

### [22.2.3] Development Land: rate of charge (S. 649A)

- 3.1 Note:** See IT-CGT-CT Manual [Part 22.02.04](#) as regards windfall gains attributable to relevant planning decisions on disposals made between **30 October 2009 and 31 December 2014 – to which an 80% rate of CGT applies.**
- 3.2 This manual** applies to gains accruing on the disposal of development land on or after 6 December 2012 which are chargeable at the rate of 33%. Appendix 2 contains the rates applicable to disposals prior to 6 December 2012.
- Finance Act 2010, section 56, has substituted a new S542(1)(d) in TCA 1997. The effect of this is that all disposals under compulsory purchase (or threat of compulsory purchase) made on or after 4 February 2010 will receive the treatment previously only available to certain disposals of farm land. For disposals, on or after 4 February 2010, on foot of a CPO or threat of a CPO, the CGT liability will not accrue until the year of assessment in which the compensation is received. ***The applicable rate of charge will continue to be that in force when the disposal was made*** (See Tax Instruction 19.1.15 Pars 3 &4).
- 3.3 Tax Briefing 39** carried an article on the CGT treatment of development land gains. This is reproduced in Appendix 1.
- 3.4** Developments of Holiday cottages are regarded as a residential development for the purposes of **Section 649A(2)(b)(ii)(11) TCA 1997**. Planning permission granted for a holiday cottage development is, therefore, regarded as planning permission granted for residential development.
- 3.5** Revenue expressed the view in **Tax Briefing 35** that the 40% rate applied where a chargeable gain accrued on the grant of a right of way over development land which had planning permission for residential development. This was on the basis that the right of way itself did not have planning permission for residential development. It was also confirmed, by way of general note, that annual profits or gains in respect of receipts from easements are chargeable to income tax under Schedule D Case V. In contrast, a charge to capital gains tax arises where a right of way is disposed of.
- 3.6** The NAMA Act 2009 introduced a new provision S649B to the TCA, which charged gains on disposals of development land, to the extent to which they are attributable to rezoning, to CGT at a special rate of 80%. The provision applies to disposals on or after 30 October 2009. Section 25 Finance Act 2010 extended the scope of the charge to planning decisions which allow a material contravention of a development plan. **Section 31 Finance Act 2014 discontinued this 80% rate in respect of disposals made on or after 1 January 2015.**

## Appendix 1

### Development Land CGT Treatment

#### Introduction

The capital gains tax treatment applying to disposals of development land is contained in Section 69 Finance Bill 2000. That section gives effect to the Budget 2000 announcement that a 20% rate of capital gains tax should apply to the disposal of non-residential development land. A 20% rate already applies to disposals of certain residential development land. The 20% rate is also now to apply to those categories of residential development land which were specifically excluded up to now.

#### Position from 1 December 1999

There will now be a general 20% capital gains tax rate for all disposals of development land from 1 December 1999 to 5 April 2002. A rate of 60%\*\* takes effect for disposals to which that rate will apply as and from 6 April 2002. The new rules come into force as respects disposals made on or after 1 December 1999.

\*\* Section 94 Finance Act 2001 abolished the 60% capital gains tax rate for the disposal of residential development land which was to take effect for such disposals on or after 6 April 2002.

Section 69 Finance Bill 2000 amends Section 649A Taxes Consolidation Act 1997 to provide for the new rules from 1 December 1999 and it also preserves the pre 1 December 1999 rules. Accordingly, the new subsection (1) of Section 649A sets out the three rates of capital gains tax on disposals of development land which apply from 3 December 1997 through to 6 April 2002 and thereafter. The new subsection (2) of Section 649A sets out the different categories of residential development land which attracted the 20% rate in the period from 3 December 1997 to the introduction of the general 20% rate from 1 December 1999.

#### Period up to 30 November 1999

The reduced rate of capital gains tax applies to certain disposals of development land in the period to 30 November 1999. Three categories of disposal of development land qualify for the 20% rate of CGT. The legislative basis for the reduced rate is contained in Section 649A (2) and (3) Taxes Consolidation Act 1997.

The three categories are:

- (a) Land required for the purposes of the Housing Acts 1996 to 1998 disposed of to:
  - A housing authority (as defined) in the period 23 April, 1998 to 30 November 1999

- The National Building Agency Limited or voluntary housing bodies in the period 10 March 1999 to 30 November 1999.
  - Land the whole of which has, at the time of disposal, unexpired planning permission for residential development disposed of in the period 23 April 1998 to 30 November 1999.
- (b) Land the whole of which is, at the time of disposal, zoned for use solely or primarily for residential purposes in accordance with a development objective set out in the development plan of the relevant planning authority disposed of in the period 10 March 1999 to 30 November 1999.
- (c) Disposals of development land, other than the 3 categories above, in the period to 30 November 1999 attracted the higher CGT rate of 40%.

### **Housing Authorities etc.**

The first category is straightforward. The 20% rate applies where a certificate is given by either a housing authority or the National Building Agency Ltd that the land concerned is land needed for the purposes of the Housing Acts 1966 to 1998.

### **Planning Permission for Residential Development**

The second category requires extant planning permission for residential development for the whole of the land at the time of the disposal.

**“residential development”** is defined in Section 649A(3) as including any development which is ancillary to the development and which is necessary for the proper planning and development of the area in question.

### **Zoning for Residential Purposes**

The third category attracting the 20% rate of capital gains tax is land the whole of which at the time of its disposal is zoned solely or primarily for residential purposes.

**“residential purposes”** is not defined in the legislation. Consequently, it must take its normal meaning. Any purpose which can be regarded as having as its objective the

provision of a building which is capable of being used as a residence would on this basis qualify.

The phrase **“solely or primarily”** must be read in the context of “for use solely or primarily for residential purposes” .... “in accordance with a development objective (as indicated in the development plan of the planning authority concerned)”.

The approach taken is that unless the development objective in question was unambiguously “solely or primarily for residential purposes” the legislation precluded the 20% rate of CGT applying.

## Appendix 2

<u>Period</u>	<u>Basic CGT Rate</u>
6/4/1974 - 5/4/1978	26%
6/4/1978 - 27/1/1982	30%
28/1/1982 - 25/3/1982	45% <sup>1</sup>
26/3/1982 - 5/4/1990	50% <sup>2</sup>
6/4/1990 - 5/4/1992	50% <sup>3</sup>
6/4/1992 - 2/12/1997	40%
3/12/1997 - 30/11/1999	40% <sup>4</sup>
1/12/1999 – 14/10/2008	20%
15/10/2008 – 7/4/2009	22%
8/4/09 – 6/12/2011	25%
7/12/2011- 5/12/2012	30%

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<sup>1</sup> 40% where land compulsorily acquired.

<sup>2</sup> The rate was 60% where the period of ownership was less than 1 year. The rate was 40% where land owned for more than 3 years was compulsorily acquired.

<sup>3</sup> The rate was 40% where land owned for more than 3 years was compulsorily acquired.

<sup>4</sup> 20% in certain instances (see Appendix 1)