

Corporation Tax/Capital Gains Tax interaction

Part 02-02-08

This document should be read in conjunction with Chapters 2 and 3 of Part 2 of the Taxes Consolidation Act 1997

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1. Introduction

This manual outlines the interaction between corporation tax provisions and capital gains tax provisions and specifically the application of capital gains tax provisions to chargeable gains accruing to a company.

2. Corporation tax/CGT interaction

Capital gains accruing on disposals by a company from 6 April 1974 to 5 April 1976 are assessable and chargeable to capital gains tax in the same way as in the case of any other person.

From 6 April 1976, however the term “profits” includes chargeable gains and a company whose profits are chargeable to corporation tax (or would be so chargeable but for an exemption) is not normally chargeable to capital gains tax. From the time when a company comes within the charge to corporation tax, the amounts of chargeable gains on which it is taxable are normally aggregated with its income to arrive at its corporation tax profits. However, in accordance with section 21(3) of the Taxes Consolidation Act (TCA 1997), capital gains on the disposal of **development land** on or after 28 January 1982 are charged to capital gains tax and not corporation tax (see **section 649** TCA 1997).

Non-resident companies are chargeable on gains accruing on the disposal of specified assets (see **section 29** TCA 1997).

- The charge is to corporation tax where the gains accrue on assets situated in the State which, at or before the time when the chargeable gains accrued were used in or for the purposes of a trade carried on by the company in the State through a branch or agency, or which at or before that time were used or held or acquired for use by or for the purposes of the branch or agency.
- A gain which accrues to a non-resident company on the disposal of an asset, the profits or gains from which the company was chargeable to tax under Case V of Schedule D, or would have been but for an insufficiency of profits or gains, is within the charge to corporation tax. The only exception to this rule is where a gain is realised on the disposal of development land, in which case the gain is within the charge to capital gains tax.
- Otherwise the charge is to capital gains tax.

In all cases non-resident companies are chargeable to capital gains tax on the disposal of development land.

Chargeable gains accruing to a company in a fiduciary or representative capacity are excluded from the charge to corporation tax by the general rule which excludes profits so accruing. Such gains are, however, chargeable on the company to capital gains tax at the prevailing rate of capital gains tax. For example, where a trustee company holds the investments of an unapproved superannuation fund and realises chargeable gains on the disposal of any of those investments.