



Tax Bulletin – Capital Gains Tax Update

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Payment of Capital Gains Tax – Date of Disposal

Capital gains tax (CGT) on chargeable gains arising in the period from 1 January to 30 November 2009 must be paid on or before 15 December 2009 to avoid an interest charge.

CGT on chargeable gains arising in the period from 1 December to 31 December 2009 must be paid on or before 31 January next year.

The general rule is that where a disposal occurs under the terms of an unconditional contract, the date of disposal for CGT purposes is the time the contract is made and not the time the sale is closed and the asset is conveyed or transferred.

Unconditional contracts entered into in December will therefore give rise to a CGT charge payable on or before 31 January 2010, irrespective of when the sale closes. In contrast, in the case of a contract signed on or after 1 January 2010 the CGT would not become payable until 15 December 2010, which could give rise to a cash flow benefit for a vendor. The deferring of signing a contract for these reasons will of course have to be carefully considered by a vendor in light of the present state of the property market and also the risk of rate increases in the forthcoming Budget on 9 December.

80% CGT Rate – Rezoning Gains

The National Asset Management Agency Act 2009, which established NAMA, introduced an 80% rate of CGT on disposals of land on or after 30 October 2009 where;

- The land has been “rezoned” since it was acquired by the person making the disposal; and
- The rezoning took place on or after 30 October 2009.

Similar rules have been introduced for profits or gains from a trade of dealing in or developing land

to the extent the profits are attributable to the land rezoning.

The tax will be payable on the increase in the market value of the land which is attributable to rezoning i.e. the windfall gain.

Re-zoning means a change in the zoning of land in a development plan or local area plan made or varied on or after 30 October 2009 from either: -

- Non-development land uses to development land uses; or from
- One development land use to another development land use including a mixture of such uses.

Non-development land uses mean a land use which is agricultural, open space, recreational or amenity use or a mixture of such uses. Development land uses mean a land use which is residential, commercial or industrial or a mixture of such uses.

The new provision not only applies to a change from non-development land uses to development land uses, such as from agricultural to residential, but also from one development use to another development use, such as from residential to commercial or industrial. In the latter case developers holding banks of land which have been zoned residential may come within the new provisions if alternative zoning is obtained

Any losses arising from a re-zoning will be ring-fenced for use only against other re-zoning gains and cannot be generally offset against any other chargeable gains. Certain limited disposals are excluded from the provision i.e. disposals to an authority possessing CPO powers, but only if the disposal would not otherwise have been made, and disposals by a NAMA subsidiary.

For further information on any of the above matters or on any tax matters, please contact John Cuddigan (john.cuddigan@rdj.ie) or Eoin Tobin (eoin.tobin@rdj.ie) at 021-4802700