Disposals and acquisitions made at market value (S.547)

Part 19-02-06

This document should be read in conjunction with section 547 of the Taxes Consolidation Act 1997

Document last reviewed May 2022

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Table of Contents

Introduction 3

6.1 General rule 3

6.2 Exchange of assets 3

Example 1 4

Example 2 5

6.3 Deemed disposal and acquisition at market value 6

6.4 Gifts and gifts in settlement 6

6.5 Gifts to the State, charities and cultural institutions 6

6.6 CGT and Capital Acquisitions Tax (“CAT”) 7

6.7 CGT recoverable from the donee 7

Introduction

Section 547 of the Taxes Consolidation Act 1997 ("TCA 1997") contains rules for determining the market value of an asset for Capital Gains Tax ("CGT") purposes. The situations where the market value of an asset is relevant for CGT purposes include transfers by gift and other transfers by means of bargains not at arm's length and certain disposals of trust assets.

6.1 General rule

The general rule is that the market value of an asset is the price which it might reasonably be expected to fetch on a sale in the open market.

Assets are deemed to pass at market value in the case of gifts, in transactions not at arm's length and in cases (some of which are exemplified in the legislation) where the consideration received in exchange for the asset cannot be valued.

The market value rule applies also in cases of deemed disposal, e.g., where a beneficiary becomes absolutely entitled to property as against a trustee, or where in the hands of trustees, assets are deemed to have been disposed of and immediately re-acquired on the termination of a life interest.

6.2 Exchange of assets

The exchange of one asset for another is a chargeable occasion for both persons involved unless special rules apply e.g.

(a) conversion of securities – see Tax and Duty Manual (TDM) Part 19-04-09;

(b) exchanges of shares or debentures in certain circumstances – see TDM Part 19-04-10 and TDM Part 19-04-11; and

(c) transfer of a business to a company in exchange for shares – see TDM Part 19-06-04.

Exchanges are most frequently met as transactions between connected persons - see TDM Part 19-02-09. The essential difference between such a transaction and an arm's length transaction is that, in the former, the disposal proceeds are measured by the market value (at the date of exchange of the asset disposed of **(see Example 1 below)** whilst in the latter the disposal proceeds are measured by the value of the consideration received. In the case of an arm's length transaction, the values at the date of exchange, taking into account any cash adjustment, would be expected to be the same but this is not necessarily the case. Wherever possible, the valuations for both taxpayers should be considered at the same time and there should therefore be liaison between the taxpayers' Revenue Branches.

Example 1

In 1986/87 X acquired a piece of jewellery for €5,000 and in 1987/88 her brother Y acquired a painting for €4,000. In 2021 when the piece of jewellery has a market value of €80,000 and the painting a market value of €85,000 the two articles are exchanged. As X and Y are connected persons, the disposal proceeds are the market values at the date of exchange of the assets exchanged (**Section 549 TCA 1997**).

Disposal of jewellery by X

Consideration (value of jewellery at date of exchange)	€80,000
Cost €5,000 x 1.637 (indexation)	€8,185
Gain	€71,815

Disposal of painting by Y

Consideration (value of painting at date of exchange)	€85,000
Cost €4,000 x 1.583 (indexation)	€6,332
Gain	€78,668

The cost of the new acquisition in each case is the market value of the asset at the date of exchange (**Section 549 TCA 1997**).

X's acquisition of painting:	Market value in 2021:	€85,000
Y's acquisition of jewellery:	Market value in 2021:	€80,000

Example 2

Assume that the parties to the exchange transaction in **Example 1** are **not** connected persons and that a cash adjustment was made equal to the difference in the values so that X paid €5,000 to Y. The gains would be the same as in **Example 1** but the mechanics of the computation would be different.

Disposal of jewellery by X

Consideration received (value of painting at date of exchange)	€85,000
Less cash adjustment paid by X to Y	€5,000
	€80,000
Cost of Jewellery €5,000 x 1.637 (indexation)	€8,185
X's Gain	€71,815

Disposal of painting by Y

Consideration received (value of jewellery at date of exchange)	€80,000
Plus cash adjustment received by Y from X	€5,000
	€85,000
Cost of painting €4,000 x 1.583 (indexation)	€6,332
Y's Gain	€78,668

Cost in 2021 of the acquisition:- Acquisition of painting by X

Consideration given = value of jewellery at date of exchange	€80,000
Plus cash	€5,000
Cost to X	€85,000

Cost in 2021 of the acquisition:- Acquisition of jewellery by Y

Consideration given = value of painting at date of exchange	€85,000
Less cash adjustment	€5,000
Cost to Y	€80,000

In the unlikely event of there being no cash adjustment in the case of an exchange between non-connected persons where the values of the assets exchanged differ, this is not itself sufficient to challenge the arm's length nature of the transactions, although in practice, unless the difference is clearly substantial, all parties may well agree on a common value. If, in Example 2, there was no consideration other than the exchange of assets and the values set out in that example were agreed, X's gain would be increased by €5,000 and Y's gain reduced by €5,000. The acquisition cost of X's new asset (the painting) would be reduced by €5,000 and Y's acquisition cost of the piece of jewellery would be increased by €5,000.

Land is one of the assets often featuring in exchange transactions and sometimes shares in properties are exchanged. For example, two joint owners of two properties may each give up a 'half' share in one property and assume full ownership of the other. The result is that each taxpayer disposes of his or her half share in one property and acquires the remaining half share in the other. The same principles of computation apply as in the examples above.

6.3 Deemed disposal and acquisition at market value

Apart from occasions on which there is a deemed disposal and re-acquisition of an asset by the same person, there are three situations in which an asset is deemed to be disposed of and acquired at its market value:-

(a) where the asset is transferred otherwise than by way of a bargain at arm's length, e.g. as a gift;

(b) where the transfer is by way of a distribution from a company in respect of the shares of the company - see TDM Part 19-03-08;

(c) where the asset is acquired wholly or partly for a consideration which cannot itself be valued, or in connection with a person's own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his / her or another's services or past services in any office or employment, or of any other service rendered or to be rendered by him / her or another. (see however, TDM Part 19-01-16 as regards certain transfers to employees or directors where, in practice and so far as the employer is concerned, this basis is not adopted).

A transaction between "connected persons" is deemed to be a transaction not at arm's length - see TDM Part 19-02-09.

6.4 Gifts and gifts in settlement

For CGT purposes, a gift, including a gift in settlement (see TDM Part 19-03-05) is a disposal of an asset for a deemed consideration equal to its market value. The recipient of a gift is deemed to acquire the asset in question for a consideration equal to its market value at the time of disposal.

The time of disposal of a gift (including a gift in settlement) is the time the property effectively passes (and, in particular, in the case of the gift of a chattel, when the chattel is delivered).

6.5 Gifts to the State, charities and cultural institutions

As regards disposals, including gifts, to the State, to a charity or to certain national or local cultural institutions – see TDM Part 19-07-08.

6.6 CGT and Capital Acquisitions Tax ("CAT")

Even though the receipt of a gift may attract a charge to CAT on the donee, no deduction for that tax is to be given in the CGT computation based on the market value of the gifted asset. However, where both CGT and CAT are chargeable on the same property in connection with the same event, the CGT paid may be allowable as a credit against the CAT.

6.7 CGT recoverable from the donee

CGT chargeable on the occasion of a gift is recoverable from the donee if the donor fails to pay the tax within twelve months of the date on which the tax became due and payable (**Section 978 TCA 1997**).