Capital Gains Tax

CAPITAL GAINS TAX

Charge to tax

Capital gains tax (CGT) is charged when a person makes a chargeable gain on the ***disposal*** of an ***asset*** (s 28).

An ***asset*** means property in any form including intangible property, such as an option or debt (s 532).

A ***disposal*** includes a part disposal (s 534) and the deriving of a capital sum from an asset (s 535).

CGT is charged on gains arising in a tax year after deducting allowable losses (s 31). Gains accruing to a partnership are separately assessed on the individual partners (s 30).

Residence

A person who is resident or ordinarily resident in the Republic of Ireland (ROI) for a tax year chargeable to CGT on his worldwide gains in that tax year.

A person who is neither resident nor ordinarily resident in the ROI, is chargeable on the disposal of ROI:

(a) land,

(b) minerals or exploration rights,

(c) branch or agency assets.

A foreign-domiciled person is only chargeable on the disposal of non-ROI to the extent that he remits the proceeds into ROI (s 29).

Capital gains tax rates

The general rate of CGT is **33%.**

A 40% rate applies to gains on disposals of:

(a) foreign life assurance policies (s 594(2)(f)), and

(b) a material interest in certain offshore fund (s 747A).

Exemptions

The main exemptions from CGT are:

(a) **Annual exemption**. The first €1,270 of gains for a tax year is exempt (s 601).

(b) Disposals of property acquired between 7 December 2011 and 31 December 2014, provided the property is held for more than seven years (s 604A).

(c) **Chattel exemption**. If the proceeds from the disposal of a durable chattel ("tangible movable property" other than wasting assets) do not exceed €2,540, the gain is exempt (s 602).

(d) Gains on **government and certain other securities** (s 607).

(e) Gains realised by **pension funds** (s 608) and **charities** (s 609).

(f) Gains on the following are also exempt (s 613):

(i) instalment savings scheme bonuses,

(ii) prize bond winnings,

(iii) compensation for damages or personal injury,

(iv) lottery and betting winnings, and

(v) a disposal of pension rights.

(g) **Transfer of residential site from parent to child**, provided the site is to construct the child's principal private residence, and the site's market value does not exceed €500,000 (s 603A).

Reliefs

The main CGT reliefs are:

(a) **"Retirement" relief**: This applies where a person aged 55 or more and disposes of a farm or business ("qualifying assets"), i.e., chargeable business assets – including shares in a family company that you have been held for 10 years or more.

If the disposal is to a child of the disponer the gain is exempt (s 599). From 1 January 2014, a lifetime limit of €3m applies if the disponer is aged 66 or over.

For other disposals the CGT is nil if the disposal proceeds do not exceed the lifetime limit of €750,000 (s 598). From 1 January 2014, the lifetime limit is reduced to €500,000 if the disponer is aged 66 or over.

If the proceeds exceed the lifetime limit, the CGT may not exceed half the difference between the proceeds and the lifetime limit.

A disposal of assets held by a family company owner may also qualify for relief provided they are disposed of at the same time and to the same person as the family company shares.

Let farm land can qualify if any of the following apply:

(i) Having been farmed prior to letting it is let under the early retirement scheme.

(ii) It is compulsorily acquired and was land let for 5 years the disposal.

(iii) The disposal is to a child and it was farmed prior to the letting.

(iv) It was let for not less than five years to the same person in the 25 year period ending with the disposal.

Retirement relief is subject to a "bona-fide commercial reasons" anti-avoidance test.

(b) **Transfer of business to company** (s 600): Where a business and all its (non-cash) assets are transferred as a going concern to a company in exchange for shares in that company, the base cost of those shares (for the purposes of future disposals) is reduced to match the cost of the assets.

(c) **Principal private residence** (s 604): A gain on the disposal of a main residence is exempt, provided it was occupied as the disponer's main residence throughout the period of ownership, with the exception of the last 12 months of ownership.

(d) **Entrepreneur relief** (s 597AA): This provides a 10% CGT rate for disposals of chargeable business assets, owned for not less than three years, up to a lifetime limit of €1m. The relief does not apply to development land or investment assets.

For disposals of private company shares, the disponer must have:

(i) owned not less than 15% of the shares in the trading company (or its holding company),

(ii) been a full-time working director of the company for not less than three years prior to the

disposal.
Effective 01.01.2016.

Indexation

For disposals made in 2003 and later tax years, the cost of acquiring an asset may be multiplied by the indexation factor appropriate to the year in which the asset was acquired:

1974-75: 7.528
1975-76: 6.080
1976-77: 5.238
1977-78: 4.490
1978-79: 4.148
1979-80: 3.742
1980-81: 3.240
1981-82: 2.678
1982-83: 2.253
1983-84: 2.003
1984-85: 1.819
1985-86: 1.713
1986-87: 1.637
1987-88: 1.583
1988-89: 1.553
1989-90: 1.503
1990-91: 1.442
1991-92: 1.406
1992-93: 1.356
1993-94: 1.331
1994-95: 1.309
1995-96: 1.277
1996-97: 1.251
1997-98: 1.232
1998-99: 1.212
1999-00: 1.193
2000-01: 1.144
2001: 1.087
2002: 1.049

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Losses

A loss on a disposal is allowable if the corresponding gain would have been chargeable (s 546). An unused loss can be carried forward.

Self assessment

Preliminary CGT is payable (s 952):

(a) generally, on or before 15 December in the tax year, and

(b) as respects gains made in December, on or before 31 January in the next year.

The CGT return must be filed on or before **31 October** in the tax year following the year in which the gain was made (s 958(2)).

Revenue powers

See Administration, Anti-avoidance, Information, Audit and Collection under INCOME TAX: Revenue powers.

Withholding tax

If the seller cannot produce a tax clearance certificate the purchaser must deduct **15%** withholding tax from the price paid for ROI:

(a) land,

(b) minerals or exploration rights,

(c) shares deriving their value from (a) or (b).

This does not apply if the transaction value does not exceed **€500,000** (€1,000,000 for houses and apartments) (s 980).

Appeals

See INCOME TAX: Appeals.