

# **Notes for Guidance - Taxes Consolidation Act 1997**

**Finance Act 2020 edition**

## **Part 22**

### **Provisions Relating to Dealing In or Developing Land and Disposals of Development Land**

**December 2020**



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

**Notes for Guidance - Taxes Consolidation Act 1997**

**Finance Act 2020 edition**

Part 22 Provisions Relating to Dealing In or Developing Land and Disposals of Development Land

CHAPTER 1 *Income tax and corporation tax: profits or gains from dealing in or developing land*

639 Interpretation (*Chapter 1*)

640 Extension of charge under Case I of Schedule D to certain profits from dealing in or developing land

641 Computation under Case I of Schedule D of profits or gains from dealing in or developing land

642 Transfers of interests in land between certain associated persons

643 Tax to be charged under Case IV on gains from certain disposals of land

644 Provisions supplementary to section 643

644A Relief from income tax in respect of income from dealing in residential development land

644AA Treatment of losses from dealing in residential development land

644AB Treatment of profits or gains from land rezonings

644B Relief from corporation tax in respect of income from dealing in residential development land

644C Relief from corporation tax for losses from dealing in residential development land

645 Power to obtain information

646 Postponement of payment of income tax to be permitted in certain cases

647 Postponement of payment of corporation tax to be permitted in certain cases

CHAPTER 2 *Capital gains tax: disposals of development land*

648 Interpretation (*Chapter 2*)

649 Companies chargeable to capital gains tax in respect of chargeable gains accruing on relevant disposals

649A Relevant disposals: rate of charge

649B Windfall gains from rezonings: rate of charge

650 Exclusion of certain disposals

651 Restriction of indexation relief in relation to relevant disposals

652 Non-application of reliefs on replacement of assets in case of relevant disposals

653 Restriction of relief for losses, etc in relation to relevant disposals

## TRANSACTIONS IN LAND

### PART 22 PROVISIONS RELATING TO DEALING IN OR DEVELOPING LAND AND DISPOSALS OF DEVELOPMENT LAND

#### CHAPTER 1

#### *Income tax and corporation tax: profits or gains from dealing in or developing land*

#### Overview

This Chapter extends the charge to tax under Case I of Schedule D to certain activities of a business of dealing in or developing land (which would not otherwise be within Case I) and sets out computational rules to be applied in certain circumstances. It also extends the charge to tax under Case IV of Schedule D to certain gains of a capital nature (which would not otherwise be taxable as income) arising on the disposal of land and other property (such as shares) deriving its value from land.

#### 639 Interpretation (*Chapter 1*)

#### Summary

This section provides for the interpretation and construction of various expressions used in the Chapter.

#### Details

#### *Definitions and construction*

The definition of “development” embraces the construction of new buildings and the extension, alteration or demolition of existing buildings. It also covers engineering operations such as levelling, construction of roads, and the laying of sewers, or water or gas mains which adapt the land for materially altered use. It does not include maintenance or repair or engineering works which do not adapt the land for materially altered use. (1)

The term “trading stock” is, in effect, defined as meaning property, whether real or personal, such as is sold in the ordinary course of the trade in relation to which the expression is used.

The definitions of “company” and “market value” are self-explanatory.

It is to be noted that, by virtue of section 12 of, and the Schedule to, the Interpretation Act, 1937, “land” (which is not defined by *section 639*) includes, unless the contrary intention appears, “messuages, tenements, and hereditaments, houses and buildings, of any tenure.”

The final paragraph of *subsection (1)* ensures that the granting of a lease ranks as a disposal of an interest. The object is to remove the ground for a possible argument that one can dispose only of something which is already in existence whereas the interest which a lessee acquires is brought into existence by the very act which it is sought to describe as a “disposal”. The portion of the paragraph which refers to an interest which ceases on its acquisition provides for, for example, a case in which a speculative builder, having bought the fee simple of an area of land, subsequently “buys out” a person who

has a lease (to which the fee simple is subject) of the land or of a part of it. After the second transaction the builder would have one interest only but the cost of both acquisitions should clearly be allowed in arriving at the builder's profits.

The mortgaging of property as security for a loan, or the granting of a lease on terms which do not require payment of any premium, is not to be regarded as a disposal of an interest. This is to prevent a speculative builder, for example, from writing down the value of property in the accounts on the basis that, by mortgaging or letting it, the builder has disposed of part of the builder's interest. As regards leases for which no premium is payable there is the further consideration that the full income arising to the landlord would be taxable under *Chapter 8 of Part 4*. (2)(a)

As a precautionary measure, it is provided that an option to purchase is to be regarded as an interest in land. What is in mind here is the possibility that, as an avoidance device, an option to purchase might be granted at an artificially high price and the subsequent sale made at an artificially low price. This provision is primarily intended to ensure that, in such a case, the vendor could not successfully argue that only the sale consideration should be taken into account in computing profits. (2)(b)

Specific provision was not considered necessary in relation to a case in which A enters into a contract to purchase land from B (and pays a deposit); resells within a short time to C and has the conveyance or transfer executed by B in favour of C. In such a case, A would have acquired and disposed of an equitable interest in the land and, if A carried out the transactions in the course of a trade of dealing in land, any profit made by A would be taxable.

### *Application*

The provisions of *subsection (3)* obviate the possibility of the intention of the Chapter being defeated by arguments based on the general law in relation to the taxation of rents and certain other payments (such as premiums) as set out in *Chapter 8 of Part 4*. However, the possibility of a premium or like sum being taxed as rent and again as a receipt of a business of dealing in land is excluded by provisions embodied in *sections 99(2), 100(4) and 641(2)*. (3)

## **640 Extension of charge under Case I of Schedule D to certain profits from dealing in or developing land**

### **Summary**

Broadly, the intention underlying this section is to bring within the charge to tax under Case I of Schedule D the profits of certain activities undertaken in the course of a business of dealing in or developing land which would not be regarded as trading because of the decisions in two Irish court cases, namely, *Birch v Delaney* in 1936, and *Swaine v V.E.* in 1964. In the *Delaney* case it was held that a builder would not be regarded under general tax law as having sold anything if, instead of disposing of a completed building outright, the builder leased the building under a long lease for a large premium but retained a small ground rent. In the *Swaine v V.E.* case a building company that acquired farm land with the intention of farming it, but later built houses on the land, could not be taxed as a trader because the land had not been acquired with the intention of developing it. The section also takes account of a 1977 decision in the case of *Mara v Hummingbird* which provided that the original (1968) legislation might not apply where the whole of a person's interest in land had been disposed of.

## Details

### ***Construction of the terms “dealing” and “developing” as used in subsection (2)***

The disposal, as regards the whole or a part of any land, of the interest acquired, or of an interest which derives therefrom, is to be regarded as dealing in land. This provides against a possible argument that, in the ordinary use of language, “dealing in” articles or commodities implies purchase and re-sale; and that, by analogy, dealing in land can be said to take place only where the full interest acquired is disposed of. On this view a person who, having acquired the fee simple of a parcel of land, grants a lease or leases could not be said to be dealing in land. There is also the consideration that, in relation to, for example, a case in which a person develops and disposes of land which the person has farmed, or held as an investment, for a number of years, it is essential to the effectiveness of **subsection (2)** that the disposal alone could be regarded as a business of dealing in land. (1)(a)

The provisions of **subsection (2)** will apply to a person who has the development of land carried out by another person (who might be, for example, a company under the person’s control or an independent contractor) where it would have applied to the person if the development work had been done by the person (or by employees of the person). (1)(b)

### ***Dealing in or developing land: when is it regarded as trading?***

The circumstances are set out in which dealing in or developing land which, under the general law, does not constitute trading is to be regarded as trading and the profits charged accordingly. (2)

The essential conditions required for the application of the section are that dealing in or developing land should be carried on and that it should be carried on in such a way as to constitute a business. The expression “business of dealing in or developing land” is not defined and is to be construed according to its ordinary meaning as applied to the subject matter with regard to which it is used.

In a case in which the existence of a business of dealing in or developing land has been established, the subsection is concerned only with the activities (if any) of the business which, under the general law, cannot be regarded as trading. In regard to such activities it calls for the determination of the question: would those activities have fallen to be treated as trading activities if every disposal of an interest in land included among those activities had been a disposal of the full interest acquired by the person by whom the business is carried on – and that interest had been acquired by the person in the course of the business? Where this question is answered in the affirmative, the business is deemed to be wholly a trade, or part of a trade, as the case may be, and the profits charged under Case I of Schedule D.

Broadly, the effect of the subsection is that the question whether a given complex of activities involving the turning over of an interest in land constitutes trading in the Schedule D sense is to be determined as if —

- the granting of a lease wholly or partly in consideration of a premium were a sale, and
- the operator had acquired the interest in the land concerned with the intention of carrying out the operations and transactions which the operator did in fact carry out.

### ***Disposals of interests in land effected in the course of winding-up of a company***

Where there are disposals of interests in land during the winding-up of a company, the company is to be treated as having continued to carry on its trade or business up to the time when the disposals are completed and, for the purpose of determining whether (3)

profits arising on the disposals are taxable, the winding-up is to be disregarded. In the absence of a provision of this kind, the question whether the company's activities amounted to a business of dealing in or developing land and, if so, whether that business is to be regarded as a trade would normally have to be decided by reference only to what had been done up to the time when the winding-up commenced. Subsequent transactions would have to be treated as realisations of the company's assets.

## **641 Computation under Case I of Schedule D of profits or gains from dealing in or developing land**

### **Summary**

This section sets out the principles to be followed in computing the profits of a business of dealing in or developing land where the business is, or is to be regarded as, a trade or a part of a trade. Broadly, the treatment provided for is that any interest in land acquired by the trader is to be treated as trading stock and any disposal of an interest in land as a sale of trading stock.

### **Details**

#### ***General rule***

Where a business of dealing in or developing land is, or is to be regarded as, a trade or a part of a trade, the general law relating to the computation of trading profits applies except in so far as it is modified by the special rule set out in this note. (1)

#### ***Special rules***

A disposal of an interest in land is to be treated as a disposal of trading stock and the consideration for the disposal, in so far as it is not rent (or a premium which is treated as rent under *section 98*), is to be taken into account as a trading receipt. (2)(a)

Any interest in land which has become trading stock of the trade is to continue to be treated as trading stock until it is disposed of or until the trade is discontinued. An example of the need for this provision might be a builder who, having taken a lease of an area of land, erects an office block which is disposed of by way of sub-lease for a premium and a rent. At this stage the builder might, in the absence of any special provision, be able to contend that the reversion had ceased to be a trading asset for the reason that it had been decided to retain the reversion as an investment and, in the event of a subsequent sale of the reversion, that the profit arising was a capital profit on the realisation of an investment rather than a profit of the trade. This provision secures, in the instance cited, that any profit arising on a sale of the reversion while the trade is being carried on is taxable. The provision also secures that a person trading as a speculative builder will not escape liability on profit arising on the sale of a house erected by the builder in the course of trade merely by reason of the builder having let the house for a period before selling it. Here again the trader might, in the absence of special provision, be able to claim that the property sold had ceased to be trading stock on letting and was being held as an investment. (2)(b)

Where an interest in land is acquired otherwise than for valuable consideration (for example, by gift or inheritance), its cost to the trader is to be taken as the market value at the time of acquisition. Market value is also to apply where the consideration (not being money or money's worth) is one which cannot be valued, such as marriage consideration, an undertaking by the transferee, unliquidated damages and so on. (2)(c)

Provision is made to cover the possibility of a person selling in the course of a trade (for example, a trade of speculative builder) land which the person had acquired (by purchase (2)(d)

or otherwise) before commencing to carry on that trade, or land which the person had acquired after commencing the trade but for some purpose unconnected with it. In such a case it might be inequitable that the cost of acquisition of the land should be determined, as the case might be, by reference to the price actually paid or the market value at the time of acquisition. Accordingly, it is provided that, in such a case, the person is to be deemed to have purchased the land for a consideration equal to its market value at the time of its appropriation as trading stock – a time which is to be determined in the light of the facts of the particular case.

Provision is also made to deal with a case in which, for example, a person engaged in a trade of dealing in or developing land might, in relation to a particular “estate”, grant a licence to a builder (perhaps an associated company) to go on to the land for the purpose of developing it and at the same time undertake to give, in due course, leases or sub-leases of developed sites to nominees of the builder. Any fee for the grant of a licence of this nature is to be taken into account as a trading receipt. (2)(e)

In computing the trader’s profits, a deduction is not to be made in respect of any sum payable by the trader to secure the forfeiture or surrender of any person’s right to an annuity or other annual payment. However, the prohibition of a deduction is not to apply in certain circumstances, for example, where the payment arises under a testamentary disposition such as a will. (3)

Where — (4)

- the right to an annuity is bought out by a person other than the trader,
- the consideration so paid is not a trading receipt of a land-dealing trade, and
- the trader subsequently buys an interest in the land,

then, the amount payable by the trader for that interest is to be deemed to be the amount which would have been expended if the right had not been bought out, and the excess of the cost of the interest over that amount is, for the purposes of *subsection (3)*, to be treated as having been expended by the trader in buying out the right to the annuity.

The result is that the trader is deemed to have bought out the annuity and is not given a deduction unless the trader would qualify for such a deduction under *subsection (3)*.

Provision is made for the making of apportionments and valuations for the purposes of *subsection (4)* by the inspector where necessary.

## **642 Transfers of interests in land between certain associated persons**

### **Summary**

This section is designed to prevent a person chargeable on profits from dealing in land from avoiding liability by buying land at an artificially high price, or selling it at an artificially low price, in cases where the transferor and the transferee are connected persons.

### **Details**

In a case in which the person carrying on the trade of dealing in or developing land is the purchaser and in which the seller of the land does not carry on any such trade, the price paid by the purchaser will be a capital sum in the seller’s hands and not taxable as income. Where in such a case the parties are connected persons (see *section 10*) and the price paid is pitched at an artificially high level, the subsection provides that for tax purposes the price is to be deemed to be, not the artificially inflated price, but rather the market value. (1)

In a case where the person carrying on the trade of dealing in or developing land is the (2)

seller and the purchaser, who is a connected person (see *section 10*), does not carry on a trade of this kind, the price the purchaser pays will not affect the purchaser's tax liability since the purchaser is not dealing in land. Tax might therefore be avoided if the seller and the purchaser arranged that the property should pass at an artificially low price. This is prevented by securing that the price is to be deemed to be the market value instead of the artificially low figure. A disposal of property by way of gift is brought within the scope of this rule. In the absence of such a provision, a gift might not be caught by the rule because no "price" was involved.

In the application of the section to a case in which a lease is granted, "price" is to be taken (3) to include the fine or premium required by the lease.

### **643 Tax to be charged under Case IV on gains from certain disposals of land**

#### **Summary**

This section provides for a charge to tax under Case IV of Schedule D on gains from certain disposals of land or property (such as shares) deriving its value from land. The section aims to combat schemes and arrangements which are designed to remove profits from the scope of income taxation under Case I of Schedule D. Under these schemes, such profits, when they are taxed at all, would only be treated as capital gains and may be subject to a lower effective rate of taxation.

Provisions which are supplementary to this section are contained in *section 644*.

#### **Details**

##### ***Definitions and construction***

The term "capital amount" means any amount not treated as income for tax purposes. (1) Other expressions which include the word "capital" are to be construed accordingly, for example, "gain of a capital nature".

References to property deriving its value from land includes shares, partnership interests, or interests in settled property which derive the greater part (that is, over 50 per cent) of their value from land, and anything such as an option, consent or embargo which affects the disposition of land.

The definitions of "chargeable period", "land" and "shares" are self-explanatory.

##### ***Exceptions***

The section does not apply to any gain by an individual on the disposal of his/ her sole or (2) main residence.

##### ***Application***

The section applies only where one of the following 3 conditions is satisfied and "a gain (3) of a capital nature" is obtained from the disposal of the land —

- land or property deriving its value from land is acquired with the sole or main object of realising a gain from its disposal,
- land is held as trading stock, or
- land is developed by a company with the sole or main object of realising a gain on disposal after development.

The category of persons who is within the section is also set out by stipulating that the gain must be realised by —

- the person acquiring, holding or developing the land (or by any connected person – see *section 10*), or



- any person who is a party to, or concerned in, any arrangement or scheme regarding the land which enables a gain to be realised by any direct or indirect method or series of transactions.

In a case where the asset concerned is property deriving its value from land the subsection does not automatically catch a gain obtained by the owner of that property. In such a case, for example, where a person buys shares in a property-owning company and later sells them at a profit, the disposal is not caught unless the person is connected with the company or the gain is realised by means of an arrangement or scheme.

The commonest situation to which the section applies is where land (or property deriving its value from land) is acquired with the sole or main object of realising a gain from the disposal of the land, and a gain is in fact obtained — **(3)(a)**

- from a disposal of the land by the person acquiring the land or a person connected with the person acquiring the land, or
- from a disposal of property (such as shares) deriving its value from land by a person connected with the person acquiring the land, or
- from a disposal of either the land or property deriving its value from land by any person who is a party to an arrangement or scheme which is effected as respects the land.

The “sole or main object” requirement in both *subsections* **(3)(a)** and **(c)** ensures that a person who buys property or shares in a property-owning company as a genuine investment will not be chargeable under the section merely because the person subsequently sells at a higher price.

The circumstances in which a capital gain can be made where land is held as trading stock arise where the land is held by a company as trading stock and the shares in the company are sold by a connected shareholder. Any gain made on the disposal of the shares may be chargeable under *subsection* **(3)(b)**. However, *subsection* **(12)** provides for a limited exclusion from liability in certain circumstances. **(3)(b)**

In a case where land which, although not originally acquired with the intention of disposing of it at a gain, is at a later date developed by a company with that object, *subsection* **(10)** comes into play so as to restrict the gain to the actual gain accruing in the period commencing on the date on which the intention to develop was formed. The “cost” of the land should be taken as its market value at the time when the intention to develop it was formed (provided that this is not lower than the actual cost). **(3)(c)**

### ***Tax treatment of gains***

A gain which comes within the section is to be treated as income arising when the gain is realised and is to be charged under Case IV of Schedule D. This gain is normally to be charged on the person by whom it is realised. In certain circumstances the gain may be charged on some other person – see *subsection* **(11)**. **(4)**

### ***Disposals of land***

For the purposes of the section, there is a disposal of land if the property in the land, or control over the land, is effectively disposed of either by one or more transactions or by any arrangement or scheme, whether such transaction, arrangement or scheme concerns the land or property deriving its value from the land. **(5)**

### ***Gains obtained by one person from another/multiple transactions***

The circumstances of how a gain could be obtained by one person for another (see the concluding words of *subsection* **(3)**) are set out. The Oxford Dictionary defines “premature” as “occurring before the usual or proper time”. **(6)(a)**

Any number of transactions may be regarded as constituting a single arrangement or scheme so long as a common purpose is discerned in those transactions or there is other sufficient evidence of a common purpose. (6)(b)

It should be noted, however, that *subsection (6)* is not concerned with a genuine sale at low value by a person not involved in an arrangement or scheme.

***Land disposed of by means of an arrangement or scheme***

This provision enlarges on the ways in which land can be disposed of by means of an arrangement or scheme. It specifies that account is to be taken of any method by which any property or right is transferred or transmitted or by which the value of any property is enhanced or diminished. The provision goes on to secure that the occasion of any transfer of property or any enhancement of the value of any property may be an occasion when tax may be charged under the section. (7)

Particular examples of schemes to which the above provision applies are — (8)

- transactions made for less or more than full consideration,
- transfers of any property or right by means of assignments of share capital, partnership interests, or interests in settled property,
- the creation of any option, consent or embargo affecting the disposition of any property or right, and the giving of any consideration for the option or consent or the release from the embargo, and
- the disposal of any property or right on a winding-up, dissolution or termination of any company, partnership or trust.

***Computation of gains***

Provision is made to authorise the use of any just and reasonable method of computing a gain which may be appropriate to the particular case. The value of what is obtained on the disposal is to be taken into account. Allowable expenses are to be restricted to those attributable to the land disposed of, and it will be a question to be decided on the facts of each case whether expenses claimed relate solely to the land disposed of or only partly to that land. In general, Case I principles, as applied to land dealers, are to be followed as far as possible – especially where an interest in land is acquired and the reversion (ground rent) is retained on disposal. In that event, the ground rents created, and any premiums on leases, are to be dealt with in the same way as they would be in Case I computations. (9)

***Land not originally acquired with a view to making a gain on its disposal***

Provision is made to deal with the case of land which, although not originally acquired with the object of making a gain from its disposal, is at a later date developed by a company with that object. In such a case, the gain chargeable under this section is restricted by applying the rules relating to Case I, and thereby ensuring that the land is deemed to have been purchased for a consideration equal to its market value at the time when the intention to develop was formed. (10)

***Gains provided for a person by others***

Where a gain is made by a person and that gain is effectively provided for that person by some other person, that other person is to be charged to tax on the gain. For example, if an office block is acquired by a person with the sole object of realising a gain and that person transfers the property to foreign trustees who subsequently sell it and realise the gain, the gain is chargeable not on the trustees, but on the person who transferred the property to the trustees. (11)

***Disposals of shares in companies holding land as trading stock***

Where there is a disposal of shares in a company which — (12)

- holds land as trading stock, or
- owns directly or indirectly 90 per cent or more of the ordinary share capital of another company which holds land as trading stock,

then, if the land so held is sold by the company holding the land in the normal course of trading and all the opportunity to procure a profit in respect of that land arises to that company, this section will not treat any gain which might accrue to the holder of the shares as being a gain on property deriving its value from that land.

The final words in brackets in the subsection ensure that if there is any scheme or arrangement in relation to land held by the company at the time of the sale of the shares, the inspector is entitled to examine that scheme to see if any liability might arise under **subsection (3)(ii)**.

***Administration***

No document, memorandum or articles of association setting out the objects and powers of any person is to be conclusive in ascertaining the intentions of any person. (13)

In ascertaining whether and to what extent the value of any interest is derived from any other interest, value may be traced through any number of companies, partnerships and trusts, and the property held by any company, partnership or trust is to be attributed in a just and reasonable manner to the shareholders, partners or beneficiaries at each stage as may be appropriate. (14)

In applying the section — (15)

- any amount may be apportioned by such method as is just and reasonable, and
- appropriate valuations are to be made to give effect to the section.

Partners, or the trustees of a trust, or personal representatives, may be regarded as persons distinct from the individuals or other persons who are for the time being partners or trustees or personal representatives. For example, a trustee of a trust may be looked at either as such a trustee or as an individual in his/her own right where the occasion so requires. (16)

If all or any part of the land in question is in the State then the section is to apply to all persons whether resident in the State or not. (17)

**644 Provisions supplementary to section 643**

A gain under **section 643** would normally be chargeable on the person by whom the gain is realised. If, however, the opportunity of realising the gain has been provided by some other person, for example, if a settlor provides an opportunity for the trustees to realise a gain, that other person is chargeable even though that person does not actually receive the consideration. (1)(a)

A person who, under **section 643**, is assessed in respect of consideration receivable by another person is entitled to recover the tax from that other person.

If the tax, or any part of it, remains unpaid after 6 months from the due date, it is recoverable by the Revenue from the other person (who was not assessed) as though that person had himself/herself been assessed. However, this does not prejudice the right of the Revenue to recover the tax from the person who was assessed.

The inspector, if requested, is obliged to furnish a certificate to the person seeking to recover tax paid under **section 643** from another person specifying the amount of income

in respect of which tax has been paid and the amount of tax so paid. This is to assist the person seeking recoupment of tax paid by that person in respect of another person's gain. Such a certificate is evidence, until the contrary is proved, of any facts stated in the certificate.

Any amount which by virtue of **section 643** is to be treated as the income of a person is to be treated as the highest taxed part of the person's income. This is to apply despite any other provision of the Tax Acts to the contrary. (1)(b)

The Revenue Commissioners are empowered to take certain steps when it appears to them that any person entitled to any consideration or other amount taxable under **section 643** is not resident in the State. In such circumstances, they may direct that **section 238** is to apply to any payment forming part of the amount taxable under **section 643** as if it were an annual payment charged with tax under Schedule D. Thus, where a payment is made in such circumstances to a non-resident person, income tax must be deducted at the standard rate by the payer and accounted for to the Revenue. This will not, however, prejudice the final determination of the liability of the non-resident person, including any liability under the provisions of **subsection (1)(a)(ii)**. (2)

The provisions of **section 643** are made subject to any provision of the Tax Acts which deems income of one person to be the income of another person – for example, the provisions of the settlements legislation in **Part 31** which deems income of certain beneficiaries of settlements to be income of the settlors. (3)

Where, for the purposes of computing a gain chargeable under **section 643**, land is treated under **subsection (10)** of that subsection as having been appropriated as trading stock, the land must also be treated as having been appropriated as trading stock for the purposes of **section 596**, which deals with the capital gains tax treatment of appropriations to and from stock in trade. For capital gains tax purposes, therefore, the land is treated as having been sold at its market value on the date on which it is treated as having been appropriated as trading stock (also at market value) for the purposes of **section 643** and, where appropriate, a capital gains tax liability may arise in respect of the part of the gain on that land which is not to be taxed under **section 643**. (4)

Where one person realises a gain and another person is charged to tax under **section 643** on that gain, and that tax is paid, the person by whom the gain was realised is to be regarded as having been charged to that tax. This ensures that the person who made the disposal and realised the gain is not to be charged to capital gains tax on that gain. (5)

## **644A Relief from income tax in respect of income from dealing in residential development land**

### **Summary**

This section provides for an income tax rate of 20 per cent to apply, up to and including the tax year 2008, to income from dealing in residential development land. Profits attributable to preparatory development work on the land up to, but not including, the laying of foundations are also included for the purposes of the 20 per cent rate.

These profits are ringfenced so that no offset for personal credits etc. is allowed. However, the taxpayer has the option of having these profits charged to income tax in the normal way, thus allowing the offset of personal credits against the profits. This ensures that in any year the taxpayer may choose the option which best suits his or her circumstances.

This special incentive rate of tax does not apply to such income for 2009 and subsequent tax years. From that time income from dealing in residential development land will be

taxed under normal income tax rules.

### Details

This section provides for a rate of income tax of 20 per cent on profits or gains arising from dealing in residential development land.

Specifically, the section applies to profits or gains which — (2)

- arise from dealing in or developing residential development land in the course of a trade consisting of, or including, dealing in or developing land, assessable under Case I, or
- are gains of a capital nature from disposing of residential development land which, by virtue of *section 643*, are chargeable under Case IV of Schedule D.

Profits or gains to which the section applies are charged to tax at 20 per cent and are not to be reckoned in computing total income for the purposes of the Income Tax Acts. In addition, they are not to be taken into account for the purposes of reliefs or exemptions under the Income Tax Acts. (3)

“residential development land” is defined as land which satisfies one of the following three criteria: (1)

- land sold to a housing authority, the National Building Agency Limited or an approved body for the purposes of section 6 of the Housing (Miscellaneous Provisions) Act, 1992, provided that the land is specified in a certificate as being required for the purposes of the Housing Acts,
- land in respect of which planning permission for residential development has been granted, or
- land which is zoned residential.

“residential development” includes developments which are ancillary to the development and which are necessary for the proper planning and development of the area in question. Such ancillary developments would include shops, schools, churches, etc.

There are rules for apportionment of income and expenses of a trade as between dealing in residential development land and other activities by treating these two businesses as separate trades. (4)(a)

In computing the profits or gains to which the 20 per cent rate of tax is to apply, no account is to be taken of profits or gains that result from construction operations. (4)(b)

Where profits and gains, amounts receivable or expenses incurred are required to be apportioned as between different activities, that apportionment will be made in a just and reasonable manner. (4)(c)

“construction operations” in relation to residential development land has the same meaning as in *section 530(1)* but does not include the following: (1)

- demolition of any building etc. on the land,
- construction or demolition of roadworks, water mains, wells, sewers or land drainage installations, or
- operations preparatory to residential development, other than laying of foundations.

The effect of this is that profits from development activities up to but not including the laying of foundations can qualify for the 20 per cent rate.

If a person elects on or before the specified return date for the relevant year of assessment, this section does not apply for that year of assessment and the person will be taxed in the normal way. (5)

This section does not apply to income from dealing in residential development land (6)

arising to a person in the 2009 tax year and subsequent tax years.

## **644AA Treatment of losses from dealing in residential development land**

### **Summary**

This section sets out special rules for the treatment of certain trading losses arising from a trade of dealing in residential development land where, if profits had been earned, the profits would have qualified for the 20% incentive rate of income tax under *section 644A*.

Under normal income tax rules, a loss sustained in a trade may be set sideways against the person's other income in the year in which the loss arises, or may be carried forward for set-off against the income from the trade in subsequent tax years. In the case of losses sustained in a trade of dealing in residential development land, this could lead to a mismatch, in that such losses (sustained in a trade in which if profits had been made they would have been taxed at 20%) could be set against the person's other income taxable at the higher rate of tax. This section provides that such losses must first be converted into a tax credit, valued at 20% of the loss, and then allows the tax credit to be set sideways in the year the loss is sustained against tax payable on the person's other income. Any unused part of the tax credit may be carried forward and set-off against tax payable on the income from the trade in subsequent years. Where dealing in residential development land is part of a larger trade, any carried forward tax credit may be set against tax on the income from the larger trade.

As respects a claim for the sideways set-off of losses arising in a trade of dealing in residential development land against a property developer's other income, the special rules apply where such a claim has not been made to and received by Revenue before 7 April 2009. As respects the carry forward of such losses within the trade, the special rules apply unless the carry forward claim by the property developer is made to and received by Revenue before that date. For the purposes of these rules, where a trade comprises partly of dealing in residential development land and partly of other activities the new section requires each part to be treated as a separate trade.

Finally, where a claim for terminal loss relief (i.e. on the permanent cessation of a trade) has not been made to and received by Revenue before 7 April 2009, the special rules restrict the relief so that any part of the terminal loss that relates to a loss sustained, before 1 January 2009, in a trade of dealing in residential development land is "ring-fenced" and can only be set against income arising in that trade, or in that part of a trade, in prior years.

### **Details**

This section sets out special rules for the treatment of certain trading losses arising from a trade of dealing in residential development land where, if profits had been earned, the profits would have qualified for the 20% incentive rate of income tax under *section 644A*.

### **Definitions**

Certain terms used in the section are defined. While these are largely self-explanatory, the definition of the term "specified trade" should be noted. Specified trade is defined as a trade in its own right, or part of a combined trade, the income (if any) of which was taxable at the 20% incentive rate in the tax years before 2009. In essence, this means a trade, or part of a trade, consisting of dealing in residential development land. The definition specifically excludes, however, situations where a taxpayer elected to be taxed under the normal income tax rules (which he could do by making an election under *section 644A(5)*) and not under the special 20% incentive rate provided for by *section 644A(3)*. The purpose of the definition is to allow the identification of losses arising in a (1)

trade of dealing in residential development land so that they can be treated in the fashion set out in the section.

Other definitions to note are “adjusted income” and adjusted profits or gains”. These terms are used in the formula for attributing part of the tax payable on a person’s total income from all sources to the profits or gains from a trade carried out by that person (see material on **subsection (7)(a)** following).

Where there is a combined trade, the part of the trade that involves dealing in residential development land (i.e. the specified trade) and the part of the trade involving other activities (i.e. the non-specified trade) are each to be treated as separate trades. Where such is the case, an apportionment must be made of sales, expenses etc between the two parts of the trade, on a just and reasonable basis. (2)

### ***Relief to be granted by converting loss into tax credit***

Where a claim is made by a person under **section 381** in respect of a loss which is, or includes, a relevant loss (defined as a loss, or part of a loss, arising in a specified trade) then if the claim is not made to and received by Revenue before 7 April 2009, the normal rules of **section 381(1)** – which allows the loss to be set-off sideways against the person’s other income in the tax year in which the loss is sustained – do not apply. Instead, relief is to be granted by converting the loss into a tax credit and setting the tax credit sideways in the year the loss is sustained against tax payable on the person’s other income. (3) & (4)

Essentially the relief is to be granted by reducing the amount of tax that would otherwise be payable by the person by the tax credit equivalent of the relevant loss, or, where appropriate, by making a repayment of tax, sufficient to ensure that the final tax borne by the person is no greater than it would have been if the tax which would otherwise have been borne by that person (i.e. “the interim amount of tax payable”), had been reduced by the tax credit equivalent of the loss. (4)(a)

The “interim amount of tax payable” means the tax that would otherwise have been borne by that person following any reduction in the person’s income as a result of the sideways set-off of other losses to which the person is entitled in accordance with **section 381** – this could be the part of any loss arising on the non-specified part of a combined trade or losses from another trade of that person, in respect of which the old rules will continue to apply. (4)(b)

The tax credit equivalent of the relevant loss is determined by way of a formula. Basically the tax credit is the amount of the relevant loss multiplied by the incentive rate of tax (20%) which would have applied to the profits or gains of the specified trade had such profits or gains been made. So if the relevant loss was €100, the equivalent tax credit is  $€100 \times 20\% = €20$ . (5)

### ***Carry forward of unused tax credit***

If relief cannot be fully given for the relevant loss via the tax credit in the year in which the loss is sustained, due to the fact that the tax that would otherwise have been payable by the person is less than the amount of the tax credit, the unused tax credit (the “excess tax credit”) may be carried forward and used against tax payable on the profits or gains of the overall combined trade in any subsequent tax year. (6)(a)

Relief for any carried forward tax credit is to be given, as far as possible, from the tax payable on income from the combined trade in the first subsequent tax year and so on. (6)(b)

### ***Tax attributable to income from the trade***

As tax is charged on a person’s total taxable income and not separately on individual sources of income, some mechanism is required to attribute part of the overall tax payable (7)(a)

by the person in a subsequent year to the income from the trade of dealing in residential development land for that year. The section provides a formula for determining this. The intention of the formula is to attribute to the income from the trade a portion of the overall tax payable by the person which is in the same proportion as the income from the trade bears to the person's total income, but only where the trading income actually contributed to the overall amount of tax payable by the person on his or her total income in the first place.

The numerator in the fraction in the formula is the "adjusted profits or gains" from the trade – that is, the amount, if any, of the profits or gains after taking into account any allowance, charge, deduction or loss (for example, capital allowances) specific to the trade. Similarly, the denominator is the person's "adjusted income" – that is, the person's income from all sources, after taking into account any allowance, charge, deduction or loss specific to each income source. The definition of "adjusted income" makes clear, however, that it does not take into account any general allowances, charges or deductions available against all of the person's income sources. To do so, could give rise to an over attribution of tax payable to income from the trade.

Where the carry forward of the excess tax credit is to a tax year before the tax year 2009 (i.e. to a tax year when the special incentive rate of 20% applied to profits or gains from a trade of dealing in residential development land) any excess tax credit is to be offset- (7)(b)

- firstly, against any tax actually paid at the 20% rate on profits or gains of the specified trade in that tax year, and
- only then against the tax payable on the non-specified trade as calculated by the formula in **subsection (7)(a)** except for altering the definition of "C" in the formula to allow for the apportionment of tax to be between the profits or gains on the non-specified trade and other income (as opposed to the profits or gains on the trade as a whole and other income).

### ***Treatment of loss carried forward***

Where a claim is made to carry forward a relevant trading loss or part of such a loss sustained in a tax year prior to 2009 (other than a loss where the claim for the sideways set off of the loss is not made to and received by Revenue before 7 April 2009 which is already dealt with in the earlier part of the section) then, unless the claim for the carry forward is made to and received by Revenue before 7 April 2009, new rules apply which require the carried forward loss to be converted to a tax credit. The purpose is to bring within the new rules, claims for the carry forward of unused losses, notwithstanding, for example, that any associated sideways set-off claim was made to and received by Revenue before 7 April 2009, once the carry forward claim itself is made after that date. (8)(a)

The tax credit equivalent of the carried forward relevant loss is to be determined by way of a formula. Basically the tax credit is the amount of the relevant loss, or the part of the relevant loss, carried forward multiplied by the incentive rate of tax which would have applied to the profits or gains of the specified trade had such profits or gains been made. So if the carried forward relevant loss was €100, then the equivalent tax credit is €100 x 20% = €20. (8)(b)

The amount of the tax credit in these circumstances is to be treated as if it was an excess tax credit under **subsection (6)(a)** – this ensures that the provisions of **subsections (6) and (7)(b)** will apply to such an excess tax credit. (8)(c)

### ***Terminal loss relief***

Where a claim for relief in respect of a terminal loss (i.e. where a trade ceases permanently) under **section 385** is made in respect of a combined trade and the claim is not made to and received by Revenue before 7 April 2009, **subsection (1)** of that section (9)(a)



(which allows the terminal loss to be set against the profits or gains from the trade in the three tax years preceding the tax year in which the permanent cessation of the trade takes place) will apply to so much of the terminal loss as is attributable to the period before 1 January 2009 as if the specified and non-specified parts of the combined trades were two separate trades. In essence, this means that any part of the terminal loss that relates to a loss sustained, before 1 January 2009, in a trade of dealing in residential development land is “ring-fenced” and can only be set against income arising in that trade, or in that part of a trade, in prior years. The companion provisions to *section 385* (i.e. *sections 386* to *389*) will apply accordingly. These provisions deal, inter alia, with how to calculate the terminal loss and how to calculate the amount of profits and gains from a trade in prior years against which the terminal loss relief may be claimed.

Where in order to give effect to *subsection (9)(a)* an apportionment of sales, expenses etc *(9)(b)* is required, it shall be done on a just and reasonable basis.

## **644AB Treatment of profits or gains from land rezonings**

### **Summary**

This section provides for an 80% tax rate to apply to ‘windfall’ profits or gains from certain land disposals following a relevant planning decision. Such a decision has two elements, i.e. a rezoning or a decision to allow a material contravention of a development plan. A rezoning means a change under the Planning and Development Act 2000 from non-development land use to development land use. This change is one from agriculture and amenity uses to residential, commercial or industrial uses or a mixture of such uses.

The section applies, in the case of individuals and companies, who dispose of land that is rezoned on or after 30 October 2009 or is the subject of a material contravention decision made on or after 4 February 2010. It applies whether the land is disposed of in the course of a trade taxable under Case I or the income is taxable under Case IV in accordance with *section 643*.

Companies in receipt of profits attributable to rezoning are charged to income tax instead of corporation tax on those profits.

This section only applies to such profits or gains arising in the tax years 2010 to 2014, inclusive.

### **Details**

#### **Definitions**

Certain terms used in the section are defined. While some are self-explanatory the definition of certain other terms should be noted. *(1)*

“development land-use” means residential, commercial or industrial uses or a mixture of such uses.

“non-development land-use” means a land-use which is agricultural, open space, recreational or amenity use or a mixture of such uses.

“qualifying land” means land which is disposed of (on or after 30 October 2009) in the course of a business and is –

- disposed of to an authority possessing compulsory purchasing powers but only if the Revenue Commissioners are satisfied that the disposal would not have been made but for the exercise of those powers or where the authority has given formal notice that it will exercise those powers,

- disposed of by a company in which the National Asset Management Agency owns any part of the ordinary share capital, or by a company which is an effective 75% subsidiary of such a company, or
- a disposal of a site consisting of 0.4047 hectares (1 acre) or less, whose market value at the date of disposal does not exceed €250,000, other than where the disposal forms part of a larger transaction or series of transactions.

“relevant planning decision” for the purposes of this section means –

- a change in the zoning of land from non-development land-use to development land-use or from one development land-use to another development land-use, including a mixture of such uses, or
- a decision to grant permission for a development that would materially contravene a development plan.

### ***Application***

This section applies to profits or gains (to the extent that the profits or gains are attributable to a relevant planning decision) which – (2)

- arise from dealing in or developing land in the course of a trade consisting of or including dealing in or developing land, assessable under Case I, or
- any gain of a capital nature from disposing of development land which, by virtue of **section 643**, is chargeable to tax under Case IV of Schedule D.

Corporation tax is not chargeable on the profits or gains to which this section applies. Such profits or gains will not be regarded as profits or gains of the company for the purposes of corporation tax. (3)

Profits or gains are chargeable to income tax at 80 per cent. These profits or gains are to be taken into account in respect of the Tax Acts only to the extent that they relate to the assessment, collection and recovery of income tax and of any interest or penalties arising on that tax. (4)

### ***Treatment of loss carried forward***

Where a loss is attributable to rezoning, the loss may be carried forward for use only against future profits arising from rezoning. Such a loss shall be disregarded for Corporation Tax purposes. (5)(a)

Relief for any carried forward loss is to be given, as far as possible, from the profits or gains arising from rezoning in the first subsequent tax year and so on. (5)(b)

### ***Ringfencing of 80% profits and gains***

Profits or gains will not be included in the definition of “reckonable income” for the purposes of PRSI and the income and health levy. (6)

In computing the profits or gains to which the 80% rate of tax is to apply, no account is to be taken of the profits or gains which result from construction operations or are attributable to qualifying land. (7)

### ***Apportionment***

Where profits or gains, amounts receivable or expenses incurred are required to be (8)

apportioned as between different activities, that apportionment will be made in a just and reasonable manner.

### ***Treatment of Distributions***

Where a distribution is made by a company partly from the profits of rezoning and partly from other profits then that distribution should be apportioned to reflect this. (9)

Distributions from the profits or gains attributable to rezoning will not be regarded as income for the purposes of the Tax Acts or included as reckonable income for the purposes of PRSI and health levy. (10)

This section applies to profits or gains attributable to rezoning for the year of assessment 2010 to 2014, inclusive. (11)

## **644B Relief from corporation tax in respect of income from dealing in residential development land**

### **Summary**

This section provides that income from the disposal by companies of residential development land is to be taxed at 20 per cent. While *section 21A* provides for a corporation tax rate of 25 per cent on profits from certain activities including dealing in or developing land, this section ensures that a 20 per cent rate applies to residential development land. The section ceased to have effect from 1 January 2009.

The 20 per cent rate is achieved by reducing, by one-fifth, the tax which is charged in accordance with *section 21A* on the income from disposals of residential development land. This applies whether the land is disposed of in the course of a trade taxable under Case I or the income is taxable under Case IV in accordance with *section 643*.

The first stage in the process is to determine the corporation tax charged at 25 per cent and to apportion this to income from dealing in residential development land. The tax attributable to such income is reduced by one-fifth.

### **Details**

The definitions provided for in this section are as follows: (1)

“excepted trade” has the same meaning as in *section 21A*. This effectively segregates profits from construction activities from those attributable to dealing in land.

“residential development” and “residential development land” have the same meanings as in *section 644A*, which provides a 20 per cent rate of income tax on dealing in residential development land.

### ***Excepted trades***

Where a company carries on an excepted trade which includes dealing in residential development land, its corporation tax, in so far as it refers to trading income from dealing in residential development land is to be reduced by one-fifth. An excepted trade is a trade which is not taxable at the standard corporation tax rate but is taxable at a rate of 25 per cent. One category of excepted trade is a trade of dealing in land – but all construction activities are excluded. (2)(a)

The section sets out the computational rules to calculate corporation tax attributable to profits from dealing in residential development land. A two-step approach is required:

- the first step provides for the apportionment of corporation tax which is payable at the 25 per cent rate – this can apply to income chargeable under Cases III, IV or V and to income from an excepted trade (land dealing generally, mining and (2)(b)(ii)

petroleum activities) – as between income of an excepted trade and other income taxable at the 25 per cent rate.

- once the tax referable to an excepted trade has been determined, the second step provides for the corporation tax referable to the excepted trade to be apportioned between income from dealing in residential development land and other income of the excepted trade. This is done on the basis of receipts from disposals of residential development land and other receipts of the excepted trade. In making this apportionment it is specified that receipts from disposing of residential development land and total receipts of the excepted trade do not include any amount attributable to construction operations. (2)(b)(i)

**Example**

Case III, IV and V income	€100	
Expected trade*	€300	
Less charges	€120	€180
	€280 @ 25% = €70	
*Receivable from disposals of residential land	€2,000	
Receivable from disposals of other land	<u>€1,000</u>	
	€3,000	

CT referable to income of an excepted trade is —

$$\text{CT charged at 25\%} \frac{\text{income of excepted trade}}{\text{total income charged at 25}} \\ 70 \times \frac{180}{280} = 45$$

CT referable to income from dealing in residential development land is:

$$\text{CT referable to income of an excepted trade} \times \frac{\text{Receivable from dealing in residential development land}}{\text{Total receivable from the excepted trade}} \\ 45 \times \frac{2,000}{3,000} = 30$$

This €30 is reduced by one fifth i.e. €6 to give €24 and an effective rate of 20% on the income from dealing in residential development land:

$$\left( \frac{2,000}{3,000} \times 180 = 120 \right) @ 20\% = 24$$

**Tax on certain gains taxable under Case IV**

The section also provides for a one-fifth reduction in corporation tax charged on certain capital gains arising from disposals of residential development land. The gains concerned are gains arising on disposals and transfers of land and property (such as shares) deriving their value from land and which, by virtue of **section 643**, are charged to income tax under Case IV of Schedule D. **Section 643** aims to combat schemes and arrangements which are designed to remove profits from the scope of income tax under Case I of Schedule D. Under these schemes, such profits, if they are taxed at all, would otherwise be chargeable under the capital gains tax code and would from time to time be subject to a lower effective rate of tax. **Section 643** applies to such transactions in land in general. The (3)(a)

section provides that corporation tax is to be reduced only in so far as it relates to gains on residential development land.

The section sets out the computational rules. There are two steps involved in determining the corporation tax referable to a gain which is charged to tax as income under Case IV.

- Step 1 provides for the apportionment of corporation tax charged at the 25 per cent rate between income charged under Case IV by virtue of **section 643** and other income charged at that rate. This is done on the basis of the amount of such Case IV income as compared with the total income taxable at the 25 per cent rate. Once this has been determined step 2 can be applied. (3)(b)(ii)
- Step 2 provides for the apportionment of corporation tax referable to income chargeable under Case IV by virtue of **section 643** as between such income as is referable to disposals of residential development land and other income so charged. The apportionment is done on the basis of the amount of gain attributable to the disposal of residential development land as compared with the total of such gains. In doing this calculation, the amount of gain attributable to the disposal of residential development land, is not to include any amount referable to construction operations. It is not necessary to make a similar exclusion in relation to the total gain because the total gain includes any gain on the land whether or not it includes anything referable to construction activities. What is required is to take the proportion referable to disposing of land, and only land, which is residential development land and to reduce the tax on that to an effective 20 per cent rate. (3)(b)(i)

Income charged under Case IV by virtue of **section 643** will never be included in trading income taxable at the standard corporation tax rate. Consequently it will always be taxed at the 25 per cent rate (subject to the reduction under this section). Income from development activities such as demolition, installation of services and other preparatory work to residential development is included in the income to be taxed (effectively) at the 20 per cent rate. It is for this reason that the reference to construction operations is to such operations as defined in **section 644A** rather than the wider definition in **section 21A**. (3)(b)(i)

A company is allowed to disapply a part of **section 21A** in the case of income from the sale of residential development land arising in the year 2000. **Section 21A** generally provides for income from dealing in land to be treated as income of an excepted trade taxable at the 25 per cent rate. However, it also allows income from dealing in land which has been fully developed by a builder to be included in the builder's trading income which is taxable at the standard rate of corporation tax. The standard corporation tax for 2002 and subsequent years is lower than the 20 per cent rate provided for by this section. However, the standard corporation tax rate in 2000 was 24 per cent, higher than the 20 per cent rate provided for by this section. Under this section companies were given the option for 2000 to disapply that part of **section 21A** which treats income from disposals of certain residential development land as being taxable at the standard rate of corporation tax. Where a company exercises that option, the income concerned is taxed at the 25 per cent rate with a reduction of one fifth of the tax concerned to achieve an effective rate of 20 per cent. (4)

### **Termination of relief**

The section ceased to apply to an accounting period ending after 31 December 2008. Where an accounting period of a company began before 31 December 2008 and ended after that date it is to be divided into 2 parts one commencing before 31 December 2008 and ending on that date and another beginning on 1 January 2009 and ending on the date the accounting period ends and both parts shall be treated as if they were separate accounting periods of the company. (5)

## **644C Relief from corporation tax for losses from dealing in residential development**

## land

### Summary

This section restricts the relief for losses on dealing in residential development land incurred prior to 31 December 2008 where a claim for the relief in respect of those losses is made on or after 7 April 2009. Claims made after that day for relief in respect of losses on residential development land incurred before 1 January 2009 will be dealt with as follows:

- (a) such losses will be relieved on a value basis to the extent that they are carried forward to accounting periods ending after 1 January 2009,
- (b) such losses will be relieved on a value basis to the extent that relief is claimed to set these losses sideways or back against income chargeable to corporation tax at 25 per cent,
- (c) such losses will be ring fenced to income arising from dealing in residential development land in earlier accounting periods,
- (d) such losses will be relieved on a value basis where surrendered to a company within the same group and claimed against profits from dealing in residential land or other profits chargeable to tax at the 25 per cent rate of corporation tax, and
- (e) where such losses are terminal losses they will be available for relief on a value basis to the extent that they may be claimed against profits from dealing in residential development land.

### Details

#### *Definitions*

“corporation tax referable to dealing in residential land” is defined in *section 644B(2)* and (1)(a) this definition is imported into this section.

“relevant corporation tax” is the corporation tax which would be chargeable for the accounting period apart from:

- tax withheld by the company from certain payments (*sections 239* and *241*) which have been paid over to Revenue,
- group relief for losses under *section 420B*,
- surcharges on undistributed income (*sections 440* and *441*), and
- any corporation tax attributable to a life business company (within the meaning of *section 706*) where that corporation tax is referable to profits of policyholders.

“relevant trading income” has the same meaning set out in *section 243A*, i.e. trading income other than so much of that income as is taxable at the 25 per cent rate of corporation tax.

“residential development land” has the same meanings as in *section 644A*, which provided a 20 per cent rate of income tax on dealing in residential development land.

#### *Separate accounting periods*

Where an accounting period of a company straddles 31 December 2008 it is treated as two (1)(b) accounting periods. The section then only applies to losses arising on or before that date.

#### *Carry forward of losses*

Losses arising from dealing in residential development land that are carried forward are to (2) be allowed on a value basis. This is achieved by reducing the amount of the residential development land loss by 20 per cent.

### ***Computation of losses***

Losses from dealing in residential development land are removed from the scope of **section 396(2)** (the general provision which allows set off of losses sideways and back). **(3) & (4)**  
The amount of the loss relating to dealing in residential development land is available for relief under **subsections (3) to (11)** of this section.

The mechanism for computing the amount of the loss relating to dealing in residential development land is set out. There must firstly be an overall loss in the trade. Then the amount of the loss relating to dealing in residential development land is computed using receipts and expenses relating to residential development land only and other receipts and expenses partly so relating, apportioned on a just and reasonable basis. If, however, the loss as so computed exceeds the loss in the trade then it is the amount of the loss in the trade that is taken as the amount of the loss relating to dealing in residential development land. Where the loss is incurred in an accounting period which straddles 31 December 2008 only the portion of the loss relating to the period falling before that date is removed from the scope of **section 396(2)**.

The loss computed in accordance with **subsections (3) and (4)** is treated as a loss in a separate trade and for the purposes of this section it is known as a “relevant loss”. **(5)**

### ***Carry-back and same period set off of losses***

A residential development land loss may be set sideways against income chargeable at 12½ per cent and 10 per cent and chargeable gains. Any excess may be set back under this subsection against similar income and gains of preceding accounting periods, ending within a specified time. The previous accounting periods in which relief can be given for a loss incurred in an accounting period are those ending in the time immediately preceding the accounting period in which the loss was incurred and which is equal in length to that accounting period. If necessary, parts of accounting periods can be taken into account for this purpose. This only applies to the extent that the company carried on actual trade during that immediately preceding period. **(6) & (7)**

### ***Set off of losses on a value basis***

A company may claim relief on a value basis for a relevant loss (i.e. a loss arising from dealing in residential development land) in an accounting period that cannot otherwise be relieved. **(8), (9) & (10)**

The tax value of the unrelieved portion of the loss is available for set off against the relevant corporation tax for the accounting period. Losses are relieved in this way by reducing the relevant corporation tax for the accounting period in which they were incurred and of previous accounting periods, ending within a specified time, by 20 per cent of that loss.

The previous accounting periods in which relief can be given for a loss incurred in an accounting period are those ending in the time immediately preceding the accounting period in which the loss was incurred and which is equal in length to that accounting period. However, the reduction, which can be made in the relevant corporation tax for an accounting period falling partly before that time, is to be proportionately reduced on a time basis.

### ***Carry forward of unused amounts***

Special rules apply to determine the amount of the losses that are to be regarded as having been used. The amount of losses, which are to be regarded as used, is determined by regrossing the loss relief given at 20 per cent. However, in loss relief generally, losses are offset against profits before deducting charges. Consistency with that approach is **(11)**

achieved by providing that the amount of losses treated as used is the amount that have been treated as used if there were no non-trade charges on income, expenses of management or other similar amounts deductible from profits of more than one description. This ensures that only the appropriate amount of losses is brought forward. However, the definition ensures that there is nothing to prevent the carry forward of excess capital allowances under **section 308**.

### **Application**

The section applies for all accounting periods where a claim is made to set a trading loss relating to residential development land sideways or backwards under **section 396(2)** and that claim is made on or after 7 April 2009. (12)

### **Terminal loss relief**

The amount of the loss for which terminal loss relief can be claimed under **section 397** where the trade ceases on or before 31 December 2008, will be reduced by the lesser of (a) the amount of the loss or (b) the amount of the loss which relates to dealing in residential development land (as computed under **subsection (4)**). (13)

The amount of the loss for which terminal loss relief can be claimed under **section 397** where the trade ceases in the year 2009, will be reduced by the lesser of (a) the amount of the loss or (b) the amount of the loss which relates to dealing in residential development land (as computed under **subsection (4)**) for the portion of the period falling before 31 December 2008). (14)

### **Value basis computation – terminal loss relief**

The company ceasing to carry on a trade which includes dealing in residential development land may claim relief under **subsections (15) to (17)** in respect of amounts restricted under **subsection (13)** or **(14)**. (15)

Relief is granted for this loss by permitting the company to reduce the corporation tax of the company so far as it is corporation tax referable to income from dealing in residential development land by 20 per cent of the loss in the same manner as terminal losses are relieved under **section 397**. (16) & (17)

The income of accounting periods for which terminal loss relief is claimed is to be reduced by an amount of income corresponding to the amount of corporation tax referable to income from dealing in residential development land before any relief under **subsection (15)**. The corporation tax paid by the company is also deemed to be reduced by the corporation tax referable to income from dealing in residential development land paid by the company and not repaid to it. (18)

### **Application of terminal loss relief provisions**

The section shall apply where a claim is made for terminal loss relief in a trade that ceases on or before 31 December 2008 and that claim is made on or after 7 April 2009. (19)

### **Group relief**

Losses from dealing in residential development land are excluded from the scope of the general group relief provisions (i.e. **subsections (1) to (6)** of **sections 420** and **421**). The amount of the loss relating to dealing in residential development land is available for relief under **subsections (21) to (25)** of this section. (20)

### **Value basis relief**

The tax value (i.e. 20 per cent of the loss) of surrendered losses arising from dealing in residential development land may be set against corporation tax (if any) referable to (21)(a)



dealing in residential development land of the claimant company for a corresponding accounting period.

### ***Value of losses surrendered***

The mechanism to determine the amount of losses to be treated as used for the purposes of ensuring that relief will not be granted more than once in respect of the same loss is set out. The amount of losses that are regarded as used is determined by regrossing the amount by which the relevant corporation tax of the claimant company is reduced by virtue of **subsection (21)(a)**. (21)(b)

### ***Set off of losses***

Losses from dealing in residential development land may be set off against profits of the claimant company chargeable at 12½ per cent or 10 per cent in the normal way. (22)

### ***Order of losses***

The order of set off of losses is set out. Group relief allowed under **subsection (22)** will reduce the trading income of the claimant company for an accounting period before relief for terminal losses under **section 397** and after any relief granted under **section 396** in respect of a loss incurred in a preceding accounting period. (23)

### ***Sharing of group relief***

Where a claim for group relief is made by a company as a member of a consortium then the fraction each claimant can claim is determined by reference to the member company's share in the consortium. (24)

### ***Value basis relief***

A claimant company may claim relief in respect of the tax value of losses (20 per cent of the loss) arising from dealing in residential development land incurred by the claimant company against corporation tax chargeable on income at the 25 per cent rate. (25) & (26)

### ***Application of group relief provisions***

**Subsections (20) to (26)** are treated as if they were part of the group relief provisions contained in **Chapter 5 of Part 12**. This ensures that all the definitions and provisions of general application for the purposes of that Chapter will also apply for the purposes of these subsections. (27)

### ***Operative date***

**Subsections (20) to (27)** shall apply where a claim is made for group relief and that claim is made on or after 7 April 2009. (28)

## **645 Power to obtain information**

The inspector may by notice in writing require any person to furnish such particulars as he/she considers necessary for the purposes of **sections 643 and 644**. (1)

The requirements which the inspector may include in the notice are set out. (2)

Provision is made for the protection of professional privilege between solicitor and client. (3)

## **646 Postponement of payment of income tax to be permitted in certain cases**

### **Summary**

This section provides special treatment for cases in which property is sold subject to the condition that the purchaser will lease it back to the vendor. Many transactions of this

kind would not be regarded as trading transactions, by reference to *section 643* or otherwise, and there would be no question of liability to income tax in respect of any profit arising to the vendor. Such would normally be the position where, for example, the property concerned is industrial or commercial property which is occupied, or to be occupied, by the vendor.

In a case in which the question of liability arises, the situation presented is likely to be one in which a person has acquired land, erected a building on it and then disposed of the property to an insurance company or other financial institution by way of a sale-lease arrangement. In that situation, the consideration for the sale would consist partly of a sum in cash and partly of the right on the part of the vendor to obtain the lease back, and the total consideration would have to be taken into account in computing the profits chargeable.

The value of the right to the lease back largely depends on the amount of the rent payable under the lease, which initially is fixed at a percentage – say 8 per cent of the cash consideration. In a given case, the cash consideration may approximate to the market value of the property. In that event the rent under the lease back is high and, consequently, the value of the vendor’s right to that lease is small or even negligible. On the other hand, the cash consideration may be well below the market value of the property – perhaps only one-third or one-half of it. In that event, the rent under the lease-back is relatively low and the value of the right to the lease back is a relatively high proportion of the total consideration for the sale. Where, in a case of the latter kind, the vendor holds the lease back as an investment from which the vendor hopes to derive an income by letting the premises, the vendor’s liquid position may be such that insistence on immediate payment of the tax on the vendor’s development profits might cause difficulties.

*Section 646* meets such a case by permitting payment, by instalments over a 10-year period, of so much of the income tax as is attributable to the value of the lease back being treated as part of the sale consideration.

## Details

### *Definition*

The term “basis period” is defined in relation to a year of assessment and means the period on the profits or gains of which income tax for that year is to be finally computed. (1)

### *Conditions necessary for postponement of income tax*

The rules of *subsections (3) and (4)* apply for the year of assessment in the basis period for which the disposal of the land took place if the following conditions are satisfied — (2)

- a person (called the vendor) carrying on a trade of dealing in or developing land sells his/her full interest in the land in the course of the trade to a person (called the purchaser),
- the purchaser is not connected with the vendor (this is designed to prevent abuse of the relief; normally, however, the parties to sale-lease transactions are at arm’s length, the purchaser being an insurance company or other financial institution),
- the terms of sale provide that the purchaser will lease the land back to the vendor and the purchaser does so within 6 months from the time of the sale (the idea underlying the time limit of 6 months is that, if the lease back is bona fide intended to be held as an investment, it is taken up as soon as possible; in practice, the lease back is usually granted immediately after the sale, but the interval of 6 months provides for any delay which might reasonably occur in a particular case), and
- the right to the lease back has a value to be taken into account in computing the vendor’s trading profit.

### ***Postponement of income tax***

Where the above conditions are satisfied, and the vendor retains the leasehold interest acquired from the purchaser and has not disposed of any interest derived from that leasehold interest (for example, by the grant of a sub-lease), whether of the whole or part of the land, an amount of the tax payable by the vendor on the sale-lease transaction may be postponed. The amount of the tax to be postponed is 90 per cent of the additional tax payable as a result of including in the consideration for the disposal of the land a sum equal to the value of the right of the vendor to a leaseback of the land. (The rest of the vendor's income tax liability is payable as normal.) The tax postponed is payable in 9 equal instalments commencing on 1 January in the year following that in which the tax would otherwise have been payable. (3)

Where a postponement of tax has been allowed, any balance of the tax which is still unpaid becomes due and payable immediately if any of the following events occurs — (4)

- the vendor ceases to retain the leasehold interest acquired from the purchaser,
- the vendor disposes of an interest (for example, by the grant of a sub-lease) derived from that leasehold interest, whether of the whole or part of the land,
- the vendor (being an individual) dies, or
- the vendor (being a company) commences to be wound up.

### **647 Postponement of payment of corporation tax to be permitted in certain cases**

This section applies broadly the same postponement procedure (as in *section 646*) to the case of a sale and leaseback by a company.

## CHAPTER 2

### *Capital gains tax: disposals of development land*

#### **Overview**

This Chapter provides for the capital gains tax charge on disposals of development land. The pertinent definitions are set out (*section 648*), while the charge to capital gains tax on companies in respect of such disposals and rules in relation to such disposals by company groups are also provided for (*section 649*). The normal rate of capital gains tax on certain disposals of development land is set out in *section 649A*. *Section 649B* provides for a rate of 80% in respect of gains attributable to the rezoning of land. The application of certain capital gains tax reliefs are restricted in the case of disposals of development land, that is, indexation relief (*section 651*), roll-over relief (*section 652*) and loss relief (*section 653*). These restrictions do not apply to disposals of development land by individuals for less than €19,050 in a year of assessment (*section 650*), and exceptions to the restrictions on the application of roll-over relief are also provided for (*section 652*).

#### **648 Interpretation (Chapter 2)**

“the Act of 1963” is the Local Government (Planning and Development) Act, 1963.

“the Act of 2000” is the Planning and Development Act 2000.

“compulsory disposal” is a disposal to an authority possessing compulsory purchase powers which is made either as a result of an actual compulsory purchase order or a formal notice of intention to exercise those powers, but a disposal of development land under section 29 of the Act of 1963 is not to be regarded as a compulsory disposal.

“current use value”, in relation to land, or unquoted shares deriving their value or the greater part of their value (that is, over 50 per cent) directly or indirectly from land, is the

amount which would be the market value of the land if its value were calculated on the basis that it was at that time, and would remain, unlawful to carry out any development in relation to the land other than development of a minor nature.

“development land” is land in the State, or unquoted shares deriving their value or the greater part of their value directly or indirectly from such land, the consideration for the disposal of which, or the market value at the time of disposal, exceeds the current use value at the time the disposal was made.

#### **Example**

If 200 acres of a farm is zoned as “agricultural land” and will not receive planning permission for rezoning for development, and its value as farmland is €500,000, then its current use value is €500,000. If, however, it were likely that the land could be rezoned for development and it is sold for, say, €20 million, then it is development land for the purposes of this definition (although it may not yet be rezoned).

“development of a minor nature” is development carried out by certain statutory undertakers (that is, those authorised by statute to carry out certain public development) under section 4 of the Act of 1963 or, on or after 11 March 2002, under section 4 of the Act of 2000. These sections exempt certain developments such as improvement to dwelling places or the installation of certain utilities such as water, gas, electricity, etc. This type of development does not include developments by local authorities under section 2 of the Act of 1963 or, on or after 11 March 2002, under section 2 of the Act of 2000 (i.e., the construction of local authority housing).

“relevant disposal” is a disposal of development land made on or after 28 January, 1982.

## **649 Companies chargeable to capital gains tax in respect of chargeable gains accruing on relevant disposals**

### **Summary**

This section provides that companies are chargeable to capital gains tax (and not corporation tax) in respect of gains accruing on disposals of development land. It also provides for certain rules relating to such disposals in the case of company groups’.

### **Details**

#### ***Charge to capital gains tax***

Whereas it is usually the case that a company’s chargeable gains are subject to corporation tax (see *section 78*), this section provides that where a gain accrues to a company from a disposal of development land, the company is chargeable to capital gains tax (and not to corporation tax) in respect of the gain. (1)

#### ***Groups of companies***

Where capital gains tax is chargeable on gains accruing to a company on disposals of development land, then, *sections 617* (transfers of non-trading stock within a group), *621* (depreciatory transactions in a group), *622* (dividend stripping), *623* (company ceasing to be member of group), *624* (exemption from charge under *section 623* in case of certain mergers), *625* (shares in subsidiary member of group) and *626* (tax on company recoverable from other members of group) apply to capital gains tax chargeable on the company as they apply in relation to corporation tax on chargeable gains. (2)

Where a company which is or has been a member of a group of companies disposes of development land, and that land when it was acquired by the company had not been development land and had been acquired from another company within the group at a time when both companies were members of the group, the chargeable gain is computed (3)(a)

as if the group members were a single person and as if the acquisition of the land by the group taken as a single person had been the acquisition of the land by the member disposing of it.

Provision is made, however, to guard against the imputing of an excessive period of ownership, and possibly an excessive chargeable gain, on a disposal. If, at a time earlier than the disposal, another date of acquisition, which is later than the date on which the asset first entered the group as a whole, is provided for under *section 618(2)* (transfer of trading stock within group) or *623* (company ceasing to be member of group), that later date is treated as the start of the period of ownership of the asset. (3)(b)

## 649A Relevant disposals: rate of charge

### Summary

Subject to certain exceptions, gains on disposals of development land are liable to capital gains tax at 40 per cent, where the disposal was made in the period from 3 December 1997 to 30 November 1999. The rate of tax on disposals made on or after 6 December 2012 is 33 per cent.

### Details

#### Definitions

“development plan” is defined in the Local Government (Planning and Development) Act, 1963 and refers to the plans made by the appropriate planning authority indicating the development objectives for the land concerned. (3)

“planning authority” is defined in section 2(2) of the Local Government (Planning and Development) Act, 1963 and essentially means the appropriate County Council, Corporation or Urban District Council.

“relevant contract” refers to a contract, etc. for the sale of land which is conditional on planning permission for non-residential development being obtained for that land.

“residential development” includes any development which is ancillary to a residential development and which is necessary for the proper planning and development of the area in question. Such ancillary developments would include shops, schools, churches, estate roads, etc.

#### Rates of capital gains tax on disposals of development land

In general, the rate of capital gains tax applying to the disposal of assets other than development land (and a number of other exceptions, e.g. certain foreign life assurance policies) is 33 per cent (*section 28*). Notwithstanding this, and subject to the exceptions specified in *subsection (2)*, the rate of tax applying to gains on the disposals of development land (including unquoted shares which derive their value from land) is — (1)

- 40 per cent, where a relevant disposal was made in the period from 3 December, 1997 to 30 November, 1999,
- 33 per cent, where a relevant disposal was made on or after 6 December 2012.

#### Exceptions to the higher rate

A 20 per cent rate, rather than the 40 per cent rate, applies to the following disposals made before 1 December 1999 —

*This provision has been deleted by section 44 of the Finance (No. 2) Act 2008.*

- disposals of land (but not shares) —

(a) in the period from 23 April, 1998 to 30 November, 1999 to a housing (2)(b)(ii)

authority (section 23 of the Housing (Miscellaneous Provisions) Act, 1992) for the purposes of the Housing Acts,

- (b) in the period from 10 March, 1999 to 30 November, 1999 to the National Building Agency Limited, (2)(b)(iii)
- (c) in the period from 23 April, 1998 to 30 November, 1999, all of which, at the time of the disposal, has current planning permission for residential development, granted under section 26 of the Local Government (Planning and Development) Act, 1963, or (2)(b)(iv)
- (d) in the period from 10 March, 1999 to 30 November, 1999 zoned solely or primarily for residential development under the appropriate County Development Plan. (2)(b)(v)

In the case of (c) and (d) above there are two exceptions and in such cases the rate is 40 per cent. These exceptions are —

- a disposal between connected persons, and (2)(c)(i)
- where a “relevant contract” exists in relation to the disposal. The purpose of this exclusion is to prevent land with planning permission for residential development being sold for other purposes. A prospective purchaser might insert in the contract a requirement that planning permission for, say, a commercial development be obtained or else the sale would not go through. Such a condition suggests that the land may be intended for use other than for residential development. (2)(c)(ii)

## **649B Windfall gains from rezonings: rate of charge**

### **Summary**

This section provides that an 80% rate applies to gains attributable to a relevant planning decision. Such a decision has two elements, i.e. a rezoning and a decision to allow a material contravention of a development plan. A rezoning means a change under the Planning and Development Act 2000 from non-development land use to development land use. This change is one from agricultural and amenity uses to residential, commercial or industrial uses or a mixture of such uses. The section applies to disposals made in the period beginning on 30 October 2009 and ending on 31 December 2014.

### **Details**

The terms used in the section have the following meaning: (1)

“development land use” means residential, commercial or industrial uses or a mixture of such uses;

“loss arising on rezoning” means a loss realised on or after 30 October 2009 on a disposal of land to the extent to which that loss is attributable solely to a decrease in the market value of land arising on a rezoning where such loss has not been effectively relieved;

“non-development land-use” means a land-use which is agricultural, open space, recreational or amenity use or a mixture of such uses;

“relevant planning decision” means —

- a change in the zoning of land in a development plan or a local area plan made or varied under Part II of the Act of 2000 from non-development land-use including a mixture of such uses, or
- a decision to grant permission in accordance with section 34(6) or 37(2) of the Act

of 2000 for a development that would materially contravene a development plan;

“windfall gain” means any increase in the market value of land which is attributable to a relevant planning decision.

This section applies to a disposal of development land that —

- has been the subject of a relevant planning decision since it was acquired by the person making the disposal, (2)(a)
- was acquired from a connected person and the acquisition cost for the purposes of the Capital Gains Tax Acts was other than market value, where the relevant planning decision occurred during the period during which it was owned by either person, or (2)(b)
- was the subject of a sequence of transfers between connected persons if the relevant planning decision took place during the period between the date of disposal and the latest date at which the acquisition cost, at any step in the sequence, was market value. (2)(c)

The rate of capital gains tax in respect of a chargeable gain which is the lesser of the gain arising to a person on a relevant disposal to which this section applies is 80% (3)

This section does not apply to a disposal of land to which *subsection (2)* applies where —

- the land is disposed of to an authority possessing compulsory purchasing powers but only if the Revenue Commissioners are satisfied that the disposal would not have been made but for the exercise of those powers or the giving by the authority of formal notice of its intention to exercise those powers, (4)(a)
- the disposal is a disposal by a company referred to in *section 616(1)(g)* (i.e. a 75% subsidiary of the National Asset Management Agency and any other company which is a 75% subsidiary of the first-mentioned company), or (4)(b)
- the disposal is the disposal of a site of 0.4047 hectares or less whose value on the date of disposal does not exceed €250,000, other than where the disposal by the person making it or by a person connected with that person forms part of a larger transaction or series of transactions. (4)(c)

The rate of capital gains tax in respect of a chargeable gain on a relevant disposal to which the above provisions apply will be 25%.

Any loss accruing on any disposal will not be deducted from a chargeable gain to which this section applies, apart from a loss arising on a relevant planning decision. (5)

This section applies to relevant disposals made in the period beginning on 30 October 2009 and ending on 31 December 2014. (6)

### **650 Exclusion of certain disposals**

The special capital gains tax rules relating to disposals of development land as set out in *section 651* (restriction on indexation relief), *652* (non-availability of roll-over relief) and *653* (restriction of loss relief) do not apply to such a disposal by an individual in a year of assessment where the total consideration received from all such disposals by the individual in the year does not exceed €19,050. This section only applies to individuals –

it does not apply to companies, trustees or other non-corporate bodies.

### **651 Restriction of indexation relief in relation to relevant disposals**

This section provides that, in the case of disposals of development land, indexation relief under *section 556* is given only for —

- that part of the amount of the consideration given by the vendor or on the vendor's behalf for the acquisition of the land (or of the market value at date of acquisition where, for example, *section 547* (disposals and acquisitions treated as made at market value) applies) as is equal to the current use value of the land at the date of acquisition, together with such proportion of the incidental costs of acquisition as are referable to that current use value, or
- where the land was held by the vendor on 6 April, 1974, that part of the market value of the land on 6 April, 1974 as is equal to the current use value of the land at that date.

The section does not provide for indexation of enhancement expenditure in computing a chargeable gain on the disposal of development land. However, the actual amount of such expenditure (unindexed) is allowable as a deduction in computing the chargeable gain if it is reflected in the state of the asset at the time of disposal (see *section 552(1)(b)*).

### **652 Non-application of reliefs on replacement of assets in case of relevant disposals**

#### **Summary**

This section provides that, subject to certain exceptions, roll-over relief under *section 597*, or the similar relief under *section 605* for compulsory acquisitions, does not apply in the case of disposals of development land.

#### **Details**

##### ***Definitions***

“relevant local authority” is the county council, corporation of a county or other borough, (2)(a)  
or urban district council in whose functional area the land is situated.

“assets of an authorised racecourse” are those assets of an authorised racecourse used for (3)(a)  
the functioning of that racecourse, and “authorised racecourse” has the same meaning as  
in section 2 of Irish Horseracing Industry Act, 1994.

“greyhound race”, “greyhound race track” and “greyhound race track licence” have the (3A)(a)  
same meanings as in section 2 of the Greyhound Industry Act, 1958.

“assets of an authorised greyhound race track” are those assets of an authorised (3A)(a)  
greyhound race track used for the functioning of that greyhound race track and  
“authorised greyhound race track” means a validly licenced greyhound race track.

##### ***Denial of roll-over relief and relief for compulsory acquisitions***

Subject to certain exceptions, a disposal of development land does not qualify for roll- (1)  
over relief under *section 597*.

Neither, subject to the exceptions provided for in *subsection (5)*, does such a disposal (4)  
qualify for the relief available under *section 605* where land is disposed of by reason of a  
Compulsory Purchase Order (CPO).

##### ***Exceptions***

The denial of roll-over relief does not apply in the case of a disposal of development land (2)(b)  
where a certificate is issued by the relevant local authority to state that the land being



disposed of is subject to a use which is environmentally damaging as per guidelines issued by the Department of the Environment and Local Government.

The denial of roll-over relief does not apply in the case of a disposal of development land by an authorised race course if — (3)(b)

- the asset being disposed of was an asset of the authorised racecourse throughout the period of 5 years ending with the disposal, and
- the new assets acquired are also assets of an authorised racecourse.

Where a new asset ceases to be an asset of an authorised racecourse or it ceases to be used for the purposes of an authorised racecourse then the deferral of capital gains tax ceases. (3)(c)

The denial of roll-over relief does not apply in the case of a disposal of development land by an authorised greyhound race track if — (3A)(b)

- the asset being disposed of was an asset of the authorised greyhound race track throughout the period of 5 years ending with the disposal, and
- the new assets acquired are also assets of an authorised greyhound race track.

Where a new asset ceases to be an asset of an authorised greyhound track or it ceases to be used for the purposes of an authorised greyhound race track then the deferral of capital gains tax ceases. (3A)(c)

The denial of roll-over relief does not apply in respect of a disposal of development land which has been effected by an order under section 28 of the Dublin Docklands Development Authority Act, 1997. Under that Act the Minister for the Environment and Local Government may transfer, by order, land in the Dublin Docklands Area from a statutory body to the Dublin Docklands Development Authority. (3B)

The denial of the relief available under *section 605* does not apply in the case of a disposal of land to a compulsory purchasing authority and the disposal is made under the CPO for the purposes of enabling that authority to construct, widen or extend a road or for a purpose connected with the construction, widening or extension of a road. The time frame within which reinvestment in replacement assets must be made is 2 years before and 8 years after the disposal in question. However, the time limits may be extended by the Revenue Commissioners where circumstances warrant such an extension. Relief may be given provisionally where an unconditional contract for the acquisition is entered into and all appropriate adjustments may be made by way of assessments (and without regard to the general time limits for making assessments) or repayments (notwithstanding the general time limit for making a claim for a repayment of tax in *section 865*) or discharge of tax when all the facts are known. (5)(b)

The denial of roll-over relief and the denial of the relief available under *section 605* does not apply in the case of the disposal of development land by bodies established for the sole purpose of promoting athletic or amateur games or sports where the disposal is made to further such activities of the body as are directed to that purpose. (6)

### **653 Restriction of relief for losses, etc in relation to relevant disposals**

In computing a person's liability to capital gains tax, allowable losses made on the disposal of an asset which is not development land (that is, an ordinary disposal) may not be set off against chargeable gains made on the disposal of development land. (1)

In computing a person's liability to capital gains tax, allowable losses made on disposals of development land may be set off against chargeable gains on such disposals and on ordinary disposals. However, where a company sets off an allowable loss on a disposal of development land against a chargeable gain on such a disposal, the same loss cannot be deducted again in calculating the company's corporation tax liability in respect of (2)

chargeable gains.