

Mortgages and charges not to be treated as disposals in certain cases (S.537)

Part 19-01-08

This document should be read in conjunction with section 537
of the Taxes Consolidation Act 1997

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Introduction

Section 537 of the Taxes Consolidation Act 1997 ("TCA 1997") provides that the transfer of an asset as security (e.g., a mortgage of land) or the re-transfer of that asset on redemption of the security, should not be treated as a disposal of the asset.

8.1 Enforcing the security for a debt

Where a creditor deals with an asset for the purpose of enforcing or giving effect to the security for a debt, he or she should be treated as nominee for the debtor so that all his or her acts are deemed to be the acts of the debtor. Consequently, any gain or loss on disposal of the asset by the creditor is deemed to be the gain or loss of the debtor.

8.2 Consideration on the transfer of an asset

Where an asset is transferred subject to a subsisting charge, the whole asset (ignoring the charge) is deemed to be acquired, and the full value of the charge should be added to any consideration for the transfer.

Example 1

A building is sold for €600,000 and the buyer takes over the obligation to repay a mortgage of which €180,000 is still outstanding. The building is deemed to have been sold by the seller and bought by the buyer for €600,000 plus €180,000 = €780,000. (This is the amount the buyer will have to pay to obtain the unencumbered ownership. At the same time the seller has received €600,000 and has been relieved of a liability of €180,000.)

8.3 Relevant case law

In the British case of *Thompson v. Salah*, 1971 47 T.C. 559, a sale of property was effected by the execution of a mortgage to the purchaser, followed by a conveyance by the vendor of the equity of redemption in consideration of the release by the purchaser of the mortgage debt. The Court ruled that the gain on disposal was to be computed on the basis that the property was disposed of free of the charge.