

Requests for Clearance – Disposal of Land and Buildings (e.g. Specified assets) by non-resident vendors

Part 45-01-05

This document should be read in conjunction with sections 1034 and 1043 of the Taxes Consolidation Act 1997

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1 Background

Gains arising on the disposal of specified assets will always be subject to Irish capital gains tax regardless of the residence or domicile position of the individual disposing of them.

Section 29 Taxes Consolidation Act (TCA) 1997 sets out what is meant by specified assets and includes:

- i) Land in the State (which includes not just actual land but any interest in land such as buildings or leases of land),
- ii) Minerals in the State or any rights, interests, or other assets in relation to minerals or mining for minerals or searching for minerals. In addition to mineral rights in the State, exploration or exploitation rights in the Irish continental shelf are deemed to be assets situated in the State, and
- iii) Assets which are situated in the State, and which were used in or for the purposes of a trade carried on by the person in the State through a branch or agency.

To ensure that Ireland maintains its taxing rights to these specified Irish assets, section 29 TCA 1997 clarifies that where shares in an unquoted company derive the greater part of their value from land or mineral rights in the State, then it too shall be specified assets for the purposes of CGT. In this context, “the greater part of their value” means that more than 50% of the value of the shares is derived from those assets.

Therefore, in accordance with section 29 TCA 1997, where a non-resident individual disposes of a specified asset, they will be within the charge to Irish capital gains tax. In this way, the non-resident individual will have a liability to capital gains tax in respect of any gain arising.

Sections 1034 and 1043 TCA 1997 provide that a non-resident person is assessable and chargeable to income tax and capital gains tax in the name of any representative located in the State, e.g. including a solicitor, whether such representative has receipt of the profits or gains or not, in the like manner and to the like amount as the non-resident person would be assessed and charged if they were resident in the State and in actual receipt of the profits or gains. The imposition of a charge on the representative in such cases could lead to a liability for the representative where the non-resident vendor does not make good any income tax or capital gains tax arising in respect of the asset being disposed of.

2 Clearance process

It is understood that this issue arises mainly in relation to disposals of specified assets listed at (i) above e.g. land or buildings in the State. This clearance process has been agreed based on this understanding and the following guidance sets out the procedure to be used in such cases. All references to specified assets in the foregoing should be taken to mean those outlined at point (i) above i.e. land or buildings in the State. Any other relevant disposals of specified assets will be dealt with on a case-by-case basis.

Where a disposal of assets listed at Section 29 (3)(a) TCA 1997 takes place by a non-resident and a representative is not possessed of funds (e.g., voluntary transfers, Deeds of Family Arrangement, partition by joint tenants/tenants in common) requests for clearance will be dealt with on a case-by-case basis. The representative should contact Revenue for its requirements at an early stage in the transaction in order to ensure that they will be able to fulfil their obligations under section 1034/1043 TCA 1997.

A representative, e.g., solicitor, acting on behalf of a non-resident vendor in respect of the disposal of a specified asset on which a chargeable gain arises, may submit a clearance request to Revenue. In making a clearance request, the representative should ensure that a complete and accurate submission to Revenue has been made, which should include all documentation outlined in [section 4](#) of this manual completed in full.

When a representative makes a complete and accurate submission to Revenue (in accordance with [section 3](#) below) about the intended distribution of the sales proceeds to the non-resident vendor, Revenue undertakes to reply within 35 working days in two scenarios:

- If further information is required, or
- If a compliance intervention is to be conducted on the taxpayer.

If Revenue issues either type of correspondence within 35 working days, and the representative continues to distribute the sales proceeds without waiting to receive clearance from Revenue, then there is a risk that secondary liability under section 1034/1043 TCA 1997 may still apply.

If Revenue does not issue either type of the above correspondence within 35 working days, deemed clearance applies. This means that the representative is considered to have fulfilled their obligations under section 1034/1043 TCA and secondary liability will not apply.

A new online process to manage these applications for clearance has been established. A representative can now submit their intention to distribute sales proceeds to a non-resident vendor via MyEnquiries on ROS. This request for clearance must be made by the representative – **the taxpayer should not make this request themselves.**

When the request is submitted the applicant will receive an automated reply stating that if Revenue do not respond within 35 working days, they can distribute the sales proceeds to the non-resident vendor. There will be no requirement for a further letter from Revenue to issue providing clearance to the applicant if Revenue do not respond within 35 days. The automated reply will be sufficient to allow the representative to distribute after the timeframe of 35 working days has elapsed and no contact has been made by Revenue in relation to the application for clearance.

This manual provides detail in relation to the new clearance process including:

- how the clearance request should be submitted, and
- the required documentation and returns.

Specific guidance has been provided at [section 4.1](#) to cover cases where there is a secured charge on the property at the time of the disposal, and the representative is required to redeem the charge from the proceeds of sale as per their undertakings with the relevant lender and purchaser's solicitor.

Specific guidance has been provided at [section 4.2](#) to cover cases where a disposal has taken place, but the representative is not possessed of sales proceeds or is not possessed of sufficient sale proceeds to meet the Capital Gains Tax liability.

This manual also outlines the process for caseworkers dealing with clearance requests.

2.1 Irish tax residence

Section 819(1) TCA 1997 provides that an individual is resident in the State for tax purposes for a tax year if he or she is present in the State for:

- a) 183 days in that tax year, or
- b) 280 days in total at any time during that tax year and the previous tax year, with a minimum of 30 days in any year – this is commonly known as the 'look-back rule'.

Section 819(2) TCA 1997 provides that if an individual is present in the State for not more than 30 days in a tax year:

- that individual will not be resident for that tax year, and
- such days are ignored for the purpose of (b) above.

Section 820 TCA 1997 provides that if an individual has been resident in the State for three consecutive tax years, he or she is regarded as ordinarily resident from the beginning of the fourth tax year.

On the other hand, he or she will cease to be ordinarily resident in the State if non-resident for three consecutive tax years. A person can be non-resident for a tax year but still be ordinarily resident for that year if the absence is temporary.

An individual is non-resident for capital gains tax if he or she is neither resident nor ordinary resident in the tax year in which the transaction occurs.

Further information on the provisions in relation to residence of individuals can be found in Tax and Duty Manual (TDM) [Part 34-00-01](#).

2.2 Charge to capital gains tax

As set out above, non-resident vendors are liable to capital gains tax on gains arising from the sale of Irish specified assets.

2.2.1 Capital gains tax pay and file deadlines.

The dates to pay and file capital gains tax are based on the date the specified asset was disposed of. For disposals made between:

- 1 January and 30 November, payment is due by 15 December of the same year.
- 1 December and 31 December, payment is due by 31 January of the next year.

The capital gains tax return, i.e., the [Form CG1](#), is due by 31 October of the next year.

Where a disposal takes place mid-year, and the relevant Form CG1 is not yet available, then the representative should use the previous year Form CG1 and make the necessary handwritten changes, e.g., to the year.

2.3 How to obtain a Personal Public Service (PPS) Number

In order to sell a specified asset in Ireland, the non-resident vendor will need a PPS number.

To obtain a PPS number, the non-resident vendor must complete an application Form REG1 (Department of Social Protection – DSP) and must provide the following:

- Proof of identity,
- Proof of reason why a PPS number is needed,
- Evidence of their current address,
- If the PPS number is to issue to a third-party representative, e.g., a solicitor or accountant, a consent form signed by the non-resident vendor, and
- A completed questionnaire as provided for by the Department of Social Protection (DSP).

The completed forms should be scanned and emailed to CIS@welfare.ie or posted to:

Department of Social Protection,
Shannon Lodge,
Carrick on Shannon,
Co. Leitrim,
N41 KD81,
Republic of Ireland.

Further information on the accepted documentation to prove evidence of the above criteria, plus a link to the DSP questionnaire and application forms, can be found on the DSP webpage [How to get a Personal Public Service \(PPS\) Number](#).

Once the PPSN has been received, it must be registered as a tax reference number with Revenue. This is done by submitting a paper [Form TR1\(FT\)](#) to Revenue. Upon receipt of this form, Revenue will input the relevant details and register the non-resident vendor for CGT.

If the non-resident vendor is registered here for any other taxhead prior to the disposal, then their PPSN is already activated and they can register for CGT via MyAccount or ROS, as appropriate.

3 How clearance requests should be submitted

In the first instance, it is necessary for the representative seeking clearance to have obtained a TAIN (which is either a Transaction Advisory Identification Number or a Tax Agent Identification Number) and register for ROS. Details of how to obtain the TAIN and register for ROS can be found in the TDM [Part 37-00-04b – Guidelines for agents or advisors acting on behalf of taxpayers](#).

A TAIN application and obtaining a ROS certificate for that TAIN is a once-off action carried out by the representative. Once that activity has been completed, the representative can submit subsequent clearance requests for any number of clients thereafter by logging in to ROS on that ROS TAIN certificate. A representative only needs one TAIN and one linked ROS certificate – they do not need a ROS TAIN certificate for every clearance application.

Clearance requests should not be submitted under a representative's own tax registration number. They should always be submitted using a TAIN with its own TAIN ROS certificate.

The request for clearance (including the documentation/confirmations) and the necessary attachments as outlined in [section 4](#), should be submitted via MyEnquiries on ROS. The category/sub-category references are:

Category (enquiry relates to)	Sub-category (and more specifically)
Capital Gains Tax (CGT)	Non-Residents

When the request is submitted, the applicant will receive an automated reply stating that if Revenue do not respond within 35 working days, they can distribute the sales proceeds to the non-resident vendor.

There will be no requirement for a further letter from Revenue to issue providing clearance to the applicant. The automated reply will be sufficient to allow the representative to distribute after the timeframe of 35 working days has elapsed and no contact has been made by Revenue in relation to the application for clearance.

The submission of an enquiry to the above category/sub-category combinations will result in an automatic system acknowledgement. A step-by-step guide on how to submit the application for clearance is available at [Appendix 2](#).

3.1 Advisor client link

As mentioned above, the representative must link on ROS to the taxpayer who is the subject of the clearance request. In order to do this, a [Transaction Advisory Notification](#) must be completed for each individual client. Advisors must retain either a physical copy, or a scanned copy, of the signed mandate for a period of 6 years.

This Transaction Advisory Notification should be submitted with the request for clearance, as per [section 4](#).

4 Required documentation and returns

Where a representative submits a clearance request to Revenue indicating the intention to distribute the sales proceeds and seek clearance, the application must be accompanied by certain documentation and returns. These include:

- a) The form in [Appendix 1](#), filled out and signed by the non-resident vendor. This declaration form includes the following information:
 - Declaration of non-residence: any request for clearance should be accompanied by a declaration of non-residence by the vendor.
 - Confirmation as to how the property was used during the period of ownership.

- b) Transaction Advisory Notification signed by the client to confirm that the representative is acting on his or her behalf.
- c) [Form CG1](#) for the tax year in which the disposal takes place. Please note, a CG1 is required where a claim for PPR relief is made.
 - Please refer to [section 2.2.1](#) for information in relation to mid-year disposals.
- d) CGT computation: the CGT computation should include a breakdown of base cost, enhancement expenditure, details of losses carried forward, claim for PPR relief etc. where applicable. The provision of this information is to ensure that the CGT computation can be readily reconciled by Revenue without the need for further information. The representative is invited to submit any information related to the CGT position which may be relevant in this regard.
- e) Full payment of CGT liability (assuming one is due) in respect of the asset subject to the disposal. Where no payment is made due to losses arising/ PPR relief etc., this should be confirmed, and the necessary detail provided.
 - Where the representative is required to redeem a secured charge, e.g. a mortgage, against the sales proceeds and there are insufficient funds to discharge the CGT liability, please see the specific guidance outlined in [section 4.1.2](#).
- f) Contract of sale as evidence of proceeds.
- g) Details on how the property was used during the period of ownership (this is to ensure there is no outstanding charge to income tax in respect of income arising from the property).
 - If the property was rented, confirmation that all relevant income tax returns have been filed and all liabilities paid. Where the income tax returns were filed by a resident agent on behalf of the non-resident landlord, details of the agent PPS number must also be provided.

4.1 Disposals of property with a secured charge

A scenario may arise whereby, following disposal by a non-resident vendor, the representative is required to redeem a secured charge, e.g., a mortgage, from the sales proceeds, in advance of obtaining clearance from Revenue, as per their undertaking to a financial institution and undertaking to the purchaser's solicitor. Clearance is required regardless of whether there are sales proceeds remaining following redemption of the secured charge. However, for clarity, this TDM splits this scenario into two categories and provides specific guidance for each as follows:-

4.1.1 Sufficient sales proceeds remaining following redemption of the secured charge to discharge Capital Gains Tax

Where the representative has redeemed a secured charge, e.g. a mortgage, from the sales proceeds, and there are sufficient sales proceeds remaining following the redemption to discharge the Capital Gains Tax liability the representative should proceed with the clearance process outlined above as normal.

4.1.2 Insufficient sales proceeds remaining following redemption of the secured charge to discharge Capital Gains Tax

Where the representative has redeemed a secured charge, e.g. a mortgage, from the sales proceeds, and there are insufficient sales proceeds remaining following the redemption of the charge to discharge the Capital Gains Tax liability, the representative should proceed with the clearance process outlined above. However, in lieu of full payment of the CGT liability, the representative should include confirmation that the taxpayer has signed-up to a phased payment arrangement to discharge the CGT due.

Further information in relation to phased payment arrangements and how to apply can be found at [Phased Payment Arrangements \(PPAs\)](#) on www.revenue.ie.

4.2 Revenue action on receipt of submission and reply

Automatic clearance is granted on the basis that all required documentation outlined in [section 4](#) is included in the representative's submission.

As set out in [section 3](#), the request for clearance which is submitted via MyEnquiries will generate an automatic reply. This reply states that automatic clearance is granted provided that Revenue does not raise queries within 35 working days. Revenue uses the 35 working days to carry out a review and decide whether further review or an intervention is warranted. If no queries are raised within 35 days, this means that automatic clearance has been granted.

If the review results in the caseworker requiring further clarity or identifying tax non-compliance issues, a Revenue reply will be sent to advise the representative that clearance is not granted. Where this happens, the 35-day period is no longer relevant, and automatic clearance does not apply. Once the representative has replied to any queries raised, and Revenue is satisfied, then Revenue will issue clearance via MyEnquiries to the representative. Revenue will endeavour to deal with the replies as soon as possible.

If a compliance intervention is required, the nature of the compliance intervention that is initiated may vary depending on the matters identified in the review. Where a risk of non-compliance has been identified, Revenue will initiate a Level 2 Compliance Intervention – Risk Review or Audit depending on the tax heads involved. Any communication about a compliance intervention will be conducted in accordance with the relevant [Code of Practice for Revenue Compliance Interventions](#).

4.3 Revenue action on receipt of resident agent's reply and follow-up

In the event of a compliance intervention, if no additional liabilities arise and the Revenue caseworker is in a position to finalise the case, a letter will be sent to the representative as appropriate.

If additional liabilities arise and it is not possible to get agreement, Revenue will write to the representative and the taxpayer outlining the basis for any assessment being raised. The taxpayer will have the right to appeal against the assessment in the normal manner.

Where a clearance request was not complete and further information has been requested, Revenue will respond based on the outcome of that position.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

6 Summary

The following table provides a summary of scenarios that may come up when dealing with disposals by non-resident vendors. Please note it is not an exhaustive list.

1	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	No gain arises on this disposal. As such, s1034/1043 TCA 1997 does not apply.	No clearance is required as no gain has arisen.					
2	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	Clearance is required as a gain has arisen. The representative submits a clearance request, meeting all requirements as per section 4 .	Revenue review the clearance request, and everything is in order - there are no queries raised by Revenue within the 35-day period.	Automatic clearance is granted after 35 days have passed from the date of submission of the clearance request.	The representative distributes the funds to the non-resident vendor.		
3	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	Clearance is required as a gain has arisen. The representative submits a clearance request, meeting all requirements as per section 4 .	Revenue review the clearance request and raise additional queries within the 35-day period.	Automatic clearance is not granted as the 35-day period has been broken.	The representative answers the additional queries raised by Revenue. Revenue are satisfied with the answers provided, and issues clearance to the representative.	The representative distributes the funds to the non-resident vendor.	

4	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	Clearance is required as a gain has arisen. The representative submits a clearance request, but the requirements set out in section 4 have not been met. As such, a valid clearance request has not been submitted and automatic clearance will not apply.	A valid clearance request should now be submitted by the representative.				
5	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	There is a secured charge that must be redeemed from the sales proceeds, but there are sufficient funds remaining to meet the CGT liability.	Clearance is required as a gain has arisen. The representative submits a clearance request, meeting all requirements set out in section 4 .	Revenue review the clearance request, and everything is in order - there are no queries raised by Revenue within the 35-day period.	Automatic clearance is granted after 35 days have passed from the date of submission of the clearance request.	The representative distributes the funds to the non-resident vendor.	
6	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	There is a secured charge t that must be redeemed from the sales proceeds, but there are sufficient funds remaining to meet the CGT liability.	Clearance is required as a gain has arisen. The representative submits a clearance request, meeting all requirements set out in section 4 .	Revenue review the clearance request and raise additional queries within the 35-day period.	Automatic clearance is not granted as the 35-day period has been broken.	The representative answers the additional queries raised by Revenue. Revenue are satisfied with the answers provided and issues clearance to the representative.	The representative distributes the funds to the non-resident vendor.

7	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	There is a secured charge that must be redeemed from the sales proceeds, but there are sufficient funds remaining to meet the CGT liability.	Clearance is required as a gain has arisen. The representative submits a clearance request, but the requirements set out in section 4 have not been met. As such, a valid clearance request has not been submitted and automatic clearance will not apply.	A valid clearance request should now be submitted by the representative.			
8	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	There is a secured charge that must be redeemed from the sales proceeds and there are no funds remaining to meet the CGT liability.	Clearance is required as a gain has arisen. The representative submits a clearance request, meeting all requirements set out in section 4 and section 4.1.2 .	Revenue review the clearance request, and everything is in order - there are no queries raised by Revenue within the 35-day period.	Automatic clearance is granted after 35 days have passed from the date of submission of the clearance request.	The representative has discharged their obligations under s1034/1043 TCA 1997.	
9	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	There is outstanding secured charge that must be redeemed from the sales proceeds and there are no funds remaining to meet the CGT liability.	Clearance is required as a gain has arisen. The representative submits a clearance request, meeting all requirements set out in section 4 and section 4.1.2 .	Revenue review the clearance request and raise additional queries within the 35-day period.	Automatic clearance is not granted as the 35-day period has been broken.	The representative answers the additional queries raised by Revenue. Revenue are satisfied with the answers provided and issues clearance to the representative.	The representative has discharged their obligations under s1034/1043 TCA 1997.

10	A disposal is made by the non-resident vendor. The representative is possessed of the sales proceeds.	A gain arises on this disposal. As such, s1034/1043 TCA 1997 applies.	There is a secured charge that must be redeemed from the sales proceeds and there are no funds remaining to meet the CGT liability.	Clearance is required as a gain has arisen. The representative submits a clearance request, but the requirements set out in section 4 and section 4.1.2 have not been met - as such, a valid clearance request has not been submitted and automatic clearance will not apply.	A valid clearance request should be submitted by the represent			
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Appendix 1 – Non-Resident Vendor Declaration

Further guidance on this form is contained in the TDM Part 45-01-05.

Declaration of non-residence:

I confirm that for [Year of Disposal], I will spend:

- less than 183 days in the State, and
- less than 280 days in the State in the [Year of Disposal] and [Year Preceding Disposal].

Please note: any tax year in which you have spent 30 days or less in the State is disregarded for the purposes of these residency tests.

I am therefore not tax resident in the State for [Year of Disposal] in accordance with Sections 819 TCA 1997.

Property use:

Please outline how the property was used during the period of ownership.

If the property was rented during the period of ownership, please confirm whether all relevant income tax returns have been filed and paid (*tick the box if applicable*):

I confirm that all relevant income tax returns have been filed and paid

Documentation requirements:

I confirm that the following documentation have been provided to my representative:

- Form CG1,
- Capital gains tax computation, including a breakdown of base cost, enhancement expenditure, details of losses carried forward where applicable
- Evidence of full payment of CGT liability (assuming one is due), or a request to enter into a PPA, in respect of the asset subject to the disposal,
- Contract of sale,
- Details on how the property was used for the period of ownership,
- If the property was rented during the period of ownership, confirmation that all relevant income tax returns have been filed and paid.

Signed:

Date:

Appendix 2 – Guide to submitting an application for clearance

Guide to submitting an application for clearance under sections 1034/1043 TCA 1997 to distribute sales proceeds to a non-resident vendor.

A representative making an application for clearance under sections 1034/1043 TCA 1997 to distribute sales proceeds to a non-resident vendor can use the following steps to submit a clearance request to Revenue via MyEnquiries on ROS.

Please also see TDM [Part 37-00-36c](#) *Submitting and Managing Enquiries in ROS*, for more information on the MyEnquiries process.

1. Log in to your ROS Account. Go to the the “My Services” tab and select “MyEnquiries”:

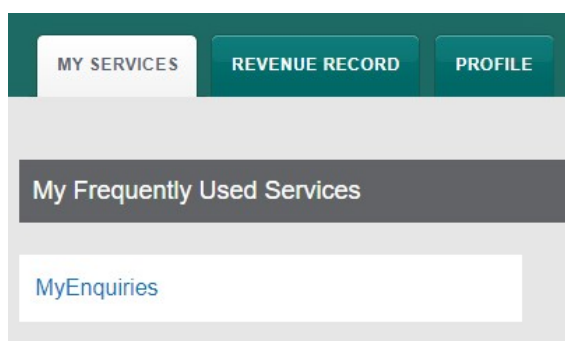


Figure 1: Showing My Services tab on ROS

2. Scroll to the bottom of the “MyEnquiries” screen and select “Add New Enquiry”:




Figure 2: Showing "Add New Enquiry" button on MyEnquiries screen


3. Select the following:

Enquiry relates to: Capital Gains Tax (CGT)

More specifically: Non-Residents

Enquiry relates to * 

Capital Gains Tax (CGT) ▾


More specifically * 

Non Residents ▾

Figure 3: Showing the drop-down options when opening a new enquiry on MyEnquiries

4. Enter the information regarding your request in the “Enquiry details” box.
You can attach supporting documents at the bottom of the screen:

Attach supporting information

Filename can only be alphanumeric and max length of 50. 

[▶ What file types can I attach?](#)

Drop files here...



 Add files...  Cancel upload

Figure 4: Showing how to attach supporting documentation to your MyEnquiry

5. Once completed, select “Submit enquiry” at the bottom of the screen:

Submit enquiry →

Figure 5: Showing "Submit enquiry" button on MyEnquiries screen

On submission, you will receive an auto reply:

Thank you for your recent submission received 11/10/2022.

Revenue will review this submission and will contact you within 35 working days if further information is required, or if a compliance intervention is to take place.

If, after 35 working days, you have not received a response in relation to your request for clearance under sections 1034 and 1043 Taxes Consolation Act 1997, you may distribute the sales proceeds to the non-resident vendor.

Revenue will not hold the representative, i.e., solicitor, acting in the disposal of the asset liable for the relevant taxes where it can be shown that a completed submission was made in accordance with the guidelines as set out in the tax and duty manual Part 45-01-05.

It should be noted that, in order for your submission to be valid for clearance purposes, the required documentation and returns as outlined in Part 45-01-05 must accompany the submission. Where the required documentation and returns as per the TDM are not submitted, then the submission will not be considered valid, and this online deemed clearance process will not apply.

[Continue](#)

Figure 6: Showing the text that auto replies when a CGT – Non-Resident’s clearance request is submitted

- This reply will be available in your previous MyEnquiries if it is required for your records.

Previous Enquiries [Search previous enquiries](#)

Archive	Enquiry ID	Date	Enquiry relates to	More specifically	Reference	Status
<input type="checkbox"/>	2210-91	2022/10/11 13:56	Capital Gains Tax (CGT)	Non Residents		Received

Figure 7: Showing the previous enquiries screen on MyEnquiries

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[...]