

Temporary non-residents

Part 02-03-02

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Temporary non-residents (S.29A)

- 2.1** Section 29A of the Taxes Consolidation Act 1997 is designed to counter the avoidance of CGT by individuals who become temporarily non-resident for tax purposes by providing that certain assets disposed of by an individual in any year of non-residence are deemed to have been disposed of and reacquired at their market value on the last day of the year in which the individual left the State to reside elsewhere, thus imposing a CGT charge.
- 2.2** Under section **29A TCA 1997** an individual who ceases to be resident in 2003 or later years of assessment is deemed for Capital Gains Tax purposes to have disposed of certain assets owned on the last day of the last year of assessment for which he or she is taxable in the State, prior to becoming taxable elsewhere. However this charge will only arise where the individual
- is not taxable in the State for a period of 5 years or less before again becoming so taxable and
 - to the extent that he disposes of those assets during that period and
 - was domiciled in Ireland prior to departure
- 2.3** The assets concerned are a holding of the issued share capital in any company (wherever located) with a value of either 5% or more of all that company's issued share capital or exceeding €500,000.
- 2.4** Section 29A was amended by Section 46 Finance Act 2014 arising from doubts raised by the EU Commission that section 29A of the Taxes Consolidation Act 1997 did not take account of a possible **reduction** in the market value of shares at the moment of their actual disposal, at a time when the individual was temporarily non-resident, and was accordingly liable to deter individuals from exercising their fundamental freedoms under Articles 45, 49 and 21 of the Treaty on the Functioning of the EU (TFEU) and with Articles 28 and 31 of the EEA Agreement.
- 2.5** The amendment provides that where there is an **increase or a decrease** in the market value of assets between the last day of the year of departure and the date those assets are disposed of, the market value of the assets on the date they were disposed of will be treated as their market value for the purpose of the CGT charge. The amendment applies to disposals made on or after 23 December 2014 (i.e. the date of the passing of Finance Act 2014).