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

Part 42-03-01

This document should be read together with section 980 TCA 1997

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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Introduction

Section 980 Taxes Consolidation Act 1997 ("TCA 1997") provides for the procedure that applies where a tax clearance certificate is not provided by a person, when required, 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.

1.1 Application

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 **para 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**. The section does not apply to a disposal by way of gift (e.g. a transfer of an asset for no consideration), or in the case of a disposal which is partly by way of gift, and partly for consideration, where the consideration paid does not exceed €500,000.

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

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 1997 are:

A. A disposal by a pension fund or arrangement carrying an exemption from Capital Gains Tax ("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

Section 980 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 615, 617 and 980

Section 615 provides that the transfer of the whole or part of a business by a company to another company under a reconstruction or amalgamation is to be treated as having been for a consideration of such amount that neither a gain nor a loss accrues to the company making the disposal, subject to certain conditions.

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 **sections 615 or 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 CGT or obtain a tax clearance certificate does not apply.

The examples below should help illustrate the interaction of **sections 615, 617** and **980** and clarify whether it is necessary to apply for a CG50A in the case of certain transfers of business assets under a company reconstruction or amalgamation and intra-group asset disposals:

Example 1

Company A transfers business assets to Company B under a reconstruction. The cost of the asset to Company A was €600,000.

A CG50A **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 business assets to Company B under a reconstruction. The cost of the asset to Company A was €250,000.

A CG50A 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 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 CG50A **is** required because the deemed consideration is €600,000 and greater than the €500,000 threshold provided for in section 980(3).

Example 4

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 CG50A is **not** required because the deemed consideration is €250,000 and less than the €500,000 threshold provided for in **section 980(3).**

Example 5

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 CG50A 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 6

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 CG50A **is** required because the deemed consideration is €1,200,000 and greater than the €1,000,000 threshold provided for in **section 980(3).**

1.2 Assets to which section 980 applies

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.

Section 28 Finance Act 2017 inserted subsection (2A) into section 980, which provides that, in calculating the portion of the value of shares attributable directly or indirectly to the assets referred to in paragraph (d), account will not be taken of any arrangement that

- involves a transfer of money or other assets (apart from assets specified in paragraphs (a), (b) or (c)) from a person connected with the company in which those shares are held,
- is made before a disposal of the assets referred to in paragraph (d), and
- the main purpose or one of the main purposes of which is the avoidance of tax.

1.3 Disposals not involving acquisition of assets

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.

1.4 Amount retained by purchaser to be paid to Collector-General

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.

1.5 Vendor entitled to relief for amount paid by purchaser

In computing the CGT liability on the disposal, the vendor is entitled to relief for the amount paid by the purchaser (see **para 1.4**). The filing of the CG50B (Certificate of Deduction of CGT from Purchase Consideration under Section 980(4)(a)(i) TCA 1997) and the payment of that 15% can be completed online. Further guidance is available on the Revenue website under Tax and Duty Manual (TDM) Part 42-03-01a - eCG50 – Guide for Applicants.

Alternatively, Form CG50B is completed in full by the purchaser and transmitted to the vendor who, in turn, submits it to the Revenue Division dealing with his or her tax affairs. The form is available at the CGT Clearance Certificate section on the Revenue website under related forms.

1.6 Asset acquired for non-monetary consideration

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.

1.7 Conditions to be satisfied to obtain a certificate

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 CGT is chargeable on the particular disposal, or

(c) the CGT 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 or her disposal of the same asset) from the sale proceeds of the transaction concerned. The undertaking should be on the solicitor's headed note paper, signed and contain the name and 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.

1.8 Where application for clearance certificate should be made

Online CG50 application processing system

Applications for a Form CG50A and a Form CG50B can be submitted online through ROS/MyAccount. Online processing will significantly improve the turnaround time for all applicants seeking a CG50 clearance certificate. Resident applicants, in particular, potentially could receive an immediate turnaround on their application. Further guidance is available on the Revenue website under TDM Part 42-03-01a - eCG50 – Guide for Applicants.

Continuing support for paper-based applications

Whilst the online system is a quicker and more efficient manner of obtaining a CG50 clearance certificate, to ensure a transition to the new online system and to facilitate non-e-enabled customers, Revenue will continue to support a paper-based system. Completed application forms (CG50s) **should be submitted directly to the Revenue Division dealing with the tax affairs of the vendor**. A copy of the contract for sale and, if necessary, the information referred to in **para 1.7** should accompany the application. **Scanned copies of completed Forms CG50 and related contracts will be accepted by Revenue Divisions.**

Where possible, applications made by post should be posted so that they are received in the Revenue Division at least **5 working days** in advance of the closing date. (**From 1 July 2021, as taxpayers and agents have become more familiar with the online system, this requirement will move to 10 working days**.) The issue of a clearance certificate in time for the closing date cannot be guaranteed if the 5-day period is not observed (**10 days from 1 July 2021**). 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.

Non-resident applicants

Non-residents vendors making a CG50A application will need a PPSN. If they do not already have one, they should contact the Department of Employment Affairs and Social Protection. Similarly, non-resident purchasers filling out a CG50B form will need a PPSN.

Written undertaking from the solicitor

A payment in satisfaction of an undertaking should be submitted, without request, to the Revenue Division 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.'

1.9 Applications in specific situations

Applications for a CG50A and CG50B forms can be submitted online through ROS/MyAccount. As noted in **para 1.8** paper-based applications should be made to the Revenue Division dealing with the affairs of the vendor. This information can normally be obtained from the vendor. The following paragraphs provide guidelines for the making of applications in specific situations.

(a) Disposal by receiver/mortgagee in possession (MIP)

In the case of a receiver or a MIP appointed to an asset charged by a company or an individual, the application for a tax clearance certificate (Form CG50A) should be made by the receiver or the MIP, as the case may be, on the disposal of specified assets to third parties where the consideration exceeds certain limits, currently €500,000 (the limit is €1m in the case of a house or an apartment). A receiver or a MIP should discharge the registration obligations set out in **para. 1.2** TDM Part 04-00-01. Applications should be made online via the Capital Gains Clearance Facility, selecting the 'Vendor CG50A' option (as per the manual **eCG50 - Guide for Applicants**). As the MIP has a separate tax reference number for all activities undertaken as a mortgagee, the eCG50 application should be made using that tax reference number. Alternatively, a paper application can be made to the following Revenue Divisions:

Disposal by:	Relevant Division	Tax Reference Number
Receiver over corporate assets	Division dealing with corporates	Company tax reference number
Receiver over assets of an individual	Division dealing with individuals	Individual's PPSN /tax reference number
Receiver over co-owner asset	Division dealing with Receivers	PPSN/tax registration of all co-owners to be listed on a schedule
MIP	Large Corporates Division[1]	MIP's tax reference number

The vendor details on the application Form should be completed as: "[receiver/MIP name] - as receiver/MIP over assets of [borrowers name]"and signed by the receiver/MIP in their capacity as such.

The vendor, for the residence test purposes, is the borrower, not the receiver/ MIP. However, for MIP applications to Large Corporates Division using the tax reference number of the mortgagee as MIP, Revenue will permit that the residence test may be determined by reference to the mortgagee's residence position.

In instances where a CG50A has issued to a receiver, but the contract is being closed by a MIP, while technically a new CG50A should be sought, Revenue will accept the CG50A issued to the receiver.

(b) Resident individuals with no tax reference number

Vendors making a CG50A application will need a PPSN. If they do not already have one, they should contact the Department of Employment Affairs and Social Protection. Similarly, purchasers filling out a CG50B form will need a PPSN.

(c) Multiple Vendors

Where a single asset is sold and there are two or more vendors, only one certificate should be issued.

Parties who make the application in ROS / MyAccount, will be able to view the applications made by them. Any vendor named in an application for a CG50A certificate will receive a Revenue notice outlining the contents of the application. One vendor (or one agent) may create an application on behalf of multiple owners of an asset, however only the person who created the application will have full viewing rights of all details of that application in the eCG50 system in ROS / MyAccount. Where a paper application is made by multiple vendors, the application should be signed by all the vendors or their agent and should, in general, be processed by the

[1] Agreed arrangements are in place whereby mortgagees apply for CG50As to Large Corporates Division.

Revenue Division which receives the application, in liaison with the other vendors Revenue Division.

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 Division.

(d) Executor/Administrator, etc.

Solicitors can act on behalf of deceased clients, provided they are linked with the estate of the deceased, i.e. solicitors will enter the tax reference number of the estate not the PPSN of the deceased. Where a paper application is made, the application should be made to the Revenue Division where the deceased person's tax affairs were dealt with. The executor would apply under the tax reference number of the estate of the deceased, not under the PPSN of the deceased.

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 or her agent notified accordingly.

(e) Purchase in trust

Circumstances can arise where a purchaser does not want to reveal its identity to a vendor, or where this may not have been finally decided, say in the context of a group of companies. In this case, notwithstanding note 7 of the existing Form CG50, the inclusion of 'in trust' details for the purchase on the application form will not prevent the issue of a clearance certificate.

The purchaser's agent must, however, furnish the name and address of the purchaser to the Revenue District that issued the certificate immediately on the closing of the sale.

(f) Simultaneous signing and closing of contracts

Simultaneous signing and closing of contracts can occur in certain situations and, in particular, can involve the contract being amended right up to its execution. Difficulties can arise, therefore, where a contract is amended after the CGT clearance cert has issued.

In this case applications should be processed on the basis of the unsigned contract that accompanies the Form CG50. Where a clearance certificate issues in these circumstances, the purchaser can rely on the certificate; however, the applicant (or agent for the applicant) should submit a copy of the actual signed contract immediately on the closing of the sale. A purchaser can satisfy this requirement themselves by sending a copy of the signed contract to the Revenue, if they are in any doubt that this will be done post-closing.

(g) Disposals where there is no contract

Disposals where there is no contract can occur in certain situations, for example, on the redemption of shares. If not already provided, the applicant should confirm in writing the reasons the application is not accompanied by a contract, and this should be provided to Revenue with the application. The absence of a contract should not, in itself, prevent the issue of a clearance certificate in such situations.

(h) Consideration payable by instalments

While it is recognised that it is difficult to provide definitive guidance on this area, the general position is that clearance certificates should issue at the outset, for the maximum amount of the consideration that is provided for in the contract, notwithstanding that the initial payment might not exceed the threshold.

If there are doubts as to the quantum of the final amount of the consideration – for example, where there is contingent consideration – the applicant should be asked to quantify the final amount to the best of their ability, and the application should be considered on that basis. Any quantification for this purpose will not affect the ultimate liability of the parties to tax, including in particular to CGT.

(i) Disposals by partners in a partnership

Where the total consideration on disposal of a partnership asset exceeds €500,000, one application is made on behalf of the partnership. The application should list the names of the partners and their PPS numbers. This one certificate suffices for presentation to the purchaser to enable him or her to pay gross, even if the payment is divided, with amounts going to individual partners.

(j) Disposals by co-ownerships

On the disposal of an asset by a co-ownership, each co-owner only needs a certificate to the extent that his or her share of the consideration is greater than €500,000. Documentation should accompany a CG50 application, explaining that a certificate is being sought in respect of the applicant's share (greater in consideration value than €500,000) of a larger asset and that a co-ownership rather than a partnership is involved.

(k) Liquidators

Where a company is in liquidation, the liquidator should apply for a certificate on the disposal of specified assets to third parties where the consideration exceeds €500,000. The application should be made quoting the tax reference number of the company. Where the assets (being specified assets) of the company in liquidation are being distributed in specie to the shareholders of the company:

(i) The liquidator should apply for a certificate if the value of the shareholder rights being given up in return for the specified assets exceeds €500,000, and

(ii) Each shareholder should separately apply for a certificate in respect of the disposal of his or her shares where the value of the specified assets being distributed to him or her exceeds €500,000.