

## Capital Gains Tax

### Windfall Gains from Relevant Planning Decisions Made between 30 October 2009 and 31 December 2014

1. The NAMA Act 2009 as amended by S25 Finance Act 2010 introduced a new provision, section 649B, into the Tax Consolidation Act 1997. The provision charges gains on disposals of development land, to the extent to which gains are attributable to a relevant planning decision (RPD hereafter in this note), **at a special rate of 80%.**

**Section 31 Finance Act 2014 amended Section 649B TCA 1997 to provide that the windfall rate of CGT of 80% only applies to relevant disposals made in the period beginning on 30 October 2009 and ending on 31 December 2014. Accordingly, the basic CGT rate applies to all chargeable gains on disposals made on or after 1 January 2015.**

**The remainder of this Manual only applies to gains on disposals attributable to relevant planning decisions made between 30 October 2009 and 31 December 2014.**

See [Instruction 22.2.3](#), in relation to Development Land Gains other than those attributable to relevant planning decisions made between 30 November 2009 and 31 December 2014 .

2. An RPD has two elements, a rezoning, and a decision to allow a material contravention of a development plan. A rezoning means a change, under the Planning and Development Act 2009, from non-developmental land use to development land use. This change is one from agricultural and amenity type uses to residential, commercial or industrial uses, or a mixture of such uses.
3. The provision applies to disposals made on or after 30 October 2009.
4. Subsection (2) contains anti-avoidance provisions to ensure that the 80% charge cannot be side stepped by a transfer between connected persons.
5. The only loss which may be set against a windfall gain, is a loss realised on a disposal of development land, which loss is attributable to a reduction in market value arising on a rezoning.
6. The maximum gain, which may be charged at 80%, is the gain on disposal (there could have been an increase in the market value of land attributable to rezoning, which is greater than the gain on disposal).
7. There are two exceptions to the charge – a disposal by virtue of a compulsory Purchase Order and a disposal by a subsidiary of NAMA as defined in section 616(1)(g) TCA 1997.

9. The original NAMA legislation came into force on 22 December 2009. This charged gains at the 80% rate to the extent that they were attributable to a rezoning only, where the rezoning took place on or after 30 October 2009. The wider definition of RPD to include material contravention applies, following the Finance Act 2010, to decisions made on or after 4 February 2010.
10. Finance Act 2010 also introduced an exemption from the higher rate of charge, on a disposal of a site of 0.4047 hectares or less, whose market value at date of disposal does not exceed €250.0000, other than where the disposal forms part of a larger transactions or series of transactions. This exemption applies regardless of whether planning permission has been granted for the disposal. The exemption has retrospective effect and applies to disposals made on or after 30 October 2009.
11. The new provision applies to disposals of development land only. [Disposals of Development Land Generally](#) See **Instruction 22.2.1, Disposals of Development Land Generally**. The development land provisions are at Chapter 2, Part 22, TCA 1997. Development land is land which if sold for, or whose market value at time of disposal is greater than, Current Use Value. CUV is the value of land if it were, at that time, unlawful, and would so remain, to carry out any development on it except development of a minor nature. Note that principal private residence relief does not extend to that part of gain on the residence or one surrounding acre, which represents development value – S 604(12) TCA 1997.  
**See Instruction 19.7.3.23, Principal Private Residence and Development Land.** [Principal Private Residence & Development Land](#)

## 12. Valuations

The increase or decrease in value of land resulting from a RPD may entail consideration of valuations for dates before and after the rezoning or allowing of a material contravention. If professional valuations provided by taxpayers are thought to be unsatisfactory, it may be necessary for Revenue to obtain its own valuations.

Attention will need to be given to arguments that values had already increased because an RPD was signalled in advance, was inevitable because of trends in existing developments, or because purchasers had identified speculative possibilities (hope value). This kind of argument, and valuations put forward in support of it, may need consideration in the Regional Office or by the Revenue Technical Service.

### 13. Administration

Districts will need to be aware of the possible application of S649B, when auditing CGT returns of disposals of development land. Any instance of sizeable increase in land value and where no element of the gain is chargeable at the higher rate, will need to be examined by reference to any RPD made in respect of the land in the relevant period. Losses treated as offset against windfall gains will need to be carefully considered, as will any previous instances of transfer of the land between connected persons (see 4 above). Regions and Districts should make themselves aware of new development plans for their areas published by relevant planning authorities.

#### Examples

- a. Land is purchased in 2002 for 105,000 inclusive of allowable costs. Following an RPD there is an increase in value from 140,000 beforehand to 300,000 afterwards. The land is later sold for 600,000 after deduction of allowable costs. The land is development land at time of disposal. The full gain on disposal is 495,000 of which 160,000 is charged at the 80% rate. The balance is charged at the standard CGT rate of 25%.
- b. The facts are the same as in example a), but there is a drop in development land values sometime after the increase 160,000 due to the RPD. The land is sold for 200,000 when it is still development land. The overall gain is 95,000 and this is charged at the 80% rate. There is no other charge. (See 6 above.)
- c. The facts are as in example b), but at time of sale, 200,000 represents Current Use Value only. This is not a sale of development land and the windfall provision does not apply. The gain 95,000 is charged at 25%.
- d. Land is bought for 500,000 after costs. Later when its value remains at 500,000 there is a drop in value of 100,000 resulting from an RPD. The land is sold for 350,000 following further deterioration in market conditions. The overall loss is 150,000. The loss attributable to the RPD is 100,000 and this is the maximum which may be relieved against a gain resulting from an RPD. The remaining loss of 50,000 is available for offset against other gains. (See 5 above.)
- e. Facts as in example d), except that after the reduction in value of 100,000 resulting from the RPD, there is a recovery in market conditions. The land is sold for 500,000. There is no overall loss and the reduction in value arising from the RPD is not available for relief. (See 5 above).