

Disposals within family of business or farm

Part 19-06-03b

This document should be read in conjunction with section 599
of the Taxes Consolidation Act 1997

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Executive summary

Section 599 gives relief from capital gains tax on the disposal by an individual, who has attained 55 years of age, of certain business or agricultural assets where such disposal is to a “child” of the individual or of that individual’s civil partner. [The relief broadly follows the same rules that apply to relief under section 598, with the exception of the monetary limits applicable.]

3.1 Amount of relief

For an individual who has attained 55 years of age and satisfies the conditions applicable to the relief there is no monetary limit on the amount of consideration that can qualify for relief in relation to disposals made prior to 1 January 2014.

However, for disposals on or after 1 January 2014, where the individual making the disposal is 66 years or over and the market value of the qualifying assets is over €3m, **section 60, Finance Act 2012** provides that the relief is limited to the gain on the amount of €3m. In other words, the portion of the consideration in excess of €3m is chargeable to CGT.

Example

A farm is acquired for €1.5m and disposed of after 1 January 2014 for €5m.

The normal computation of liability (ignoring indexation and personal exemption) would be:

Consideration	€5 million
Less Cost	<u>€1.5 million</u>
Chargeable gain	€3.5 million
Capital Gains Tax @33% =	€1,155,000

However, relief under section 599(1)(b)(iii), Taxes Consolidation Act 1997, reduces the capital gains tax payable by an amount calculated as if the consideration was €3 million:

Consideration	€3 million
Less Cost	<u>€1.5 million</u>
Chargeable gain	€1.5 million
Capital Gains Tax @33% =	€495,000
	= Relieved amount

The net CGT payable is therefore €660,000 (€1,155,000 - €495,000) – which is the same as calculating CGT on the excess of the consideration over €3 million, i.e. €5 million - €3 million x 33% = €660,000.

3.2 Meaning of “child” for the purposes of this relief

The meaning of “child” for the purposes of this relief is extended to include a child of a deceased child, a nephew or niece who has worked full-time in the business for the 5-year period ending on the date of the disposal. It also includes a foster child who was under the care of and maintained at the expense of the individual making the disposal for a period of 5 years (or periods which together amounted to 5 years) up to the time such foster child reached 18 years of age, but only where the claim for relief is not based on the uncorroborated testimony of one witness.

3.3 An exchange or part-exchange of land

Where an individual is disposing of land used for farming to his or her child (see **Par 2** above) and the consideration for the disposal consists in whole or in part of other land (i.e. an exchange or part-exchange of land) the individual acquiring this other land will be treated as having acquired the land at the time and for the consideration that the child originally acquired it and to have farmed it for the period that the child farmed it.

3.4 Clawback

There is a provision for a clawback of the relief where the assets transferred to the child are disposed of by that child within 6 years of the date of transfer. In any such case, the capital gains tax which would have been charged on the transferor if the relief had not applied is assessed and charged on the child in addition to the tax on any gain made by the child on his or her disposal of the assets. Where the disposal is for farm restructuring purposes, relief under **section 604B TCA 1997** can be availed of by the child, provided that child meets the conditions of the relief. The effect of relief under **section 604B** is that there will not be a clawback of the relief given by virtue of **section 599**, or a CGT charge in respect of the gain (if any) made by the child, to the extent that the proceeds of the disposal are reinvested in other qualifying land.

There must be a disposal by the child for the clawback to apply. If the child dies within 6 years, the child's death would not give rise to a clawback as death is not an occasion of disposal for capital gains tax purposes (see **section 573(2)(b) TCA 1997**). The provision is aimed at preventing abuse of the relief by dressing up a disposal to an outsider as a disposal firstly to a child, bringing the base cost up to its market value, and then secondly by the child to an outsider.

3.5 Certain disposals of shares or securities

In relation to a disposal of shares or securities of a family company by an individual aged 66 years or over to a child, the consideration in respect of such disposal is to be aggregated with a disposal of shares or securities by the individual to a company controlled by that same child, for the purpose of calculating the €500,000 threshold limit for relief under **section 598**.

[While this relief is confined to disposals within the family, **section 598** provides a similar more general relief but with lower monetary limits on the disposal outside the family by an individual who has attained 55 years of age. See [Tax and Duty Manual Part 19-06-03](#) for more details.