

## [19.2.14] Part Disposals (S.557)

- 14.1** In the case of part disposals the cost to be attributed to the part disposed of is the proportion of the total cost which the consideration received for the part disposed of bears to that consideration plus the market value of the remaining part. If a person receives compensation for damage to a chargeable asset the receipt of the capital sum is by definition a part disposal with a consequent chargeable gain or allowable loss.
- 14.2** Where there is a part disposal, the expenditure on the asset under **Section 552(1)(a) and (b)** - see [Tax Instruction 19.2.10 Par. 1](#) - must be apportioned for the purpose of the computation of the gain or loss on the part disposed of, and for the allocation of a figure of cost to the part retained.

The apportionment is to be made by reference to the disposal consideration and the value of the part retained at the time of the part disposal. This treatment does not, however, apply to sub-leases granted out of short leases (see [Tax Instruction 19.2.21 Par. 18](#)).

Where the asset disposed of was obtained with other assets on a composite acquisition (e.g., a single contract of purchase at an inclusive price embracing more than one asset), the acquisition price should be apportioned to the respective assets broadly by reference to their market values at the date of acquisition.

- 14.3** In some circumstances it is necessary to decide what is the asset before determining whether a disposal is an entire or a part disposal.

"Asset" is not defined in the Act and is therefore to be given its natural meaning subject, however, to the inference from **Sections 552 and 557** that the "asset" is whatever is covered by a specific item of expenditure on an acquisition, whether made by purchase or otherwise (such expenditure being allowable under **Section 552(1)(a)** - see [Tax Instruction 19.2.10 Par. 1](#)). See, however, **Par. 12** as regards the practice under which a part disposal of land may in certain circumstances, be regarded as a disposal of a separate asset.

- 14.4** Expenditure enhancing the value of an asset allowable under **Section 552(1)(b)** may alter the character of the asset but does not create a new asset. Thus the purchase by a bakery owner of an additional bread round which is merged with the main business is an addition to existing goodwill, not the acquisition of a separate asset.
- 14.5** The following paragraphs and the instructions in **Par. 6 to 11** are based mainly on a strict interpretation of the law. To meet the difficulty of having to value the whole of the unsold portion of a property when part is sold, however, the practice described in **Par. 12** may, where appropriate, be adopted. See also [Tax Instruction 19.2.8](#) regarding small part disposals and the need for valuation reports.

Unless it appears from the facts at the time of the acquisition that more than one asset (given its natural meaning) was acquired, a single acquisition of land (with or without buildings), whether obtained by purchase under one contract at an inclusive price or by gift or inheritance as a whole, should be regarded as a single asset (even though it comprises distinguishable elements such as a house and garden, farmhouses, buildings, woodlands, cottages, etc.)

In the case of acquisitions by purchase there may be contemporary evidence showing that the acquisition comprised more than one asset. For example, correspondence, etc. during the negotiations leading up to the purchase may show that the contract price was based upon the sum, rounded up or down, of a number of valuation units; the land may have been offered for sale by auction in lots; or the rent roll of an estate may show separate tenants paying substantial rents for individual properties. Purchasers acquiring estates of small let properties (e.g., terraced urban dwelling houses) should normally be regarded as acquiring blocks of a size convenient to hold as investments but no objection need be made to the treatment of individual dwelling-houses as separate assets. Single buildings in multiple occupation such as blocks of flats or office suites should normally be regarded as single assets. No objection need, however, be made to the treatment of individual flats, etc., as separate assets if it appears that similar flats, etc., in the same ownership or in the locality have been commonly sold singly as independent dwellings.

- 14.6** Where a disposal of land includes the whole or part of two or more separate assets, separate computations for the separate assets are required. This ensures that indexed losses (see [Tax Instruction 19.2.13 Par. 1](#)) on one asset are not inadvertently allowed against gains arising on other assets contained in the composite disposal.

Where separate computations are required on a composite disposal, the disposal consideration should be apportioned to the several assets.

- 14.7** The original cost of the asset should be apportioned by reference to the disposal consideration and the value of the part retained at the time of the part disposal. The remainder of the expenditure ranks as the amount allowable on a future disposal of the part retained. See, however, [Tax Instruction 19.4.6 Par. 10](#) et seq., where a part disposal of a holding of shares follows the re-organisation or reduction of a company's share capital.

**Example 1**

In 1995/96, a person buys an asset for €20,000 and in 2006, sells a part of it for €45,000 at a time when the value of the remainder of the asset is €135,000.

The computation is then as follows:--

Part cost apportioned to the disposal -

|                 |               |           |                            |
|-----------------|---------------|-----------|----------------------------|
|                 | <u>45,000</u> |           | €                          |
| €20,000 x       | 45,000        | + 135,000 | 5,000 x 1.277 (indexation) |
| Disposal price  |               |           | <u>45,000</u>              |
| Chargeable gain |               |           | 38,615                     |

The adjusted "cost" of the remainder of the asset (for the purposes of any later disposal) is €20,000 less €5,000, i.e. €15,000.

- 14.8** Where the amounts involved are not large and the part sold is clearly a recognisable fraction of the whole and all the allowable expenditure falls under **Section 552(1)(a)**, (**Tax Instruction 19.2.10**), the allowable expenditure may, in practice, be divided in accordance with that fraction in order to avoid unnecessary work on valuation. Thus in the case of a disposal of part of an asset, for say €10,000, it is clear that the proceeds represent 25% of the value of the whole asset, the same fraction (i.e. 25%) of the original cost may be taken as the cost for the purpose of the computation. This method is not statutory but, in practice, it gives a very close approximation and should be adopted unless the taxpayer objects.
- 14.9** Allowable expenditure which is wholly attributable to the part which is disposed of, or to the part which remains undisposed of, should be so allocated and not subjected to the apportionment formula. The formula should be applied only to common expenditure and the following example illustrates this treatment.

**Example 2**

In July 1990 a person buys 50 acres of farm land with no house or buildings for €150,000. In July 1992, he buys 10 acres more for €40,000. In 2005, he sells an 8 acre field from the original 50 acres for €360,000. Since the land sold is part of the 1990 purchase, the cost of the land bought in 1992 is not brought into the computation of the gain on the sale in 2005. On the assumption that the 42 acres retained out of the original purchase are worth €1,600,000 in 2005, the computation (subject to expenses) is –

|                       |  |               |
|-----------------------|--|---------------|
|                       |  | €             |
| Sale price            |  | 360,000       |
| Part cost allowable - |  |               |
| €150,000 x            | $\frac{360,000}{360,000 + 1,600,000} \times 27,551 \times 1.442$ | <u>39,728</u> |
| Chargeable gain       |  | 320,272       |

- 14.10** In the case of an asset subject to capital allowances, the apportionment under **Par. 7** should be made first and capital allowances taken into account under [Tax Instruction 19.2.12 Par. 2](#) to the extent only that they relate to the part being disposed of. If there has been a previous part disposal at a loss and on that disposal capital allowances have been used to restrict the allowable loss, then only the balance of the capital allowances should be used to restrict any further loss on the disposal of the asset in full or in part.

### Example 3

A person buys a building for €200,000 and makes additions for €100,000 on which he becomes entitled to industrial buildings allowance of say €2,000 per year. After 4 years he sells a part of the building for €50,000, incurring expenses of €5,000 on the disposal. The value of the remainder of the building at the time of sale was €250,000.

The computation on the part disposal is -

|                     |                                   |                |
|---------------------|-----------------------------------|----------------|
| Sale price          |                                   | €50,000        |
| Part cost 300,000 x | $\frac{50,000}{50,000 + 250,000}$ | <u>€50,000</u> |
|                     |                                   | NIL            |
| Expenses of sale    |                                   | €5,000         |
| Loss                |                                   | <u>€5,000</u>  |

It must now be considered whether this loss is allowable.

For the purposes of loss restriction the adjusted allowable cost becomes €200,000 (being the original €200,000 plus the addition of €100,000 but less the capital allowances made or which may be made - €100,000). The proportion allowable is

$$\frac{€50,000}{50,000 + 250,000} \text{ of } €200k = €33,334$$

that is an exclusion of the amount of €16,666.

This would result in a gain so that the restriction is reduced to €5,000 and the loss of €5,000 is not allowable.

Assuming that the remainder of the building is sold for €200,000 and €50,000 expenses of sale were incurred the computation is -

|   |          |
|---|----------|
| Sale price  | €200,000 |
| Balance of cost from the part disposal computation<br>(€200,000 + €100,000 - €50,000) | €250,000 |
| Loss  | €50,000  |
| Expenses of sale  | €50,000  |
| Total loss  | €100,000 |

That loss is to be allowed only to the extent that it exceeds the capital allowances given as reduced by the amount restricted on the part disposal. The capital allowances with balancing allowance amount to €100,000 and taking off the €5000 restricted in the part disposal computation the amount to be set against the loss of €100,000 is €95,000. The final allowable loss will therefore be €5,000. This agrees with the overall position which is as follows:-

|  |          |
|--|----------|
| Total sale price (€50,000 part + €200,000 balance) | €250,000 |
| Cost (€200,000 + €100,000)                         | 300,000  |
| Expenses of sale (€5,000 part + €50,000)           | 55,000   |
| Loss   | €105,000 |
| Allowed against income as capital allowance        | €100,000 |
| Balance due  | €5,000   |

- 14.11** Where a physical part (or an interest in or right over a part) of an area of land comprising a number of acquisitions is disposed of, the rules for part disposals should be applied to the smallest separate acquisition or number of acquisitions out of which the part disposal is made.

#### Example 4

Suppose that over a period of years, X acquires land as follows:-

- (a) He inherits a farm.
- (b) He buys adjacent land to extend the farm.

- (c) He inherits a house and garden on the farm following the death of his mother.

The whole is farmed as one unit.

He later sells a strip of land to a local authority for road making. The strip crosses the land in (b) and cuts a corner off the garden in (c).

In computing the chargeable gain or allowable loss on the disposal of the land, the consideration for the disposal should be apportioned to the units represented by acquisitions (b) and (c) respectively, and the rules for part disposal applied to each acquisition.

For the purposes of valuation on 6 April, 1974 each of the units of valuation (and the land within acquisition (a)) should be treated as a separate asset.

- 14.12** In calculating the Capital Gains Tax liability on the disposal of part of an asset, the whole of the unsold portion has, in strictness, to be valued. Where there is a part disposal of land, however, the practice described below may, if the conditions are satisfied, be adopted. This practice, which in effect regards the unit of disposal as being also the unit of acquisition, is not to be applied in any case where the taxpayer wishes to adhere to the strict interpretation of the law (**Par. 5 et seq.**).

Where the entire interest in what is recognisably a separate asset is disposed of, the amount to be allowed under **Section 552(1)(a)**, ([Tax Instruction 19.2.10](#)) may, if the taxpayer agrees and subject to **Par. 13**, be ascertained by a just and reasonable apportionment of the expenditure made, or deemed to have been incurred, when the asset was acquired as part of a larger bargain. This apportionment follows the basis in **Section 544(5)**.

- 14.13** If on an occasion before a disposal to which the practice set out in **Par. 12** can be applied, the formula in **Section 557**

$$\text{(i.e., } \frac{A}{A + B} \text{)}$$

where A is the consideration for the part disposed of, and B is the market value of the part retained), has been applied to the original expenditure, then technically it could be argued that **Section 544(5)**, cannot be applied because it has already been accepted that there was only a single asset. In practice, however, the procedure in **Par. 12** may be adopted, part of the original cost, etc., being ascertained and allowed.

For this purpose the original cost should be increased by a suitable proportion of any additional expenditure and reduced by an appropriate part of any expenditure allowed on a previous part disposal which was not in respect of an identifiable physical part of the original asset.

Since the taxpayer is always free to require that the

$$\frac{A}{A + B}$$

formula should be applied the **Par. 12** procedure should only be granted where a written undertaking is given that a similar basis of apportionment will be applied on the occasion of all subsequent disposals by him out of that "single asset".

- 14.14** When a computation based on the practice in **Par. 12** is received, it should be examined and if the apportionment made by the taxpayer or his agents seems reasonable, it should be accepted. In examining the computation, consideration should be given to the total of the block of expenditure out of which the disposal is made and to the extent of the disposal. The Inspector should ensure that a realistic part of the whole expenditure is apportioned to each disposal. In the end the total cost of the parts must equal the cost of the whole or the market value of the whole as at 6 April, 1974 as the case may be. Districts should maintain a record in each case to ensure that the original cost (or the market value) of the whole of the land is not exceeded.

In strictness, any apportionment should be made by reference to the values at the time of acquisition. In practice, however, where, for example, a block of flats or tenements or terraced houses is involved, the initial "cost" may be ascertained on the basis of current valuations for rating purposes.

- 14.15** Where it is not found possible to agree the apportionment of the "cost" with the taxpayer, and an appeal hearing is necessary, the appeal will have to be taken in the normal way on the statutory basis.

$$\frac{A}{A + B}$$

The appeal will concern the value of land and will not be an apportionment problem as such.

- 14.16** For disposals of development land **Section 651** provides that indexation is applied only to that part of the allowable cost of acquiring the land as is equal to its current use value at the date of acquisition, together with such proportion of the incidental costs of acquisition as are referable to that current use value. Where the part disposal rules apply to such a disposal the application of the part disposal formula may result in a disproportionate allocation of cost being applied to the part sold. As confirmed in **Tax Briefing 52** Revenue will accept that the treatment set out in the following example is to be applied.

**Example 5**

An individual acquired 50 acres of land for €100,000 on 1 December 1995 (€2,000 per acre). In 2007, 10 acres are sold for €4m and the value of the remaining 40 acres is €200,000.

|                       |   |                |               |
|-----------------------|---|----------------|---------------|
|                       |   |                | €             |
| Sale price            |   |                | 4000000       |
| Part cost allowable - |   |                |               |
| 100,000 x             | $\frac{4,000,000}{4,000,000 + 200,000}$ | 95,238 x 1.277 | <u>121618</u> |
| Chargeable gain       |   |                | 3878382       |

In this example €95,238 is clearly greater than the current use value of the land disposed of, at the time of its acquisition (€20,000). Where land is acquired at current use value and a part of that land is subsequently disposed of as development land, the allowable cost, determined by the part disposal formula, should be viewed as an allocation of the original cost rather than the market value of that part of the land at the time of its acquisition. This original cost represents current use value, at the time of acquisition and any allocation of this amount should consequently be indexed, without restriction. On a subsequent disposal of the remaining 40 acres, the base cost of the land disposed of, will be the original cost less the base cost allocated to this disposal, i.e, €100,000 - €95,238 = €4,762. A similar situation arises on the disposal of a site, which was part of the garden of a principal private residence (see [Tax Instruction 19.7.3. \(example 8\)](#)).