

Deduction from consideration on disposal of certain assets (S.980)

Part 42-03-01

Document last updated December 2017

Contents

| | |
|---|----------|
| Introduction..... | 2 |
| Deduction from consideration on disposal of certain assets (S.980) 2 | |
| Assets to which section 980 applies | 5 |
| Disposals not involving acquisition of assets | 5 |
| Amount retained by purchaser to be paid to Collector-General..... | 6 |
| Vendor entitled to relief for amount paid by purchaser | 6 |
| Asset acquired for non-monetary consideration..... | 6 |
| Conditions to be satisfied to obtain certificate | 6 |
| Where application for clearance certificate should be made | 7 |
| Revenue contacts in specific situations | 8 |

Introduction

This manual sets out the procedure that applies where a tax clearance certificate is not provided by a person who sells certain specified assets. Where such a certificate has not been provided, the purchaser is required to deduct 15% from the consideration and remit that amount to Revenue.

Deduction from consideration on disposal of certain assets (S.980)

1.1 Section 980 provides that on the payment of consideration for acquiring certain assets a deduction of 15% is to be made by the purchaser, unless the vendor produces

- (a) a certificate issued under **section 980(8)** (Form CG50A) or,
- (b) where the asset being sold is land on which a new house** has been built or is in the course of being built, a Form CG50A or one of the certificates listed in **section 980(8A)**.

** "house" and "new house" which are defined in **section 980(4)(c)** include any building or part of a building used or suitable for use as a dwelling.

The section applies to all disposals and acquisitions of the assets listed at par 1.2 below where the consideration exceeds €500,000 (or €1,000,000 if the asset disposed of is a house (within the meaning of **section 372AK**)). A house includes an apartment for the purpose of the definition in **section 372AK**.

A certificate is not required if the consideration is €500,000 or less (or €1,000,000 or less if the asset disposed of is a house (within the meaning of **section 372AK**)). Neither is a certificate required in the circumstances set out in (i), (ii), (iii) or (iv) below.

The increased threshold in the case of houses and apartments applies to disposals on or after 1 January 2016.

(i) Disposals of assets by bodies which carry an exemption from capital gains tax (CGT)

The section will not apply to a disposal of an asset by a person where any gain accruing on the disposal would not be a chargeable gain. Examples of such disposals in the TCA are:

- A. A disposal by a pension fund or arrangement carrying an exemption from CGT under **section 608(2)** or **(2A)**.
- B. A disposal by an investment undertaking within **section 739C**.
- C. A disposal by a charity to which **section 609(1)** is applicable.

- D. A disposal by the National Asset Management Agency (NAMA) or by any other body specified in **Schedule 15**.
- E. A disposal by a REIT or a member of a group REIT to which **section 705G(1)(b)** is applicable.

(ii) Sales by financial institutions of loans secured on land in the State

The section will not apply to the sale by a financial institution of loans secured on land in the State where the sale arises in the ordinary course of the carrying out of its trading activities. In other words, the section will not apply to the sale of such a loan by a financial institution in circumstances where any profit on the sale would be treated as a trading receipt of its trade, including a trade carried on through a branch or agency.

However, in the case of a sale by a financial institution of a loan secured on land in the State, which arises in the ordinary course of a trade that is not carried on in the State, the Revenue view is that such a sale is a disposal for CGT purposes to which section 980 is applicable.

The Revenue view in regard to loans secured on land in the State is that, in general, such loans are interests in land for the purposes of **section 980** and are regarded as securities for the purposes of that section.

It follows, therefore, that the provisions of **section 980** will have application where the sale of such a loan would be a disposal for CGT purposes.

(iii) Sales by “qualifying companies” within section 110 of loans secured on land in the State

The section will not apply to the sale by a “qualifying company” as defined in **section 110** of a loan secured on land in the State in the ordinary course of the carrying on in the State a business of holding or managing, or holding and managing, of “qualifying assets” as defined in that section.

(iv) Payments to non-resident investors in “investment undertakings” defined in section 739B

Some uncertainty has been expressed in regard to the possible application of section 980 to non-resident investors in investment undertakings in circumstances where the assets of such undertakings would, in the main, consist of land in the State.

Section 739G(2)(h) provides that a non-resident person is not chargeable to tax in respect of payments arising from holdings in investment undertakings and, accordingly, Revenue can confirm that **section 980** will not apply to a payment received by a unitholder/shareholder –

- (a) which is made by an investment undertaking, or
- (b) which arises from the transfer by way of sale or otherwise, of an entitlement to a unit/share in an investment undertaking,

where the unitholder/shareholder is a company which is not resident in the State or, where not being a company, is neither resident nor ordinarily resident in the State.

For completeness, **section 980** will not apply to a payment received by a resident investor in an investment undertaking. In such a case, there will either be a liability to exit tax (income tax) or the investor will be a body specified in **section 739D(6)** and, accordingly, CGT will not be in point.

Meaning of “land” for purposes of section 980

For the purposes of section 980, the meaning of “land” is the meaning set out in Part 1 of the Schedule to the Interpretation Act 2005, which provides that the term includes tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land.

Interaction of sections 617 and 980

Section 617 provides that the disposal of a chargeable asset (other than trading stock) within a group of companies is to be treated as having been for a consideration of such an amount that neither a gain nor a loss accrues to the company making the disposal, subject to certain conditions.

In the case of transfers of assets to which **section 617** applies, the consideration is deemed to be the original cost of acquiring the asset by the vendor company. Revenue wishes to clarify that this is also to be regarded as the consideration for such transfers for the purposes of **section 980** and, where this does not exceed €500,000 (or €1,000,000 if the asset disposed of is a house (within the meaning of **section 372AK**)), the requirement under that section to deduct 15% from the purchase price in respect of capital gains tax or obtain a tax clearance certificate does not apply.

A number of examples should help illustrate the interaction of **sections 617** and **980** and clarify whether it is necessary to apply for a CG50A in the case of certain intra-group asset disposals:

Example 1

Company A transfers a specified asset (other than a house (within the meaning of **section 372AK**)) to fellow group Company B for €1m. The cost of the asset to Company A was €600,000.

A CG 50A is required because the deemed consideration is €600,000 and greater than the €500,000 threshold provided for in section 980(3).

Example 2

Company A transfers a specified asset (other than a house (within the meaning of **section 372AK**)) to fellow group Company B for €1m. The cost of the asset to Company A was €250,000.

A CG 50A is **not** required because the deemed consideration is €250,000 and less than the €500,000 threshold provided for in **section 980(3)**.

Example 3

Company A transfers a house (within the meaning of **section 372AK**) to fellow group Company B for €700,000. The cost of the asset to Company A was €600,000.

A CG 50A is **not** required because the deemed consideration is €600,000 and less than the €1,000,000 threshold provided for in **section 980(3)**.

Example 4

Company A transfers a house (within the meaning of section 372AK) to fellow group Company B for €700,000. The cost of the asset to Company A was €1,200,000.

A CG 50A **is** required because the deemed consideration is €1,200,000 and greater than the €1,000,000 threshold provided for in **section 980(3)**.

Assets to which section 980 applies

- 1.2** The assets to which **section 980** applies are:
- (a) land in the State;
 - (b) minerals in the State or any rights, interests or other assets in relation to mining or minerals or the searching for minerals;
 - (c) exploration or exploitation rights in a designated area (that is, the Continental Shelf);
 - (d) shares in a company deriving their value or the greater part of their value directly or indirectly from assets specified in (a), (b) or (c) other than shares quoted on a stock exchange;
 - (e) shares received in exchange for shares specified at (d); and
 - (f) goodwill of a trade carried on in the State.

Disposals not involving acquisition of assets

- 1.3** Certain disposals of assets do not necessarily involve the acquisition of assets (for example, the redemption of loan notes by the issuing company involves the disposal, but not the acquisition, of assets). For the purposes of this section where a capital sum derives from an asset, the payer is deemed to have acquired the asset for a consideration equal to the capital sum.

Amount retained by purchaser to be paid to Collector-General

- 1.4** A purchaser who retains 15% of the purchase price on the acquisition of an asset must, within 30 days, deliver an account of the amount retained to the Revenue Commissioners and pay that amount to the Collector-General.

Vendor entitled to relief for amount paid by purchaser

- 1.5** In computing the capital gains tax liability on the disposal, the vendor is entitled to relief for the amount paid by the purchaser (**see par 1.4**). **Form CG50B** is completed in full by the purchaser and transmitted to the vendor who, in turn, submits it to his/her local Revenue Office. The form is available on the revenue website www.revenue.ie under Forms, Forms for Individuals, Capital Gains Tax or from the local Revenue Office.

Asset acquired for non-monetary consideration

- 1.6** Where a purchaser acquires an asset for a non-monetary consideration and the vendor has not provided a clearance certificate the purchaser must, within seven days of the time of the acquisition, notify the Revenue Commissioners in writing, providing particulars of:
- the asset acquired;
 - the consideration for acquiring the asset;
 - the market value of the consideration; and
 - the name and address of the person making the disposal.

The purchaser must also pay 15% of the market value of the consideration to the Collector General.

Conditions to be satisfied to obtain certificate

- 1.7** The applicant, who may be the vendor or a person acting under the vendor's authority, can obtain a certificate if any of the following conditions are satisfied:
- (a) the vendor is resident in the State,
 - (b) no capital gains tax is chargeable on the particular disposal, or

- (c) the capital gains tax payable on the disposal and on any gain accruing in an earlier year on a previous disposal of the asset has been paid.

In the latter two instances the applicant must demonstrate with supporting computation, payment, etc. that the relevant condition is satisfied.

Where a vendor applying for a certificate under (c) does not have sufficient funds to pay the liability in advance of the disposal, Revenue will accept a written undertaking from the solicitor acting for the vendor to discharge the liability (and any earlier unpaid tax on his/her disposal of the same asset) from the sale proceeds of the transaction concerned. The undertaking should be on the solicitors headed note paper, signed and contain the name & address of the vendor, the PPS number if available, the amount for which the undertaking is given and the date by which the payment will be made. It should be submitted with the application.

A payment in satisfaction of an undertaking should be submitted, without request, to the Revenue office which issued the certificate and should be accompanied by a copy of the undertaking and the vendor's PPS number which will be available from the certificate.

Where a solicitor complies with an undertaking given by submitting the relevant payment, a letter acknowledging receipt and formally discharging the solicitor from the undertaking should be issued. The text of this acknowledgement could be in the following form:

'I acknowledge receipt of the payment in respect of the disposal by Miss X, a non-resident. You are hereby discharged from the undertaking given by you in your letter of ... in connection with the application dated ... for CGT clearance certificate.'

Where application for clearance certificate should be made

- 1.8** Completed application forms (CG50s) **should be submitted directly to the Revenue Office dealing with the tax affairs of the vendor.** A copy of the contract for sale and, if necessary, the information referred to in **par 1.7** should accompany the application. **Scanned copies of completed Forms CG 50 and related contracts will be accepted by tax districts.**

Where possible, applications made by post should be posted so that they are received in the Revenue office at least **5 working days** in advance of the closing date. The issue of a clearance certificate in time for the closing date cannot be guaranteed if the 5 day period is not observed. If the closing date on the contract for sale has elapsed at the time of making the application, confirmation will be required that the consideration has not passed and a revised closing date must be specified.

Certificates are normally to be issued by post. However, Inspectors have discretion in certain circumstances to issue these certificates to personal callers once an

application has been received in writing at least 3 days previously e.g. where there is a disruption to the postal services.

The original certificate should issue to the vendor and a copy should issue to the purchaser. In addition, a copy should be put on the vendor's file and a further copy transmitted to the officer dealing with the purchaser's liability.

Revenue contacts in specific situations

1.9 As noted in par 1.8 applications should be made to the Revenue Office dealing with the affairs of the vendor. This information can normally be obtained from the vendor. The Contact Locator on the Revenue website can also be utilised. The following paragraphs provide guidelines in specific situations.

(a) Disposal by receiver/mortgagee in possession

Where the disposal is by a receiver over the assets of an individual or a company, the application should be made to the tax district dealing with the individual or company, as the case may be. In the case co-owned assets disposed of by a receiver, the application should be made to the tax district dealing with the receiver.

Where the disposal is by a mortgagee in possession, the application should be made to Large Cases Division.

(b) Resident individuals with no tax reference

An example of this category would be a widow with a small social welfare pension. The application should be made to the Revenue Office responsible for the geographic location where the individual resides.

(c) Multiple Vendors

Where a single asset is sold and there are two or more vendors, only one certificate should be issued. The application should be signed by all the vendors or their agent and should, in general, be processed by the Revenue Office which receives the application, in liaison with the other vendors Revenue Offices. It follows that where one of the vendors is non-resident no clearance certificate should issue unless the inspector is satisfied that **section 980(8)(b)** or **(c)** applies to the non-resident vendor.

It should be noted that shares do not constitute a single asset and each shareholder would therefore be obliged to make an application to the appropriate Revenue Office.

(d) Executor/Administrator, etc.

The application should be made to the Revenue Office where the deceased person's tax affairs were dealt with.

Where an application is misdirected, every effort should be made to ensure that it is passed on to the appropriate area without delay and the taxpayer and/or his agent notified accordingly.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]