends to, and has sufficient expertise and experience, to implement its business plan, or ***(a)(vii)(I)***

(II) a company referred to in paragraph (v)(II) (i.e. it is a holding company) and it is reasonable to consider the company and its qualifying subsidiary have sufficient expertise and experience to implement their respective business plan; ***(a)(vii)(II)***

Each company of the relief group of which the applicant company is a member must meet the following conditions— ***(2)(b)***

(i) each company of the relief group must be unlisted, and no arrangements must be in existence in relation to a company becoming a listed company, ***(b)(i)***

(ii) each company of the relief group must not be subject to a recovery order, and ***(b)(ii)***

(iii) all shares are fully paid up in respect of each company of the relief group. ***(b)(iii)***

No company or business which is in the relief group of which the applicant company is a member can be in existence for more than 7 years at the date of application for the certificates of qualification. ***(2)(c)***

(i) No company in the relief group, or predecessor company in the case of a company formed following an acquisition or merger, can be more than 7 years old at the date the application for the certificates of qualification under section 600F(1) is made. ***(c)(i)***

(ii) In the case of a merger or acquisition, where the acquisition or merger was with a member of the relief group other than the company, the date it commenced carrying on the enterprise cannot be more than 7 years prior to the date of the application for the certificates of qualification under section 600F(1) is made. ***(c)(ii)***

(iii) Where a member is an enterprise other than a company, the date it commenced carrying on the enterprise cannot be more than 7 years prior to the date of the application for the certificates of qualification under section 600F(1) is made. ***(c)(iii)***

The relief group of which the applicant company is a member must— ***(2)(d)***

(i) be an SME, and ***(d)(i)***

(ii) not be an undertaking in difficulty. ***(d)(ii)***

The Revenue Commissioners will issue a certificate called a "certificate of going concern" where the applicant company has demonstrated to the Revenue Commissioners that it satisfies certain conditions. ***(3)***

A certificate of going concern will issue to a company where the company has demonstrated to the satisfaction of the Revenue Commissioners that the relief group of which the applicant company is a member satisfies the conditions specified in subsection (2)(d) (i.e. it is an SME and not an undertaking in difficulty). ***(a)(i)***

Where the applicant company has not demonstrated to the satisfaction of the Revenue Commissioners that the relief group of which the applicant company is a member, satisfies the conditions specified in paragraph (i) or (ii) in subsection (2)(d), (i.e. whether it is an SME or, an undertaking in difficulty), the Revenue Commissioners will issue a determination to this effect, which will outline the reasons for the determination. ***(a)(ii)***

The Revenue Commissioners may issue to the applicant company a certificate, or a renewal of a certificate, of going concern. The Revenue Commissioners may consult with Enterprise Ireland on whether a company satisfies the conditions to be issued a certificate of going concern. Where the Revenue Commissioners consult with Enterprise Ireland for these purposes, the Revenue Commissioners may take into account any recommendations or reports Enterprise Ireland shall make to the Revenue Commissioners on whether or not the company has demonstrated that it has satisfied the conditions necessary to obtain a certificate of going concern. ***(3)(b)***

Where the Revenue Commissioners have reason to believe that the relief group of which the applicant company is a member, or any company that is a member of the relief group, has not demonstrated the conditions under subparagraphs (i) to (v) of paragraph (a), or paragraph (b) or (c) of subsection (2) are met, in order to be issued a certificate or a renewal of a certificate, of going concern, the Revenue Commissioners shall issue a determination stating the reason for this decision. ***(3)(c)***

An applicant company aggrieved by a decision under paragraph (a)(ii) (i.e. where the applicant company or the relief group of which the applicant company is a member does not satisfy that, it is an SME, or is not an undertaking in difficulty) or paragraph (c) (i.e. where the applicant company or the relief group of which the applicant company is a member does not satisfy the necessary conditions as outlined under subsection (2)(a)(i) to (v), subsection (2)(b) and subsection (2)(c) that a company is required to satisfy in order to be make an application to the Revenue Commissioners for the certificates of qualification) has 30 days after the date of the notice of the determination, in which to appeal such a determination to the Tax Appeal Commission in accordance with section 949I. ***(3)(d)***

Where a company holds a valid certificate of going concern, and the certificate of going concern has expired or is about to expire, the company may apply to the Revenue Commissioners for a renewal of its certificate of going concern. The provisions of this section apply on a renewal of a certificate of going concern as it would for an application for a certificate of going concern, with any necessary modifications. ***(3)(e)***

Subject to section 600P, which provides for the withdrawal of certificates of qualification in certain circumstances, a certificate of going concern shall be valid for the later of two days. ***(3)(f)***

(i) The first of the two days to be considered is the day that is the earlier of three days. This first day is the earlier of— ***(3)(f)(i)***

(I) the day that the oldest company in the relief group is registered for 3 years, ***(f)(i)(I)***

(II) where any company that is a member of the relief group was formed by way of acquisition or merger, it is the day which is 3 years from the date of registration of any company that was party to the acquisition or merger, or ***(f)(i)(II)***

(III) where a member of the relief group is an enterprise other than a company, it is the day that is 3 years from the date that enterprise commenced carrying on the enterprise, or ***(f)(i)(III)***

(ii) The second of the two days to be considered is the day that is the earlier of two days. These two days to be considered are— ***(f)(ii)***

(I) the first of the second day to be considered for the purposes of determining the validity period of a certificate of going concern is the later of two days— ***(f)(ii)(I)***

(A) the first day is the day that is the last day of the accounting period, of the company to which the certificate was issued, in which the certificate was issued, or ***(f)(ii)(I)(A)***

(B) the second day is the day that is 9 months after the day on which the certificate of going concern issued to the company in accordance with subclause (A) where that day is later than the day referred to in subclause (A), or ***(f)(ii)(I)(B)***

(II) the second day of the second day to be considered is the day on which the certificate of commercial innovation ceases to be valid, where the certificate of going concern was renewed in accordance with paragraph (e). This acts as a backstop to ensure that a certificate of going concern will only remain valid for the period of validity of the certificate of commercial innovation. ***(f)(ii)(II)***

This subsection provides for the issue of a second certificate, the certificate of commercial innovation, which confirms the company has demonstrated to the Revenue Commissioners that: ***(4)***

- the company, or one or more than one qualifying subsidiary of the company, is an innovative company, and
- the company has a business plan that it is reasonable to consider can be implemented by the company, or where the company is a company referred to in subsection (2)(a)(v)(II) it is reasonable to consider the company and its qualifying subsidiary intend to, and have sufficient expertise and experience, to implement their respective business plan.

The Revenue Commissioners may consult with Enterprise Ireland on whether the applicant company satisfies these conditions.

The Revenue Commissioners will issue the applicant company either, a certificate of commercial innovation where the applicant company has demonstrated to the Revenue Commissioners that it satisfies certain conditions, or a determination in respect of a certificate of commercial innovation where the applicant company has not demonstrated to the Revenue Commissioners that it satisfies certain conditions. ***(4)(a)***

(i) The Revenue Commissioners will issue a certificate of commercial innovation where the applicant company has demonstrated to the Revenue Commissioners that the applicant company satisfies the conditions specified in subparagraphs (vi) and (vii) of subsection (2)(a), (i.e. it is an innovative enterprise (or one or more than one qualifying subsidiary of the applicant company is an innovative enterprise) and has a business plan that it is reasonable to consider can be implemented by the company (or where the applicant company is a holding company, it is reasonable to consider the company and its qualifying subsidiary intend to, and have sufficient expertise and experience, to implement their respective business plan), or ***(a)(i)***

(ii) The Revenue Commissioners will issue a determination that the applicant company has not demonstrated to the satisfaction of the Revenue Commissioners that the applicant company satisfies the conditions specified in subparagraphs (vi) and (vii) of subsection (2)(a) (i.e. the company is an innovative enterprise, (or one or more than one qualifying subsidiary of the company is an innovative enterprise), and has a business plan that it is reasonable to consider can be implemented by the company (or where the company is a holding company, it is reasonable to consider the company and its qualifying subsidiary intend to, and have sufficient expertise and experience, to implement their respective business plan). The Revenue Commissioners will provide the reasons for the determination. ***(a)(ii)***

The Revenue Commissioners may issue to the applicant company a certificate of commercial innovation. The Revenue Commissioners may consult with Enterprise Ireland on whether a company satisfies the conditions to be issued a certificate of commercial innovation. Where the Revenue Commissioners consult with Enterprise Ireland for these purposes, the Revenue Commissioners may take into account any recommendations or report Enterprise Ireland shall make to the Revenue Commissioners on whether or not the company has demonstrated that it has satisfied the conditions necessary to obtain a certificate of commercial innovation. ***(4)(b)***

Where the Revenue Commissioners have reason to believe that the relief group of which the applicant company is a member, or any company that is a member of the relief group, has not demonstrated that the conditions under paragraphs (a) to (d) of subsection (2) are met (these are the necessary conditions as outlined under subsection (2) that a company must satisfy in order to apply to the Revenue Commissioners for certificates of qualification), the Revenue Commissioners shall not issue a certificate of commercial innovation.. ***(4)(c)***

An applicant company aggrieved by a decision under paragraph (a)(ii) (where the Revenue Commissioners will not issue a certificate of commercial innovation on the basis that the applicant company has not demonstrated that the applicant company or its qualifying subsidiary is an innovative enterprise, and that it is reasonable to consider that the applicant company or its qualifying subsidiary intend to, and has sufficient expertise and experience, to implement their respective business plan) has 30 days after the date of the notice of the determination, in which to appeal such a determination to the Tax Appeal Commission in accordance with section 949I. ***(4)(d)***

Subject to section 600P TCA 1997 which provides for the withdrawal of the certificates of qualification in certain circumstances, a certificate of commercial innovation will be valid until the date that the oldest member of the relief group is established for 7 years. This will be the earliest of three dates which are contained in subparagraphs (i), (ii) and (iii) of subsection (4)(e). ***(4)(e)***

(i) The first date of these three dates is the date of the registration of any company that is a member of the relief group of which the applicant company is a member. Thus, the certificate of commercial innovation may remain valid to the date the oldest company in the relief group is registered for seven years. ***(e)(i)***

(ii) The second date is comprised of either of the following two dates— ***(e)(ii)***

(I) the date of the registration of any company that was party to the acquisition or merger where any company that is a member of the relief group was formed by way of acquisition or merger. Therefore, the certificate of commercial innovation may remain valid until the date the oldest company in the relief group, where any company was formed by way of acquisition or merger, is registered for seven years. ***(e)(ii)(I)***

(II) for the purpose of an acquisition or merger referred to in clause (I), the date of the commencement of the carrying of an enterprise where the acquisition or merger was with a party other than the company. Thus, where there is an acquisition or merger with a party that is an unincorporated enterprise the certificate of commercial innovation may remain valid until the date which is seven years from the date that unincorporated enterprise commenced carrying on its business. ***(e)(ii)(II)***

(iii) The third date of these three dates is the date of the commencement of the carrying on of an enterprise, where a member of the relief group is an enterprise other than a company. Thus, the certificate of commercial innovation may remain valid until the date which is seven years from the date of the commencement of a business by an unincorporated member of the relief group. ***(e)(iii)***

Enterprise Ireland may consult with any person who in their opinion may assist in providing any recommendations or report where the Revenue Commissioners consult with Enterprise Ireland, to determine whether an applicant company satisfies the conditions in order to be issued, or retain, certificates of qualification. Subsection (5) is comprised of paragraphs (a) to (f) which outline the steps to be followed before Enterprise Ireland may engage or share information with the person Enterprise Ireland intend to consult with. ***(5)***

The Revenue Commissioners may authorise the disclosure of information by Enterprise Ireland to a person they may consult, who may in the opinion of Enterprise Ireland be of assistance in providing any recommendations or report referred to in subsection (3)(b) or (4)(b) or section 600P(4)(d)(ii) (i.e. for ascertaining whether the applicant company satisfies the criteria in order to be issued a certificate of going concern, or a certificate of commercial innovation or the retention of these certificates where additional information come to the attention of the Revenue Commissioners and such information may invalidate the certificates of qualification). ***(5)(a)***

Before disclosing information to the person referred to under paragraph (a) (i.e., the person Enterprise Ireland intend to engage and consult with), Enterprise Ireland will be required to notify the Revenue Commissioners in writing of— ***(5)(b)***

(i) the purposes of the consultation, ***(b)(i)***

(ii) the intention to disclose information, ***(b)(ii)***

(iii) the information that Enterprise Ireland intends to disclose, and ***(b)(iii)***

(iv) the identity of the person Enterprise Ireland intends to consult. ***(b)(iv)***

The Revenue Commissioners may authorise the disclosure of information by Enterprise Ireland in certain circumstances, notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by, or under, the Tax Acts or any other statute or otherwise. ***(5)(c)***

(i) The Revenue Commissioners may authorise the disclosure of information to the person referred to in paragraph (a) where the applicant company provides consent regarding same pursuant to paragraph (d). This is notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by, or under, the Tax Acts or any other statute or otherwise. ***(c)(i)***

(ii) Enterprise Ireland will not be authorised to disclose information to the person referred to in paragraph (a) (i.e., the person Enterprise Ireland intend to engage and consult with), without the applicant company providing consent regarding same pursuant to paragraph (d). ***(c)(ii)***

Before the Revenue Commissioners may provide the authorisation referred to in paragraph (c) to Enterprise Ireland (i.e., to engage with the person and disclose information to that person), the Revenue Commissioners shall notify the applicant company in writing of— ***(5)(d)***

(i) the purposes of the consultation, ***(d)(i)***

(ii) the intention to disclose information, ***(d)(ii)***

(iii) the information Enterprise Ireland intends to disclose, and ***(d)(iii)***

(iv) the identity of the person Enterprise Ireland intends to consult. ***(d)(iv)***

The applicant company has 30 days after the date of the notice to show to the satisfaction of the Revenue Commissioners that the Revenue Commissioners providing the approval referred to in paragraph (c) (i.e., providing the approval to Enterprise Ireland to engage with the person and disclose information to that person) could prejudice the company's business.

Where the applicant company does not show to the satisfaction of the Revenue Commissioners that disclosure of such information to the person referred to in paragraph (c) (i.e., the person Enterprise Ireland intends to engage) could prejudice the company's business within the 30-day timeframe, the Revenue Commissioners may provide the approval to Enterprise Ireland to disclose the information to the consultant where the Revenue Commissioners— ***(5)(e)***

(i) notify the company in writing of the decision to provide the approval referred to in paragraph (c) (i.e., providing the approval to Enterprise Ireland to engage with the person and the authorisation to disclose the information to the person), and ***(e)(i)***

(ii) allow the company 30 days after the date of the notice to appeal the decision to the Appeal Commissioners in accordance with section 949I. ***(e)(ii)***

An applicant company aggrieved by a decision under paragraph (e) may appeal such a determination to the Appeal Commissioners within a 30-day period after the date of the notice of the decision. ***(5)(f)***

Certain details are to be included in the certificates of qualification. Paragraphs (a) to (e) provide for the details to be included. ***(6)***

The certificate type issued (either the certificate of going concern or the certificate of commercial innovation) shall be included. ***(6)(a)***

The name, address, Companies Registration Office (CRO) number of the company (or equivalent), shall be included. ***(6)(b)***

The date of issue of the certificate shall be included. ***(6)(c)***

The validity period of the certificate shall be included. ***(6)(d)***

A unique sequential identification number shall be assigned to each certificate. ***(6)(e)***

A publicly available register of certificates of qualification shall be maintained and the information to be included in the register is provided. Paragraphs (a) to (c) provide for the details to be included in the register. ***(7)***

The Revenue Commissioners shall establish and maintain a register of companies to which certificates of qualification have been issued. ***(7)(a)***

The Revenue Commissioners shall publish the register on a website. ***(7)(b)***

The register shall only contain the information specified in subsection (6) in respect of the certificates of qualification that have been issued. Where the certificates of qualification have been withdrawn, the date of withdrawal shall be included. ***(7)(c)***

600G Subscription for shares

Summary

Section 600G sets out the meaning of “subscribes for”.

Details

An individual subscribes for shares if the individual subscribes for and is issued shares by the company— ***(1)***

(a) for consideration consisting wholly of cash, ***(1)(a)***

(b) for bona fide commercial reasons. Thus, the subscription and issue of the shares is for genuine commercial reasons and not as part of arrangements the main purpose, or one of the main purposes, of which is to secure a tax advantage to any person, and ***(1)(b)***

(c) at an arm’s length bargain. ***(1)(c)***

A share subscribed for, issued to, held by, or disposed of for, an individual by a nominee are treated as done by the individual for whom they are acting where the nominee has complied with sections 892 and 894 TCA 1997 in respect of the share. ***(2)***

References to an individual having subscribed for a share include the individual having subscribed for the share jointly with any other individual. ***(3)***

600H Qualifying investor

Summary

Section 600H sets out a definition of qualifying investor.

Details

A qualifying investor is an individual who subscribed for eligible shares on his or her own behalf in a qualifying company and complies with this section. ***(1)***

An individual shall not be a qualifying investor in certain circumstances. ***(2)***

An individual shall not be a qualifying investor if he or she is connected with the company on the date of the investment. This is determined by reference to this section and section 600I. ***(2)(a)***

An individual will be connected with the company where that individual, or an associate (i.e., a relative) of the individual— ***(2)(b)***

(i) is a partner of the company, or of any company that is a member of the relief group of which the company is a member, ***(b)(i)***

(ii) is a director or employee of the company, or of any company that is a member of the relief group of which the company is a member, or ***(b)(ii)***

(iii) subject to subsection (3), has an interest in the capital of the company, or of any company that is a member of the relief group of which the company is a member. ***(b)(iii)***

An individual shall be considered to have an interest in the capital of the company that is a member of the relief group in certain circumstances. ***(3)***

An individual or his/her associate shall have an interest in the capital of a company that is a member of the relief group if that individual, or his/her associate directly or indirectly possesses or is entitled to acquire— ***(3)(a)***

(i) any of the issued share capital, ***(a)(i)***

(ii) any of the loan capital, ***(a)(ii)***

(iii) any of the voting power, or ***(a)(iii)***

(iv) rights to the assets on a winding up, ***(a)(iv)***

of any such company.

For the purposes of paragraph (a)(ii), which relate to the loan capital of a company, the loan capital shall include any debt incurred by the company— ***(3)(b)***

(i) for any money borrowed or capital assets acquired by the company, ***(b)(i)***

(ii) for any right to receive income created in favour of the company, or ***(b)(ii)***

(iii) for consideration the value of which to the company was at the time when the debt was incurred, substantially less than the amount of the debt. This includes any premium on the debt. ***(b)(iii)***

Excluded from this is any debt incurred by the company by overdrawing a bank account, where that overdraft arises in the ordinary course of business.

Subsection (3)(c) provides rules for the purposes of paragraph (a)(iv), which applies for determining the rights that an individual (or an associate) has in respect of the assets on a winding up of a company that is a member of the relief group. ***(3)(c)***

(i) For the purposes of paragraph (a)(iv), an individual shall have a right to the assets on a winding up of a company, if that individual or an associate of the individual, has rights as would, in the event of a winding up of the company, entitle the individual to receive any assets of the company which would be available at that time for a distribution to the equity holders of the company. For the purposes of this subsection— ***(c)(i)***

(I) the persons who are equity holders of the company, and ***(c)(i)(I)***

(II) the percentage of the assets of the company to which the individual would be entitled, ***(c)(i)(II)***

are to be determined in accordance with sections 413 and 415 TCA 1997. References in section 415 to the first company shall be construed as references to an equity holders and references to a winding up shall include references to any other circumstances in which assets of the company are available for the distribution to equity holders.

(ii) In applying sections 413 and 415 in determining the percentage of the share capital or other amounts which a shareholder beneficially owns or is beneficially entitled to under subparagraph (i), the provisions of section 411(1)(c) shall be disregarded. ***(c)(ii)***

An individual shall be treated as having an interest in the capital of the company in certain circumstances. ***(3)(d)***

(i) An individual shall be treated as having an interest in the capital of the company if the individual has control of the company. ***(d)(i)***

(ii) For the purposes of this section, an individual shall be treated as having an interest in the capital of the company if the individual has, at the date of investment, control of another company which is a subsidiary of the company. ***(d)(ii)***

For the purposes of subsection (3) no account shall be taken of shares in a company that are held by the individual, or that individuals associate, where— ***(4)***

(a) that individual or the individuals associate may be entitled to relief under section 600M on a future disposal, and ***(4)(a)***

(b) neither the individual nor a person connected with that individual had control of the company concerned at the date of the investment. ***(4)(b)***

An individual shall be treated as entitled to acquire anything which that individual or an associate of that individual is entitled to acquire at a future date or will acquire at a future date. ***(5)***

An individual will not be treated as connected with a company where an associate of that individual— ***(6)***

(a) has an interest in the share capital of that company, and ***(6)(a)***

(b) is a partner of that individual solely due to them being partners in a qualifying investment fund within section 508IA TCA 1997 or a qualifying partnership under section 600N. ***(6)(b)***

600I Anti-avoidance: qualifying investor

Summary

Section 600I is an anti-avoidance provision in relation to a qualifying investor.

Details

This section provides that an individual will be treated as connected with a company if that individual subscribes for shares in that company as part of a scheme or arrangement which allows another individual to subscribe for shares in a company with which the first mentioned individual, or any other individual who is a party to the arrangement, is connected.

600J Qualifying investment (investor perspective)

Summary

Section 600J sets out what is a qualifying investment from the perspective of the investor.

Details

Subject to section 600K and 600L, that an investment shall be a qualifying investment where— ***(1)***

(a) an individual subscribes for eligible shares in a qualifying company, and ***(1)(a)***

(b) the investment complies with this section and section 600E. ***(1)(b)***

Subsection (2) sets out the requirements of a minimum amount of investment. ***(2)***

The eligible shares must be held by the individual for a period of 3 years from the date of investment. This is in accordance with the requirement in Article 21a(4) of GBER. ***(2)(a)***

There must be a minimum amount of investment in eligible shares in a qualifying company on the date of investment. The following minimum amount of investment is required— ***(2)(b)***

(i) €20,000, or ***(b)(i)***

(ii) €10,000, where at the time of investment— ***(b)(ii)***

(I) the eligible shares held by the individual represents a minimum 5% of the ordinary share capital of the qualifying company, and ***(b)(ii)(I)***

(II) the eligible shares held by the individual entitle the individual to not less than 5% of— ***(b)(ii)(II)***

(A) the profits available for distribution to the equity holders of the qualifying company, ***(b)(ii)(II)(A)***

(B) the voting rights of the qualifying company, and ***(b)(ii)(II)(B)***

(C) the assets of the qualifying company available for distribution to equity holders, ***(b)(ii)(II)(C)***

and

(III) no arrangements must exist which could— ***(b)(ii)(III)***

(A) cause the individual's holding of eligible shares to fall below 5%, and ***(b)(ii)(III)(A)***

(B) reduce the individual's equity entitlements referred to in clause (II) in respect of the eligible shares below 5%. ***(b)(ii)(III)(B)***

Throughout the 3-year holding period the maximum shareholding that can be held by the investor in the qualifying company, or any company that is a member of the relief group of which the qualifying company is a member— ***(2)(c)***

(i) represents not more than 49% of the ordinary share capital of the company, and ***(c)(i)***

(ii) the individual is not entitled to more than 49% of— ***(c)(ii)***

(I) the profits available for distribution to equity holders of the company, ***(c)(ii)(I)***

(II) the voting rights of the company, and ***(c)(ii)(II)***

(III) the assets of the company available for distribution to equity holders. ***(c)(ii)(III)***

The investor is required to retain a copy of certificates of qualification in respect of the qualifying company that were valid on the date of investment. ***(2)(d)***

600K Anti-avoidance: qualifying investment (shares)

Summary

Section 600K is an anti-avoidance provision relating to the qualifying investment in respect of shares. This section applies to shares in respect of which there is an agreement which reduces the risks associated with the shares or with distributions associated with those shares. An investment in shares where such an agreement exists will not be a qualifying investment. The section applies not just to the shares but to rights associated with those shares.

Details

A 'distribution' has the same meaning as in the Corporation Tax Acts. ***(1)***

For the purposes of this section, an amount specified or implied shall include an amount specified or implied in a foreign currency. ***(2)***

This section applies to shares in a company where any arrangement exists which could reasonably be considered to substantially reduce the risk that the person beneficially owning those shares— ***(3)***

(a) might, at or after a time specified in or implied by that arrangement, be unable to realise directly or indirectly in money or money's worth an amount so specified or implied, other than a distribution, in respect of those shares, or ***(3)(a)***

(b) might not receive an amount so specified or implied of distributions in respect of those shares. ***(3)(b)***

The reference in this section to the person beneficially owning shares shall be deemed to be a reference to both that person and any person connected with that person. ***(4)***

An investment in shares to which this section applies shall not be a qualifying investment for the purposes of this Chapter. ***(5)***

This subsection sets out that such arrangements may include any rights associated with the shares as set out in the company's constitution. Thus, this section applies not just to the shares but to rights associated with those shares. *(6)*

600L Anti-avoidance: qualifying investment (investor perspective)

Summary

Section 600L is an anti-avoidance provision in relation to the investment from the perspective of the investor. This section provides the investment will not be a qualifying investment in respect of a person, if at any point in the 3 years from the date of the investment, the company or its qualifying subsidiary carries on a business previously carried on by that person (or their associates) and includes any business that the person (or their associates) had more than 50% interest in. For these purposes, the person to whom a business belongs and, where a business belongs to two or more persons any interest, rights or powers of a person shall be determined in accordance with section (1)(a), (1)(b), (2) and (3) of section 400 and includes interest held by associates.

Details

The conditions that will result in an investment not being considered a qualifying investment are as follows. ***(1)***

An investment will not be a qualifying investment in respect of a person if at any point in the 3 years from the date of the investment, the company or any of its qualifying subsidiaries either— ***(1)(a)***

(i) begins to carry on a business previously carried on by that person, or ***(a)(i)***

(ii) acquires the whole or greater part of the assets used for the purpose of a business previously so carried on. ***(a)(ii)***

This anti-avoidance section applies to an individual where— ***(1)(b)***

(i) any person or group of persons that had an interest of more than 50% in the business (as previously carried on) during the 3 years from the date of investment, or ***(b)(i)***

(ii) any person or group of persons who controls or has at any time controlled the company is a person or a group of persons who at any time controlled another company which previously carried on the business, ***(b)(ii)***

and the individual is that person or one of those persons.

An individual shall not be entitled to relief under section 600M in respect of any shares in a company where— ***(2)***

(a) the company acquires all of the issued share capital of another company during the 3 years from the date of investment, and ***(2)(a)***

(b) any person or group of persons who controls or has at any time controlled the company is a person or a group of persons who at any time controlled that other company, ***(2)(b)***

and the individual is that person or one of those persons.

For the purposes of subsection (1)(b)— ***(3)***

(a) the person or persons to whom a business belongs and, where a business belongs to two or more persons their respective shares in that business shall be determined in accordance with subsections (1)(a), (1)(b), (2) and (3) of section 400 TCA 1997, and ***(3)(a)***

(b) any interest, rights or powers of a person who is an associate of another person shall be treated as those of that other person. ***(3)(b)***

600M Relief

Summary

Section 600M provides relief on the gains arising from the disposal of a qualifying investment by a qualifying investor by applying a reduced rate of Capital Gains Tax (CGT) to a portion of those gains.

Details

Relief under this section will be available to a qualifying investor who disposes of a qualifying investment in a qualifying company, except for certain disposals. ***(1)***

A qualifying investor who disposes of a qualifying investment in a qualifying company shall be entitled to claim relief under this section. ***(1)(a)***

Relief is not available where the disposal— ***(1)(b)***

(i) constitutes the redemption, repayment or repurchase of eligible shares by the company, or ***(b)(i)***

(ii) is a part disposal of eligible shares. ***(b)(ii)***

The amount of gain to which the relief is available is the lower of— ***(2)***

(a) the chargeable gain, ***(2)(a)***

(b) twice the amount of the qualifying investment in the eligible shares disposed of, or ***(2)(b)***

(c) the balance of the lifetime threshold available to the individual which is €10 million. ***(2)(c)***

This restriction of twice the gain on the investment is the prescribed limit under Article 21a of GBER which restricts the benefit an individual investor may obtain under GBER.

The reduced rate of CGT is 16% where the investment is made directly in the company by an individual. ***(3)***

A lifetime limit may apply to gains under this section. ***(4)***

The lifetime limit is €10 million. ***(4)(a)***

Where the individual makes several sales in a year to which the relief is available, relief is treated as available on the earlier disposals in priority to the later sales. ***(4)(b)***

The information that is to be provided by an individual when making a claim for the relief includes— ***(5)***

(a) the name and address of the qualifying company that issued the shares; ***(5)(a)***

(b) the date on which the investment was made; ***(5)(b)***

(c) the value and number of shares subscribed; ***(5)(c)***

(d) the identification number of the certificate of commercial innovation assigned by the Revenue Commissioners. ***(5)(d)***

600N Qualifying partnership

Summary

Section 600N applies the relief to investments made by an individual through a qualifying partnership.

Details

In order for the relief to apply, that individual must be a partner in a partnership and have contributed a minimum of €20,000 to the partnership. The partnership must also have a written partnership agreement and have as its principal business the investing of funds in line with a defined investment policy for the benefit of investors. The partnership agreement must also fulfil additional conditions as set out below.

A qualifying partnership is a partnership that— ***(1)***

(a) the individual must be a partner in and has contributed a minimum of €20,000 to the partnership prior to the date of investment by the partnership in a qualifying company, and ***(1)(a)***

(b) complies with subsection (2). ***(1)(b)***

A partnership shall be a qualifying partnership for the purposes of this Chapter where it satisfies a number of conditions pursuant to paragraphs (a) and (b) of subsection (2). ***(2)***

A partnership shall be established under a partnership agreement and have as its principal business, to be expressed in the partnership agreement establishing the partnership, the investing of its funds in accordance with a defined investment policy for the benefit of its investors, and ***(2)(a)***

The partnership agreement must also provide that— ***(2)(b)***

(i) the funds to be invested in eligible shares must be invested in a timely manner, ***(b)(i)***

(ii) pending investment in eligible shares, any moneys subscribed for the purchase of eligible shares are to be placed on deposit in a separate account with a licensed bank to transact in the State, ***(b)(ii)***

(iii) any amounts received by means of dividends or interest cannot be subject to a commission above an amount set out in the partnership agreement, and to be paid without undue delay to the partners, ***(b)(iii)***

(iv) any charges relating to the establishment, operation, winding down or termination of the partnership cannot exceed the amounts set out in the partnership agreement, and ***(b)(iv)***

(v) audited partnership accounts must be prepared annually and submitted to the Revenue Commissioners when requested. ***(b)(v)***

Relief is available where the investment made by the partnership satisfies certain conditions as prescribed in paragraphs (a) and (b). ***(3)***

Where a qualifying partnership makes an investment in eligible shares in a qualifying company of at least €20,000, that would, if the investment was made directly in the qualifying company by the individual be a qualifying investment, then relief under section 600M shall be available to the investor in the partnership subject to certain modifications. The partnership cannot be connected to the qualifying company. The relief available to the investor in the partnership shall be apportioned to a partner. ***(3)(a)***

Modifications to the legislation are required for a qualifying partnership and are that section 600J shall apply to an investment by a qualifying partnership as if— ***(3)(b)***

(i) section 600J(2)(b)(ii) were deleted. This means an investment must be made by the qualifying partnership for a minimum of €20,000 in eligible shares. There is no requirement that the investment satisfies a minimum percentage shareholding of 5%, and ***(b)(i)***

(ii) references to "the individual" in section 600J(2)(c) were references to "qualifying partnership". This means the shares are required to be held by the qualifying partnership for 3 years and the shares held by the partnership do not amount to more than 49% of the ordinary share capital of the company or any company that is a member of the relief group of which the qualifying company is a member. Further, the partnership must retain a copy of the certificates of qualification. ***(b)(ii)***

Relief available is at a reduced rate of 18% for individuals who invest via qualifying partnerships, as opposed to 16% when invested directly by individuals, as required by GBER in relation to indirect investments. ***(4)***

600O Interaction of relief with other provisions of this Act

Summary

This section provides for the sequence in which reliefs may apply, in the event that the disposal of eligible shares qualifies for more than one CGT relief.

Details

Section 600O provides that where either revised entrepreneur relief (section 597AA) or retirement relief (section 598 or 599) could also apply on the disposal of eligible shares, those reliefs shall apply instead where relief under those provisions is more favourable than if relief to the investor were to apply under this Chapter.

The provisions that apply to a chargeable gain where relief would be available under this Chapter and section 597AA (revised entrepreneur relief) in respect of that gain are as follows. ***(1)***

Where revised entrepreneur relief applies to a disposal, in whole or in part, of eligible share, then where the amount of CGT payable by the qualifying investor is greater under this Chapter than the amount of CGT payable under revised entrepreneur relief, then the provisions of revised entrepreneur relief shall apply to that disposal. ***(1)(a)***

Relief under this Chapter shall not apply to a disposal referred to in paragraph (a) that revised entrepreneur relief applies to. ***(1)(b)***

The provisions that apply to a chargeable gain where relief would be available under this Chapter and section 598 or 599 (retirement relief) in respect of that gain are as follows. ***(2)***

Where retirement relief applies to a disposal, in whole or in part, of eligible share, then where the amount of CGT payable by the qualifying investor is greater under this Chapter than the amount of CGT payable under the retirement relief provisions, then the provisions of retirement relief shall apply to that disposal. ***(2)(a)***

Relief under this Chapter shall not apply to a disposal referred to in paragraph (a) that retirement relief applies to. ***(2)(b)***

Relief under this Chapter is not available to an investor in respect of shares for which relief has or will be claimed under Part 16. This includes the reliefs known as employment investment incentive, start-up capital incentive and start-up relief for entrepreneurs. ***(3)***

600P Failure to comply with requirements of this Chapter

Summary

Section 600P applies to a company to which certificates of qualification were issued and either those certificates were issued when they should not have been because the company did not meet the relevant conditions, or the certificates were correctly issued and the company subsequently ceases to meet the relevant conditions.

Details

Section 600P applies to a company or a relief group of which the company is a member, which did not satisfy or no longer satisfy the relevant conditions as set out in section 600F in order for a company to hold certificates of qualification.

This subsection applies to a company (in this subsection referred to as 'the first-mentioned company') to which certificates of qualification were issued which are valid and the following arises— ***(1)***

(a) the company no longer satisfies section 600F(2)(a). These are conditions that a company must satisfy in order to apply to the Revenue Commissioners for the certificates of qualification, ***(1)(a)***

(b) any company that is a member of the relief group of which the company is a member does not satisfy the conditions in paragraphs (b) and (c) of section 600F(2). These are conditions which must be satisfied for a company to apply for certificates of qualification including conditions that the relief group must satisfy e.g., be unlisted, not subject to a recovery order and have fully paid-up shares. Further, all members of relief group must be less than 7 years old; or ***(1)(b)***

(c) the relief group of which the company is a member does not satisfy the conditions in section 600F(2)(d) (i.e. it is not an SME or is an undertaking in difficulty). ***(1)(c)***

A company that holds certificates of qualification and does not satisfy the required conditions to hold these must return the certificates of qualification to the Revenue Commissioners. ***(2)***

A company to whom subsection (1) applies— ***(2)(a)***

(i) cannot give certificates of qualification to a qualifying investor or qualifying partnership, and ***(a)(i)***

(ii) must return those certificates of qualification to the Revenue Commissioners. ***(a)(ii)***

Where a company returns its certificates of qualification to the Revenue Commissioners, the Revenue Commissioners will withdraw the certificates. ***(2)(b)***

When the Revenue Commissioners withdraw the certificates of qualification, the certificates of qualification shall cease to be valid from the date of withdrawal. ***(2)(c)***

A charge to tax may arise in respect of an investment of a company that provided certificates of qualification to an investor or partnership in circumstances where it should not have done so. ***(3)***

The provisions of subsection (3) shall apply to an investment and a company, where the company provided certificates of qualification to an investor or partnership in circumstances where it should not have done so. ***(3)(a)***

The company to which this subsection applies shall be charged to corporation tax under Case IV of Schedule D for the accounting period in which the investment was made on an amount equal to the maximum tax relief that could have been claimed by an investor on a gain from an investment that was made on foot of those certificates of qualification. The amount to which this subsection applies is an amount calculated by the following formula: ***(3)(b)***

$$(I \text{ X } 2 \text{ X } 17 \text{ per cent}) \text{ X } 4$$

where I is the investment to which this subsection applies.

The amount within the charge to tax under this section shall be treated— ***(3)(c)***

(i) as income against which no loss, deficit, expense or allowance may be set off, and ***(c)(i)***

(ii) as not forming part of the income of the company for the purposes of calculating a surcharge under section 440. ***(c)(ii)***

Where during the validity period of the certificates of qualification there is a material change in the company's position such that the company no longer satisfies the conditions under section 600F(2), which are the conditions that a company must satisfy in order to apply to the Revenue Commissioners for certificates of qualification then— ***(4)(a)***

(i) the company, or ***(a)(i)***

(ii) any officer or agent of the company who has knowledge of the change, ***(a)(ii)***

shall inform the Revenue Commissioners within 30 days of becoming aware of any change in circumstances that would impact a company's entitlement to receive or hold certificates of qualification.

Where there is a failure to comply with paragraph (a) a penalty may apply. ***(4)(b)***

(i) An individual who does not comply with paragraph (a) and notify the Revenue Commissioners where this is a change in the position of the company impacting the entitlement of the company to hold the certificates of qualification will be liable to a penalty of €3,000. ***(b)(i)***

(ii) A company that does not comply with paragraph (a) and notify the Revenue Commissioners where this is a change in the position of the company impacting the entitlement of the company to hold the certificates of qualification will be liable to— ***(b)(ii)***

(I) a penalty of €4,000, in the case of the company, and ***(b)(ii)(I)***

(II) a penalty of €3,000, in the case of the secretary of the company. ***(b)(ii)(II)***

Where information comes to the attention of the Revenue Commissioners which causes the Revenue Commissioners to form the opinion that— ***(4)(c)***

(i) there has been a change in a material fact relevant to the company satisfying any of the conditions contained within section 600F(2), or ***(c)(i)***

(ii) any of the conditions contained within section 600F(2) were not satisfied at the date of application for the certificates of qualification, or the date on which the certificates of qualification were issued, or renewed, ***(c)(ii)***

then, the Revenue Commissioners will give notice in writing to the company of the intention to withdraw the certificates of qualification.

For the purposes of assessing whether a company should retain the certificates of qualification, the Revenue Commissioners may consult with Enterprise Ireland and take account of any such recommendations or report made by Enterprise Ireland to the Revenue Commissioners. ***(4)(d)***

(i) For the purposes of assessing whether a company should retain the certificates of qualification, where additional information has come to the attention of the Revenue Commissioners, the Revenue Commissioners may consult with Enterprise Ireland. ***(d)(i)***

(ii) Following the consultation of the Revenue Commissioners with Enterprise Ireland, Enterprise Ireland shall make any recommendations or report to the Revenue Commissioners for the purposes of assessing whether a company should retain the certificates of qualification. The Revenue Commissioners shall take the recommendations or report made into account when forming their opinion as to whether to withdraw the certificates of qualification. ***(d)(ii)***

Subsection (4)(e) provides that a notice under paragraph (c), which is the notice from the Revenue Commissioners to the company that the Revenue Commissioners intend to withdraw the certificates of qualification, shall state— ***(4)(e)***

(i) the reasons for the intention to withdraw the certificates of qualification, and ***(e)(i)***

(ii) that the company has 30 days to make submissions and to provide such information and explanations as are necessary to prove to the satisfaction of the Revenue Commissioners that the conditions specified in section 600F(2) will— ***(e)(ii)***

(I) continue to be satisfied where paragraph (c)(i) applies, (i.e. where there has been a change in the material facts relevant to whether the company satisfies the necessary conditions under section 600F(2), the company demonstrates it satisfies the necessary conditions under section 600F(2)), or *(e)(ii)(I)*

(II) were satisfied, where paragraph (c)(ii) applies (i.e. where there has been a change in the material facts relating to whether the company satisfied the necessary conditions under section 600F(2), the company demonstrates it satisfied the necessary conditions at the date of application for the certificates of qualification). *(e)(ii)(II)*

Following consideration of the company's submissions and, having taken into account any further recommendations or report which Enterprise Ireland (who may in turn consult with a consultant in respect of this matter), may make to the Revenue Commissioners, the Revenue Commissioners continue to hold the opinion that the company should not hold certificates of qualification on the basis that the conditions in section 600F(2)— *(4)(f)*

(i) are not satisfied where paragraph (c)(i) applies (i.e. where there has been a change in the material facts relevant to whether the company satisfies the necessary conditions under section 600F(2), the company does not demonstrate it satisfies the necessary conditions under section 600F(2)), or *(f)(i)*

(ii) were not satisfied, where paragraph (c)(ii) applies (i.e. where there has been a change in the material facts relating to whether the company satisfied the necessary conditions under section 600F(2), the company does not demonstrate it satisfied the necessary conditions at the date of application for the certificates of qualification), *(f)(ii)*

then the Revenue Commissioners will issue a determination withdrawing the certificates of qualification and set out the reasons for that determination.

A person who is not satisfied with a determination issued under paragraph (f) may appeal the determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that determination. *(4)(g)*

A determination under paragraph (f) shall take effect and the certificates of qualification which are withdrawn shall cease to be valid where— *(4)(h)*

(i) no appeal against the determination is brought, the certificates will cease to be valid 30 days after the determination, or *(h)(i)*

(ii) where an appeal is brought and is unsuccessful, the certificates will cease to be valid on the date the appeal process is concluded. *(h)(ii)*

600Q Powers

Summary

Section 600Q provides powers to the Revenue Commissioners to make enquiries regarding the applications received from companies for certificates of qualification, or to verify whether a company has returned its certificates of qualification to the Revenue Commissioners where these are withdrawn.

Details

The Revenue Commissioners can nominate in writing an officer to act on its behalf and discharge any functions authorised by this Chapter. *(1)*

The authorised officer has the power to make enquiries necessary to establish if— *(2)*

(a) the information contained in the application made by a company is correct and complete, and *(2)(a)*

(b) a company has complied with section 600P(2), and has not provided the certificates of qualification to investors and has returned the certificates of qualification to the Revenue Commissioners. ***(2)(b)***

For the purpose of these enquiries under subsection (2), the authorised officer may enter premises or place of business of a company for the purpose of carrying out these enquiries. ***(3)***

An authorised officer may, in respect of an applicant company (within the meaning of section 600F), compel linked or partner businesses to produce books, records or other documents and to furnish information, explanations and particulars to give assistance to the authorised officer for the purposes of his or her enquiries. ***(4)***

600R Application of this Chapter

Summary

Section 600R provides for the upper timeframe the relief as provided for in section 600M may apply.

Details

Section 600R is a sunset clause providing that the relief will only be available for eligible shares issued up to 31 December 2026.

600S Reporting of relief by qualifying companies

Summary

As the relief is a form of permissible State aid under GBER (Article 21a), certain information is required to be published in respect of companies that raise investments from investors. Section 600S provides that a qualifying company must make a return to the Revenue Commissioners setting out certain information that is required to be published. Such information includes the amounts of investments made under this Chapter. Where a company fails to submit a return, the company may be subject to a penalty.

Details

Where in an accounting period a qualifying company issues shares in respect of which there may be an entitlement for the investor to claim relief under section 600M on the disposal of those shares, the qualifying company is required to comply with certain reporting obligations for the period. ***(1)***

A qualifying company shall provide details of the qualifying investment. This detail is required to be set out in a return under Part 41A to the Revenue Commissioners, and the company will be considered a chargeable person for the accounting period. This is notwithstanding anything to the contrary in Part 41A or section 1084. ***(2)***

A qualifying company shall not later than 4 months after the end of the year of assessment in which the shares are issued in respect of a qualifying investment, provide certain information to the Revenue Commissioners. ***(3)***

The information that may be required for the purposes of the annual report in line with Article 11 of GBER includes: ***(3)(a)***

(i) the name of the company; ***(a)(i)***

(ii) the address of the company; ***(a)(ii)***

(iii) the Companies Registration Office number of the company; ***(a)(iii)***

(iv) the amount of finance raised; ***(a)(iv)***

(v) the date of the share issue. ***(a)(v)***

Any additional information that may be necessary for the Revenue Commissioners to administer the relief will also be required. Such information may include: ***(3)(b)***

(i) the investor's name, address and PPS Number, or the partnership name, address and tax registration number; ***(b)(i)***

(ii) the amount of the investment per investor, or partnership; ***(b)(ii)***

Notwithstanding section 851A TCA 1997, or any other restriction on the disclosure of information, the Revenue Commissioners may disclose information obtained in accordance with subsection (3) to any person submitting the annual report referred to in subsection (3). ***(4)***

The Revenue Commissioners may disclose information furnished in accordance with subsection (3)(a) to the person responsible for publishing information in accordance with the requirements of GBER. ***(4)(a)***

The following information in relation to all qualifying companies shall be published: ***(4)(b)***

(i) the name of the company; ***(b)(i)***

(ii) the address of the company; ***(b)(ii)***

(iii) the Companies Registration Office number of the company; ***(b)(iii)***

(iv) the amount of finance raised; ***(b)(iv)***

(v) the date of the share issue. ***(b)(v)***

Where a company fails to comply with the requirements of this section, a penalty of €2,000 shall apply. Where a company continues to fail to comply with the requirements of this section, a further penalty of €50 applies for each day on which the failure continues. ***(5)***

CHAPTER 7
Other reliefs and exemptions

Overview

This Chapter provides for miscellaneous capital gains tax reliefs and exemptions, the more important of which are the annual exemption (***section 601***), the relief on the disposal of a principal private residence (***section 604***), the relief on a disposal to an authority possessing compulsory purchase powers (***section 605***), the exemption of Government and certain other securities (***section 607***) and the exemption of certain State and other bodies (***section 610***).

601 Annual exempt amount

Summary

This section gives an exemption to an individual in respect of the first €1,270 of chargeable gains in any one year of assessment. Where the gains accruing to the individual exceed that figure, only the excess over €1,270 is chargeable. In taking into account the amount of the chargeable gains, any losses must first be set off against gains. It is not permissible to obtain exemption on the gross chargeable gains, thus leaving losses which can be set off available for carry forward to a later year. The exemption does not apply to an individual who has obtained relief under ***section 598*** (disposal of business or farm on "retirement") or ***section 599*** (disposal within family of business or farm).

Details

Chargeable gains accruing to an individual which do not exceed €1,270 in any year of assessment are exempt from capital gains tax. The reference to ***section 31*** is to ensure that ***(1)*** in computing chargeable gains for the purposes of the exemption, losses (including losses brought forward) are to be set off against gains so that the exemption is applied to the net gains after losses. The benefit of losses, therefore, is not lost but equally an individual cannot take advantage of the exemption to cover gains so as to leave losses available for carry forward to a subsequent year. Thus, where an individual makes gains of €1,270 and losses of €270 in a particular year, he/she is not entitled to claim that the gains of €1,270 should be exempted and the loss of €270 carried forward. The correct position is that the chargeable gains for the year are €1,000 and as this amount is less than €1,270 there is no charge to capital gains tax and there is no carry forward of losses.

Provision is made to make it clear that only the amount of net chargeable gains over €1,270 is to be chargeable. ***(2)***

Where an individual is chargeable to tax for a year of assessment at 2 rates, the exemption is to be allowed as far as possible against the gains chargeable at the higher of the rates and then from the gains chargeable at the lower rate. Similarly, where a person is chargeable at 3 or more rates, the exemption is to be allowed as far as possible from the gains chargeable at the highest rate and then from the gains chargeable at the next highest rate and so on. (At present, there are only 2 rates of tax – 20 per cent and 40 per cent.) ***(3)***

Example

In 2002 an individual has the following chargeable gains —

€500 taxable at 40 per cent

€1,800 taxable at 20 per cent

The annual exemption of €1,270 is set off as to €500 against the gain taxable at 40 per cent and €770 against the gain taxable at 20 per cent The net position, therefore, is that the individual must pay tax on a net gain of €1,030 taxable at 20 per cent.

Where the personal representatives of a deceased person are chargeable in respect of the pre-death chargeable gains of the deceased, the annual exemption is allowed to the same extent as if the deceased were living at the time the assessment is made, without apportionment by reference to the date of death. ***(4)***

The annual exemption is not available for any year of assessment for which the individual has been granted relief under ***section 598*** (disposal of business or farm on “retirement”) or ***section 599*** (disposal within family of business or farm). ***(5)***

602 Chattel exemption

Summary

This section grants exemption from capital gains tax where the gain accrues from the disposal by an individual of tangible movable property (chattels) and the consideration for the disposal is €2,540 or less. Where the consideration exceeds €2,540, marginal relief applies so that the amount of tax chargeable does not exceed one-half the difference between the consideration and €2,540. A loss on a disposal in similar circumstances is nevertheless an allowable loss; but, where the consideration is less than €2,540, the consideration is deemed to be €2,540 and the amount of loss is restricted accordingly. There is a provision to restrict the relief where a set of chattels has been split into lots (or individual items) for separate disposal at amounts within the exemption limit, even where one of the lots is disposed of before the 6 April 1974 (but after 28 February, 1974, the date of publication of the White Paper on Capital Taxation). A further measure ensures that on the disposal of rights or interests in or over chattels account is to be taken of the market value of the interest remaining. The section does not apply to commodities, currency, or wasting assets.

Details

Definition

Tangible movable property does not include a wasting asset within the meaning of ***section 560***. There is a separate exemption for such assets in ***section 561***. ***(1)***

Exemption

A gain accruing to an individual on the disposal of tangible movable property is not chargeable to capital gains tax if the consideration for the disposal does not exceed €2,540. ***(2)***

Marginal relief

Marginal relief applies where the consideration for the disposal exceeds €2,540. This relief operates by providing that the amount of capital gains tax chargeable on the disposal is not to exceed one-half of the difference between the amount of the consideration and €2,540. ***(3)(a)***

For the above purpose, the amount of the tax chargeable on the disposal is the tax which would not have been payable but for the gain made on that disposal, that is, the difference in amount between the tax chargeable on all gains for the year of assessment, including the gain on the disposal of the tangible movable property, and the tax chargeable on all gains for that year excluding that gain. (3)(b)

Example

Tax with article included

Gain on article	€700	
Other gains	€2,000	
	€2,700	
Annual exemption under ***section 601***	€1,270	
	€1,430	@ 20% = €286

Tax with article excluded

Other gain	€2,000	
Annual exemption under ***section 601***	€1,270	
	€730	@ 20% = €146

Tax which would not be paid if the gain on the article were not included = €140 (i.e. €286 – €146)

Thus, €140 is the tax referable to the particular transaction. If the consideration on the disposal of the article were €3,000, the tax payable would be €140; however, if the consideration were €2,700 the tax payable would be restricted to €80 (i.e. one half of the difference between €2,700 and €2,540).

Allowable losses

The availability of the exemption and marginal relief does not prevent an allowable loss arising on the disposal of tangible movable property. However, if a loss does arise on such a disposal and the consideration for the disposal is less than €2,540, loss relief is restricted by deeming the consideration to be €2,540. Thus, if an individual bought a chattel for €3,175 and sold it for €1,800, he/she would be allowed a loss of €635 and not €1,375. ***(4)***

Disposals in separate parts

A measure is provided to prevent abuse of the section by the disposal in separate parts, to persons acting in concert or connected persons (defined in ***section 10***), of a set of articles (for example, a stamp collection) so that the amount of the consideration for each part is ***(5)*** below €2,540, while the total realised on the set is above this figure. In such a case the different transactions are treated as a single transaction even where the disposals occur on different occasions. Any apportionment of relief under ***subsection (3)*** or of reduced loss under ***subsection (4)*** is to be made to the different years of disposal by reference to the sale proceeds applicable to each year.

The measure applies to disposals made on or after 6 April, 1974, and also to disposals made between 28 February 1974 (the date of issue of the White Paper on Capital Taxation) and 5 April, 1974. It does not, however, impose liability on transactions concluded before 6 April, 1974. It merely restricts relief from tax on parts of a set of articles disposed of on or after 6 April, 1974 by bringing into account in applying the €2,540 limit the value of assets disposed of between 28 February, 1974 and 6 April, 1974.

Disposals of rights or interests in or over chattels

Special rules apply where the disposal is of a right or interest in or over a chattel. In applying the exemption (***subsection (2)***), marginal relief (***subsection (3)***) and the restriction of loss relief (***subsection (4)***), the consideration for the part disposal is to be taken as including both the actual consideration for the disposal of the right or interest and the market value of what remains undisposed. ***(6)***

Thus, where the actual consideration for the disposal of the right or interest and the value of what remains is not more than €2,540, the exemption applies in full to the disposal. Where the aggregate of the actual consideration and the value of what remains is greater than €2,540, marginal relief (the maximum tax payable) is calculated by reference to the following formula —

Consideration for disposal plus value of what remains minus

$$2500 \times 1/2 \times \frac{\text{Consideration for disposal}}{\text{Consideration for disposal plus value of what remains}}$$

Example

Consideration for part disposal	€600
Value of what remains	€2,400
Aggregate	€3,000

Marginal relief is —

$$[\ 3{,}000 - \ 2{,}540] \times \frac{1}{2} \times \frac{600}{3{,}000} \qquad €46$$

The maximum tax payable on the part disposal is €46.

Where the actual consideration for the disposal of the right or interest and the value of what remains is less than €2,540, any loss arising on the disposal is restricted. The restriction operates by deeming the consideration for the disposal to be the actual consideration plus a fraction of the difference between €2,540 and the aggregate of the actual consideration and the value of what remains. The fraction to be used is the actual consideration for the disposal divided by the aggregate of that consideration and the value of what remains.

Example

Consideration for part disposal	€600

Value of what remains	€1,000
Aggregate	€1,600

The deemed consideration for the purposes of calculating a loss is —

$$600 + (2{,}540 - 1{,}600) \times \frac{600}{600 + 1{,}000} = 952$$

Non-application

The section does not apply in relation to disposals of commodities by or through a market dealer or to disposals of any currency. ***(7)***

603 Wasting chattels

Summary

Tangible movable property (chattels) which is a wasting asset is exempt from capital gains tax, that is, no chargeable gain arises on the disposal of such property. A wasting asset is one with an expected useful life not exceeding 50 years (see ***section 560***). Examples of wasting chattels are bloodstock, livestock, motor cars and household furniture (other than antiques) and appliances.

The exemption does not apply to wasting chattels used for business purposes to the extent that the expenditure on the asset qualified for capital allowances. The exemption does not apply to commodities of any description nor does it apply to the disposal of certain assets that were leased on such terms to which ***section 299(1)*** applies.

Details

Exemption

No chargeable gain accrues on the disposal of a wasting chattel (tangible moveable property which is a wasting asset). Consequently, losses incurred on the disposal of such assets are not allowable losses. ***(1)***

Wasting chattels used solely for business purposes

The exemption does not apply where the asset has been used and used solely for the purpose of a trade or profession during the entire period of ownership of the person making the disposal and that person has claimed or could have claimed capital allowances in respect of the expenditure incurred in acquiring the asset. Likewise, the exemption does not apply where any expenditure was incurred on the asset and that expenditure qualified in full for capital allowances (for example, leased machinery or plant). ***(2)***

Wasting chattels used partly for business purposes

A special rule applies to deal with the case where there is a disposal of a wasting chattel used partly for the purposes of a trade or profession or where the expenditure incurred in acquiring the chattel qualified in part for capital allowances. In any such case the expenditure on acquisition and the consideration for the disposal are apportioned by reference to the extent to which that expenditure qualified for capital allowances, and the gain is computed separately in relation to the apportioned parts. The part of the gain applicable to the extent that the asset has been partly used for the purposes of a trade or profession or has qualified in part for capital allowances is a chargeable gain. The part of the gain not so applicable is exempt. ***(3)***

Commodities

The exemption does not apply to a disposal of commodities by or through a market dealer. ***(4)***

Disposal of assets that were previously the subject of a relevant lease (within the meaning of section 299)

The exemption does not apply to disposals of machinery or plant where— ***(5)***

- the asset was previously the subject of a lease, on the terms described in ***section 299(1)***, and
- the person disposing of the asset is or was the lessor in respect of that lease

603A Disposal of site to child

Summary

This section provides exemption from capital gains tax in respect of any gain on a disposal, subject to conditions, on or after 6 December 2000, of a site by a parent or his or her civil partner to a "child" and that child's spouse or civil partner.

Details

The term "child of a parent", in relation to a disposal for which relief is claimed under the section, includes an individual who resided with, was under the care of and was maintained at the expense of, the person making the disposal throughout a period of 5 years (or periods which together amounted to 5 years), before the individual concerned reached the age of 18 years, but only if the claim is based on the uncorroborated testimony of one witness. ***(1)***

The section applies to a disposal of land having a market value that does not exceed €500,000 at the date of the disposal and the area of the land being disposed of does not exceed 0.4047 hectare, i.e. 1 acre (exclusive of the area on which the house is to be built). ***(1A)***

The disposal by a parent or his or her civil partner of the land to a child must be for the purpose of enabling the "child" to construct a dwelling house on the land on which a dwelling house is to be occupied by the "child" as his or her only or main residence. ***(2)***

The term "disposal" in ***subsection (2)*** includes a simultaneous disposal by both parents/civil partners to a child. ***(2A)***

If the child disposes of the land or part of the land without a dwelling house having been built on the site and occupied by the "child" as his or her only or main residence for a period of 3 years, then the chargeable gain which was exempted is treated as accruing to the "child" at the time of that disposal. However, a sale to the spouse of the "child" does not give rise to such a tax charge. ***(3)***

Only one tax-exempt disposal of land is allowed to each "child" under the section. However, if ***subsection (3)*** has been applied so that the full amount of the exemption in respect of a disposal to a "child" has been effectively withdrawn, a further disposal of land to that "child" is entitled to be exempted if the conditions of the section are met. ***(4)***

The section applies to the disposal of a site to a child of the civil partner of an individual if all other conditions of the section have been met. For this purpose, "disposal" includes a simultaneous disposal by both civil partners. ***(5)***

The references in ***subsection (2)(a)*** to a "child of a parent" and the references in subsections ***(2)(b), (3), (4)*** and ***(5)*** to "child" are deemed to include that child's spouse or civil partner. ***(6)***

604 Disposals of principal private residence

Summary

This section exempts from capital gains tax the gain made by an individual on the disposal of his/her dwelling house together with land occupied as its gardens or grounds up to an area (exclusive of the site of the residence) of one acre. For full relief to apply, the dwelling house must have been occupied by the individual as his/her principal private residence throughout his/her period of ownership of the house. Where the house is not so occupied during the whole period of ownership, only the proportion of the gain applicable to the period of occupation is exempt. The continuity of owner-occupation is not interrupted by periods spent in employment abroad or by periods of absence not exceeding in the aggregate 4 years because of the situation of an individual's place of employment or an obligation of the individual's employment to reside elsewhere. Any such periods are treated as periods of occupation of the principal private residence. In addition, the last 12 months of the period of ownership is, in any event, treated as a period of occupation of the principal private residence.

Relief is not given for any part of the gain which is applicable to a part of a house which is used exclusively for the purposes of a trade, business or profession. Relief is also not given for any part of the gain which is applicable to "development land value". In any such case, the relief would be determined only by reference to the gain which would have arisen if the house had been bought and sold for its value solely as a residence. Finally, an individual cannot have more than one principal private residence at any one time.

Details

Period of ownership

The term "period of ownership" is not defined as such. Thus, it must take its normal meaning, namely, the period for which the individual has owned the property concerned. ***(1)***

However, in cases where an individual has had different interests in the property at different times, the period of ownership is treated as starting from the time of the first acquisition in respect of which the individual incurred expenditure on the property which would be an allowable deduction in computing chargeable gains.

In addition, periods of ownership before 6 April, 1974 are not reckoned in determining whether the house has been the only or main residence throughout the whole period of ownership (***subsection (3)***), in apportioning the gain where the periods of occupation as a residence do not cover the whole period of ownership (***subsection (4)***), and in treating certain periods of absence as periods of occupation (***subsection (5)***).

Application

The section applies to a gain accruing to an individual on the disposal of, or of an interest in, a dwelling house which has been occupied by the individual as his/her only or main residence. It also applies to the disposal of, or of an interest in, land occupied as the gardens or grounds of the house up to an area of one acre (excluding the site of the house). If such land is to be exempted, however, it must be disposed of not later than the date of disposal of the residence. Where the land exceeds an acre, the part of the land to be included with the residence for the purposes of the relief is that which would be regarded as most suitable for occupation with the residence. ***(2)***

It should be noted that the section applies to a gain on the disposal of an interest in property as well as to a gain on the disposal of freehold property. Thus, the section applies to a gain arising where a person who occupies a house as his/ her main residence under a lease obtained at a premium assigns the lease or grants a sub-lease.

Full relief

Any gain on the disposal by an individual of his/her dwelling house is exempt from capital gains tax if the property has been occupied as his/her only or main residence throughout his/her period of ownership. The last 12 months of ownership is, in any event, to be regarded as a period of occupation. This allows for the case where the owner-occupier puts his/her house for sale and moves without being able to find a buyer immediately. ***(3)***

Partial relief

Where the dwelling house was not occupied by the individual as his/her only or main residence throughout the period of ownership, a proportion of the gain on the disposal is exempt. This proportion is the same proportion as the length of the period of owner-occupation (inclusive, in any event, of the last 12 months of ownership) bears to the length of the period of ownership. The balance of the gain is chargeable in the normal manner ***(4)***

Certain periods of absence treated as periods of occupation

A "period of absence" is a period during which the dwelling house was not the individual's only or main residence and throughout which the individual had no residence or main residence eligible for the relief. ***(5)(a)***

Certain periods of absence during which the individual was prevented from residing in the house are treated as periods of owner-occupation if, both before and after those periods, the house was occupied by the individual as his/her only or main residence. These are — ***(5)(b)***

- any period throughout which the individual worked in an employment or office all the duties of which were performed outside the State, and
- any period not exceeding 4 years, or any periods which together do not exceed 4 years, throughout which, because of the individual's place of work or a condition of employment, the individual had to reside elsewhere. The condition of employment must have been reasonably imposed to secure the effective performance by the individual of the employee's duties.

Example

period of ownership 1/4/85 to 30/9/02	17 years	
period of occupation —		
1/4/85 to 31/12/89 (actual)	4 years	
1/1/90 to 30/6/92 (deemed)	2 years	
1/7/92 to 31/3/95 (actual)	2 years	
1/4/95 to 31/3/99 (deemed)	4 years	
1/4/99 to 31/3/01 (actual)	2 years	
1/10/01 to 30/9/02 (deemed – last year)	1 year	17 years

Sale price		€250,000
Cost €50,000 indexed @ 1.735		€86,750
Total gain		€163,250
Reduce by principal private residence relief		

$63{,}250\times\frac{17}{17\frac{1}{2}}\frac{(34)}{(35)}$	€158,586
Chargeable gain	€4,664

House used for business purposes

Where part of a house is used exclusively for the purposes of a trade, business or profession, the gain on the disposal must be apportioned between the respective parts of the house. Only the part of the gain which is not attributable to the part of the house used for trade, business or profession purposes qualifies for relief. The part of the gain attributable to the part of the house used for such purposes is chargeable in the normal manner. ***(6)***

It is to be noted that apportionment of the gain is only necessary where part of the house is used exclusively for trade, business or professional purposes. If part of the house is being used for such purposes but not exclusively so, apportionment does not arise. For example, if a room was used as an office during the day and as a study room for children at night, apportionment would not be required.

Change in use of house

Where there are changes made as regards the use or structure of the house during the period of ownership, the relief is adjusted in such manner as the individual concerned and the inspector may agree. If there is no agreement, there is a right of appeal against the assessment to the Appeal Commissioners who may give such relief as they consider just and reasonable. Examples of changes of use or to the structure would include the case of an owner who, after occupying the whole house, converted it into flats, lived in one of them and let the rest, and the case where different parts of the house had been interchanged for residential and business use at different times. ***(7)***

One main residence only

For the purposes of the relief, an individual cannot have more than one main residence for any one period. If the individual has more than one residence, he/ she, after giving notice to the inspector by 5 April, 1976 or within 2 years of the beginning of the period, may come to an agreement with the inspector as to which residence is to be treated as the individual's main residence for the period in question. In the absence of agreement between the inspector and the individual, the inspector may make a determination as regards the whole or part of the period in question. ***(8)***

A person aggrieved by a determination made under this section may appeal the determination by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of the determination. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A of the Act. ***(8A)***

Married persons and Civil Partners

A married couple or civil partners living together may only have one main residence for both at any one time. If there is more than one residence, a notice under ***subsection (8)(a)*** must be made by both. If a house is transferred from one spouse/civil partner to the other, whether by sale, gift or death, the period of ownership is to date back to the time of acquisition by the one who first acquired the house even if that time was before their marriage or the registration of their civil partnership. Where each spouse/civil partner owns a residence, a notice of determination by the inspector under ***subsection (8)(b)*** as to which residence is to be treated as the main residence for the purposes of the relief must be given ***(9)*** to each spouse/civil partner and either spouse/civil partner has the right of appeal against the determination.

Settled property

Relief is also available on the disposal by a trustee of a dwelling house where during the period of ownership of the trustee the house had been occupied as a sole or main residence by the individual entitled to occupy it under the terms of the settlement. Where it is a question of deciding which (if more than one) residence is the main residence, any notice to be given under ***subsection (8)(a)*** must be given jointly by the trustee and the individual. ***(10)***

Dependent relatives

A "dependent relative" is a relative of the individual or of the individual's spouse or civil partner who is incapacitated by old age or infirmity from maintaining himself or herself, or the widowed father or widowed mother of the individual or of the individual's spouse whether or not so incapacitated. ***(11)(a)***

Relief is available in respect of a gain accruing to an individual on the disposal of a house or part of a house which during the individual's period of ownership has been the sole residence of a dependent relative. For the relief to apply, the house must have been provided gratuitously for the dependent relative (that is, rent-free and without any other consideration). Accordingly, any period during which the relative paid a rent to the individual, or occupied the house in consideration of performing services for the individual, does not count as a qualifying period of residence. ***(11)(b)***

Relief is also available where all other conditions of the section have been met and the residence concerned has been the sole residence owned by one civil partner and a residence owned by the other civil partner. ***(11)(c)***

The relief to be given, on a claim being made by the individual, is such relief as would be given in respect of the house and grounds if the house or the relevant part of it had been the individual's only or main residence during the period of residence by the dependent relative. This relief does not affect the relief available to the individual in respect of his/her own main residence and is additional to any relief the individual could claim in respect of the house in question in respect of any period during which the individual lived in the house (as his/her only or main residence) before its occupation by the dependent relative. In the case of any individual, only one house can qualify for this additional relief at any one time.

Development land

Necessary definitions for the operation of the subsection are set out. ***(12)(a)***

"base date" is the date of the original acquisition of the asset by the person disposing of it but, if the asset was acquired by that person before 6 April, 1974, the base date is 6 April, 1974.

"base value" is the cost price of the asset on the base date, excluding any incidental cost of acquisition (solicitor's and auctioneer's fees, stamp duty, etc), or its market value on 6 April, 1974 if the base date is that date.

"current use value" has the meaning set out in ***section 648***, of which is the interpretation section for the provisions dealing with the capital gains tax treatment of development land. Broadly, it is the market value calculated on the basis that the property had no development potential. In the context of this section, it means the value of a house and its grounds on the basis that the property could be sold for residential occupation only and without the possibility of development for other purposes.

"development land" is also defined by reference to ***section 648***. In general, land (including buildings) is development land if the proceeds of the sale (or market value) exceed the current use value at date of disposal.

Relief under the section is restricted where — ***(12)(b)***

- an individual makes a disposal of development land, and
- any gain on the disposal would (but for ***subsection (12)***) have attracted relief under the section as being a gain on the disposal of the individual's only or main residence (within ***subsection (2)***) or a residence occupied rent-free by a dependent relative (within ***subsection (11)***).

In any such case, relief is to be given only to the extent that it would be given if the amount to be taxed were determined under the normal rules governing disposals of development land but on the basis of the following exclusions —

- the excess of the base value of the asset over the current use value of the asset on the base date (normally, there will be no development value at a base date except where the asset being disposed of had development value when it was originally acquired (or, if it had been held on 6 April, 1974, at that date);
- the excess of the consideration for the disposal over the current use value of the asset on the date of disposal;
- where the asset was acquired after 6 April, 1974, the appropriate proportion of the incidental costs of acquisition that would have been referable to the excess referred to in ***subparagraph (I)*** ; and
- the appropriate proportion of the incidental costs of disposal that would have been referable to the excess referred to in ***subparagraph (II)***.

In effect, therefore, in any such case, the gain on the disposal is first calculated in the normal manner as a development land gain (see ***Chapter 2*** of ***Part 22***). This requires the application of special rules regarding indexation of base cost and of expenses of acquisition and non-indexation of enhancement expenditure. A notional computation is then made of the gain which would have arisen if the asset had both been acquired and disposed of for its current use value only (that is, without development value) and, where costs and expenses are deductible in calculating a gain, if the proportion of such costs and expenses referable to the development value had been excluded. The notional gain so computed is relievable under the section and is deducted from the actual chargeable gain arising on the disposal. The balance of the gain is chargeable as a development land gain.

Example

(A) Computation of actual chargeable gain

Proceeds €1,000,000 less expenses €50,000 €950,000

Deduct —

(a) proportion of costs of acquisition

$$12{,}000 \times \frac{140{,}000}{210{,}000} = \quad 8{,}000$$

indexed @ 1.175 = €9,400

(b) balance of such costs – not indexed by virtue of ***section 651*** €4,000

(c) relief for base cost —

		(i) C.U.V. on 1/6/97 €140,000 indexed @ 1.175	€164,500 €148,820	
		(ii) development value on 1/6/97 (€210,000 – €140,000) – not indexed by virtue of ***section 651***	€70,000	€247,900
	Actual chargeable gain =			€702,100
(B)	Computation of notional gain (relievable under ***section 604***)			
	Deemed proceeds (C.U.V. on 1/12/02)		€250,000	
	Less proportion of expenses of sale			
	$500{,}000 \times \frac{250{,}000}{1{,}000{,}000}$		€12,500	€237,500
	Deduct —			
	(a)	proportion of costs of acquisition		
		$12{,}000 \times \frac{140{,}000}{210{,}000} = 8{,}000$		
		indexed @ 1.175 =	€9,400	
	(b)	C.U.V. on 1/6/97 €140,000		
		indexed @ 1.175 =	€164,500	€173,900
		Notional chargeable gain		€63,600
(C)	Actual chargeable gain			€702,100
	Deduct notional chargeable gain eligible for relief under ***section 604***		€63,600	
	Taxable amount of chargeable gain		€638,500	
	Less annual exemption		€1,270	
			€637,230	
	Taxable at 20%		€127,446	

If the total consideration accruing to the individual in the year of assessment from all disposals of assets which are development land and would (apart from ***subsection (12)***) qualify for relief under ***section 604*** does not exceed €19,050, the restriction of the relief provided for in ***paragraph (b)*** does not apply. ***(12)(c)***

Apportionments

Any necessary apportionments of sale price may be made for the purposes of applying the provisions of the section as, for example, where a house is used partly as a residence and partly for business purposes. By virtue of ***section 544(5)***, apportionments are to be made by such method as appears to be just and reasonable. ***(13)***

Acquisition made for profit

The relief does not apply where the house was acquired wholly or mainly for the purposes of realising a gain on its disposal, nor does it apply to any part of the gain on the disposal which is attributable to enhancement expenditure incurred wholly or mainly for the purposes of realising a gain on the disposal of the house. ***(14)***

Disposal by way of a lottery or game with prizes

Relief under the section is restricted where —

- an individual disposes of an interest in a dwelling house and/or its grounds by way of a lottery or game with prizes;
- the proceeds of that lottery or game exceed the market value of the property on the date of the disposal; and
- any gain on the disposal would (but for ***subsection (15)***) have attracted relief under the section as being a gain on the disposal of the individual's only or main residence (within ***subsection (2)***) or a residence occupied rent-free by a dependent relative (within ***subsection (11)***).

In any such case, the consideration for the purposes of computing any chargeable gain is the proceeds of that lottery or game, or where there are multiple prizes, the proceeds referable to the dwelling house and/or its grounds, and the maximum chargeable gain to which principal private residence relief may apply is that computed by reference to the market value of the property at the date of disposal and not by reference to the full proceeds arising on foot of such lottery or game. The allowable costs and expenses of sale are similarly apportioned.

Therefore, in any such case, the gain on the disposal is first calculated in the normal manner. A notional computation is then made of the gain which would have arisen if the asset had been disposed of for its market value only and, where costs and expenses are deductible in calculating a gain, if only the proportion of such costs and expenses referable to the market value had been allowed. The notional gain so computed is relievable under the section and is deducted from the actual chargeable gain arising on the disposal. The balance of the gain is chargeable as normal.

Example

A house and grounds of one acre were acquired by a taxpayer on 1 October, 2010 for €200,000. The person resided in the house as his sole residence until he disposed of it by way of a raffle on 1 February, 2022. The proceeds of the raffle were €450,000. The expenses of sale were €12,000 (purchaser bore the stamp duty) and the market value of the property on the date of disposal was €300,000. The computation of the gain is as follows —

(A) Computation of actual chargeable gain

Proceeds €450,000
Less expenses €12,000
Less cost of acquisition €200,000

Actual chargeable gain = €238,000

(B) Computation of notional gain
(relievable under ***section 604***)

Deemed proceeds (M.V. on 1/02/22) €300,000

Less proportion of expenses of sale

	$12,000 \times \frac{300,000}{450,000}$	€8,000	
	Less cost of acquisiton	€200,000	
	Notional chargeable gain		€92,000
(C)	Actual chargeable gain		€238,000
	Deduct notional chargeable gain eligible for relief under ***section 604***	€92,000	
	Taxable amount of chargeable gain	€146,000	
	Less annual exemption	€1,270	
		€144,730	
	Taxable at 33%	€47,761	

604A Relief for certain disposals of land or buildings

This section gives relief from capital gains tax for property purchased in any state in the European Economic Area (including the United Kingdom) between 7 December 2011 and 31 December 2014 on a disposal of such property, where that property is held for 7 or more years. The gain attributed to that 7-year period will not attract capital gains tax. Where the property is held for at least 4 years and less than 7 years, any gain will not be liable to capital gains tax where the disposal is made on or after 1 January 2018.

The relief will only apply where the property was purchased for full consideration in the case a bargain at arm's length or for at least 75% of its market value where it was purchased from a relative. Relative for this purpose means a brother, sister, uncle, aunt, niece, nephew, ancestor or lineal descendant.

Any income, profits or gains from the property must be subject to Irish income tax/corporation tax.

The relief will not apply if arrangements have been put in place and it can be shown that the relief would be less if the arrangements had not been put in place.

604B Relief for farm restructuring

This section gives relief from capital gains tax in respect of gains arising on foot of transactions undertaken to achieve farm restructuring. The relief will apply to a sale, purchase or exchange of agricultural land in the period from 1 January 2013 to 31 December 2025, where Teagasc has certified that a sale and purchase or an exchange of agricultural land was made for farm restructuring purposes. The initial sale or purchase, or the exchange, must occur in the relevant period outlined above and the subsequent sale or purchase must occur within 24 months of that sale or purchase.

Full relief from capital gains tax will be given where the consideration for the purchase or the exchange of agricultural land is equal to or exceeds the consideration for the sale or the other land that is exchanged. Where the consideration for the purchase or exchange is less than the consideration for the land that is sold or the other land that is exchanged, relief will be given in the same proportion that the consideration for the land that is purchased or exchanged bears to the consideration for the land that is sold or the other land that is exchanged.

An individual who is entitled to relief under the section will be obliged to furnish certain information to the Revenue Commissioners to enable them to calculate the amount of capital gains tax that would have been payable if the relief had not applied. This information is required in order to comply with EU state aid publication requirements. Individuals who qualify for relief under the section are obliged to furnish such information at the same time as they deliver a tax return to Revenue.

A clawback of the relief is provided for where qualifying land in respect of which relief has been given is disposed of within 5 years of the date of purchase or exchange of that land. The clawback does not apply where the disposal arises under a compulsory purchase order.

604C Exemption of certain payment entitlements

This section provides for an exemption from CGT on any chargeable gains arising from the disposal by farmers of payment entitlements under the Single Payment Scheme, where all of those entitlements were fully leased and where the owners, because of the change in Common Agricultural Policy regulations, were advised by the Department of Agriculture, Food and the Marine, to transfer their entitlements to an "active" farmer on or before 15 May 2014.

605 Disposals to authority possessing compulsory purchase powers

Summary

This section provides relief from capital gains for a person who makes a disposal, before 4 December 2002, of property to an authority possessing compulsory purchase powers, where the authority has given formal notice of its intention to acquire the property or has actually exercised those powers. Where the whole of the consideration for the disposal is invested in comparable assets, the property in the State being disposed of (the "original assets") and the property being acquired (the "replacement assets") are treated as a single asset and a disposal is deemed not to have taken place on the occasion of the acquisition of the property by the authority. As the original assets and the corresponding replacement assets are regarded as the same assets, the owner is treated for indexation purposes as if they continued in uninterrupted ownership of the original assets.

This relief is abolished by section 67 of the Finance Act 2003 for disposals on or after 4 December 2002 except for the situation where replacement assets are acquired before 4 December 2002 but the related original assets have not been disposed of under the compulsory purchase order before that date.

Partial relief applies where part only of the compensation is reinvested. Where the cost of the replacement assets exceeds the compensation received, part of the replacement assets is treated as a new asset for the purposes of indexation.

There are restrictions to the relief in terms of time limits and with regard to which class the original and replacement assets belong.

Subject to certain exceptions, the relief does not apply in the case of disposals of development land (see ***section 652***). The main exception is where the land is being acquired for the purposes of road construction.

Details

Whole (and no more) of consideration reinvested

Where a person disposes of property in the State (the "original assets") before 4 December 2002, to an authority possessing compulsory purchase powers and claims and proves to the satisfaction of the Revenue Commissioners that — ***(1)***

- the disposal was made because of the exercise by the authority of its compulsory purchase powers or because the authority had given formal notice of its intention to exercise those powers [The latter provision is inserted so that undue delay will not arise in compulsory acquisition cases. If relief were available only where the full process of compulsory acquisition had been completed, undue delay would arise which could jeopardise essential development. Accordingly, proof of the service of formal notice will suffice to allow the grant of the relief.],
- the whole of the consideration (and no more) was applied in acquiring other property (the "replacement assets"), and
- subject to ***subsection (4A)***, the original assets and the replacement assets are within one, and the same one, of the classes of assets specified in ***subsection (5)***,

then the disposal is not to be treated as a disposal for capital gains tax purposes and the replacement assets and the original assets are to be treated as the same asset with the same base cost and the same date of acquisition as the original assets.

However, if a person has acquired, or entered into an unconditional contract to acquire, replacement assets before 4 December 2002, with the intention of disposing of the related original assets to an authority possessing compulsory purchase powers, but has not disposed of those original assets before 4 December 2002, the person may still be eligible to avail of relief under this section if they dispose of the original assets on or before 31 December 2003. The time limits as set out in ***subsection (4)*** must also be complied with.

Amount in excess of consideration reinvested

Where an amount in excess of the consideration is reinvested, the excess is to be treated as consideration for the acquisition of a part of the replacement assets and that amount is treated as having been expended at the time the replacement assets were acquired. ***(2)***

Example

	€
Farm purchased in 1975	25,000
Compensation received when compulsorily acquired in 1980	60,000
Reinvested in 1980 in new farm	80,000
Excess of cost of replacement assets over compensation received	20,000
If the new farm is sold later the allowable cost will be —	
Original cost	25,000
Additional cost	20,000

and indexation under ***section 556*** will apply to these two amounts from 1975 and 1980 respectively.

Part only of consideration reinvested

Where part of the consideration received from the authority is not reinvested, the person making the disposal is to be treated as having made a part disposal of the original assets for the amount not reinvested. The replacement asset is treated for the purposes of indexation as having been acquired at the time the original asset was acquired and its base cost is a proportion of the base cost of the original asset. ***(3)***

Example

	€
Farm purchased in 1975	24,000
Compensation received when compulsorily acquired on 14 November 2002	120,000
Amount reinvested	80,000
Amount not reinvested	40,000

Computation in relation to the part disposal —

The base cost is $\frac{40{,}000}{8{,}000} \times \; 24{,}000 = \; 40{,}000 + 80{,}000$

This amount, when indexed, will be allowed in computing the gain on the part of the lands which is treated as having been disposed of for €40,000. The period of ownership for indexation purposes will run from 1975.

Time limit for reinvestment and provisional granting of relief

The acquisition, or an unconditional contract for the acquisition, of the replacement assets must be made in the period beginning 12 months before and ending 3 years after the disposal of the original assets. However, the time limits may be extended by the Revenue Commissioners where circumstances warrant such an extension. Relief may be given provisionally where an unconditional contract for the acquisition is entered into and all appropriate adjustments may be made by way of assessments (and without regard to the general time limits for making assessments) or repayments (notwithstanding the general time limit for making a claim for a repayment of tax in ***section 865***) or discharge of tax when all the facts are known. (See ***section 652(5)*** regarding development land). ***(4)***

Disposal of let land

A person who disposes of let land, before 4 December 2002, under a compulsory purchase order for road-building or road-widening comes within the relief if — ***(4A)***

- in the 10 years ending with the time the land was first let, the person farmed the land,
- the first letting took place within 5 years ending with the disposal, and
- the proceeds are re-invested in land which the person will farm or in fixed assets of another trade. [Without this subsection only reinvestment in other land for letting would be eligible for relief.]

The classes of assets

To qualify for relief the original assets and the replacement assets must be within the same class. ***(5)***

Class 1 is concerned with the assets of a trade (including farming), broadly, plant or machinery, land and buildings, whereas Class 2 is concerned with land and buildings which are not trading assets, for example, let property. Where land is the stock-in-trade of a dealer in or developer of land, it will not qualify for the relief.

Specifically, Class 2 covers all land or buildings other than land used for the purposes of a trade (and, therefore, within Class 1) and a dwelling house on the disposal of which the owner could claim relief under ***section 604***.

606 Disposals of work of art, etc, loaned for public display

Summary

This section provides an exemption from capital gains tax on the disposal of a work of art that has previously been loaned to an approved gallery or museum or to the Irish Heritage Trust, for a period of not less than 10 years (6 years for loans made before 2 February 2006) and has been on display to the public. To qualify for this relief, a work of art must have a value of at least €31,740 at the time it is loaned to the gallery.

Details

Application

The categories of objects to which the section applies are "any picture, print, book, manuscript, sculpture, piece of jewellery or work of art". The final, general term, "work of art", could encompass other categories not specifically mentioned, for example, silver, glass, and porcelain. ***(1)***

Conditions

To qualify for relief under the section, the object must have a value of not less than €31,740 at the date it is loaned. The Revenue Commissioners are empowered to consult such person or body of persons as, in their opinion, may be of help to them to enable them to decide as to the market value of any particular object. A gallery or museum, which is to receive the object, must be approved by the Revenue Commissioners for the purposes of the section. ***(1)(a)***

An object loaned to a gallery or museum must be the subject of or included in a display to which the public is afforded reasonable access and the minimum period of loan must be not less than 10 years (for loans before 2 February 2006, 6 years) from the date of loan. It is not necessary that the object be on display to the public during the entire period of loan. ***(1)(b)***

Exemption

Where after the end of the 10 year, or as the case may be 6 year, loan period the object is disposed of by the person who lent it, the disposal is treated, for capital gains purposes, as if neither a gain nor a loss arises on the disposal. This treatment applies only to a disposal by the person who had lent the object. It does not apply to a disposal by a successor in title. ***(2)***

607 Government and certain other securities

Summary

This section provides for the exemption from capital gains tax of Government and certain other public securities. In addition, future contracts which are based on such securities are also exempt provided that the delivery of the security is an unconditional requirement of the contract.

Profits and losses on all futures contracts are calculated by reference to the market value of the underlying gilt.

Details

List of exempt securities

The following are not chargeable assets — ***(1)***

- securities (including savings certificates) issued under the authority of the Minister for Finance,
- stock issued by a local authority or a harbour authority mentioned in the First Schedule to the Harbours Act, 1946,
- land bonds issued under the Land Purchase Acts,
- debentures, debenture stock, certificates of charge or other forms of security issued by the ESB, Bord Gáis, the company established pursuant to section 5 of the Gas Regulation Act 2013, Irish Water, RTE, CIE, Bord na Mona or Dublin Airport Authority,
- securities issued by the Housing Finance Agency under section 10 of the Housing Finance Agency Act, 1981,
- securities issued by a body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995,
- securities issued by the National Development Finance Agency under section 6 of the National Development Finance Agency Act 2002,
- securities issued in the State, with the approval of the Minister for Finance, by the European Community, the European Coal and Steel Community, the International Bank for Reconstruction and Development, the European Atomic Energy Community or the European Investment Bank,
- securities issued by An Post and guaranteed by the Minister for Finance.

A gain on the disposal of any of the above assets is not a chargeable gain and, consequently, a loss on such a disposal is not an allowable loss.

Future Contracts

All future contracts which — ***(2)(a)***

- are unconditional contracts for the acquisition or disposal of securities which are exempt under the section,
- require delivery of the security, and
- meet the requirements of ***paragraph (c)***,

are not chargeable assets.

In the case of a futures contract dealt in or quoted on a stock exchange or futures exchange, the requirement that the security be delivered will be met if the person by whom the contract is made closes out the contract by entering into a reciprocal and opposite contract on the exchange and settles through the exchange on a net payment or receipt basis. ***(2)(b)***

Where a profit or loss on a futures contract is calculated, directly or indirectly, by reference to the acquisition cost or disposal proceeds of an instrument to which ***subparagraph (i)*** of ***subsection (2)(a)*** applies **—** ***(2)(c)***

- that acquisition cost will be the market value of the instrument at the date of acquisition, and *(i)*
- those disposal proceeds will be the market value of the instrument at the date of disposal. *(ii)*

For example, a person contracts to sell a given amount of a specified security on a specified day. Before the specified day he enters into a second contract to buy the same amount of the specified security on the same specified day. Instead of the person completing both deals separately, the exchange will net off the contracts and make a payment to the person if he has made a net profit on both transactions. In the event of a net loss, he will make a payment through the exchange.

608 Superannuation funds

Summary

This section exempts from capital gains tax gains from the disposal of investments held as part of an approved superannuation fund, the assets of a Personal Retirement Savings Account (PRSA), the assets of a PEPP or investments held as part of a cross-border pension scheme to the extent that the income from the investment funds is exempt from income tax. Gains from the disposal of investments of the superannuation fund set up for members of the Houses of the Oireachtas are also exempt. For these purposes, contracts for financial futures or traded options are treated as if they were an investment. Thus, any gains arising to the superannuation fund, the PRSA, the PEPP or cross-border pension scheme from dealing in financial futures and trading options are also exempt.

Details

Definitions and construction

"financial futures" and "traded options" are respectively financial futures and traded options dealt in or quoted on any futures exchange or any stock exchange. ***(1)(a)***

No attempt is made to elaborate on the meaning of the terms in question and they must therefore take their ordinary technical meaning. The generally accepted definitions of futures and options are —

Futures

A *futures contract* is a binding agreement to buy or sell, through an established exchange at a definite date and at a specified price, a standard quantity of a commodity of predetermined quality under fixed conditions of delivery. In the case of a financial futures, the commodity would be financial paper or currency.

An *interest rate futures contract* is a fixed, standard agreement between a buyer and a seller for the delivery of a round lot of a specified financial instrument or its cash equivalent, such as a 3 month €deposit or a 20 year government gilt, on a given date at an agreed price.

A *currency futures contract* is an agreement to deliver, or receive delivery of, a specified amount of a foreign currency, or its cash equivalent, on a fixed date at an agreed exchange rate.

Options

An *option* grants the holder the right but not the obligation to deal in the underlying instrument at a specified price within a specified time period. Thus, a gilt option confers the right to buy the underlying gilt at any time up to maturity of the option. The holder has the absolute right not to utilise this right to purchase the gilt (or exercise the option). If he fails to exercise the option at or before the maturity date, it expires worthless. A *put option* confers the right to sell the underlying instrument.

A financial future or traded option is to be treated as an investment for the purposes of ***subsection (2)***. ***(1)(b)***

Exemption

Gains on the disposal of investments of the superannuation funds of pension schemes approved by Revenue under ***section 774***, ***784(4)*** or ***785(5)***, held as PRSA assets (within the meaning of ***section 787A***) or held as PEPP assets (within the meaning of Chapter 2D of Part 30) are not chargeable gains and are thus exempt from capital gains tax. Schemes approved by Revenue are notified to tax districts by Retirement Benefits District. If there is a doubt as to whether a particular scheme is approved in whole or in part, that District should be consulted. ***(2)***

Gains on the disposal of investments held as part of a cross-border pension scheme as provided for by ***section 790B*** are not chargeable gains and are thus exempt from capital gains tax. ***(2A)***

Where part only of a fund is approved by Revenue, gains on disposals of investments are exempt only to the same extent as income from the investments would be exempt from income tax. ***(3)***

The exemption applies also to gains from the disposal of investments of the pension scheme established for members of the Oireachtas. ***(4)***

609 Charities

Summary

This section provides that a gain is not a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes. "Charity" is defined for the purposes of capital gains tax in ***section 5*** by reference to the meaning of that term in ***section 208***, which gives exemption from income tax in respect of the trading income of charities, and, thus, means any body of persons or trust established for charitable purpose only. Essentially, therefore, any body which qualifies for charity exemption for income tax also qualifies for exemption from capital gains tax. In order to prevent the avoidance of capital gains tax through the use of "time charities", that is, a charity set up for a limited period at the end of which the assets revert either to the settlor of the charitable trust or to other beneficiaries, ***section 609*** also provides that when the assets so revert they are to be treated as having been sold by the trustees at that time at market value and any gain arising on this deemed disposal is a chargeable gain.

Details

A gain is not a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes. ***(1)***

When assets held on charitable trust ceases to be subject to the trust, the trustees are deemed to have disposed of and immediately reacquired the assets in question at that time for a consideration equal to the market value of the assets, and any resulting gain is not treated as accruing to a charity, that is, it is a chargeable gain in respect of which the trustees are liable to tax. Furthermore, any earlier gains on disposals of assets by the trustees which have not been applied for charitable purposes become chargeable.

Assessments to capital gains chargeable by virtue of the section may be made at any time within 10 years after the end of the year of assessment in which the assets cease to be subject to the charitable trust.

610 Other bodies

This section gives exemption from capital gains tax to the bodies listed in ***Part 1*** of ***Schedule 15*** by treating any gain accruing to such a body as not being a chargeable gain. A similar exemption is given to the bodies listed in ***Part 2*** of ***Schedule 15*** in respect of disposals by any such body to the Interim Board established under the Milk (Regulation of Supply) (Establishment of Interim Board) Order, 1994 (S.I. No. 408 of 1994).

610A Exemption for proceeds of disposal by sports bodies

This section ensures that a gain by an approved sporting body will get an exemption from capital gains tax if the proceeds of a disposal are used for the sole purpose of promoting athletic or amateur games or sports or, in the case of disposals on or after 1 January 2005, if a portion of the proceeds is paid to a charity.

In the case of a donation by a sports body to a charity, the body concerned must apply to the Minister for Finance for approval to make the donation and specify the charity concerned. The Minister has the power to refuse to grant the exemption if he or she does not believe the public good would be served if the donation were made. The donation must be evidenced by a deed which stipulates that the donation must be applicable and must be applied for the purposes of the charity only and neither the donor nor a person connected with the donor receives a benefit, directly or indirectly, in consequence of making the donation.

The proceeds of a disposal by an approved sports body must be expended within a period of 5 years. However, an extension of the 5-year period is provided for where the body concerned can show that it is in the process of using the proceeds for sporting or charitable purposes.

611 Disposals to State, public bodies and charities

Summary

This section deals with the transfer of assets to the State or to a charity or certain bodies. Where an asset is so transferred for no consideration (that is, as a gift) or for a consideration not exceeding the cost of the asset, the normal rule substituting market value for the disposal (***section 547***) does not apply. Instead, the disposal by the transferor and the acquisition by the State, charity or other body is treated as having been made for such a consideration as will result in neither a gain nor a loss. Where the consideration for the transfer is greater than the cost of the asset, the market value rule (***section 547***) does not apply and any gain on the transfer is calculated by reference to the actual consideration received.

Where an asset is transferred to a charity or any of the bodies referred to in the section for no consideration or for a consideration which does not exceed the cost of the asset, and there is a subsequent disposal of the asset by the charity or other body, an occasion of charge will arise if the disposal is not exempt, that is, if the charity or other body has not retained its exempt status. [As most of the bodies listed, for example, local authorities, will be exempt from capital gains tax, this provision is aimed mainly against charities set up for a limited period only with a view to obtaining the benefits of the section but intent on disposing of the transferred assets at a later date.] In this event the body concerned will become liable to the capital gains tax which (were it not for the relief under ***section 611***) would have been chargeable on the original owner when the transfer was made to the body, in addition to any liability on gains which may have accrued during its own period of ownership of the asset. Where a donation of quoted securities is made to a charity and relief under ***section 848A*** is claimed, the relief under this section is not available.

Details

Transfers of assets to State, public bodies and charities

Where a disposal of an asset is made to the State, a charity or to any of the bodies referred to in ***subparagraph (iii)***, and the disposal is not made by way of a bargain at arm's length, the normal rule in ***section 547*** (consideration deemed to be equal to market value) does not apply. If consideration is received for the disposal which results in a gain, that gain is charged without increasing the consideration to market value as would normally be required under ***section 547***, and the base cost of the asset for any subsequent disposal by the recipient is set at the actual consideration paid to the transferor. ***(1)(a)***

However, if there is no consideration for the disposal, that is, if it is a pure gift, or if the consideration is less than the amount allowable under ***sections 552*** and ***828(4)*** (that is, broadly, the cost of the assets and enhancement expenditure adjusted in accordance with the indexation provisions of ***section 556***), then —

- no charge arises as the transaction is treated as resulting in neither a gain nor a loss, and ***(1)(a)(I)***
- if the disposal is to a charity or to any of the bodies mentioned in ***subparagraph (iii)***, (but not to the State) and the asset is later disposed of, the charity or other body making that later disposal may be liable to be charged in respect of the capital gains tax which would have been chargeable on the earlier disposal if ***section 547*** had applied to it, in addition to the capital gains tax in respect of any gain accruing to it on the later disposal. ***(1)(a)(II)***

However, these charges only arise if a gain on the later disposal would be a chargeable gain. This would arise only where the body was no longer within ***subparagraph (iii)*** or had ceased to be a charity. Thus, for example, if a charity remains a genuine charity, there is no question of a charge on the later disposal or an additional charge by reference to the earlier disposal.

Provision is made to ensure that where relief was given under the section on a disposal to a charity or other body made before 20 Decenber1978 and there is a disposal by the recipient on or after that date in such circumstances as are mentioned in ***paragraph (a)(II)*** (that is, if a gain on the disposal by the charity or other body would be a chargeable gain) the charging provisions in ***paragraph (a)(II)*** will apply to withdraw the relief granted. Any relief given may be adjusted by means of assessment or amended assessment in accordance with self assessment principles. Any taxpayer affected is required to make a full and true return of the disposal – including details of the disposal and the necessary self-assessment to withdraw any relief previously claimed. ***(1)(b)***

The amount of the tax to be recovered under ***paragraph (a)(II)*** is the additional amount of tax that the transferor would have paid if the market value rule in ***section 547*** had applied to the earlier disposal. ***(1)(d)***

Disposals of settled property to State, public bodies and charities

There are certain occasions where assets held under trust are deemed to have been disposed of at market value thus triggering a possible charge to capital gains tax. These are — ***(2)***

- when a person becomes absolutely entitled to trust assets against the trustee, that is, when assets leave the trust (***section (576(1)***), and
- when a life interest in settled property ceases and another interest is set up but the assets remain in trust (***section 577(3)***).

Where, however, the person becoming absolutely entitled to the settled property is the State, a charity or a body within ***subsection (1)(a)(iii)***, or where the settled property is henceforward held exclusively for the benefit of the State, a charity or one of those bodies, the deemed disposal under ***section 576(1)*** or ***577(3)*** will not be at market value but instead at a consideration which will result in neither a gain nor a loss. This provision is conditional on no consideration being received by any person in connection with any transaction by which the State, charity or other body acquires its interest in the assets. Thus, the provision would not apply if a person were to surrender his life interest in settled property to a charity in return for benefits for himself or others. In such cases there would be a charge to tax on the trustees of the settlement based on market value at the time when the charity acquired its interest.

611A Treatment of certain disposals made by The Pharmaceutical Society of Ireland

This section ensures that any assets acquired by the new Pharmaceutical Society of Ireland from the old Society under the Pharmacy Act 2007 are charged to capital gains tax on a disposal of such assets by the new Society as if they were owned by that entity from the date they were acquired by the old Society.

612 Scheme for retirement of farmers

The European Communities (Retirement of Farmers) Regulations, 1974 were introduced to encourage older farmers to retire and provided that a farmer would get an annual pension and a capital sum (called a premium) in addition to the normal purchase price on the sale of the farm. ***Section 612*** provides that any such capital sum or premium is not to be included in the consideration for the disposal of the farm. Thus, such capital sums or premia are exempt from capital gains tax.

613 Miscellaneous exemptions for certain kinds of property

Summary

This section provides that the following are not chargeable gains —

- any bonus payable under the national instalment savings scheme,
- prize bond winnings,
- compensation for personal injury,
- payments made in accordance with specified State schemes,
- gains from betting, lotteries and sweepstakes,
- lump sums paid under the terms of pension schemes,
- annuities under deeds of covenant not secured on property, and
- gains on the disposal of certain interests arising under a settlement.

In addition to the above, compensation received by turf cutters for ceasing to cut turf is not a chargeable gain.

Details

The following are not chargeable gains and, thus, are exempt from capital gains tax — ***(1)***

- any bonus payable under the national instalment savings scheme
- prize bond winnings

- compensation for personal injury or for damage to an individual in his/ her profession
- compensation under the 2017 Voluntary Homeowners Relocation Scheme
- any payment to which section 205A (Magdalen laundry payments) applies
- any payment to which section 205B (Payments under Mother and Baby Institutions Payment Scheme Act 2023) applies
- any payment to which section 205C (Exemption in respect of CervicalCheck payments) applies.

Winnings from betting, lotteries, sweepstakes or games with prizes are exempt from capital gains tax as are rights to winnings from those sources (for example, the sale of a bet). ***(2)***

Annuities or lump sum paid to individuals under the terms of a pension scheme or of a contract (other than for a deferred annuity) with an assurance company are exempt from capital gains tax. Any annuity not secured on property which is payable under a covenant is similarly exempt. ***(3)***

Subject to the exclusion below for non-resident settlements, where there is a disposal of an interest created by or arising under a settlement, no chargeable gain accrues if the disposal was made — ***(4)(a)***

- by an original beneficiary under the terms of the settlement, or
- by any other person except one who acquired, or derived his or her title from, one who acquired the interest for a consideration in money or money's worth, other than consideration consisting of another interest under the settlement.

The purchaser of an interest (or a person deriving an interest from a purchaser) is chargeable on a gain made — ***(4)(b)***

- on disposal of the interest by him/her, or
- on his/her becoming absolutely entitled as against the trustee to the property, the consideration for the disposal being the market value of the property as diminished by any capital gains tax charged on the trustee under ***section 576(1)*** in respect of the property.

In the latter case the trustee is also chargeable under ***section 576(1)*** except where the absolute entitlement arises from the termination of a life interest due to the death of the person entitled to that interest.

The exemption afforded by ***subsection (4)*** does not apply to disposals of interests in settled property if — ***(5)***

- at the time of disposal, being on or after 11 February 1999, the trustees of the settlement are neither resident nor ordinarily resident in the State,
- if the settlement falls within ***subsection (6)***, or
- the property comprised in the settlement is or includes property that is derived directly or indirectly from a settlement falling within that subsection.

A settlement falls within ***subsection (6)*** if there has been a time when the trustees of the settlement were either not resident and ordinarily resident in the State or fell to be regarded as resident in a territory outside of the State by virtue of a double taxation relief agreement. ***(6)***

A chargeable gain does not arise in respect of compensation received by turf cutters under the Turf Cutting Compensation Scheme or the Protected Raised Bog Restoration Incentive Scheme administered by the Minister for Culture, Heritage and the Gaeltacht relating to a ***(7)***

European Site, a Natural Heritage Area or any other land which, in the opinion of the Minister, is necessary to achieve the restoration of such Site or Area. In addition, a chargeable gain does not arise on a disposal of land to the Minister for Culture, Heritage and the Gaeltacht where that land has been acquired by the Minister for the purposes of granting a right of turbary to an individual who:

- is entitled to compensation under one of the schemes referred to, and
- enters into an agreement with the Minister in respect of that land.

Gains which may arise in respect of disposals of specific assets in accordance with specific provisions of the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023 are not chargeable gains and, thus, are exempt from capital gains tax. The provisions of this subsection will come into effect on the coming into operation of the relevant provisions of the Historic and Archaeological Heritage and Miscellaneous Provisions Act 2023.

613A Supplementary provisions

Summary

This section addresses the amount of chargeable gains which can accrue to a person in respect of a disposal of an interest in certain settlements covered by ***section 613***.

Details

Subsection (2) applies where — ***(1)***

- a trust has migrated offshore such that a chargeable gain accrues to its trustees under ***section 579B*** ;
- after the time of migration a person disposes of his or her interest in the settlement and there is no exemption from tax for such disposal; and
- the interest disposed of was created for the benefit of the person making the disposal or that person otherwise acquired it before the migration.

In such a situation the chargeable gain accruing to the person is calculated as if the person had disposed of and immediately reacquired the interest in the settlement immediately before the time of migration. ***(2)***

Subsection (2) does not apply where the trustees had fallen out of charge to Irish capital gains tax by virtue of a double taxation agreement prior to the person who is disposing of an interest in the settlement acquiring that interest. ***(3)***

Subsection (6) applies where — ***(4) & (5)***

- ***section 579B*** applies as regards the trustees of a settlement which migrates;
- after the time of migration a person disposes of an interest in the settlement and no capital gains tax exemption applies to that disposal;
- the interest being disposed of was created or otherwise acquired by the person before the migration; and
- the trustee fell out of charge to Irish capital gains tax by virtue of a double taxation relief agreement during the relevant period i.e. the period beginning with the creation or acquisition of the interest and ending with the time of migration.

In such a situation the chargeable gain accruing on the disposal of the interest in the settlement is calculated as if it was disposed of and reacquired at market value immediately before the time that the trustees fell out of charge to Irish capital gains tax or if there is more than one such time, the earliest of those times. ***(6) & (7)***

Where ***subsection (2)*** has application, ***subsection (6)*** does not apply. ***(8)***