

Share Purchases: Tax Overview (Ireland)

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This Practice Note addresses the major Irish tax issues which arise when structuring the sale of a company's share capital and, in particular, the position of Irish resident sellers. It assumes that the target company is tax resident and incorporated in Ireland.

This Note provides an overview of the key tax issues that arise on the sale of a company. It looks at key areas to be considered by a buyer and their advisers to prepare a company for sale from a taxation point of view including, VAT, stamp duty, availability of capital losses to offset profits, an intra-group transfer of assets, settling of outstanding loans and payment of a pre-sale dividend. The Note then considers the taxation in Ireland of corporate and individual sellers looking at the available reliefs such as the participation exemption from chargeable gains on disposals of qualifying subsidiaries and in the case of individuals, entrepreneur relief and retirement relief.

The Note also highlights the circumstances in which these reliefs can be clawed back by the Irish Revenue Commissioners. The tax treatment of non-cash consideration is examined in the context of a share for share exchange and a sale of shares for debt consideration. The Note analyses the tax treatment of deferred consideration and unascertainable consideration (including earn-outs) under various tax headings such as capital gains tax and stamp duty. It looks at what indemnities the seller should seek from the buyer such as recovery from third parties and completion of outstanding returns.

The Note also looks at the potential benefits of tax insurance and warranty and indemnity insurance. Finally, the Note considers what Revenue clearances are needed and how long they take and the administrative steps that need to be taken in order to obtain clearances in a timely fashion.

Preparing the Target Company for Sale

Pre-Sale VAT Considerations

Where a pre-share sale intra-group reorganisation is required, several VAT issues should be considered. The correct VAT treatment associated with the transfer of assets or shares must be established. Other important considerations include the VAT recovery position on the professional costs incurred in advising on and implementing the reorganisation.

If the target is a member of the seller's VAT group, an application should be made to the Irish Revenue Commissioners (Revenue) for the withdrawal of the VAT group registration of the target with effect from completion.

The timing of the target company's exit from the VAT group is important as once it is notified by Revenue of the date that its VAT group membership ceases, any VAT that becomes chargeable or reclaimable by the company from that date must be included on its own individual VAT return with effect from that date.

Pre-Sale Stamp Duty Considerations

If a company is being sold out of a group, then the question as to whether the disposal will give rise to a clawback of tax under sections 79 or 80 of the Irish *Stamp Duties Consolidation Act 1999* (SDCA) needs to be considered.

The form of group relief, usually called "associated companies relief", allows a full relief from stamp duty on transfers of most assets within a group of companies (*section 79, SDCA*). Two companies will be "associated" for the purposes of this relief if one company holds a beneficial interest in the other company which gives it 90% of the issued ordinary share capital, 90% of the profits available for distribution, and the 90% of the assets available on a winding up. The relationship can be established directly, or indirectly through other body corporate. Two companies will also be associated if a third company holds at least a 90% beneficial interest in the company transferring the asset, and the one receiving it.

Where this relief is used as part of a pre-share sale intra-group reorganisation, or otherwise within the group, it is vital to ensure that a clawback of this relief is not triggered by the subsequent share sale. This clawback will occur if the companies party to the pre-sale transfer cease to be associated within two years of the transfer.

Section 80 of the SDCA provides for a similar relief from stamp duty in the case of a scheme of reconstruction or amalgamation. In the context of pre-sale planning, it is important to note that clawback provisions will apply where either:

- A target company ceases to beneficially own the new shares within two years, other than in the event of a reconstruction, amalgamation or liquidation.
- The acquiring company ceases to be the beneficial owner of the shares acquired in the target company within two years other than in the course of a reconstruction, amalgamation or liquidation.

For more on section 80 SDCA relief, see *Stamp Duty Relief*.

Losses

If the seller is an individual, they should consider whether they have any capital losses available which may be able to shelter any taxable gain arising on the sale of the shares.

Unused capital losses available from prior periods, or capital losses which have been realised in the same taxable period in which the sale of the shares at a gain occurs, should be identified and offset against their taxable gain. If a significant chargeable gain is likely to arise on disposal, the seller may also consider crystallising any unrealised capital losses which they may realise on a sale of other assets or investments.

Transfer of Assets Intra-Group

Careful consideration and planning for potential de-grouping issues on a sale of the target company or companies is required. In particular, where the target company leaves a group with an asset transferred to it pursuant to an intra-group transfer under section 617 of the Irish *Taxes Consolidation Act 1997* (TCA), a seller should ensure that a de-grouping charge under section 623 of the TCA does not arise.

Where a company has used section 617 group relief when acquiring an asset and subsequently leaves the group within ten years of the asset acquisition, the company will be deemed to have disposed of and immediately reacquired the asset at market value on the date of the original intra-group transfer.

Similarly, if the target company was established by way of group reconstruction, then the seller should also consider the effect of section 625 of the TCA. This de-grouping charge applies where the target ceases to be a member of a group of companies and,

within ten years before the target leaving the group, the shares in the target were disposed of by another company as part of a reconstruction or amalgamation. In these circumstances, the disposing company is deemed to have disposed of and immediately reacquired the shares at market value immediately before the earlier amalgamation or reconstruction.

Outstanding Loans

The buyer may require that certain intercompany debtors or creditors of the target are settled at completion.

Pre-Sale Dividend

Where the intention is for the target to pay dividends to its corporate parent before the sale of the target, the seller should be aware of anti-avoidance legislation which may apply.

A dividend or distribution made by a company in connection with a disposal of the company shares is treated as abnormal where the value of the dividend exceeds the amount that could reasonably have been expected to be paid, if there were no disposal of the company shares (*section 591A, TCA*).

The result is that the abnormal dividend is treated as part of the consideration for capital gains tax (CGT) purposes and disregarded for all other purposes. The dividend is treated as being made in connection with the disposal of the company shares where there exists any scheme, arrangement or understanding by virtue of which the dividend is paid. The ambit of this provision is broad and includes not only dividends, but also any distribution out of the assets of a company, whether in cash or otherwise, in respect of shares in the company. The purpose of this section is to prevent a corporate seller converting a taxable capital gain into a tax-free dividend receipt.

This anti-avoidance provision does not apply where the scheme, arrangement or understanding is undertaken for bona fide commercial reasons and does not form part of any scheme, arrangement or understanding of which the main purpose or one of the main purposes is the avoidance of liability to tax.

Taxation of Corporate Sellers

An Irish resident company is liable for corporation tax on any chargeable gain it realises on the disposal of shares. While such chargeable gains are computed in accordance with CGT principles, the chargeable gain is recalculated to give an amount which, when charged at the appropriate corporation tax rate, produces the same result as if the gains were charged at the appropriate CGT rate (currently 33%).

A non-Irish resident company is subject to corporation tax or, where the non-resident company is not carrying on a trade in Ireland through a branch or agency, CGT on disposals of unquoted shares which derive their value, or the greater of their value, from the following specified assets:

- Land situated in Ireland (including fixtures to such land).
- Minerals in Ireland or any rights, interests or other assets in relation to mining or minerals or the searching for minerals.
- Exploration or exploitation rights in a designated area on the Irish continental shelf.

Participation Exemption

Chargeable gains realised by an Irish resident company on disposals of qualifying subsidiaries are exempt from Irish CGT.

The subsidiary must be resident in an EU or tax treaty partner country. The Irish holding company must hold at least 5% of the subsidiary for at least 12 months.

In addition, at the time of the disposal either:

- The business of the subsidiary must consist wholly or mainly of the carrying on of a trade or trades.
- The business of the parent company, and all companies which meet the residence and holding period tests, when taken together, must consist wholly or mainly of trading.

Accordingly, the exemption is available to a disposal of a single trading subsidiary but also extends to disposals of non-trading subsidiaries which form part of a wider trading group.

The phrase "wholly or mainly" means greater than 50%. The primary tests are the proportion of net trading profits and the proportion of net trading assets. Other factors which may be taken into account include gross receipts and the activities of employees of the group.

The holding period requirement is also relatively flexible and facilitates part disposals.

The exemption does not apply to certain specified disposals, including shares which derive more than 50% of their value from Irish land or buildings, minerals or mining rights.

Taxation of Individual Sellers

Individual selling shareholders may be subject to Irish CGT on any chargeable gains resulting from the sale of shares. A chargeable gain will arise where consideration obtained for the shares exceeds the base cost of those shares, less permitted expenses. The base cost of the shares will either be the price paid for the shares in an arm's length transaction or, where the shares were received by way of gift or inheritance, the market value used for capital acquisitions tax purposes.

Where the individual's holding of shares have been acquired over a period of time, a share identification rule known as the First In First Out rule (FIFO) is used to identify the acquisition date and the costs for the purpose of determining the overall chargeable gain arising on the disposal (*section 580, TCA*). If the shares being sold have been acquired in different blocks at different times, the operation of this rule essentially results in each block of shares being treated as a separate disposal. Where part of a shareholding consists of shares obtained under a bonus issue or rights issue, additional rules will need to be considered for the purposes of identifying the shares being disposed of.

Subject to the availability of any reliefs and exemptions outlined below, individual sellers will be subject to CGT at a rate of 33% on such chargeable gains.

Entrepreneur Relief

Where the target is a trading company, entrepreneur relief provides a reduced rate of capital gains tax of 10% on the first EUR1 million of eligible chargeable gains arising on the disposal of the shares. To be eligible for this relief, the individual seller must both:

- Own 5% of the ordinary shares of the company.

- Have spent 50% or more of their working time as an employee or director of the company in a managerial or technical capacity for at least three of the five years immediately before the disposal.
- Have owned the shares for a continuous period for at least three years at any time before the date of the disposal of the shares.

The 10% CGT rate applies to a lifetime limit of EUR1 million of qualifying chargeable gains arising on or after 1 January 2016. Any chargeable gains in excess of EUR1 million are subject to CGT at the normal rate of 33%.

However, the relief can be restricted in cases where shares in a company are disposed of directly or indirectly to a company, and after the disposal the seller individual continues to be connected to the company. An individual is connected to a company if the individual, or the individual and persons connected to the individual, control the company. Persons connected to the individual include relatives and partners. An individual has control of a company if the individual is entitled to a majority of the company's share capital, voting rights, income or assets on a winding up. Where such a situation transpires, then the relief will only be available if it would be reasonable to consider that the disposal is made for bona fide commercial reasons and does not form part of any arrangement or scheme, the main purpose or one of the main purposes of which, is the avoidance of liability to tax.

Retirement Relief

Retirement relief provides for relief from all or part of the CGT liability, or marginal relief, on the disposal of a company where the taxpayer has reached the age of 55 years. The amount of relief depends on:

- The taxpayer's age.
- To whom the shares are disposed (either to a child or to a person other than the taxpayer's child).
- Whether all of the company's assets are chargeable business assets.

The relief can be separated into two essential forms:

- Disposals to a child (*section 599, TCA*).
- All other disposals (*section 598, TCA*).

The individual is required to have owned the shares for at least ten years ending with their disposal. The individual must have been a working director of the company for a minimum of ten years before the date of disposal, five of which were on a full-time basis.

The company which is the subject of the share sale must be a family company. A company is a family company when an individual holds a minimum of either:

- 25% of the voting rights of the company.
- 10% of the voting rights and their family, including the individual, holds a minimum of 75% of the voting rights of the company.

There is no requirement for the target company to be a trading company for retirement relief to apply.

Although described as retirement relief, the relief would be better described as a relief for disposals by a person who has reached 55 years of age as there is no requirement that the person actually retires to claim the relief.

Full relief is given and therefore no CGT is payable where a person who has reached 55 years of age disposes of qualifying shares for consideration (actual or deemed) which does not exceed either:

- EUR750,000 in the case of individuals aged 65 or under.
- EUR500,000 in the case of individuals aged 66 or over.

(Section 598, TCA.)

To determine whether the relevant limit has been exceeded in respect of consideration received on a disposal, all disposals of qualifying assets on which retirement relief was claimed within the last ten years must be aggregated.

Marginal relief may apply where the consideration is greater than the applicable limit. In that case, the CGT is limited to half of the excess of consideration over the relevant limit.

Section 599 of the TCA provides relief from CGT on the disposal of qualifying shares to a child (as defined in section 599 of the TCA). There is no limit on the amount of the consideration (actual or deemed) which qualifies for this relief where the parent making the disposal is under 66 years of age. However, where an individual aged 66 or over disposes of qualifying shares on or after 1 January 2014 to a child, a limit of EUR3 million applies on the amount of consideration (deemed or actual) that qualifies for CGT relief.

Retirement relief is subject to an anti-avoidance provision which provides that the relief will not apply to a disposal of qualifying shares unless it is shown that a disposal is made for bona fide commercial reasons and does not form part of any arrangement or scheme of which the main purpose, or one of the main purposes, is the avoidance of tax.

In addition, where the individual seller disposes of the shares to a company and remains connected to the company following the disposal, the same bona fide test for entrepreneur relief also applies to retirement relief (see [Entrepreneur Relief](#)).

Clawback Under Investment Incentive and Employee Rewards Schemes

Individual shareholders who have used tax reliefs such as the Approved Profit Sharing Schemes (APSS), Start-up Relief for Entrepreneurs (SURE) or the Employment Investment and Incentive Scheme (EII) will need to be aware that the granting of those reliefs are subject to minimum holding periods.

For instance, where shares are issued under an APSS, qualifying employees can only dispose of the shares after three years while in the case of both SURE and EII, the shareholder is generally required to hold the relevant shares for a minimum of four years.

VAT on the Sale of a Company

A sale of shares is an exempt supply for VAT purposes, so no VAT will be charged on the sale of the target. Accordingly, input tax recovery issues can arise for both seller and buyer in respect of services related to the sale.

Most VAT issues which arise in respect of the sale of shares arise at the pre-sale planning stage (see [Pre-Sale VAT Considerations](#)).

Stamp Duty on the Sale of a Company

Stamp duty at a rate of 1% (provided the shares do not derive the greater part of their value from immovable property) of the consideration paid for (or, where relevant, the market value of) the shares of an Irish incorporated company may be payable by the buyer or transferee. Sales of shares in entities deriving their value from Irish non-residential land and buildings are liable to 7.5% stamp duty in certain circumstances.

Non-Cash Consideration

Share for Share Exchange

CGT Relief

Where shares of an Irish or foreign acquiring company are issued to the shareholders of an Irish private company as consideration for the acquisition of their shares, such a transaction can generally be structured to qualify for share for share relief under section 586 of the TCA. To benefit from this treatment, one of the following conditions must be satisfied:

- The acquiring company that issues the shares has, or as a result of the transaction, will have, control of the target company.
- The share exchange occurs as a result of a general offer made to members of the target company (or to a class of such members), such offer being conditional on control of the target company being acquired by the acquiring company.

Where this relief applies, the selling shareholder is deemed not to have disposed of their shares in the original company, and the new shares received in the acquiring company are deemed to be the same asset as the original shares, with the same base cost and other tax attributes as the original shares. Share for share relief can be availed of by both corporate and individual shareholders.

Where the consideration is to be satisfied by an issue of shares by the buyer, but the issuance of the shares is deferred rather than allotted on completion, then by concession Revenue will treat the right to receive such shares as a security and the share for share exchange provisions will apply.

Stamp Duty Relief

Where an acquisition of shares of a target company is effected in exchange for shares of the acquiring company, the transaction may qualify for exemption from Irish stamp duty under section 80 of the SDCA. For more on stamp duty liability, see [Pre-sale Stamp duty Considerations](#).

The following criteria must be met to qualify for this exemption:

- At least 90% of the consideration for the acquisition (ignoring any assumed liabilities of the target company) must be comprised of shares in the acquiring company issued to the shareholders of the target company in exchange for their shares in the target company.
- The acquiring company acquires at least 90% of the shares of the target company in exchange for the issue of shares to the shareholders of the target company.
- The share for share exchange must occur as part of a "reconstruction" or "amalgamation". Neither of these terms are defined in the SDCA, but both terms have been the subject of case law. Broadly, a scheme of reconstruction involves a transfer of the business or part of the business of the target company to the acquiring company which has

substantially the same shareholders and which will carry on substantially the same business as the one transferred to it. In comparison, an amalgamation involves a combination of the business of two or more companies (merger). It may be achieved by a share for share exchange or by a share for undertaking exchange.

To avail of this relief, it is necessary to file a self-assessed stamp duty return using Revenue's online system (ROS). This filing deadline for stamp duty returns on ROS is 44 days after the execution of the instrument of transfer.

Sale of Shares for Debt Consideration

Where debt comprises all or a portion of the consideration for the sale of shares of an Irish private company, the face value of the debt must be included, without any discount, in the proceeds of disposition when calculating chargeable gains on which any CGT or corporation tax liability from the disposal is based (*section 563(1)(a), TCA*). If the debt consideration subsequently proves unrecoverable, an "adjustment, whether by means of discharge or repayment of tax or otherwise" will be made (*section 563(1)(b)*).

Before 2003, a seller could avail of the rollover provisions of section 586 of the TCA where loan notes were issued to it as consideration on the sale of the shares. However, since 2003 the seller is liable to account for CGT without the benefit of this relief. Therefore, the use of loan notes should generally be resisted by an Irish resident individual seller as it gives rise to an immediate tax liability without the cash to pay the resulting CGT liability.

Deferred Consideration, Including Earn-Outs

It is increasingly common for agreements for the sale of businesses to provide for an element of deferred consideration, often in the form of an earn-out. An earn-out refers to a situation where shares in a company are sold, and part of the consideration is payable at some point in the future and is dependent on the performance of the business at that time.

If an earn-out is contemplated, a seller should seek to ensure that the buyer is required to conduct business with a view to a profit, that management charges are on an arm's length basis and that any other inter-group transactions during the earn-out period are limited.

For more information on structuring the purchase price and earn outs, see:

- [Practice note, Structuring the Purchase Price: Acquisitions \(Ireland\)](#).
- [Practice note, Earn-outs \(Ireland\)](#).

CGT Issues Where Consideration is Deferred

The treatment outlined for debt consideration also applies to contingent earn-out consideration (see [Sale of Shares for Debt Consideration](#)). In this regard, any contingent consideration payable for a disposal "shall be taken into account without any discount for postponement of the right to receive any part of the consideration and without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent" (*section 563(1)(a), TCA*). Such contingent consideration can also take the form of a post-completion working capital or net asset value adjustment. Typical earn-out milestones include calculations based on future turnover, net profit or *EBITDA*.

Stamp Duty Issues Where Consideration is Deferred

The stamp duty treatment in relation to deferred consideration diverges from the CGT analysis. The asset being acquired, rather than the contingent element, must be valued as the basis on which stamp duty is paid (*section 44, SDCA*).

In the case of most earn-out scenarios, the working capital or net asset adjustment figure will not be determined within the 44-day stamping period. To avoid incurring excess stamp duty penalties as a result of this delay, a buyer has two options:

- Have the acquired shares valued in accordance with section 44 of the SDCA, and pay stamp duty based on that value. This is the most frequently chosen option.
- Revenue have previously confirmed that where the consideration is comprised of an initial payment and an adjusted payment to be made when completion accounts are ready, a wait and see approach can be used. In this scenario, when filing the online stamp duty return there is an option to indicate that the entire consideration is unascertained at the date of execution of the instrument. Revenue guidance notes that where the ultimate consideration payable is higher (that is, there are amounts payable under the earn-outs), an amended stamp duty return must then be filed and the additional stamp duty paid.

Interest will be payable with respect to that additional stamp duty. Where there are several earn-out events, this means filing a number of amended returns every year. That obviously carries extra cost in terms of legal fees for the filings and extra risk in terms of all parties ensuring those additional filings are made.

If, following completion, the purchase price is adjusted downwards, it may be possible to make an application to Revenue for a refund of the excess stamp duty paid (*section 152, SDCA*). Any such refund application must be made within six years of execution of the instrument and must be accompanied by a re-submission of the stampable instrument to Revenue. Any such arrangement should, however, be agreed in advance with Revenue.

Unascertainable Consideration, Including Earn-Outs

CGT Issues Where Consideration is Unascertainable

The English case of *Marren v Ingles [1980] STC 500* suggests that where the consideration is not only contingent on the happening of a future event but is unascertainable in amount, then CGT should be paid based on the current value of the right to the future payment. This issue has not been tested in the Irish courts, but in practice Revenue follow the decision. The value of the earn-out (that is, the value of the right to the future income) should be determined by an independent valuer at completion. This valuation must be included in the proceeds of sale in calculating the gain on the sale.

A separate asset (that is, the right to the future contingent proceeds) will then be deemed to exist having a base cost equal to the value determined for the earn-out at the time of the sale. Each subsequent receipt under the earn-out will be deemed to be a part disposal of the notional asset. Where more than one earn-out payment is to be made, this would ordinarily require a further independent valuation of the remaining earn-out at the time of each receipt for the purposes of allocating the base cost of the notional asset in calculating any gain or loss on the part disposal.

Stamp Duty Issues Where Consideration Is Unascertainable

Where an earn-out results in the consideration paid being unascertainable, as opposed to ascertainable but as yet unascertained, the market value approach under section 44 of the SDCA should be used.

A buyer can estimate the amount of the adjustment based on unaudited management accounts or trial balance information produced at or near the completion cut-off date. In some instances, it may be useful to have the senior finance officer of the

target company prepare, and deliver at completion, a certified estimate of the working capital or net asset value number expected at completion.

Buyer's Indemnities to Seller

It is common for the seller to seek to obtain an indemnity from the buyer in the tax covenant in respect of recovery from third parties. This clause applies where the target has a right to be reimbursed by a third party in respect of tax. The seller will obviously wish the buyer and the target to pursue recovery from the third party, and a specific contractual provision obliging the target to pursue the recovery is necessary as the seller will not have a right of action against a third party. In addition, the seller may seek to require that if the buyer were able to recover more from a third party than the amount of the seller's liability, the excess should be offset against any future claims the buyer may have under the tax covenant.

A seller may also seek to include a clause in the tax covenant providing that the buyer will complete all outstanding returns, and requiring the buyer to allow the seller to review and comment on all documents relating to accounting periods ended before completion. In addition, sellers may seek to strengthen their rights to provide input into these documents.

The seller may also seek to negotiate a counter covenant, also known as a buyer's covenant, as there are several provisions under which a seller could be held secondarily liable for a tax liability of the target that arises after completion.

Potential Benefits of Tax Insurance and Warranty and Indemnity (W&I) Insurance

Tax insurance can be a valuable tool for sellers in concluding M&A deals. Tax insurance is designed to provide protection if an investment or tax position fails to qualify for its intended tax treatment. There is a growing market where insurers provide tax insurance that offers protection if a tax liability arises. This can cover losses including taxes payable, interest and penalties, and gross-up amounts for tax due on insurance proceeds. It can also cover contest costs tied to the defence of the insured position.

From a seller perspective, tax insurance can have the following benefits:

- Facilitating smoother deal negotiations during an M&A transaction, as the parties do not need to agree on the allocation of known potential pre-closing tax liabilities.
- Defining, quantifying and capping the financial exposure for particular tax risks whether in the transactional context or within a taxpayer's operational framework.
- Avoiding the need for ongoing seller indemnities or escrows for known historic tax exposures, so facilitating the seller's clean exit from specific businesses.
- Offering certainty where tax authorities refuse to provide advance rulings to taxpayers on certain identified tax matters, or where an advance ruling will not be obtained in the timeframe necessary to close a transaction.

Similarly, a decision to obtain W&I insurance can allow buyers and sellers to address potential gaps in expectations on the level of recourse for breaches of seller warranties in a share purchase agreement (SPA). A buyer may replace the indemnity expected from the seller with insurance, or purchase cover that extends the period during which the buyer can make a claim and to a higher limit, above that offered by the seller (if any). Sellers may also use this product to replace certain SPA obligations, allowing them to return sale proceeds to investors rather than tie up money in escrow, or retain the trailing risk of having to meet a warranty claim.

The insurance protection covers loss or liability arising from unknown or undisclosed matters and provides indemnity for financial loss. The insurer effectively steps into the shoes of the person giving the contractual promises with the intention of providing the cover that was agreed under the SPA. W&I insurance is intended to work in parallel with the negotiation and is

designed to support (rather than replace) a robust due diligence process. A W&I policy is a non-renewable, single premium product with the premium being paid upon completion of the transaction.

W&I insurance is to be contrasted with specific tax insurance which covers specific known tax risks (for example, the risk that a target company is not tax resident in Ireland) while W&I insurance generally insures unknown risks.

For more information on warranties and indemnities in Ireland and W&I insurance see:

- [Practice note, Warranties and Indemnities: Acquisitions \(Ireland\)](#).
- [Practice note, Warranty & Indemnity Insurance \(Ireland\): Key Points](#).

Revenue Clearances

Where consideration having a value in excess of EUR500,000 is paid in exchange for unquoted shares which derive the greater part of their value from "specified assets" (as defined in *Taxation of Corporate Sellers*), the buyer is required to withhold from the consideration, and to remit to Revenue, 15% of the gross consideration for the sale (*section 980, TCA*).

This withholding obligation is also extended to shares that do not derive the greater part of their value from specified assets if those shares were received in exchange for shares that did so derive their value on a transaction under which share for share relief was claimed under section 584 of the TCA (*section 980(2)(d), TCA*). Buyers will generally seek to include a warranty from the seller in the share purchase agreement that section 980(2)(d) of the TCA does not apply to the shares being purchased.

The 15% withholding obligation can be avoided if the seller obtains a CG50 clearance certificate from Revenue and delivers that clearance certificate to the buyer prior to the consideration being paid or delivered to the seller. However, Revenue will not issue a CG50 clearance certificate where consideration has already passed.

Revenue will issue a CG50 clearance certificate if any of the following grounds apply:

- The seller is resident in Ireland.
- The seller is a non-resident of Ireland but satisfies Revenue that no CGT will be payable in respect of the sale transaction.
- The seller is a non-resident of Ireland, but:
 - pays (in advance) the capital gains tax chargeable on the transaction; and
 - pays or has paid any capital gains tax payable in relation to any previous disposal of the asset which occurred in any prior year ending after 6 April 1974.

Buyers will typically want to include a clause in the share purchase agreement which provides that the buyer will deduct withholding tax of 15% of the share consideration unless the seller produces the appropriate CG50 clearance certificate on completion. Alternatively, the buyer will generally accept a letter from the target's auditors that the shares in the target do not derive the greater part of their value from land and buildings in Ireland and are not shares to which section 980(2)(e) of the TCA applies.

Timelines

Revenue are currently transitioning from paper-based applications to an online CG50 application processing system via ROS. In respect of paper-based CG50 applications, Revenue have indicated in their Tax and Duty Manual Part 42-03-01 (February 2021) that, in recognition of the effort to transition to the new online system, applications should be received by them at least ten working days before completion. While Revenue do not provide a specific turnaround time for electronic applications, Tax and Duty Manual Part 42-03-01 confirms that "online processing will significantly improve the turnaround time for all applicants seeking a CG50 clearance certificate".

Where the date for completion of the transaction, as indicated in the purchase agreement, has already passed, Revenue will generally insist on confirmation that completion has not occurred before issuing the certificate.

As it is not uncommon for share purchase completions to be delayed as the result of the seller's failure to obtain a CG50 clearance certificate, it is important that the seller, or their tax advisers, commence the CG50 application process as early as possible in the sale process.

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