

CGT COMPUTATION, EXEMPTION AND LOSSES

Assessment of CGT

CGT is assessed for a tax year 6th April to the following 5th April. The Tax is payable by the 31st January in the following year.

The date which triggers CGT liability is the date of the sale contract rather than the date upon which it is completed. This can mean that the CGT liability may arise before the actual sale is completed.

The exemptions from UK CGT are significantly more generous than in Ireland. Non-residents are completely exempt. Each individual has an exemption of £9,600 (in contrast to an individual's exemption of €1,270 in Ireland).

The value for CGT purposes will generally be the sale price. This will be the case where the sale is on a commercial basis with a third party. However, if the bargain is not at arms length and the asset is deliberately sold for an undervalue the legislation requires substitution of market value for the sale price. If the disposal is to a connected person e.g. a relative or family company or trustee it is deemed that the bargain is not at arms length and market value is always substituted.

In calculating CGT, certain expenditure is allowed as a deduction. These include the following:-

- the original purchase price or value given
- incidental cost of acquisition (e.g. stamp duty, legal costs etc.)
- enhanced expenditure which means expenditure wholly and exclusively incurred for enhancing an asset i.e. permanent capital additions and improvements (as opposed to repairs)
- incidental costs of sale (e.g. legal, auctioneers fees)

Where an asset was held at 31st March 1982 the market value on those dates may be substituted for the actual costs

Enhancement expenditure is allowed as a deduction provided it is reflected in the asset at the time of disposal. Improvements which have worn out by the time of disposal are excluded. Expenditure which is allowed against income tax (e.g. repairs) will not be allowed against CGT on the sale of the property and vice versa.

Losses

Capital losses can be offset against capital gains. Capital losses can be brought forward until fully offset. Capital losses cannot be offset against an individual's income. Losses arising from transactions with connected persons e.g. relatives, companies under control etc. can only be offset against gains arising from transactions with the same person but can not otherwise be set off against other capital gains.

Losses brought forward do not need to be set against gains that are covered by the annual exemptions. All current year losses must be set against gains before using the annual exemptions.

Capital losses cannot generally be offset against income. Under certain circumstances, trading losses which have been already offset against income from other sources for a year may be set off against capital gains for the same year or against income and capital gains in the previous year. This only applies to businesses.

Exemptions from CGT

Critically, from the perspective of Irish residents, UK CGT only applies if an individual is resident or ordinarily resident in the UK. Rules in relation to resident and ordinarily resident are determined in the same way as for income tax.

Where an non resident and a non ordinarily resident person carries on a trade or business through a branch or agency CGT may be charged on the disposal of assets of the branch despite the fact that they would normally be outside the charge.

Assets can be transferred between spouses and civil partners in order to use both CGT allowance on a future sale. Assets transferred between spouses are effectively not subject to CGT.

Gains on the sale of virtually all types of assets are potentially subject to CGT. However, the principal assets, which are exempt from CGT, are as follows:

- principal private residence
- certain moveable goods
- personal property with use for life of less than 50 years, unless used in a business
- moveable items where the sale consideration is less than £6,000
- certain compensation and damages
- debts
- National Savings Certificate
- shares in ISA's and PEP's
- shares issued by way of Business Expansion Schemes
- shares that qualify for income relief under the Enterprise Investment Scheme
- shares in a Venture Capital trust
- motor cars
- woodlands
- gifts to charity
- certain life policies

A chattel means a tangible moveable asset. An example would be pictures, collectible items etc. Assets with a useful life expectancy of less than 50 years are exempt from CGT regardless of the amount of proceeds. Correspondingly there is no relief for losses on the sale or destruction of such items.

In the case of other chattels, a gain will only arise if it is not covered by the exemption. An exemption applies if the sale proceeds do not exceed £6,000. There are rules where an asset forms part of a set such limits the exemption of £6,000 to the entire set.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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