

Disposals within family of business or farm (S.599)

Part 19-06-03b

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

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Introduction

Section 599 of the Taxes Consolidation Act 1997 (“TCA 1997”) provides for relief from Capital Gains Tax (“CGT”) 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”, as defined in this section, of the individual or of that individual’s civil partner. [The relief broadly follows the same rules that apply to relief under **section 598 TCA 1997**, with the exception of the monetary limits applicable. See [Tax and Duty Manual \(TDM\) Part 19-06-03](#) for further details.]

3b.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 market value of the qualifying assets that can qualify for relief in relation to disposals made prior to 1 January 2014.

However, for disposals made on or after 1 January 2014 but on or before 31 December 2024, where the individual making the disposal is 66 years or over and the market value of the qualifying assets is over €3 million, **section 599(1)(b)(ia) TCA 1997** provides that the relief is limited to the gain on the amount of €3 million. In other words, the portion of the consideration in excess of €3 million is chargeable to CGT.

Section 50 Finance (No. 2) Act 2023 provides that, for disposals made on or after 1 January 2025, a lifetime limit of €10 million applies to the market value of the qualifying assets in respect of which relief is available, where such assets are disposed of by individuals aged 55 to 69 years to a child. Where the market value of the qualifying assets is greater than €10 million, relief shall apply on the gain accruing as if the consideration had been €10 million. In addition, the existing €3 million limit will apply to disposals of qualifying assets by persons aged 70 years and over from 1 January 2025 onwards.

All disposals by individuals aged 66 years or over at the time of the disposal of qualifying assets to a child that are currently subject to €3 million limit will be aggregated for the purpose of that limit which continues to apply where such disposals are made up to and including 31 December 2024.

Disposals by individuals aged 66 years or over at the time of the disposal of qualifying assets to a child that are currently subject to the €3 million limit will be aggregated with all such disposals by that individual on or after 1 January 2025 for the purpose of determining the new limits on relief provided for in this section, which will apply to disposals from that date on.

All disposals by individuals aged 55 years or over of qualifying assets to a child on or after 1 January 2025 will be aggregated for the purpose of determining the new €10 million and €3 million limits that apply to disposals after that date.

Example 1

A farm is acquired for €1.5 million and disposed of on 1 June 2014 for €5 million. (It is assumed that the farmer, aged 67 years at time of the disposal, fulfils all the other conditions applicable to the relief.)

The normal computation of liability would be:

Consideration	€5,000,000
Less Cost	€1,500,000
Chargeable gain	€3,500,000
Capital Gains Tax @33% =	€1,155,000

However, relief under **section 599(1)(b)(iii) TCA 1997** reduces the CGT payable by an amount calculated as if the consideration was €3 million:

Consideration	€3,000,000
Less Cost	€1,500,000
Chargeable gain	€1,500,000
Capital Gains Tax @ 33% = (Relieved amount)	€495,000

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.

Example 2

A farm is acquired for €8 million and disposed of on 1 June 2025 for €15 million. (It is assumed that the farmer, aged 67 years at the time of the disposal, fulfils all the other conditions applicable to the relief.)

The normal computation of liability would be:

Consideration	€15,000,000
Less Cost	€8,000,000
Chargeable gain	€7,000,000
Capital Gains Tax @ 33% =	€2,310,000

However, relief under **section 599(1)(b)(v) TCA 1997** reduces the CGT payable by an amount calculated as if the consideration was €10 million:

Consideration	€10,000,000
Less Cost	€8,000,000
Chargeable gain	€2,000,000
Capital Gains Tax @33% = (Relieved amount)	€660,000

The net CGT payable is therefore €1,650,000 (€2,310,000 - €660,000) – which is the same as calculating CGT on the excess of the consideration over €10 million, i.e. €15 million - €10 million x 33% = €1,650,000.

3b.2 Meaning of “child” for this relief

The meaning of “child” for the purposes of this relief is extended to include a child of a deceased child and a nephew or niece who has worked substantially on a full-time basis in the business for the 5-year period ending on the date of the disposal. Whether a niece or nephew is considered to have worked substantially on a full-time basis in the business is a question of fact to be established based on the facts and circumstances of each case.¹ 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.

¹ It should be noted that, the provisions of **Schedule 2, Part 1, paragraph 7 of the Capital Acquisitions Tax Consolidation Act 2003**, which provides, in certain circumstances, for gift and inheritances received by nieces and nephews to be treated as those received by a child of the donor, do not apply to CGT as they apply to Capital Acquisitions Tax.

3b.3 An exchange or part-exchange of land

Where an individual is disposing of land used for farming to his or her child (see **para. 3b.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.

3b.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 CGT 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 TCA 1997** is that there will not be a clawback of the relief given by virtue of **section 599 TCA 1997**, 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 CGT 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.

3b.5 Certain disposals of shares or securities

In relation to a disposal of shares or securities of a family company by an individual to a child, as defined in **section 599 TCA 1997**, the consideration in respect of such a disposal is to be aggregated with any disposal of shares or securities by that individual to a company controlled by that same child, for the purpose of calculating the relevant threshold limit for relief under **section 598 TCA 1997**.

Section 50 Finance (No.2) Act 2023 amended section 599(7) TCA 1997 to reflect the fact that, in respect of disposals made on or after 1 January 2025, the current €3 million limit on relief under the section applies to individuals aged 70 years and over, and a new €10 million limit on relief applies to such disposals when made by individuals aged 55 years and over. The subsection now provides that the consideration on a disposal of shares or securities of a family company by an individual to a child, in circumstances where the €3 million limit on relief in the period 1 January 2014 to 31 December 2024, inclusive, and/or the €10million lifetime limit on relief on or after 1 January 2025, may apply, 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 relevant threshold limits for relief under section 598.

3b.6 Requirement to make a claim

Section 50 Finance (No.2) Act 2023 requires that a claim for relief under **section 599 TCA 1997** must be made by an individual in the tax return which they are obliged to deliver for the relevant year of assessment (i.e. the year of assessment in which a disposal in respect of which relief is claimed under the section is made) in accordance with the provisions of Chapter 3 of Part 41A of the Taxes Consolidation Act 1997.