

Retirement Relief

Disposals of Business on "Retirement" and Disposals of a Business within a Family.

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Introduction

At a certain time in the business cycle and as people approach a certain age, they must begin to plan for their exit from the business. A number of reliefs are important in this regard. This article concentrates on CGT retirement relief. There is a general scheme of retirement relief, which provides for relief on disposals to third parties where the consideration does not exceed €500,000. This is a lifetime threshold. Specific rules apply, where business assets are passed to the next generation. In the case of a disposal to a child (wide definition) of the person, there is no upper limit on the consideration. Students are advised to be aware of the manner in which retirement relief interacts with other taxation measures, particularly CGT relief for the acquisition by a company of its own shares and CAT business relief.

Firstly, it is important to note that to qualify for retirement relief, an individual does not have to actually retire. Secondly, the individual does not have to dispose of the entire business. To qualify, the individual must be at least 55 years of age at the time of the disposal and must dispose of all or part of his/her qualifying assets.

Qualifying Assets

Qualifying assets can take a number of forms but fall generally into two categories - assets used in connection with the business and shares in the business. There are a number of provisions, which relate solely to farming. I have deliberately omitted reference to such provisions. Qualifying assets include:

1. The individual's chargeable business assets (defined below) which he/she has owned for at least 10 years ending on the date of the disposal and which have been his or her chargeable business assets throughout that 10 year period. Tangible movable property, typically plant and machinery, need not be owned for 10 years.
2. Shares or securities held for at least 10 years ending with their disposal, in a company which has been:
 - A trading company and the individual's family company, or
 - A member of a trading group of which the holding company is the individual's family company,

The individual must have been a working director of the company for at least 10 years during and have been a full-time working director for at least 5 of those 10 years.

3. Where the qualifying assets are shares, as outlined at 2 above, then land (including buildings) and plant and machinery owned by the individual for at least 10 years ending with the disposal may also be a qualifying asset. The land or plant and machinery must have been used throughout that period for the purposes of the individual's family company (or member of the trading group), and must be disposed of at the same time and to the same person as the shares concerned. This would most likely arise where an individual personally owns the property out of which his/her family company trades. Where the individual disposes of his/her shares in the company, together with the property to the same person and at the same time, the property may be a qualifying asset.

Chargeable Business Assets

Chargeable business assets are assets used for the purposes of a trade (including farming), profession, office or employment, carried on by:

- ◆ The individual,
- ◆ The individual's family company or
- ◆ A company, which is a member of a trading group of which the holding company is the individual's family company.

Land, buildings, plant and machinery are chargeable business assets. Goodwill is a chargeable business asset. Shares and other assets held as investments are excluded. Assets, which are not chargeable assets (for example, stock, debtors or cash) would not be included in the definition. Essentially every asset is a chargeable asset except one on the disposal of which, at the time of the disposal, any gain arising would not be a chargeable gain. Thus shares held as an investment would not be a chargeable business asset but would be a chargeable asset.

Periods of Ownership

For the purposes of determining the period of ownership of an asset, (i.e the 10 years) certain additional periods of ownership may be taken into account as follows:

1. The period of ownership of a spouse of an individual, is treated as if it were the period of ownership of the individual and where a spouse has died, the period of use of an asset by the deceased spouse is treated as if it were the period of use of the asset by the individual. However, it should be noted that in the case of transfers between spouses, for the purposes of the lifetime threshold of €500,000 (referred to in the introduction) such transfers constitute disposals and market value rules apply for this purpose.
2. Where the asset disposed of is a "new asset" which replaced "old assets", the disposal of which qualified for rollover relief, the period of ownership of the old assets is treated as if it was the period of ownership of the new assets.
3. CGT relief may apply where an individual transfers a business to a company in exchange for shares. In the case of the disposal of shares in a family company, in relation to which, the relief applied, the period of ownership of the business assets so exchanged is treated as a period of ownership of the shares in the company.

Working Director

Certain periods for which the director was a director of another company can be taken into account as a period of directorship of the company, the shares in which are qualifying assets, as follows:

1. Where an individual's spouse dies, the period immediately before death during which the deceased spouse of the individual was a full-time working director is treated as the individual's own period as a full-time working director.
2. In the case of the disposal of shares in a family company, in relation to which, transfer to business relief applied, the period of ownership of the business transferred is treated as a period during which the individual was a full time working director of the family company.
3. Where there is a company amalgamation by exchange of shares or a company reconstruction or amalgamation, a period of directorship in the first company is treated as a period of directorship in the second.

Other Important Definitions

Family Company: the individual must hold (a) at least 25 per cent of the voting rights or, (b) provided the individual and his/her family hold at least 75 per cent of the voting rights, the individual must hold not less than 10 per cent of those rights.

Family: the individual's spouse, relatives of the individual and relatives of the individual's spouse,

Relative: brother, sister, ancestor or lineal descendant.

Full-Time Working Director: a director who devotes substantially the whole of his/her time to the service of the company in a managerial or technical capacity.

Holding Company: is a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares or securities in one or more 75 per cent subsidiaries.

Trading Company: a company whose business consists wholly or mainly of the carrying on of one or more trades or professions.

Trading Group: a group of companies consisting of a holding company and its 75 per cent subsidiaries, the business of whose members taken together consists wholly or mainly of the carrying on of one or more trades or professions.

Relief

Where the consideration for a disposal is €500,000 or less, relief may be given in respect of the full amount of capital gains tax chargeable on the disposal. The threshold of €500,000 is a lifetime limit for disposals of qualifying assets, on or after 6 April, 1974, made at a time when the individual was at least 55 years of age. Where the threshold limit of €500,000 is exceeded, any earlier relief given may be withdrawn. The proceeds of any disposal qualifying for relief as a disposal of a business within the family are not taken into account in calculating the €500,000 lifetime threshold limit.

Example

Ms. Ree Tyre was born on 1/4/1949. She disposed of business assets, which she owned for more than 10 years, on the following dates:

01/02/2004	Plant and Machinery	€600,000
01/12/2004	Business Premises	€400,000
01/06/2005	Business Premises	€1,000,000

The disposal on 01/02/2004 does not qualify for retirement relief since Ms Tyre had not attained the age of 55 at the time of disposal. Neither will it be taken into account for the calculation of the lifetime limit. The disposal on 01/12/2004 qualifies in full for retirement relief since Ms. Tyre was over 55 at the time and the consideration is less than €500,000. In relation to the disposal on 01/06/2005, the consideration must be taken into account for the purposes of the lifetime threshold of €500,000. Accordingly, the relief granted in respect of the disposal on 01/12/2004 is withdrawn.

Marginal Relief

Where the consideration exceeds €500,000, marginal relief applies so as to limit the amount of tax chargeable on the disposal to one-half of the difference between the amount of the consideration and €500,000.

Example

Consideration for disposal	€510,000
Chargeable gain (say)	€30,000
Tax at 20%	€6,000
Marginal relief limits the tax to: $(€510,000 - €500,000) \times 50\%$	€5,000

Disposal of Shares

Where there is a disposal of shares or securities of a family company, only a certain amount of the consideration for the disposal is taken into account for the purposes of the relief. Only that

proportion of the consideration, which relates to the company's or (the trading group's) chargeable business assets is taken into account for the purposes of the relief.

$$\text{Sale proceeds of shares} \quad \times \quad \frac{\text{Value of coy's chargeable business assets}}{\text{Value of total chargeable assets of coy}}$$

Example

Mr. Cell disposed of shares in his family trading company for €600,000. He satisfies all the conditions for retirement relief. The company has assets and liabilities as follows:

Assets:

Premises	500,000
Plant	200,000
Goodwill	100,000
Quoted Shares, held as investments	200,000
Stock	50,000
Debtors	100,000
Cash	50,000

Liabilities:

Loan	600,000
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Consideration 600,000	X	<u>800,000</u>	<u>(500,000+200,000+100,000)</u>
		1,000,000	(500,000+200,000+100,000+200,000)

Consideration for retirement relief	480,000
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The portion taken into account for the purposes of retirement relief, €480,000, is fully relieved, since it is below €500,000. The balance, €120,000 (€600,000-€480,000) is chargeable to CGT.

Sale Proceeds			600,000
Indexed Cost (Say)			580,000
Gain			20,000
Retirement Relief	20,000 X	<u>480,000</u>	16,000
		600,000	
Chargeable Gain on Non Qualifying Assets			4,000

Disposals of a Business Within the Family

The relief applies where an individual aged 55 or over makes a disposal (including a gift), of all or part of their qualifying assets, to his/her "child". "Child" has a wider definition than its normal meaning and includes a nephew or niece of the individual making the disposal who has worked full-time in running or assisting in the running of the business for a minimum of 5 years ending on the date of the disposal. There is no threshold on this relief and any disposal to a child has no impact on the lifetime threshold for retirement relief. For the purposes of calculating the relief, market value rules will always apply to parent to child (or niece/nephew, as the case might be) transfers. Additionally, the relief does not affect the computation of gains on the disposal of assets, which are not qualifying assets.

Clawback of Relief

A clawback may apply in certain circumstances. Where relief has been given in respect of a disposal of qualifying assets and within 6 years of the date of that disposal, the “child” disposes of those assets, the relief given may be clawed back. The relief is withdrawn not from the “parent” but from the “child”. In addition the child is of course chargeable on his/her own disposal.

Example

Mr. Given is aged 60 and has run a business for more than 20 years. He has business assets as follows (All assets have been owned by Mr. Given for a period in excess of 10 years.):

Assets:	
Premises	1,400,000
Plant	400,000
Stock	50,000
Debtors	100,000
Cash	50,000
Liabilities	Nil

The premises include 2 shops in different locations. Property is shown at market value. The market value of the plant is equal to its cost. Mr. Given disposed of one property on 01/11/2004, at its market value, to a business rival for €400,000. He gifted the remaining assets to his son, Jack, on 01/12/2004. He had no disposals of qualifying assets before then.

On 01/08/2005 Jack received an offer of €3m for the property, which he accepted and he immediately ceased business. The plant was disposed of for no gain or no loss.

The gain on the disposal of the first property by Mr. Given was (say) €200,000. The gain on the disposal of the second property to his son was (say) €500,000. No gain or loss arose on the disposal of the plant to Jack. Mr. Given had no other disposals of qualifying assets.

The first gain is fully relieved, since the consideration was less than €500,000. The disposal to Jack does not affect the lifetime threshold.

The gain on the disposal of the second property is also fully relieved since it is a disposal to a child of his.

When Jack disposed of the business he is liable to CGT in respect of the following gains:

Gain on Premises (€3,m– 1m)	2,000,000
Gain on Plant	nil
Gain on Disposal by Father	500,000