

Retirement Relief from CGT – Life Advisory Services

Sections 598 and 599 of the Taxes Consolidation Act 1997, provide for a relief from Capital Gains Tax in certain circumstances where an individual disposes of certain business assets (Section 599 deals with Disposals to a 'child').

The main conditions that currently apply are:

- I. The individual disposing of the assets must be over age 55. There is no actual requirement to 'retire' as such, simply to be over age 55.
- II. The relief applies on the disposal of shares in a trading or farming company, where the individual has owned the shares for at least 10 years ending on the date of disposal (prior periods of ownership by a spouse or civil partner or a deceased spouse or civil partner can be taken into account).
- III. The individual must have been a working director of the company for at least 10 years and have been a full time working director for at least 5 years.
- IV. The individual must own at least 25% of the voting rights of the company, or alternatively, own at least 10% with other family members owning at least an additional 65%.
- V. Under Section 598 where the proportion of the consideration applicable to 'qualifying business assets' does not exceed €750,000 in total then relief from Capital Gains Tax is given in respect of any gain related to that part of the consideration. Where the part of the consideration qualifying for the relief exceeds €750,000 then marginal relief may apply. Marginal relief limits the tax payable to 50% of the difference between €750,000 and the actual consideration.
- VI. The proportion of the consideration for the shares treated as being applicable to 'qualifying business assets' is related to the value of the company's 'chargeable business assets' plus cash as a proportion of the company's total assets. A company's 'chargeable business assets' are those assets used in the course of the trade, including goodwill but excluding assets held by the company as investments.
- VII. Where this relief is being availed of it must be shown that the disposal is made for 'bona fide commercial reasons' and does not form part of any arrangement to avoid a liability to tax.

The **Finance Act 2010** introduced an amendment to Section 598 which clarifies that, where a payment is made to an individual by a company for its own shares, and that payment is treated as a disposal for Capital Gains Tax purposes, (see our "CGT treatment on sale of shares to Company" document for further information) this payment will be seen to come within the scope of the relief and will be taken into account for the purposes of the €750,000 lifetime threshold.

Farming Assets

There are additional conditions where farming assets are being disposed of, for example, where land has been leased prior to its disposal the land in question must have been let by the individual at any time in the 15 years prior to the disposal, and owned and farmed by that person for a period of at least 10 years prior to the disposal, and the land must be disposed of to a 'child' of the disponent.

Disposal to a child

Section 599 provides a similar relief on disposals to children (including the child of a deceased child, certain nephews and nieces and foster children), but there is no limit on the value that may qualify for relief (a maximum of €750,000 applies on disposals to others).

However, where the relief is availed of on a disposal to children there is a potential clawback in the event of a child disposing of the business or company within the next 6 years.

Terminal Illness

Where an individual disposes of "qualifying assets" before his / her 55th birthday, the Revenue Commissioners will consider claims for relief **where all the following conditions are present :**

- The claimant is, due to severe or chronic ill health, unable to continue farming, or in his / her trade, profession office or employment or as a working director in a relevant company
- On cessation the claimant disposes of "qualifying assets" – at the time of disposal the conditions for relief, other than the age requirement, are satisfied
- At the time of disposal the claimant is within 12 months of his / her 55th birthday.

An individual claiming Retirement Relief on these grounds should provide medical evidence of the illness and outline the circumstances in which the relief is being claimed. This relief applies to disposals occurring on or after 14th May 2005.

This document provides a brief outline of the conditions applying at March 2012 to retirement relief from Capital Gains Tax. The changes proposed to reliefs in Finance Bill 2012 are not included in this document because, even if they are enacted as they are currently proposed, the changes will not come into effect until January 2014.

This is a specialised area and specialist tax advice should be sought, in advance, if the relief is to be availed of.

We advise that your client seeks professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

Information is correct as at 1 March 2012 but is subject to change.