

Requests for Clearance – Capital Gains Tax and 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, he/she will be within the charge to Irish capital gains tax. In this way, he/she 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 of any kind, e.g., including a solicitor, located in the State. The extent of any liability for the non-resident vendor is the same as if he/she were actually resident in the State. The imposition of a charge on the representative in such cases leads to a liability for the representative where the 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. Any other relevant disposals (i.e., of specified assets) will be dealt with on a case-by-case basis and a separate clearance process may need to be agreed. All references to specified assets in the foregoing should be taken to mean those outlined at point (i) above e.g., land or buildings in the State.

A representative, e.g., solicitor, acting on behalf of a non-resident vendor in respect of the disposal of a specified asset, may submit a clearance request to Revenue indicating that it is intended to distribute the proceeds arising from the disposal of the asset. In making a clearance request, the representative should be satisfied 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 proceeds to the non-resident vendor, Revenue undertakes to reply within 35 working days if:

- a compliance intervention is to be conducted on the taxpayer, or
- if further information is required. Where that arises, the representative should retain control of the sales proceeds. This is required until such time as either Revenue confirms in writing that there will be no intervention or the intervention, including any appeal process, is completed and any taxes which are assessable are paid to Revenue.

If Revenue does not reply within 35 working days, the representative who submitted a full and accurate clearance request may distribute the sales proceeds to the non-resident vendor.

A new online process to manage these applications for clearance has been established. A representative can now submit their intention to distribute proceeds to a non-resident vendor via MyEnquiries on ROS. When the request is submitted the applicant will receive an automated reply stating that if Revenue do not respond within 35 working days, he/she 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.

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.

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 between 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 relation to resident 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.

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 (for the Department of Social Protection - DSP) and must provide the following:

- Proof of identity,
- Proof of reason for 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 filled-in 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](#).

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](#).

When the representative is set up on ROS as an agent/advisor, it is necessary to link on ROS to the taxpayer who is the subject of the clearance request. This “linking” will be done by Revenue as part of the clearance process and the relevant documentation should be submitted with the clearance request as outlined below. 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, he or she 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 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.
- 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 to revert for clarification. 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.
- 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 Revenue action on receipt of submission and reply

As per [section 3](#), the submission of an enquiry to a “clearance” category will generate an automatic reply. The submission will be reviewed by a Revenue caseworker.

Revenue has a defined period of 35 working days to carry out that review and decide whether further review or an intervention is warranted.

If the review results in the caseworker identifying tax non-compliance issues, a Revenue reply will be sent to advise the representative that clearance is not granted. The nature of the compliance intervention that is commenced may vary depending on the matters identified in the review. However, on the basis of a full submission having been provided, it is reasonable to expect that any such compliance intervention will take the form of 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 Revenue Code of Practice.

If no contact is received from Revenue in the defined period, the representative can distribute the sales proceeds and he or she will not be liable for any capital gains tax or income tax liabilities that arise subsequently in respect of that specified asset.

This tax and duty manual is written on the basis that all required documentation outlined in [section 4](#) is included in the representative’s submission. In the event that clarification is required in relation to the submission, or the required documentation is not submitted in full, Revenue will contact the representative. Any such contact means that deemed clearance is not provided.

4.2 Revenue action on receipt of resident agent’s reply and follow-up

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.

[...]

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Most recent version.

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].

I am therefore neither tax resident nor ordinarily tax resident in the State for [Year of Disposal] in accordance with Sections 819 and 820 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) 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.

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

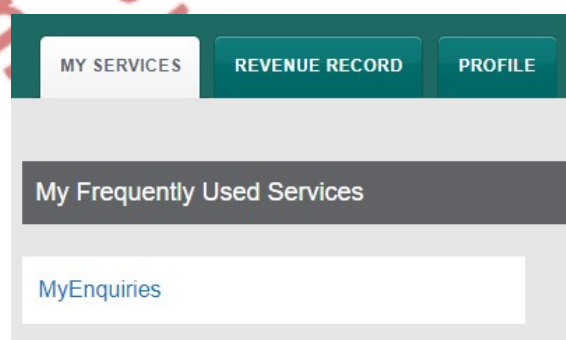


Figure 1: Showing My Services tab on ROS

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 * i

Capital Gains Tax (CGT) ▼


More specifically * i

Non Residents ▼

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

- 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?](#)

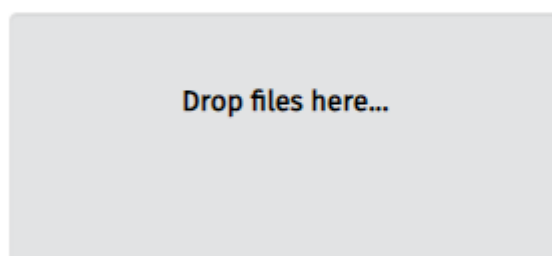


Figure 4: Showing how to attach supporting documentation to your MyEnquiry

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



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.



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

6. 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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