Changes to the Capital Gains Tax Regime

By Mark Doyle

Mark Doyle outlines the key changes to the Irish tax treatment of capital gains and recently published Revenue eBriefs on capital gains tax

Finance Act 2014 ("the Act") was signed into law by the President on 23 December 2014; the Act contained a number of changes to Capital Gains Tax ("CGT"); in addition there were a number of Revenue eBriefs in 2014 relating to CGT that are worth examining.

Retirement relief for farmers

Retirement relief is a relief from CGT for individuals aged over 55 on the disposal of certain business assets. The Act provides that farm land that has been let for up to 25 years in total (increased from 15 years) ending with the disposal of that land can now potentially qualify for retirement relief (provided that the other conditions for relief are satisfied). This change was made on foot of recommendations made by the Agri-Taxation Review carried out in early 2014.

Prior to the passing of the Act, it was Revenue's view that farmers who had let their land on conacre were not eligible for retirement relief when the land was disposed of (except certain cases where the disposal was to a child of the farmer). The Act provides farmers who have let their land on conacre and who dispose of their land to a third party a short term opportunity to avail of retirement relief (provided the other conditions for relief are satisfied) where the farmer either:

- disposes of their land on or before 31 December 2016, or
- leases their land on or before 31 December 2016 for minimum periods of 5 years (up to a maximum of 25 years) and ultimately disposes of the land.

EU Single Farm Payment Entitlements

The Act provides for an exemption from CGT on chargeable gains that arose from the disposal by farmers of payment entitlements under the EU Single Payment Scheme. The exemption applies where, as a result of Common Agricultural Policy changes, landowners disposed of their entitlements to an "active" farmer on or before 15 May 2014. Farmers whose single payment entitlements were fully leased in the Scheme year 2013 and who disposed of them in the Scheme year (16 May 2013 to 15 May 2014) are exempt from CGT on the proceeds of the disposal.

Farm restructuring relief

Farm restructuring relief allows a farmer to restructure their farm land without a charge to CGT arising. The Act extended the deadline for farm restructuring relief from 31 December 2015 to 31 December 2016;

however, in order to comply with EU State Aid requirements, farm restructuring relief is now only available on agricultural land and not on farm buildings on that land.

7 Year Property Exemption

There was a flurry of activity in the property market towards the end of 2014 in order to avail of the CGT exemption for gains on land or buildings purchased and held for a period of 7 years. As expected, the Act did not extend the relief beyond 31 December 2014.

Revenue published Revenue eBrief No. 101/14 relating to the 7 year exemption which may be helpful when dealing with a a number of matters pertaining to the relief. For the purposes of satisfying the acquisition timeframe (i.e. land or buildings acquired in the period from 7 December 2011 to 31 December 2014) the normal CGT provisions as regards the time of acquisition and time of disposal apply. Accordingly, land or buildings will be treated as acquired on or before 31 December 2014 where either:

- an unconditional contract has been made on or before that date (and regardless of the fact that the asset may be conveyed or transferred after that date), or
- a contract is made subject to a condition precedent and the condition is satisfied on or before that date.

Revenue also clarified the position in relation to enhancement expenditure incurred on land or buildings acquired in the requisite time period. If enhancement expenditure (e.g. the construction of buildings on land) is incurred at any time during the period of ownership, and is reflected in the land or buildings at the time of disposal, it will be taken into account in computing any gain. To the extent that the property is retained for 7 years any such gain relating to the enhancement expenditure should not be regarded a chargeable gain, in addition the enhancement expenditure need not have been incurred prior to 31 December 2014.

Abolition of Windfall Tax

The Act abolishes the windfall tax provisions introduced in 2009 that applied an 80% rate of CGT to certain land related profits. The 80% tax rate is abolished for disposals on or after 1 January 2015.

Temporary non-residents

The Act amends the anti-avoidance provision targeting individuals who temporarily migrate tax residency from Ireland and dispose of assets while abroad in the expectation of avoiding Irish CGT.

The provision previously operated by deeming that certain assets disposed of by an individual in any year of non-residence are disposed of and reacquired at their market value on the last day of the year the individual left Ireland to reside elsewhere, thus imposing a CGT charge.

The amendment made by the Act provides that where there is an increase or a decrease in the market value of assets between the last day of the year of departure and the date they were disposed of, the market value of assets on the date they were disposed of will be used for the purpose of determining the charge to Irish CGT.

Vodafone "C" shares

The Act provides that individuals, who received a "return of value" payment of €1,000 or less, arising from the receipt of Vodafone "C" Shares, will be treated as having received a capital sum subject to CGT rules rather than an income sum subject to income tax (unless the individual opts to have the payment treated as income). This means that such individuals who acquired shares in Vodafone as a consequence of an original investment by them in Eircom shares in 1999 should not have a liability to CGT on the return. The return of value should be subject to CGT rules – as the base cost of the Vodafone shares should be higher than the amount of the return of value received, no CGT should be payable on returns of value of €1,000 or less.

Revenue has published a number of eBriefs and guidance on the tax treatment of "return of value" to such Vodafone shareholders. The most recent eBrief No. 107/14

contains additional guidance on the CGT treatment.

Works of art

Wasting assets (i.e. assets with a useful life of less than 50 years or assets that are plant or machinery) are exempt from CGT on a disposal. The Act amends the legislation relating to wasting assets to provide that works of art do not qualify for exemption from CGT on disposal, this could otherwise occur where such works are regarded as items of plant (e.g. a painting in a gallery).

This amendment follows on from a UK Court of Appeal decision (HMRC v the Executors of Lord Howard Henderskelfe (2014) EWCA Civ 278) that found that in certain circumstances works of art could be regarded as plant and thus as wasting assets eligible for the exemption from CGT.

Incorporation of a business

While there was no legislative amendment in the Act to the CGT relief available for individuals incorporating a business, Revenue recently published eBrief No. 111/14 which clarifies their concession with regard to bona fide trade creditors.

Where a business, along with the whole of its assets (or the whole of its assets other than cash) is incorporated in exchange for shares, relief from CGT is given to the extent that the consideration for the transfer is in the form of shares. The charge to CGT on any gain arising upon incorporation can be deferred until the shares are disposed of.

A long standing Revenue concession is available where an individual transfers a business to a company in exchange for shares, the assets of the business exceed the liabilities of that business and the only other consideration is the assumption by the company of liability for bona fide trade creditors. In such a case, bona fide trade creditors will not be treated as other consideration for the transfer thus avoiding a charge to CGT. The Revenue eBrief clarifies that the concession applies to genuine trade creditors who supply goods or services to a business (e.g. a supplier of food to a restaurant business) and that the concession does not apply to business debts such as bank loans or tax liabilities taken over by a company.

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