

[22.2.1] Capital Gains Tax: disposals of development land (S648)

1.1 Section 648 includes the following definitions:

- (a) **Development land** is land in the State, or unquoted shares deriving their value or the greater part of their value directly or indirectly from such land, the consideration for the disposal of which, or the market value at the time of disposal, exceeds the current use value at the time the disposal was made.
- (b) **Current use value**, in relation to land, or unquoted shares deriving their value or the greater part of their value (that is, over 50 per cent) directly or indirectly from land, is the amount which would be the market value of the land if its value were calculated on the basis that it was at that time, and would remain, unlawful to carry out any development in relation to the land other than development of a minor nature.

- 1.2 The test to be applied so as to determine whether land is development land is whether the sale price (or market value) includes an element in respect of development value in the land, in other words, whether the sale price exceeds what the land would have realised if it were sold on the basis of its existing use. If planning permission had been obtained prior to the disposal or if the sale were made to a developer there would be no doubt as to the position but it should be remembered that land or buildings may be within the category of development land even though permission for development or for a change of use had not been obtained at the date of the disposal. The essential test is the price realised.
- 1.3 The question of whether land had sold for more than its current use value was considered by the Appeal Commissioners [**Decision 5AC 2003**]. The land, which comprised a house and approximately 8 acres, was sold for a sum which significantly exceeded the value attributed to it in valuation reports. The Commissioner determined, based on the specific facts of the case and the evidence provided, that the land was not development land. Further details of the determination are available at www.appealcommissioners.ie

Reviewed: February 2016