

Identifying disposals

Part 19-01-05

This document should be read in conjunction with section 534
of the Taxes Consolidation Act 1997

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Introduction

The term “disposal” is not defined for the purposes of the Capital Gains Tax Acts. Thus, it must take its ordinary natural meaning, namely, a transfer of ownership of an interest in an asset whether by means of sale, gift or otherwise.

5.1 Detail

It is important that disposals of chargeable assets are identified and investigated for possible liability as early as possible after the relevant information is submitted by or on behalf of the taxpayer or comes to hand from some other source. All the information available should be carefully considered when a case is being examined in order to determine whether a disposal has taken place. For example, the cessation of a source of income may indicate the disposal of an asset; less obviously, however, the acquisition of an asset may indicate that another asset has been disposed of in order to finance the acquisition. Gifts and exchanges of assets are disposals. Certain other transactions which at first sight may not appear to be disposals are, for Capital Gains Tax (“CGT”) purposes, deemed to be disposals e.g., the receipt of a capital sum as compensation for damage or injury to assets or as consideration for the use or exploitation of assets. Similarly, the disposal of an interest in or of a right over the whole or part of an asset may give rise to liability as, for example, when a premium is received in return for the grant of a lease.

It is essential, therefore, that all information received by a tax office, division or branch about a taxpayer should be placed on the taxpayer’s file with the minimum of delay. It is essential also that the use that a taxpayer is making of his or her capital be followed intelligently but without raising unnecessary queries. For example, if a taxpayer disposes of his or her business or farm for, say €600,000 and does not acquire another one it is possible that he will invest the whole or part of the proceeds which, in turn, may generate income.

5.2 Disposal on transfer of business to company

Apart from the sale of business assets on an arm’s length basis, other changes in the ownership of such assets should be carefully monitored as they may give rise to a charge to tax. Consider, for example the transfer of a business to a limited company in exchange for shares in that company.

- If the whole of the assets of the business (excluding cash) are not transferred to the company **section 600 TCA 1997** will not apply and the assets transferred are treated as having been disposed of at their market value on the occasion of the transfer.

- Even where the whole of the business assets are disposed of to the company but the consideration is taken partly in shares and partly in some other form, e.g. cash or by way of loan to the company, the gain on the disposal must be computed and the portion of the gain attributable to the consideration taken other than in shares is chargeable on the occasion of the transfer. (The part of the gain attributable to the consideration taken in the form of shares is not chargeable until such time as the shares are disposed of.)

5.3 Disposals by partnerships

The setting up of a partnership or changes in partnership which involve a change in the asset-sharing ratios may involve a disposal. In such cases, the partnership agreement should be carefully examined in order to ascertain whether a chargeable disposal has taken place.