Persons chargeable

Part 02-03-01

This document should be read in conjunction with section 29 of the Taxes Consolidation Act 1997

Document last updated June 2019

Table of Contents

Executive Summary

This section specifies the persons chargeable to capital gains tax and the extent to which they are chargeable.

A person resident or ordinarily resident in the State is chargeable to capital gains tax on gains arising on disposals of assets wherever situated. However, such a person who is not domiciled in the State is, in the case of gains from the disposal of assets situated outside the State, chargeable only on the amount of the gains received in the State, and losses arising on such disposals are not allowable losses.

1.1 Introduction

Section 29 TCA 1997 contains the general provision regarding persons chargeable to CGT.

Section 29(2) provides, in general, that a person, who is resident or ordinarily resident and domiciled in the State for a year of assessment, is chargeable to Capital Gains Tax (CGT) on disposals of assets wherever the assets are situated. Thus, for example, a person who is no longer resident in the State but is ordinarily resident and domiciled in the State is chargeable to CGT on worldwide gains.

An individual who is resident or ordinarily resident but **not domiciled in the State** is chargeable to CGT on gains from disposals of assets **situated in the State** in the normal way – Section 29 (2) applies. [See Paragraph 1.2 (below) regarding the remittance basis applicable where assets are situated **outside the State]**.

Section 29(3) provides that a person who is **not resident or ordinarily resident in the State** is chargeable to CGT on gains from disposals of certain assets. These are:

(a) land in the State (see definition of "land" in Tax and Duty Manual Part 01-00-03 par.1);

(b) minerals in the State or any rights, interests or other assets in relation to mining or minerals or the searching for minerals;

(c) assets situated in the State which, at or before the time when the chargeable gains accrued were used in or for the purposes of a trade carried on by that person in the State through a branch or agency, or which at or before that time were used or held or acquired for use by or for the purposes of the branch or agency. For CGT purposes

"branch or agency" means any factorship, agency, receivership, branch or management, but does not include the brokerage or agency of a broker or agent referred to in section 1039 (**section 5 Taxes Consolidation Act, 1997**);

(d) assets situated outside the State of an overseas life assurance company that are held in connection with the life company's trade in the State that is carried on through a branch or agency;

(e) exploration or exploitation rights in the Irish Continental Shelf area. The term "exploration or exploitation rights" means rights to, rights to interests in, or rights to the benefit of, assets generated as a result of exploration or exploration activities. For example, a foreign exploration concern undertaking prospecting surveys/searches in the State's area of the Continental Shelf has created an asset (namely, the results of the survey) which it could then sell on to, say, another foreign concern for development or exploitation (**Section 13 Taxes Consolidation Act, 1997**);

(f) shares (other than quoted shares) deriving their value or the greater part of their value directly or indirectly from the assets mentioned in (a), (b) and (e).

An anti-avoidance provision applying to disposals made on or after 22 October 2015 was inserted in **section 29** by **section 36 Finance Act 2015** as regards shares referred to in paragraph (f). The amendment provides that, in calculating the portion of the value of shares attributable directly or indirectly to the assets mentioned in (a), (b) and (e), any arrangement will not be taken into account where that arrangement:

- involves a transfer of money or other assets (apart from assets referred to in paragraphs (a), (b) or (e)) from a person to a person connected with the company in which those shares are held,
- is made before a disposal of the shares, and
- the main purpose, or one of the main purposes, of which is the avoidance of tax.

The inclusion of assets other than money referred to in the first bullet point above was made by **section 26 Finance Act 2017** and applies to disposals made on or after 19 October 2017**.**

In this context, "arrangement" includes any agreement, understanding, scheme, transaction or series of transactions.

1.2 Remittance basis of assessment

Section 29(4) provides in general that an individual who is resident or ordinarily resident but not domiciled in the State is also chargeable to CGT on gains from disposals of assets **situated outside the State**, but only to the extent that those gains are received in the State. This treatment is known as **the remittance basis** of assessment. The charge arises for the year of assessment in which the gains are received in the State. No relief is due to such an individual for losses on the disposal of assets situated outside the State.

Section 29(5) provides rules as to what amounts are to be regarded as received in the State for the purposes of Section 29(4) – essentially all amounts paid, used or enjoyed in any manner or form transmitted or brought into the State are treated as received in the State.

Section 29 was amended, by the insertion of subsection (5A), by section 45 Finance Act 2013 and section 41 Finance (No 2) Act 2013, to prevent the avoidance of CGT by an Irish resident or ordinarily resident but non-domiciled individual who transfers **outside the State** to a **spouse or civil partner**, any of the proceeds of the disposal of assets situated outside the State on which chargeable gains accrue.

This amendment applies in respect of any such amounts received or treated, under section 29(5), as received in the State on or after 24 October 2013. The effect of the amendments is that any such amounts transferred to a spouse or civil partner are treated as if they had been received in the State by the transferor.

1.3 Remittance basis and assets situated in the UK

The remittance basis of assessment applies to gains arising on disposals of assets situated in the UK in respect of disposals made on or after 20 November 2008 – see section 42 of the Finance (No. 2) Act 2008.

For disposals of assets situated in the UK made prior to 20 November 2008 the remittance basis of assessment did not apply. Accordingly, the entire gain or loss was chargeable or allowable as appropriate.

1.4 Disposals between married persons and civil partners

Section 1028(5) treats disposals between married spouses **living together** as made for a consideration that gives rise to neither a gain nor a loss, provided the spouse who acquires the asset would be within the charge to CGT if he or she disposed of the asset in the same year in which the he or she acquired the asset from her or his spouse.

Section 1031M(5) applies the same treatment to disposals between civil partners **living together**.

Neither Section 1028(5) nor Section 1031M(5) apply if the assets in question are trading stock of the disponer prior to the disposal or if they become trading stock of the acquiring spouse or civil partner.

1.5 Separation/divorce and dissolution of civil partnerships

Disposals between Spouses on Separation/Divorce and between Civil Partners on Dissolution of Civil Partnerships - General Position

Sections 1030(2), 1031(2) and **1031O(1)** contain the general provisions applicable to disposals of assets between separated spouses, divorced spouses and partners whose civil partnerships are dissolved, respectively, **where the disposals are made by virtue or in consequence of separation, divorce or dissolution of a civil partnership under any of the respective legal remedies set out in Sections 1030, 1031 or 1031O, as appropriate.**

Sections 1030, 1031 & 1031O apply, **notwithstanding any other provisions of the Capital Gains Tax Acts**, to disposals of assets by individuals to spouses or civil partners by virtue or in consequence of separation, divorce or dissolution of civil partnerships. These disposals and acquisitions are deemed to be made for such a consideration as would secure that **neither a gain nor a loss accrues to the person making the disposal.** The spouse or civil partner acquiring the asset is deemed to have acquired it for the same consideration which the spouse or civil partner making the disposal originally acquired it.

However, this treatment only applies where the spouse or civil partner acquiring the asset would be within the charge to Irish capital gains tax if, having acquired the asset, they disposed of it in the same year of assessment (**Sections 1030(2A),1031(2A),1031O(2),** as appropriate, apply).

1.6 The remittance basis: separated/divorced individuals and civil partners

The remittance basis and disposals by virtue or in consequence of separation/divorce or dissolution of civil partnerships - where the disponer is resident or ordinarily resident but non-domiciled in the State and the assets being disposed of are situated outside the State

Scenarios:

(i). Disponer transfers asset situated outside the State to the spouse or civil partner who retains the asset

(ii) Disponer transfers asset situated outside the State to the spouse or civil partner and the Spouse or Civil Partner disposes of the asset to a third party

(iii) Disponer disposes of asset situated outside the State to a third party and gives the proceeds of the disposal to the spouse or civil

The CGT treatment applicable to the disponer is the same in all of the above three scenarios. The disponer is non-domiciled and the asset is situated outside the State – accordingly, CGT liability could only arise if the proceeds of the disposal were remitted to the State by or for the benefit of the disponer.

However, because the disponer is disposing of the asset by virtue or in consequence of separation, divorce or dissolution of a civil partnership **under one of the respective legal remedies set out in sections 1030, 1031 or 1031O,** the benefit of the disposal is **not going to the disponer** - but to the estranged spouse or civil partner.

Accordingly, the remittance basis does not apply as no part of the proceeds is being remitted to the State by or for the benefit of the disponer.

Even if the now former spouse or member of the dissolved civil partnership were to remit the proceeds to the State he or she would be doing so for his or her benefit and not for the benefit of the disponer so, again, the remittance basis would not apply.

1.7 Taking up residence in the State

Remittance to the State prior to a non-domiciled individual taking up residence in the State

A remittance to the State in respect of a gain accruing on the disposal of an asset situated outside the State, before the disponer comes to take up permanent residence in the State, should be ignored if he or she is not domiciled in the State at the time the disposal was made.

1.8 Gains received in the State

Section 29(5) defines gains received in the State as being "all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the State" and also applies for CGT purposes **section 72** under which income applied outside the State in payment of debts is, in certain cases, treated as received in the State.

If a gain is invested abroad temporarily, it still retains its character as a capital gain.

Where a person maintains abroad a mixed fund consisting partly of income and partly of capital, any remittance should be treated as follows -

(a) firstly, as a remittance of income up to the full amount of the income;

(b) secondly, as capital.

Where an individual who is resident or ordinarily resident but not domiciled in the State disposes of a foreign asset and divides the consideration received into two parts, a sum equal to the original cost being credited to one account and the balance to a separate account, both accounts should be treated for remittance purposes as a composite mixed fund.

1.9 Remittance basis and trustees

The remittance basis does not apply to gains accruing **to trustees** (see Tax and Duty Manual Part 19-03-05 Par. 17).

There are rules for charging persons who are resident or ordinarily resident in the State in respect of a proportion of the gains accruing to non-resident trusts or companies of which they are beneficiaries or participators - see Tax

and Duty Manuals Parts 19-03-05 Par. 18 et seq. and 19-04-13 Par. 5 et seq. respectively.

1.10 Persons exempt from CGT

Certain persons are statutorily exempt or partially exempt from CGT- see Tax and Duty Manuals Parts 19-07-05, 19-07-06 and 19-07-07 and **Schedule 15 Taxes Consolidation Act 1997**.

1.11 Residence rules and CGT

The rules governing residence and ordinary residence are in **sections 819 and 820 Taxes Consolidation Act 1997**. For further information on residence issues, see Tax and Duty Manual Part 34-00-01.