

Relief on Disposals of Certain Land or Buildings (S.604A)

Part 19-07-03A

This document should be read in conjunction with section 604A
of the Taxes Consolidation Act 1997

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Table of Contents

| | |
|--|---|
| Introduction | 3 |
| 3A.1 Background | 3 |
| Example 1 | 4 |
| Example 2 | 4 |
| Example 3 | 5 |
| 3A.2 Additional conditions | 5 |
| 3A.3 Enhancement Expenditure | 5 |
| Example 4 | 5 |
| 3A.4 No relief where “arrangements” put in place | 5 |
| 3A.5 Consideration | 6 |

Introduction

Section 604A of the Taxes Consolidation Act 1997 (“TCA 1997”) provides relief from Capital Gains Tax (“CGT”) in respect of a disposal of property that was purchased in any state in the European Economic Area (“EEA”) between 7 December 2011 and 31 December 2014, where that property is held for more than 7 years. The gain attributed to that 7-year period will not attract CGT. However, where the property is held for more than 7 years, relief is reduced in the same proportion that the period of 7 years bears to the period of ownership, so if the property is held for 9 years, 7/9 of the gain will be relieved. An amendment in Finance Act 2017 extended the relief, providing that where the property is held for at least 4 years and less than 7 years, any gain will not be liable to CGT where the disposal is made on or after 1 January 2018.

3A.1 Background

Section 604A TCA 1997 (enacted by section 64 Finance Act 2012) introduced a CGT relief on disposals of land or buildings acquired in the period commencing on 7 December 2011 and ending on 31 December 2013. Section 44 Finance (No. 2) Act 2013 extended the period within which the land or buildings may be acquired for the purposes of this relief to 31 December 2014. Section 604A TCA 1997 was further amended by section 33 Finance Act 2017 which provides that, as regards disposals made on or after 1 January 2018, gains on land and buildings acquired between 7 December 2011 and 31 December 2014 are not chargeable gains where the land or building was held for at least 4 years and up to 7 years from the date it was acquired.

For the purposes of satisfying the acquisition timeframe – the relief applies to land or buildings acquired in the period from 7 December 2011 to 31 December 2014 (both dates inclusive) – the normal CGT provisions contained in section 542 TCA 1997, as regards the time of acquisition and time of disposal apply. Accordingly, land or buildings will be treated as acquired on or before 31 December 2014 where either:

- An unconditional contract has been made on or before that date (and regardless of the fact that the asset may be conveyed or transferred after that date), or
- A contract is made subject to a condition precedent and the condition is satisfied on or before that date.

Having regard to the fact that land is defined in section 5 of the TCA 1997 as including any interest in land and having regard to the definition of “land” in Part 1 of the Schedule to the Interpretation Act 2005 (which includes houses and buildings), no distinction need be made as between land or buildings in relation to this relief. Accordingly, all references in this manual to “property” can be taken to refer to either land or buildings.

The Relief

Property acquired in any State in the EEA (including the State) or in the United Kingdom¹ during the period 7 December 2011 to 31 December 2014 (the relevant period) will, if held for a period of 7 years, qualify for full relief on any gain arising on disposal – section 604A(2)(b) TCA 1997 refers. Where the property is held for more than 7 years, relief is reduced in the same proportion that the period of 7 years bears to the period of ownership – see example 2 below. Section 604A(2A) TCA 1997 provides that, for disposals made on or after 1 January 2018 of property acquired in the relevant period, gains are not chargeable gains where that property was held for at least 4 years and up to 7 years from the time it was acquired.

Where property is acquired from a relative (within the meaning of section 10 TCA 1997), the individual who acquired the property must have paid consideration amounting to at least 75% of the market value of the property at the time it was acquired in order to qualify for relief.

Note: The EEA States comprise all EU member states and include Norway, Iceland and Liechtenstein.

Example 1

Property acquired on 1 March 2014 for €500,000 and sold on 2 March 2021 for €700,000.

Gain of €200,000 is fully relieved as the property is held for a full 7 years.

Where the property is held for longer than 7 years, relief will apply to the following part of any gain: $7/n$ (where “n” is the total number of years of ownership).

Example 2

Property acquired on 1 March 2012 for €500,000 and sold on 2 March 2022 for €800,000 – i.e. property owned for a full 10 years.

The gain of €300,000 is partially relieved:

| | | |
|-----------------|-----------------|----------|
| Gain | | €300,000 |
| Less Relief | €300,000 x 7/10 | €210,000 |
| Chargeable Gain | | €90,000 |

¹ Section 60 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020. This provision was commenced by a Commencement Order made by the Minister for Finance with effect from 31 December 2020 (S.I. No. 723 of 2020 refers).

Example 3

Property acquired on 1 March 2012 for €500,000 and sold on 2 March 2018 for €650,000. As the disposal is made on or after 1 January 2018 and the property was held for at least 4 years, the gain of €150,000 is not a chargeable gain by virtue of the amendment of section 604A TCA 1997 in section 33 Finance Act 2017.

3A.2 Additional conditions

Relief under section 604A TCA 1997 will only be available if any income, profits or gains derived from the property by the person who acquired it is income, profits or gains to which the Income Tax Acts or the Corporation Tax Acts apply.

3A.3 Enhancement Expenditure

Section 604A TCA 1997 makes no reference to enhancement expenditure. Accordingly, any gain on disposal is to be calculated in the normal way in accordance with CGT rules. If enhancement expenditure – including construction of buildings on land and the completion of partially constructed buildings – is incurred at any time during the period of ownership, and is reflected in the land or buildings at the time of disposal, it will be taken into account in computing any gain – and to the extent that that property is retained for the relevant period, any such gain will be entitled to relief. The enhancement expenditure need not have been incurred prior to 31 December 2014.

Example 4

Property acquired on 1 March 2014 for €500,000 with a further €300,000 of enhancement expenditure incurred during the seven-year period of ownership. The property is sold on 2 March 2021 for €1 million.

The gain of €200,000 on the disposal of the property is fully relieved as the property is held for a full 7 years.

If the property were sold on 2 March 2020 for €900,000, the gain of €100,000 is not a chargeable gain by virtue of the amendment of section 604A TCA 1997 in section 33 Finance Act 2017.

3A.4 No relief where “arrangements” put in place

Relief under section 604A TCA 1997 will not be available where any “arrangements” have been put in place that have the effect of a chargeable gain being relieved by more than it would have been if the “arrangements” had not been put in place.

In this context “arrangements” means any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable) within the meaning of section 546A of the TCA 1997.

3A.5 Consideration

For the purposes of the relief provided for in section 604A TCA 1997 consideration is the amount or value of the actual consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition.