

Disposals to the State, public bodies and charities (S.611)

Part 19-07-08

This document should be read in conjunction with section 611
of the Taxes Consolidation Act 1997

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Introduction

Section 611 of the Taxes Consolidation Act 1997 (“TCA 1997”) provides that in certain circumstances (**see para 8.2**) there is to be no charge to Capital Gains Tax (“CGT”) on the occasion of a gift, or a sale at a price not exceeding the cost to the donor, of assets -

- to the State;
- to a charity; or
- to one of the bodies mentioned in **para 8.1**.

Where there is any doubt as to whether a particular organisation is a charity the matter should be referred to Charities Section, Government Office, St. Conlon’s Road, Nenagh Co Tipperary.

8.1 Specified institutions

The specified institutions are –

- the Chester Beatty Library;
- the Crawford Art Gallery Cork;
- the Irish Museum of Modern Art;
- the National Archives;
- the National Concert Hall;
- the National Gallery of Ireland;
- the National Library of Ireland;
- the National Museum of Ireland;
- the Friends of the National Collections of Ireland;
- the Local Government Computer Services Board;
- the Local Government Management Services Board;
- the Affordable Homes Partnership;
- Irish Water Safety;

- Limerick Northside Regeneration Agency;
- Limerick Southside Regeneration Agency;
- a local authority or a joint body (within the meaning of section 2 of the Local Government Act 2001); and
- any university in the State.

Section 611 TCA 1997 gives the relief from CGT described in the **Introduction** to disposals of assets to those bodies provided certain conditions (**para 8.2**) are satisfied.

8.2 Bargain at arm's length

A condition of the relief is that a disposal must be effected otherwise than by a bargain at arm's length, this ensures that ordinary commercial transactions are dealt with by reference to the normal rules.

8.3 Consideration for the disposal

Where the consideration for a disposal does not exceed the amounts allowable as a deduction to the disposer under **section 552 TCA 1997** the transaction will be treated as a disposal for such consideration as will produce neither a gain nor a loss. Where the disposal is above "cost" but below market value the consideration for the disposal will be the actual proceeds passing and not the market value of the asset involved.

Example 1

A bought some freehold land in May 1992 for €100,000. In January, 2020, when the market value of the land is €200,000 he or she conveys it to a charity -

- for nil consideration. A has neither gain nor loss;
- for €50,000. The CGT consequences are as in (a) above;
- for €150,000 (i.e., above cost but below market value) A is chargeable on a gain of €14,400 being the proceeds of €150,000 less the cost to A, as indexed ($€100,000 \times 1.356$) = €135,600. The gain is calculated by reference to the actual consideration passing (€150,000) and the charity is regarded as acquiring the land in 2020 for €150,000;
- for €200,000 i.e., market value. This would normally indicate a bargain at arm's length and **section 611 TCA 1997** has no effect at all. The chargeable gain is calculated by reference to the sale price of €200,000. A has a gain of

€64,400, being €200,000 less €135,600 (i.e. €100,000 x 1.356). The acquisition cost of the charity in 2020 is also €200,000.

If the disposal is to a charity or to any of the bodies mentioned in **para 8.1** (but not to the State) and the asset is later disposed of, the charity or body mentioned in **para 8.1** making that later disposal is liable to be charged in respect of -

- (i) the CGT which would have been chargeable on the earlier disposal if **section 547 TCA 1997** had applied to it, and
- (ii) the CGT accruing to it in the normal way on the later disposal.

The clawback provision will not, however, arise if a gain on the later disposal would not be a **chargeable gain**. Thus, if the charity remains a genuine charity, there is no question of a clawback.

8.4 Surrender of interest by a life tenant

Where, for example, on the surrender of his or her interest by a life tenant there is a deemed disposal and re-acquisition by trustees under **section 576 TCA 1997** and the person becoming entitled under **section 576 TCA 1997** to the assets is a charity or other qualifying body (see **para 8.1**) then the disposal is deemed to be at a figure which produces neither gain nor loss.

8.5 Trustees

Where there is a deemed disposal and re-acquisition by trustees under **section 577(3) TCA 1997** (for example on the surrender by a life tenant of his or her interest in favour of a charity, the assets remaining settled property) and the whole of the assets are henceforward held exclusively for the benefit of a charity or other qualifying body (see **para 8.1**) then the "no gain no loss" rule applies. When only a proportion of the assets deemed to be disposed of is thereafter held for a charity, or other qualifying body (see **para 8.1**) the rule applies to a corresponding proportion of each of the assets.

8.6 No gain no loss

The "no gain no loss" rule in situations described in **para 8.5 & 8.6** does not apply if any consideration is received by any person in connection with any transactions by which a charity or other qualifying body (see **para 8.1**) obtains its interest in the assets. This condition is aimed at various possible avoidance devices concealing what is really the sale of an interest under a settlement.