

## **Disposals to the State, public bodies and charities (S.611)**

### **Part 19-07-08**

This document should be read in conjunction with section 611  
of the Taxes Consolidation Act 1997

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## Introduction

**Section 611 of the Taxes Consolidation Act 1997 (“TCA 1997”)** provides that in certain circumstances (**see para 8.2**) there is to be no charge to Capital Gains Tax (“CGT”) on the occasion of a gift, or a sale at a price not exceeding the cost to the donor, of assets -

- to the State;
- to a charity; or
- to one of the bodies mentioned in **para 8.1**.

Where there is any doubt as to whether a particular organisation is a charity the matter should be referred to Charities Section, Government Office, St. Conlon’s Road, Nenagh Co Tipperary.

### 8.1 Specified institutions

The specified institutions are –

- the Chester Beatty Library;
- the Crawford Art Gallery Cork;
- the Irish Museum of Modern Art;
- the National Archives;
- the National Concert Hall;
- the National Gallery of Ireland;
- the National Library of Ireland;
- the National Museum of Ireland;
- the Friends of the National Collections of Ireland;
- the Local Government Computer Services Board;
- the Local Government Management Services Board;
- the Affordable Homes Partnership;
- Irish Water Safety;

- Limerick Northside Regeneration Agency;
- Limerick Southside Regeneration Agency;
- a local authority or a joint body (within the meaning of section 2 of the Local Government Act 2001); and
- any university in the State.

**Section 611 TCA 1997** gives the relief from CGT described in the **Introduction** to disposals of assets to those bodies provided certain conditions (**para 8.2**) are satisfied.

## 8.2 Bargain at arm's length

A condition of the relief is that a disposal must be effected otherwise than by a bargain at arm's length, this ensures that ordinary commercial transactions are dealt with by reference to the normal rules.

## 8.3 Consideration for the disposal

Where the consideration for a disposal does not exceed the amounts allowable as a deduction to the disposer under **section 552 TCA 1997** the transaction will be treated as a disposal for such consideration as will produce neither a gain nor a loss. Where the disposal is above "cost" but below market value the consideration for the disposal will be the actual proceeds passing and not the market value of the asset involved.

### Example 1

A bought some freehold land in May 1992 for €100,000. In January, 2020, when the market value of the land is €200,000 he or she conveys it to a charity -

- (a) for nil consideration. A has neither gain nor loss;
- (b) for €50,000. The CGT consequences are as in (a) above;
- (c) for €150,000 (i.e., above cost but below market value) A is chargeable on a gain of €14,400 being the proceeds of €150,000 less the cost to A, as indexed ( $€100,000 \times 1.356$ ) = €135,600. The gain is calculated by reference to the actual consideration passing (€150,000) and the charity is regarded as acquiring the land in 2020 for €150,000;
- (d) for €200,000 i.e., market value. This would normally indicate a bargain at arm's length and **section 611 TCA 1997** has no effect at all. The chargeable gain is calculated by reference to the sale price of €200,000. A has a gain of

€64,400, being €200,000 less €135,600 (i.e. €100,000 x 1.356). The acquisition cost of the charity in 2020 is also €200,000.

If the disposal is to a charity or to any of the bodies mentioned in **para 8.1** (but not to the State) and the asset is later disposed of, the charity or body mentioned in **para 8.1** making that later disposal is liable to be charged in respect of -

- (i) the CGT which would have been chargeable on the earlier disposal if **section 547 TCA 1997** had applied to it, and
- (ii) the CGT accruing to it in the normal way on the later disposal.

The clawback provision will not, however, arise if a gain on the later disposal would not be a **chargeable gain**. Thus, if the charity remains a genuine charity, there is no question of a clawback.

#### 8.4 Surrender of interest by a life tenant

Where, for example, on the surrender of his or her interest by a life tenant there is a deemed disposal and re-acquisition by trustees under **section 576 TCA 1997** and the person becoming entitled under **section 576 TCA 1997** to the assets is a charity or other qualifying body (see **para 8.1**) then the disposal is deemed to be at a figure which produces neither gain nor loss.

#### 8.5 Trustees

Where there is a deemed disposal and re-acquisition by trustees under **section 577(3) TCA 1997** (for example on the surrender by a life tenant of his or her interest in favour of a charity, the assets remaining settled property) and the whole of the assets are henceforward held exclusively for the benefit of a charity or other qualifying body (see **para 8.1**) then the "no gain no loss" rule applies. When only a proportion of the assets deemed to be disposed of is thereafter held for a charity, or other qualifying body (see **para 8.1**) the rule applies to a corresponding proportion of each of the assets.

#### 8.6 No gain no loss

The "no gain no loss" rule in situations described in **para 8.5 & 8.6** does not apply if any consideration is received by any person in connection with any transactions by which a charity or other qualifying body (see **para 8.1**) obtains its interest in the assets. This condition is aimed at various possible avoidance devices concealing what is really the sale of an interest under a settlement.