

Relief for individuals on certain reinvestment (S.591)

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Relief under Section 591 was discontinued for disposals on or after 4 December 2002. Gains arising on disposals before that date may continue to be "rolled over" while the vendor continues to invest the consideration for subsequent disposals of qualifying assets in replacement qualifying assets.

14.1 Introduction

Section 591 TCA 1997 provides a capital gains tax rollover relief which allows for the deferral of capital gains tax on gains accruing to an individual on the disposal, on or after 6 May 1993, of shares or securities in a trading company. To obtain the relief the proceeds must be re-invested in shares in an unquoted trading company falling within the scope of the Business Expansion Scheme. However Section 65 F.A. 1994 and Section 74, F.A. 1995 subsequently extended the scope of the re-investment to include most trading activities in the wider services sector.

14.2 Conditions for relief

- (i) (a) The vendor must be an individual [**S. 591(2)**].
 - (b) The vendor must make a material disposal (See **Par. 3.**) of shares in or securities of any company (original holding) [**Sec 591(2)**].
 - (c) The consideration which an individual obtains for any material disposal must be applied by him within a period of 3 years from the date of disposal in acquiring a qualifying investment (See **Par. 4(i)**) [**Sec 591(2)**].
- (ii) Where the conditions are met, the capital gain on the disposal of the original holding will be "rolled over", that is, the gain will be deemed not to arise until the qualifying investment is disposed of. Moreover, the gain will continue to be "rolled over" where the qualifying investment is disposed of and the proceeds from that disposal are re-invested in a further qualifying investment.

14.3 Material disposal - Sec 591(5)

The disposal of shares in or securities of a company by an individual will be a material disposal if, for the period of 3 years ending with the date of disposal or, where the company commenced trading at any time in that period for the period beginning at that time and ending with the date of disposal -

- (a) the company was a trading company or holding company

- (b) the individual was a full or part time employee or director of the company or if that company is a member of a trading group, of one or more companies which are members of that group.

14.4 Qualifying Investment - Sec 591(6)

- (i) An individual will be regarded as acquiring a qualifying investment where he acquires eligible shares (as defined in **Section 488**) in a qualifying company (See **Par. 5(i)**) and -
 - (a) he holds at least 5% of the ordinary share capital of the qualifying company within 1 year after the date of disposal of the original holding (the initial period). Section 65 F.A. 1994 made provision to allow disposals between 6 May 1993 and 5 April 1994 which are re-invested in the tax year commencing 6 April 1994 to qualify for relief provided all other conditions of the relief are met,
 - (b) he holds at least 15% of the ordinary share capital of the qualifying company within 3 years after the date of disposal of the original holding (specified period),
 - (c) the qualifying company is not the company in which the original holding subsisted or a company that was a member of the same trading group as that company,
 - (d) he becomes a full-time employee or full-time director of the company within 1 year of the disposal of the original holding and must remain in such a capacity until at least 3 years after that disposal or where the company is wound up or dissolved and the conditions set out in **Par.5** are satisfied, until such time as the commencement of the winding up or dissolution,
 - (e) the company uses the monies raised through the share issue for the purposes of enabling it to undertake, or enlarge its capacity to undertake, trading or professional operations. This is in respect of disposals on or after 6/4/1995.
- (ii) If an individual fails to meet the 5% requirement detailed at **Par. 4(i)(a)** above, but meets the 15% requirement detailed at **Par. 4(i)(b)**, and satisfies all other conditions of the relief, he may claim a refund of the tax paid on the original disposal. Such a refund does not carry interest.

14.5 Qualifying Company - Sec 591(7)

- (i) A company will be regarded as a qualifying company if
 - (a) it is incorporated in the State and

- (b) it is throughout the specified period (see **Par.4 (i)(b)**) an unquoted company (see **Par. 5(ii)** below)
 - (i) which is resident in the State and not elsewhere and
 - (ii) which exists wholly for the carrying on wholly or mainly in the State of a qualifying trade (see **Par. 6**), and
- (c) it is not at any time in the specified period
 - (iii) under the control of another company (or of another company and any person connected with that other company) or
 - (iv) a 51% subsidiary of another company.
- (ii) A company which is admitted to the Developing Companies Market of the Irish Stock Exchange during the specified period will still qualify, although quoted.
- (iii) A company will cease to be a qualifying company if at any time in the specified period it commences to wind up or dissolve. However, it will not cease to be a qualifying company solely because of a winding up or dissolution if it is shown that it was carried out for bona fide commercial reasons and not for the avoidance of tax and the net assets are distributed to its members within 3 years of the winding up or dissolution.

14.6 Qualifying Trade - Sec 591(8)

- (i) Where the disposal and re-investment takes place between 6 May 1993 and 5 April 1994, Sec. 16 F.A. 1984 (which determines what a qualifying trade is for the purposes of B.E.S.) will apply for the purposes of this relief as if reference there in to the "relevant period" were references to the "specified period".
- (ii) Section 65 F.A. 1994 takes effect from 6 April 1994 but it will apply to disposals made between 6 May 1993 and 5 April 1994 where the re-investment takes place in the year commencing 6 April 1994.
- (iii) Section 65 F.A. 1994 extended the scope of the qualifying reinvestment to include trading companies whose business consists of qualifying trading operations (see **Par. 6(iv)**). For this purpose dealing in shares, securities, land, currencies, futures or traded options are specifically excluded.
- (iv) A trade will be regarded as a qualifying trade if throughout the specified period
 - (a) it is carried on a commercial basis with a view to profits and

(b) it consists wholly or mainly of qualifying trading operations.

(v) A trade will be regarded as consisting wholly or mainly of qualifying trading operations if not less than 75% of the total amount receivable by the company from all its trading operations in the specified period is derived from sales made or services rendered by the company in the course of the carrying on of the qualifying trading operations.

14.7 Partial Relief – Sec. 591(4)

In general relief will not apply where only part of the proceeds from a material disposal is re-invested in acquiring a qualifying investment. If however the amount not re-invested is less than the gain accruing on the disposal, partial relief will apply. If for instance there was a gain of €30,000 and the amount not re-invested was €10,000, the individual would be treated as if he had made a gain of €10,000 and would be taxed on this sum accordingly. The balance i.e. €20,000 would qualify for relief.

14.8 Claiming Relief – Sec. 591(9)

Claims for relief may be made after the re-investment by the individual in a qualifying company. Effectively, relief is given in advance of the conditions of the section being met but provision is made for the withdrawal of the relief if the conditions are not subsequently satisfied.

14.9 Withdrawal of the Relief - Sec. 591(10) and (11)

(i) Withdrawal of the relief will be made for the year of assessment in which the event or non-event giving rise to the withdrawal of the relief occurred. Under **Section 951** the onus is on the individual to include this information in his tax return for the relevant year together with details of the gain accruing to him.

(ii) The gain referred to in **Par. 9(i)** is the actual chargeable gain which accrued on the disposal of the original holding

(a) reduced by

(i) losses available for relief under **Section 31** but only to the extent that such losses have not already been allowed in the year in which the disposal of the original holding took place or subsequent years of assessment, and

(ii) any balance of the annual exemption under **Section 601** not utilised in the year of assessment in which the disposal of the original holding took place

and increased by

an amount determined by the formula

$$\frac{G \times R}{100} \times M$$

where

- G is the amount reduced in accordance with **Par. 9(ii)(a)(i) & (ii)**
- R is 0.083 [**S 145 (7) Finance Act 2005**]
- M is the number of months in the period beginning on the date on which capital gains tax for the year of assessment in which the disposal of the original holding occurred was due and payable and ending on the date on which capital gains tax for the year of assessment for which the withdrawal of the relief is to be made is due and payable.

14.10 Indexation - Sec. 591(12)

Where a gain is treated as accruing at a date later than the date of disposal indexation relief is only due up to the date of disposal.

14.11 Anti-Avoidance - Sec. 591(14)

Relief will not apply unless the acquisition of a qualifying investment was made for bona fide commercial reasons and not for the purpose of realising a gain from the disposal of the qualifying investment.

14.12 Definitions

Please refer to **Section 591(1)** for further definitions.