Disposals where assets lost or destroyed or become of negligible value (S.538)

Part 19-01-09

This document should be read in conjunction with section 538 of the Taxes Consolidation Act 1997

Document last reviewed August 2023

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

Table of Contents

Introduction 3
9.1 Land and buildings 3
9.2 Timing of claim for negligible value 4
9.3 Anglo Irish Bank 4
9.4 Partnerships 4
9.5 Where a company is dissolved or struck-off 4
9.6 Negligible value 5

Introduction

Section 538 of the Taxes Consolidation Act 1997 ("TCA 1997") provides for the occasion of the complete destruction or extinction of an asset. It is treated as a disposal of the asset for Capital Gains Tax ("CGT") 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.

9.1 Land and buildings

Section 538(3) TCA 1997 applies subsections (1) and (2) of that section (Tax and Duty Manual (TDM) Part 19-01-06) to buildings and structures on land which would otherwise be outside the scope of those subsections because in law the asset is land which can never be entirely destroyed and is unlikely to become of negligible value.

A building or structure can therefore be regarded (for the purpose of giving relief under these two subsections) as a unit distinct from the land on which it stands. The person is treated as if he or she had also sold and immediately re-acquired the site of the building or structure (including in the site any land occupied for the purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time. Consequently, the loss relief is measured by reference to the cost of the land and building to the owner and the value of the land and building at the time when the claim was made, so that any increase in the value of the land will reduce the amount of loss on the building for which the relief is claimed. In practice, however, any appreciation in the value of the site of the building or structure would not be precisely computed or ascertained if it is clear that the appreciation in value of the site is small, being not more than 5 per cent of the loss which has been sustained on the destruction of the building or structure.

Where there are demolition costs, see TDM Part 19-02-10.

Where allowable expenditure on the building or structure destroyed has already been fully covered by capital allowances, **section 555(1) TCA 1997** operates to preclude relief for the loss incurred (see TDM Part 19-02-12). In such circumstances, the capital loss on the destruction of the building or structure need not be computed.

Cases may arise where the appreciation in the value of the site of the building or structure is so great that it would be against the owner's interest to claim that the land and the building or structure should be regarded as separate units. In such cases, **section 538(3) TCA 1997** is not applicable.

9.2 Timing of claim for negligible value

On a strict interpretation a loss arising on a deemed disposal under **section 538(2) TCA 1997** is allowable only in the year of claim. However, in practice, a claim made within twelve months of the end of the year of assessment or accounting period for which relief is sought will be admitted, provided that the asset was of negligible value in the year of assessment or account period concerned.

9.3 Anglo Irish Bank

Where, resulting from the provisions of the **Anglo-Irish Bank Corporation Act 2009**, shares in Anglo Irish Bank are transferred to the Minister for Finance, there will be a disposal to which **section 538 TCA 1997** applies. Where a claim is made, the shares will be treated as of negligible value and a loss for 2009 may be calculated. If it later transpires that compensation is received, under the terms of the Act, in respect of the transferred shares, this will be treated, under **section 535 TCA 1997**, as consideration for a disposal at time of receipt. In such a case, if a negligible value claim was made earlier, there will be no base cost and any chargeable gain arising shall be computed accordingly. If a negligible value claim was not made, the costs of acquisition of the shares transferred will be the base cost to be set against any compensation proceeds.

In this instance, no separate claim need be made. If the loss is being claimed for 2009, it may be set against other gains, as appropriate, in arriving at CGT due on 15 December. In making any CGT return or in completing the CGT panel of an Income Tax return, the loss may be used without separate comment.

9.4 Partnerships

Where a partnership has written off goodwill in the balance sheet and a partner makes a subsequent disposal of his or her share in partnership assets, including goodwill, the partner is treated as realising a loss on the goodwill if he or she has a cost greater than nil.

9.5 Where a company is dissolved or struck-off

Where a company is dissolved or struck-off, any property in the company's ownership at that date falls to the State by virtue of a provision in the **State Property Act 1954**. However, the former shareholders may establish entitlement to this property and so can petition the Minister for Finance to waive his or her interest in the property in favour of them. In these circumstances, title to the property reverts to the former shareholders.

9.6 Negligible value

The word ‘negligible’ is not defined for the purpose of the CGT Acts and therefore takes its normal meaning, i.e., not worth considering; insignificant. The concept of negligible value is not comparative in nature. A dramatic fall in the value of shares, e.g. due to the volatile nature of the sector in which it operates, would not give rise to a negligible value claim where the company continues to operate and its shares continue to be traded. For example, shares purchased for €10m would not be regarded as having negligible value by virtue of their value decreasing to €100,000. Clearly, €100,000 is not a negligible amount. Revenue does not accept that the legislation is intended to be applicable in these circumstances particularly where there would be a ready mechanism available to the shareholder to dispose of the shares. **Section 538 TCA 1997** is not intended to be a provision for making losses available on an artificial basis in circumstances where there would be no impediment to their actual disposal in the marketplace. In applying the provisions of this section, the inspector will look to the specific facts in ascertaining if the value of the asset has become negligible. In the case of shares, for example, a claim will only be considered where the inspector is satisfied that they are effectively worthless. Persons claiming relief under this section should provide their inspector with full details, supported by relevant documentation, of the circumstances in which the relevant asset has become of negligible value.