Temporary non-residents (S.29A)

Part 02-03-02

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

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Introduction

Section 29A of the Taxes Consolidation Act 1997 ("TCA 1997") counters the avoidance by an individual of Capital Gains Tax ("CGT") by means of going offshore temporarily, or by becoming dual resident. The section imposes a tax charge on an Irish domiciled individual who disposes of certain assets while outside the current CGT charge.

2.1 Application

Section 29A TCA 1997 is designed to counter the avoidance of CGT by individuals who become temporarily non-resident for tax purposes. It provides 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 last year of the individual's residence in the State (before their departure and subsequent return to the State), thus imposing a CGT charge.

2.2 When a charge arises

Under section 29A TCA 1997, an individual who ceases to be resident in 2003 or a later year of assessment is deemed for CGT purposes to have disposed of certain assets owned on the last day of the last year of assessment for which they are resident in the State, prior to becoming resident elsewhere. However, this charge will only arise where the individual –

- is not taxable in the State for a period of no more than 5 years of assessment before again becoming so taxable and
- to the extent that they dispose of those assets during that period and
- were domiciled in Ireland prior to departure.

2.3 Assets

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 that company's issued share capital or
- exceeding €500,000.

2.4 Finance Act 2014 provisions

Section 29A TCA 1997 was amended by section 46 Finance Act 2014 as respects the market value to be used in the deemed disposal, to take account of the market value of shares on the day of their actual disposal, at a time when the individual was temporarily non-resident - rather than the market value on the last day of the last year of assessment for which the individual was resident in the State before his or her return, which continues to be the day on which the disposal is deemed to have been made.

2.5 Change in market value

The Finance Act 2014 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).