

## **Disposals of business or farm on "retirement"**

### **Part 19-06-03**

This document should be read in conjunction with section 598  
of the Taxes Consolidation Act 1997

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## Executive Summary

**Section 598** provides for relief from Capital Gains Tax, in certain circumstances, to an individual who attains the age of 55 years and disposes of qualifying **assets to persons other than a “child” of the disponent**. **[Section 599** provides a similar relief where the business or farm is disposed of to a “child” of the disponent and is dealt with in [Tax and Duty Manual Part 19-06-03b](#), Disposals within family of business or farm.

### 3.1 The Relief

Section 598 relief is commonly referred to as retirement relief, however, a taxpayer does not have to retire (in the popular sense of the word) in order to qualify for this relief; he or she has merely to dispose by way of sale or gift of qualifying assets on or after the date on which he or she attains the age of 55 years. Differing levels of relief are granted to individuals who are 66 years or over when they make a disposal.

For disposals on or after 1 May 2008 the age limit is reduced to 45 years for individuals who get compensation payments 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.

**Section 34 Finance Act 2017** provides that, as regards disposals made on or after 1 January 2018, 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.

### 3.2 Qualifying Assets

For the purposes of the relief “qualifying assets” mean –

the “chargeable business assets” of the individual which apart from tangible movable property he or she has owned for a period of at least 10 years ending on the date of disposal and which have been his or her “chargeable business assets” throughout that 10-year period. For disposals on or after 1 May 2008 these 10-year periods are reduced to 6 years for payments 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,

- shares or securities held for at least 10 years ending with their disposal in a “relevant company” i.e. 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 or 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 his or her family trading 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 or disposed of outright under the Scheme of Early Retirement from Farming where for a period of not less than 10 years prior to it being leased it was owned by the individual claiming relief and used by him/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 (for the purposes of enabling an authority construct, widen or extend a road or for a purpose connected with the construction, widening or extension of a road), but prior to its first letting, was farmed for 10 years by the person making the disposal,
- land which was let at any time during the 25 year period prior to its disposal and which, prior to its first letting (including letting on conacre), was farmed for not less than 10 years by the person making the disposal **and the disposal is made to a “child”** (within the meaning of **section 599**),
- land which was let at any time during the 25-year period prior to the disposal and which, prior to its first letting (including letting on conacre), was farmed for not less than 10 years by the person making the disposal **and the disposal is made to an individual other than a “child”** of the disponent in the period commencing on 1 January 2015 and ending on 31 December 2016, 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 not less than 10 years by the person making the disposal **and the disposal is on or after 1 January 2015 to an individual other than a “child”** of the disponent. In this case each letting of the land must be for a minimum period of 5 years, although each 5-year letting can be to a different individual. Where the land has been let under one or more conacre agreements before 31 December 2016, this will not affect entitlement to relief, provided the land is let for a period of not less than 5 years commencing **on or before 31 December 2016**.

## Farmer retirement relief

### Sections 598/599 Taxes Consolidation Act 1997

**An essential requirement in relation to retirement relief as regards farming is that the farmer must have owned and farmed the land for a minimum period of 10 years.**

Where, in addition to the above requirement, land has been let following the cessation of farming, the following chart summarises the various situations in which retirement relief can be claimed:

Land farmed by disponent	Followed by Conacre letting	Followed by Lease (max 25 years)	Disposal on or after 1 January 2015	Qualifies for Relief
Land must be farmed for a minimum of 10 years	<b>Yes</b>	_____	Sale or transfer to "child" of disponent	Yes
As above	<b>Yes</b>	_____	Sale to third party — Sale must be on/before 31/12/2016	Yes
As above	<b>Yes</b>	Yes, but conacre letting will be taken into account for purposes of the 25-year period	Sale or transfer to "child" of disponent	Yes
As above	<b>Yes</b>	Yes — lease must be entered into on/before 31/12/2016 and be for a minimum of 5 years	Sale or transfer to third party	Yes
As above	_____	Yes	Sale or transfer to "child" of disponent	Yes
As above	_____	Yes — lease must be for minimum of 5 years	Sale or transfer to third party	Yes

As regards the disposal of qualifying assets by way of capital distribution from a family company, see pages 16 and 17.

### 3.3 Ownership and Usage Tests

The following provisions apply for the purposes of determining if the ownership and usage tests outlined above are met:

- the period of ownership of an asset by a spouse or civil partner of an individual is treated as if it were a period of ownership by 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 a 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 of use of land by an individual as a partner in a milk production partnership or a registered farm partnership is treated as if it were a period of use by the spouse of that individual where the spouse or civil partner is a co-owner of the land and 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 the death of the spouse or civil partner of the individual throughout which the deceased was a full-time working director is treated as if it were a period throughout which the individual was a full-time working director.
- 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) a company that was treated as being the same company as the relevant company for the purposes of **section 586**, or
  - (b) 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 working director of a “relevant company”.

Where a holding company is interposed or removed during the 10 years prior to disposal, a "look through" approach may be taken in determining if the shareholder satisfies the requirements that he or she has held the shares for 10 years and has been a working director for 5 years.

In strictness, relief is not due if a trade is transferred from a holding company to a subsidiary in the 10 years prior to disposal of shares. In practice, relief will be allowed where all other requirements of the section are met.

Shares held by a limited company funded by the International Fund for Ireland with the object of creating employment in a disadvantaged area should be ignored in determining whether or not a company is a holding company within the meaning of **section 598(1)** Taxes Consolidation Act, 1997.

Where a lease expires, and a new lease is granted the periods of ownership of both may be aggregated for the purpose of the 10-year ownership requirement.

### 3.4 Calculating the relief

The base for calculating relief is the amount of the consideration on disposal of qualifying assets. The separate amounts of consideration for all such disposals over the lifetime of the individual are aggregated and up to a threshold of €750,000 aggregate (€500,000 for disposals between 6 February 2003 and 31 December 2006), gains accruing from the disposal of qualifying assets are fully relieved. A measure of relief is given where the amount or value of the consideration exceeds the threshold in so far as the amount of capital gains tax chargeable in respect of gains referable to qualifying assets is limited to half the amount by which the aggregate consideration exceeds the threshold. No threshold applies where the disposal is to a child. For the purposes of this relief "child" is defined in **section 599 (1)**.

**Section 59 Finance Act 2012** provides that the relief for disposals of business or agricultural assets outside the family by individuals aged 66 or over on or after 1 January 2014 will be reduced to €500,000.

#### Example 1

#### Examples for threshold of €750,000

	€	€	€
Consideration on disposals	760,000	780,000	790,000
Gains accruing on disposals	30,000	80,000	110,000
Tax on gains @ 33%	9,900	26,400	36,300
Limit on tax imposed by <b>S.598</b>	5,000	15,000	20,000

A part disposal will qualify under **section 598** or **section 599**. In arriving at the aggregate consideration a part disposal by a husband to a wife or vice versa or by a civil partner to his or her civil partner is taken into account at market value and not at the cost to the spouse or civil partner transferring the asset as is the normal rule as respects transfers between husband and wife or civil partner (see [Tax and Duty Manual Part 44-02-01](#), Capital Gains Tax and married persons, Par. 5, Assets held jointly and [Tax and Duty Manual Part 44a-02-01](#), Transfers of Assets between Civil Partners).

#### Example 2

A farmer, who qualifies for the relief under **section 598**, transfers part of the farm to his wife (market value - €670,000 (apportioned part of original cost - €90,000) and sells the balance to a neighbour for €100,000 (apportioned share of cost €6,000) in 2018.

Aggregate of consideration for disposal	770,000
Threshold under <b>Section 598</b>	<u>750,000</u>
Excess of consideration over threshold	20,000
Limitation on tax	<b>10,000</b>
Part disposal to wife at no profit no loss - tax	NIL
Disposal to neighbour - net consideration	100,000
Apportioned share of original cost (1982/83) 6,000 x 2.253	<u>13,518</u>
Chargeable gains	86,482
Tax @ 33%	28,539
Tax is limited to 50% of difference between €770,000 less €750,000 – see <b>section 598(2)(a)(ii)</b>	<u>€10,000</u>

### 3.5 Definition of terms

“Chargeable business asset” includes goodwill but does not include shares or securities or other assets held as investments. The term means an asset which is, or is an interest in, an asset used for the purposes of a trade, profession, vocation, office or employment carried on by the individual, by the individual's family company, or by a company which is a member of a trading group of which the holding company is the individual's family company. It does not, however, include a private residence which qualifies for relief under **section 604**. Shares or securities are also excluded where the individual remains connected with the company following the disposal, as is goodwill which is disposed of to a connected company. If an



individual enters into arrangements to secure that they are not connected with a company for the purpose of the connected company exclusions, they will be deemed to be connected with the company and the assets will be deemed to be excluded. However, the connected company exclusions do not apply where it is considered that the disposal is for bona fide commercial reasons and is not for tax avoidance purposes.

“Family company” means, in this connection, a company the voting rights in which are

- (a) as to not less than 25 per cent, exercisable by the individual, or
- (b) as to not less than 75 per cent, exercisable by the individual or a member of his family, and as to not less than 10 per cent, exercisable by the individual himself.

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 his or her child 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.

"Trading company" means a company whose business consists wholly or mainly of carrying on one or more trades or professions.

“Trading group” and “trading company” are defined in **section 598(1)**.

“Family of the civil partner” means any brother, sister, ancestor or lineal descendant of the civil partner.

"Family" means the husband or wife of the individual and any brother, sister, ancestor or lineal descendant of the individual or the individual's husband or wife. For this purpose an adopted child should be regarded as a lineal descendant.

"Full-time working director" means a director who is required to devote substantially the whole of his or her time to the service of the company in a managerial or technical capacity.

Where an individual is required to devote substantially the whole of his time to the service, in a managerial or technical capacity, of more than one company and the companies constitute a “trading group” of companies or carry on complementary businesses so as to form a composite unit of business, he may be regarded (on the disposal by way of sale or gift of the whole of his shares in all the companies) as a full-time working director of any of the companies, which in relation to him, is a "family company". If relief is claimed on the disposal of one, or some only, of the companies, it will be necessary to consider the matter in the context of the specific circumstances.

### 3.6 Applying the Relief

The relief is restricted to gains on qualifying assets comprised in the disposal of the business. It does not apply to assets held as private investments except certain assets let by a partner to the partnership (see pages 12 and 13). In applying the marginal relief, the amount of half the difference between the threshold and the consideration received is to be compared with the tax which would not have been chargeable but for the gains from qualifying assets. That amount of tax is the difference between the capital gains tax which would have been chargeable on all the gains for the year (including the farm or business) and on the gains (excluding the farm or business).

#### Example 3

	€	€
Gains on disposal of qualifying assets		10,000
Gains on disposal of other assets		<u>5,000</u>
Total gains		15,000
Losses on disposal of qualifying assets	2,000	
Losses on disposal of other assets	<u>4,000</u>	<u>6,000</u>
Net gains		9,000
Tax on net gains (9,000) on all assets @ 33%		2,970
Tax on net gains (1,000) on other assets @ 33%		<u>333</u>
Difference (equal to the tax which would not have been chargeable but for gains on qualifying assets)		<u>2,637</u>

In the situation where the business or farm is operated by a family company and the individual disposes of his shares and securities in the company, only the proportion of the consideration which relates to the company's chargeable business assets is taken into account for the purposes of the relief. Thus, where the company has assets other than chargeable business assets, the amount of the consideration to be taken into account is the proportion which the chargeable business assets of the company or the trading group bears to the total value of the company's or the trading group's chargeable assets. In practice, where the relevant shares are sold at an arm's length price based on the value of the net assets (i.e. assets less liabilities) of the company, the values of -

(a) the chargeable business assets, and

(b) the other chargeable assets,

used in arriving at the sale price of the shares may be accepted as the values to be used for the purposes of the apportionment. These values, however, may not be valid for other purposes and, if necessary, proper valuations should be obtained in the normal way.

#### Example 4

A company is incorporated in 1990 with an issued share capital of 100 ordinary shares. A, who has been a full-time working director since 1990, decides to retire in 2018. He disposes of all 100 shares for a consideration of €700,000, resulting in a gain of €600,000.

The value of the assets of the company at the date of disposal are: -

	€
Freehold premises	500,000
Shop equipment	80,000
Goodwill	100,000
Quoted stocks and shares	50,000
Stock in trade and cash	<u>40,000</u>
	770,000
Less bank overdraft	<u>70,000</u>
	700,000

The proportion of consideration on disposal attributable to chargeable business assets is: -

€680,000            (premises + equipment + goodwill)

€730,000            (premises + equipment + goodwill + quoted stocks & shares)

The threshold has not been exceeded.

$$\begin{array}{rclcl} \text{€700,000} & & \times & & \text{€680,000} & & = & & \text{€652,055} \\ & & & & \text{€730,000} & & & & \end{array}$$

The gain which is relieved from tax is as follows: -

$$\begin{array}{rclcl} \text{€600,000} & & \times & & \text{€652,055} & & = & & \text{€558,904} \\ & & & & \text{€700,000} & & & & \end{array}$$

The balance of the gain (€600,000 - €558,904 = €41,096) is taxable @ 33 % = €13,562

Where gains have been relieved under **section 598 or 599** the threshold of €1,270 provided in **section 601(2)** is not to be set off against gains not coming within the scope of those two provisions.

All disposals of qualifying assets taking place after 5 April, 1974 must be taken into account in arriving at the individual's aggregate consideration for the purposes of **section 598** even if the transaction itself results in a loss. The qualifying assets may be chargeable business assets of more than one trade or profession so long as the trade or profession is carried on by the individual who owns the assets.

In the marginal situation, however, where tax at normal rates has to be compared with the limit imposed in the section the capital gains tax at normal rates must be computed as if all disposals of qualifying assets had taken place in the year of assessment of the latest disposal. In computing the relief credit will be given for any tax previously borne on such disposals. Furthermore, the figure for loss forward should be recomputed to take into account losses which may be released for carry forward by deeming gains from qualifying assets to have accrued at a later time than the time of disposal. Where the earlier disposals include qualifying shares in a family company, the consideration must be apportioned (see previous page). The consideration to be taken into account in the case of tangible movable property which is not a wasting asset is the actual consideration and not the deemed consideration of €2,540 under **section 602**. Where an individual is treated as a full-time working director of more than one family company (see **Section 6 – Definition of terms**), care should be taken to ensure that earlier disposals of shares in family companies of which the individual has been a "full time working director" (within the meaning of the concession) are not overlooked in arriving at aggregate consideration.

A part disposal between husband and wife or civil partner is taken into account for the purposes of aggregate consideration at market value (see **Section 5 – Calculating the relief**). The setting aside of **section 1028(5)** or **section 1031M(5)** is for the purpose of determining aggregate consideration only and cannot give rise to a chargeable gain on a disposal between spouses/civil partners.

Gains and losses of married couples/civil partners are calculated separately for each spouse or civil partner and in the absence of a claim to separate assessment will be assessed and charged on the husband or nominated civil partner. The combining of gains for the purpose of assessment is not to result in greater or less tax being charged overall than would be the case if a separate charge applied. It follows that each spouse or civil partner may have a separate title to relief under **sections 598 and 599**.

Under **section 573(2)** death is not a disposal and it follows that a pre-death disposal falling within **section 598** does not have to be reviewed in the light of the remaining assets passing on death. The value of assets passing on death is not to be included in the aggregate of consideration for the purposes of **section 598(6)**.

Where the disposal of qualifying assets involves an interest in partnership assets, the relief should be given by reference to the share in the total chargeable assets of the partnership to which the partner has been entitled throughout the 10-year period. Any share in the profits in a different proportion should be disregarded.

#### Example 5

P, who held a one-third share in a partnership from 2005, acquired another one-sixth share on the death of one of his three equal share partners in 2012. In 2018, at the age of 63, he retires from the partnership and gives his one-half share to his son. P has held the one-sixth share for only 6 years, and therefore the relief is computed by reference only to the one-third share.

A trading asset let to a partnership by a partner is strictly an investment and a gain on it is thus excluded from the "retirement" assets relief of **sections 598 and 599**. However, where the disposal of an asset is associated with the disposal of the whole or part of the partnership business and the partner owning the assets satisfies the other conditions of those sections then

- (a) if no rent has been paid by the partnership to the partner who owns the asset, the asset may be regarded as a chargeable business asset for the purposes of **sections 598 and 599**;
- (b) if rent being not less than market rent, has been paid by the partnership to the partner a fraction of the asset (equal to the fraction represented by the partner's share of the partnership's profits) may be regarded as a chargeable business asset. This gives relief on the fraction of the asset through which the partner has in effect paid rent to himself;
- (c) if the rent paid by the partnership to the partner is clearly less than market rent, a larger fraction of the asset than that in (b) may be regarded as a chargeable business asset.

### Example 6

X held a one-third share in a trading partnership since 2001. A freehold shop which he owned was let to, and occupied by, the partnership for the purposes of the trade since 2001. In 2018 at the age of 65 he retires from the partnership and sells the freehold to the remaining partners. The market rent was €50,000 per annum over the period. An apportionment would be required if the property had not been used by the partnership throughout the period of ownership.

- (i) If no rent has been paid by the partnership the whole of the gain (subject to the threshold) would qualify for relief.
- (ii) If the partnership had paid €50,000 per annum one-third of the gain on the disposal of the shop would qualify for relief (subject to the threshold).
- (iii) If the partnership had paid rent of only €10,000 per annum the extent of the relieved gain would be proportionate to the rent paid and the market rent.

In **section 600** there is provision for continuity where a business is transferred to a company in exchange for shares in that company. Subject to the 10-year test such shares would normally qualify for relief (shares in a family trading company). Where the individual disposes of such shares before he has held them for 10 years, **section 598(1)** provides that relief may still be given in so far as the period of ownership by the individual of the chargeable business assets will be treated as a period of ownership of the shares and also as a period during which he was a full-time working director of the company. Relief should be given by reference to that part of the shareholding which represents the share of the business owned throughout the period of the individual (or partnership) trading which falls within the 10-year period.

### Example 7

In 2003 A acquires a one-third share in a trading partnership. In 2014 he acquires a further one-sixth share from another partner bringing his total share to one-half.

In 2012, the business is transferred to a company in exchange for shares and the gains are deducted in full in arriving at the cost base for the shares in accordance with **section 600** (see [Tax and Duty Manual Part 19-06-04](#), Transfer of a business to a company, **par. 1** et seq., The relief). A's holding is 6,000 shares out of the total issued capital of 12,000. Up to 2018 he is engaged as a full-time working director of the company when on reaching 65 years of age he retires and sells his shares in the company.

The 10-year period runs from 2008 to 2018. During this period his share was one-third from 2008 to 2013 and one-half from 2014 to 2018. The 10-year test is satisfied for a fraction equal to one-third only and relief is due to A by reference to that proportion of the issued share capital which represents that one-third interest ( $12,000 \times \frac{1}{3} = 4,000$  shares).

The "retirement" reliefs of **section 598** and **599** are linked with a disposal of qualifying assets on a liquidation or winding-up of a company. **Section 598(7)** makes it clear that a part disposal represented by a capital distribution from a family trading company on its liquidation or winding-up comes within the scope of the reliefs. Relief will not apply to such a capital distribution. However, to the extent that the capital distribution consists of chargeable business assets (see first paragraph of page 17 as regards an individual succeeding to the business of a company). Where the distribution consists wholly of chargeable business assets the relief does not apply. Where the distribution is partly in chargeable business assets and partly in money or money's worth, the relief is to be restricted to that proportion of the gains accruing on the disposal of the shares which the capital distribution not in chargeable business assets bears to the total capital distribution. A corresponding fraction of the capital distribution is to be included in aggregate consideration for the purposes of thresholds.

As for any other disposal of shares, the amount qualifying for relief is further restricted under **section 598(4)** to the part of the consideration which is equal to the proportion which the company's chargeable business assets bear to the value of the company's total chargeable assets.

For the purposes of apportionment between chargeable business assets and other assets the values as at the date of appointment of the liquidator may be taken as the values at the time of the notional disposal of the shares and where an asset is subsequently sold at arm's length by the liquidator the sale proceeds may be taken as the value of that asset.

In practice, the date of appointment of the liquidator may be treated as the date of the notional disposal, so that chargeable business assets on hand at that date will be included in the disposal as such, notwithstanding that the assets are subsequently sold by the liquidator. Furthermore, where any chargeable business assets of the company are sold as a preliminary to liquidation the sale proceeds may be included, in practice, in the value of the company's chargeable business assets at the date of appointment of the liquidator. The same addition should also be made to the value of total assets unless it is clear that the sale proceeds are included in the non-chargeable assets under another heading (e.g. outstanding debtors). "Preliminary" for the purposes of this treatment may be taken as meaning not more than six months before the liquidator's appointment. Claims for this treatment in respect of earlier sales should be examined in light of the specific circumstances.

Gains on the disposal of chargeable assets by the liquidator are chargeable in the ordinary way.

## Example 8

Balance Sheet of Company X (at date of appointment of liquidator)

Fixed Assets	€500,000
Stock	€115,000
Debtors	€80,000
Cash	€90,000
Quoted Shares	<u>€110,000</u>
Total	€895,000
Capital distribution	
Fixed Assets	€500,000
Cash	<u>€270,000</u>
Total distribution:	€770,000
<b>Assume chargeable gain:</b>	<b>€275,000</b>

**Step 1**

$$\begin{array}{rclcl} \text{€770,000} & & \times & \text{€270,000} & = & \text{€270,000} \\ & & & \text{€770,000} & & \end{array}$$

**Step 2**

$$\begin{array}{rclcl} \text{€270,000} & & \times & \text{€500,000*} & = & \text{€221,311} \\ & & & \text{€610,000**} & & \end{array}$$

The qualifying part of the consideration is €221,311 and as this does not exceed the threshold of €750,000, relief is due as follows:



**Step 3**

$$\begin{array}{rclcl} \text{Gain of €275,000} & \times & \underline{\text{€270,000}} & = & \text{€96,428} \\ & & \text{€770,000} & & \end{array}$$

**Step 4**

$$\begin{array}{rclcl} \text{€96,428} & \times & \underline{\text{€500,000}} & = & \text{€79,039} \\ & & \text{€610,000} & & \end{array}$$

The balance of the gain (i.e. €275,000 - €79,039 = €195,961) is chargeable @ 33% = €64,667.

\* Fixed Assets €500,000

\*\* Fixed assets €500,000 + Quoted Shares €110,000 = €610,000

Where the business of a family company is disposed of to one or more of its shareholders, including a disposal by way of capital distribution, and the business is continued by the acquiring shareholder (or shareholders in partnership), there is an occasion of charge on the company. If the individual (or partner) retires within 10 years of acquiring the business (or a share in the business), the relief should be computed on the basis that -

- (a) the retiring individual (or partner) had owned the whole or a part of the business throughout the period during which he was a shareholder of the family company as well as when he was a sole trader (or partner) of the business taken over from the company, and
- (b) the part which qualifies for relief is the proportion represented by his share in the business held throughout the period of 10 years (whether as shareholder in the company, sole trader or partner).

The definition of "qualifying assets" for the purposes of **sections 598 and 599** requires that the individual making the disposal, or the family company of which such individual is a shareholder, must be carrying on farming or a trade, profession, office or employment up to the time of disposal. Where, however, instead of disposing of the whole or part of the business by sale or gift an individual (or partnership) closes the business down permanently and (as nearly as may be at the same time) disposes of the assets by sale or gift, the individual (or partnership) should, subject to the other conditions of **section 598**, be treated as having disposed of qualifying assets.

Revenue will consider claims for retirement relief where an individual, due to terminal illness, is unable to satisfy the 10-year requirement.

The Revenue Commissioners will consider claims for relief where an individual disposes of 'qualifying assets' before his or her 55th birthday and where all the following conditions are present.

- (a) The claimant is, due to severe or chronic ill health, unable to continue farming, or in his or her trade, profession office or employment or as a working director in a relevant company,
- (b) On cessation the claimant disposes of 'qualifying assets' - at the time of disposal the conditions for relief, other than the age requirement, are satisfied
- (c) At the time of disposal the claimant is within 12 months of his or her 55th birthday
- (d) An individual claiming retirement relief on these grounds should provide medical evidence of the illness and outline the circumstances in which the relief is being claimed.

This applies to disposals occurring on or after 14 May 2004.

The disposal by an individual of shares in his or her family company, by means of the redemption, repayment or purchase by the company of its own shares in exchange for a **relevant payment**, qualifies for relief under this section.

In this context, “relevant payment” means a payment made by a company on the redemption, repayment or purchase of its own shares which, by virtue of **section 176**, is not treated as a distribution for the purposes of **Chapter 2 of Part 6 of the TCA 1997**.

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.

For disposals on or after 31 January 2008 relief under **section 598** will not apply where the sole or main purpose of the disposal of qualifying assets is the avoidance of tax rather than for genuine commercial reasons.