

## Capital Gains Tax: disposals of development land

### Part 22-02-01

This document should be read in conjunction with section 648 Taxes Consolidation Act 1997

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## Executive summary

This section provides definitions for the purposes of the CGT charge on disposals of development land provided for in Chapter 2 of Part 20 of the Taxes Consolidation Act 1997.

### 1.1 Definitions:

**(a) Development land** is land in the State, or unquoted shares deriving their value or the greater part of their value directly or indirectly from such land, the consideration for the disposal of which, or the market value at the time of disposal, exceeds the current use value at the time the disposal was made.

**(b) Current use value**, in relation to land, or unquoted shares deriving their value or the greater part of their value (that is, over 50 per cent) directly or indirectly from land, is the amount which would be the market value of the land if its value were calculated on the basis that it was at that time, and would remain, unlawful to carry out any development in relation to the land other than development of a minor nature.

### 1.2 Development land test

The test to be applied to determine whether land is development land is whether the sale price (or market value) includes an element in respect of development value in the land, in other words, whether the sale price exceeds what the land would have realised if it were sold on the basis of its existing use. If planning permission had been obtained prior to the disposal or if the sale were made to a developer, there would be no doubt as to the position, but it should be remembered that land or buildings may be within the category of development land even though permission for development or for a change of use had not been obtained at the date of the disposal. The essential test is the price realised.

### 1.3 Case law

The question of whether land had sold for more than its current use value was considered by the Appeal Commissioners [Decision 5AC 2003 - see Appendix 1]. The land, which comprised a house and approximately 8 acres, was sold for a sum which significantly exceeded the value attributed to it in valuation reports. The Commissioner determined, based on the specific facts of the case and the evidence provided, that the land was not development land.

## Appendix 1

### Appeal Commissioners Decision 5 AC 2003

#### Appeal Commissioners determination

##### Facts

Taxpayer purchased a substantial residence together with a gate lodge and land of approximately 8 acres in one lot at auction in 1987. Although close to a city, the land was part of a "green belt" and no attempt had been made by the purchaser to develop it. Some of the land surrounding the house was used as a garden; the balance of the land was used occasionally as grazing for a few horses. The gate lodge and a small part of the main house were rented as private dwellings from time to time. The main house itself, and all of the lands were occupied by the taxpayer and his family. After approximately 10 years, the owner took advice from property experts who valued the entire property at prices, which varied, but with a mean value of approximately 400% of the purchase price. Subsequently, the owner was approached by an estate agent on behalf of clients of his who, following negotiations, contracted to buy the house and lands for approximately 1000% of the price paid by the taxpayer.

##### Evidence

Evidence was given by valuers for both sides that:

1. The contract price was considerably in excess of what the land would have sold for even if full planning permission to develop it had existed. (i.e. its "development value").
2. There was no realistic prospect of permission being given for development of the land within the foreseeable future.
3. The price obtained was completely exceptional and reflected the purchaser's determination to acquire the particular property and the fact that the vendor had no interest in parting with the property except for a truly exceptional price.
4. There was no likelihood of another purchaser being found who would pay anything close to the agreed contract price.

By the purchaser that:

1. He and his wife had strong personal attachments to the area and had no intention of developing the lands.
2. They would have paid exactly the same price for the property even if there had been a specific legal prohibition on any current or future development of the property.
3. They acquired the property solely on the basis of its amenity value to them.

### **Revenue**

The inspector of taxes argued that the valuers accepted that the land had sold for a price well in excess of what its market value might reasonably have been expected to be. Therefore, it should be treated as “development land” within the meaning of section 648.

### **Taxpayer**

Argued that, on the evidence, the purchasers had been willing to pay an exceptionally high price for the land because of the value they placed on the property. However, that value represented “amenity value” to the purchasers. Further, on the evidence, the amenity value paid considerably exceeded the theoretical development value which might have been obtained had it been lawful to develop the land; which it was not. There was, on the taxpayer’s submissions, no reason why current use value or amenity value should not exceed development value and the proper test to be applied was what would the land have sold for had the statutory fiction of a permanent prohibition on development been in place.

### **Decision**

The Appeal Commissioner determined that the legislation effectively required him to ask the following questions.

1. What was the contract price for the sale of the property?
2. What would the property have sold for if it had been sold on the basis that it was, and would remain, unlawful to develop it?

If question 2 produced a value, which was less than the answer to question 1, the land was “development land”. Otherwise it was not.

He accepted the evidence of the purchaser of the property that he would have contracted to pay same amount whether or not it was and would remain unlawful to develop the property.

Therefore, the Appeal Commissioner determined that the property was not “Development land” within the meaning of section 648 TCA 1997.

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