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Retirement Relief from Capital Gains Tax

For further information on this topic please contact Irish Life's Life Advisory Services Team.

A liability to Capital Gains Tax (CGT) arises where an individual disposes (by sale or gift) of his or her business or farming assets.

Sections 598 and 599 of the Taxes Consolidation Act (TCA) 1997, provide for relief from this Capital Gains Tax bill where the disponer is aged 55 or over, subject to certain conditions.

Section 598 provides relief where the assets are being sold outside of the family, including where shares are sold back to the disponers own trading company.

Section 599 provides for relief where the disposal is made to a child, including the child of a deceased child, a niece or nephew who has worked full time in the business and certain foster children.

The main conditions that currently apply are:

(i) The individual disposing of the assets must be over age 55. There is no actual requirement to 'retire' as such, simply to be over age 55.

(ii) The relief applies on the disposal of shares in a trading or farming company, where the individual has owned the shares for at least 10 years ending on the date of disposal (prior periods of ownership by a spouse or civil partner or a deceased spouse or civil partner can be taken into account).

(iii) The individual must have been a working director of the company for at least 10 years and have been a full time working director for at least 5 years.

(iv) The individual must own at least 25% of the voting rights of the company, or alternatively, own at least 10% with other family members owning at least an additional 65%.

(v) The proportion of the consideration for the shares treated as being applicable to 'qualifying business assets' is related to the value of the company's 'chargeable business assets' plus cash as a proportion of the company's total assets. A company's 'chargeable business assets' are those assets used in the course of the trade, including goodwill but excluding assets held by the company as investments.

(vi) Where this relief is being availed of it must be shown that the disposal is made for 'bona fide commercial reasons' and does not form part of any arrangement to avoid a liability to tax.

For disposals after 1st January 2014 there are changes to both reliefs with the amount of relief being restricted where the individual disposing of the assets is aged over 66.

Relief under Section 598, for disposals to **anyone other than a 'child'**, will still be available in full;

- where the value of the assets disposed of is €750,000
- and the disponer is aged under age 66,

but, relief will only be given in full on disposals of up to €500,000 in value;

- where the disponer is over age 66
- and the assets are disposed of on or after 1st January 2014,

Marginal Relief will be available where the assets disposed of are valued at over €500,000.

Under Section 599 an upper limit of €3,000,000 on which relief can be claimed is introduced on the value of qualifying assets disposed of within the family;

- where the individual transferring the assets is aged over 66 years
- and the assets are disposed of on or after 1st January 2014.

If the market value of the qualifying assets exceeds €3,000,000 then relief will be given as if the consideration for the disposal had been €3,000,000,

Effectively, the excess value over the €3,000,000 will be subject to Capital Gains Tax in full.

Purchase by a company of it's own shares

Where a payment is made to an individual by a company for it's own shares, and that payment is treated as a disposal for Capital Gains Tax purposes, (see our "Capital Gains Tax treatment on sale of shares to Company" document for further information) this payment will be seen to come within the scope of the relief and will be taken into account for the purposes of the €750,000 or €500,000 lifetime threshold depending on the disponers age.

Farming Assets

There are additional conditions where farming assets are being disposed of, for example, where land has been leased prior to its disposal the land in question must have been let by the individual at any time in the 15 years prior to the disposal, and owned and farmed by that person for a period of at least 10 years prior to the disposal.

Disposal to a child

Where the relief is availed of on a disposal to children there is a potential clawback in the event of a child disposing of the business or company within the next 6 years. The relief is withdrawn by way of an 'assessment' on the child. What this means is, the capital gains tax which would have been paid by the parent, if not for the relief, is now payable by the child, together with any tax chargeable on the gain made by the child on the disposal.

The relief amount is a 'lifetime' limit

Proceeds from all disposals made after the individual reached age 55 years must be aggregated to determine if the limit of €750,000 has been exceeded. €500,000 is the maximum lifetime limit where the individual is over age 66.

Disposal to Spouse or Civil Partner

The threshold of €750,000 or €500,000 depending on age, applies to each individual. Therefore a married couple or civil partners owning qualifying assets can potentially receive up to €1,500,000 or €1,000,000 from the sale of their business assets without incurring a CGT liability depending on their age.

However, while the transfer of qualifying assets between spouses or civil partners will not give rise to a chargeable gain, this disposal will be aggregated with all other disposals of qualifying assets by the transferring spouse or civil partner for determining if the €750,000 or €500,000 threshold has been exceeded. Care should therefore be taken when transferring assets between spouses or civil partners.

Terminal Illness

Where an individual disposes of “qualifying assets“ before his / her 55th birthday, the Revenue Commissioners will consider claims for relief where all the following conditions are present:

- The claimant is, due to severe or chronic ill health, unable to continue farming, or in his / her trade, profession office or employment or as a working director in a relevant company
- On cessation the claimant disposes of “qualifying assets” – at the time of disposal the conditions for relief, other than the age requirement, are satisfied
- At the time of disposal the claimant is within 12 months of his / her 55th birthday.

An individual claiming Retirement Relief on these grounds should provide medical evidence of the illness and outline the circumstances in which the relief is being claimed. This relief applies to disposals occurring on or after 14th May 2005.

This is a specialised area and specialist tax advice should be sought, in advance, if the relief is to be availed of.

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client’s particular circumstances.

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