Disposals where capital sums derived from assets (S.535)

Part 19-01-06

This document should be read in conjunction with section 535
of the Taxes Consolidation Act 1997

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Introduction

Section 535 of the Taxes Consolidation Act 1997 ("TCA 1997") extends further the concept of disposal. It provides that there is a disposal of an asset where any capital sum is derived from the asset, even if no asset is acquired by the person paying the capital sum. The section is expressed to be subject to **section 536 TCA 1997** which provides that the receipt of certain compensation or insurance monies is not to be treated as a disposal in certain circumstances, and **section 537(1) TCA 1997** which provides that the transfer of an asset as security (for example, a mortgage of property) or a retransfer on redemption of the security is not a disposal of an asset.

6.1   Occasion of a disposal

Section 535(2) TCA 1997 specifically includes as disposals for Capital Gains Tax ("CGT") purposes the following occasions:

(a)   There is a disposal where any capital sum in the form of money or money's worth (so far as it is not excluded by the rules of computation) is "derived from assets" (notwithstanding that no asset is acquired by the person paying the capital sum); in particular, where the capital sum is received –

      (i)   by way of compensation for any kind of damage or injury to assets or for the loss, destruction or dissipation of assets or for any depreciation or risk of depreciation of an asset (e.g., for infringement of copyright, infringement of ancient rights, physical damage, etc.),

      (ii)   under an insurance policy covering the risk of any kind of damage or injury to or the loss or depreciation of assets (see **para 6.2** and Tax and Duty Manual (TDM) Part 19-01-07),

      (iii)   in return for forfeiture or surrender of rights, or for refraining from exercising rights (e.g., release of another person from a contract, or a restrictive covenant), and

      (iv)   as consideration for the use or exploitation of assets, e.g., premiums for leases over land; lump sum payments to landowners or farmers for the granting of easements or wayleaves, whether in perpetuity or for a term of years, to lay cables, pipelines, etc., for the transmission of gas, electricity, water, oil, etc., or capital sums for the right to exploit "know-how".

(b)   The entire loss, destruction, dissipation or extinction of an asset (whether or not any capital sum by way of compensation or otherwise is received as a result) is a disposal of an asset. This is, therefore, an occasion on which loss relief may be allowed (see, however, TDM Part 19-01-09).

(c)   There is also a disposal where, by way of a claim, the owner of an asset satisfies the Inspector that the value of the asset has become negligible. In this case, the asset is deemed to have been sold and immediately reacquired at its market value (see, however, TDM Part 19-01-09).

6.2   Capital sums and leases

Where property is held on a lease which has fifty years or less to run, insurance payments received by the lessee in respect of the property should not be treated as a capital sum derived from the lease within the meaning of **Section 535(2) TCA 1997** to the extent that they are applied by the lessee in discharging an obligation to restore any damage to the property.

6.3   Capital sum received in return for consideration given

Claims that a capital sum received in return for consideration given (e.g. by forfeiture or surrender of rights) is not in respect of an asset and therefore not chargeable to CGT should be fully considered in the light of all relevant facts and documents.