

CGT Clearance Procedure for Non Resident Vendor of Property

OHT: Revenue's New Estate Clearance Procedure

By eBrief 192/22 Revenue notified taxpayers of a new clearance procedure to operate in non-resident cases from 24 October 2022, replacing the existing procedure which involved Revenue issuing a Letter of No Audit to authorise the release of funds to clients where solicitors acted in the sale of property for non-residents. Once the application for clearance is made Revenue have a review period of 35 working days.

Revenue published a new Tax and Duty Manual (TDM) Part 45-01-05 dealing with Requests for Clearance re Capital Gains Tax and Non-Resident Vendors which outlines the new process.

The clearance procedure is predicated on the solicitor having made a complete and accurate submission to Revenue, including the required documentation, which will generally consist of the following:-

- contract for sale
- a detailed CGT computation
- Form CG1
- evidence of full payment of any CGT liability

- details of property use throughout ownership income tax returns and payments as required

The applicant must link to each non-resident client on ROS using a Transaction Advisory Notification (an agent link form).

The residence position is key, so the Revenue recommend getting the client to sign a residence declaration (see below).

An online application on ROS will result in an acknowledgement recording the start of the 35 day period.

Revenue will reply within 35 working days if they want to start a compliance check or further information is required, in which case the sales proceeds should be retained until the Revenue query has been satisfied and the case is closed with a clearance letter.

If nothing is heard from Revenue within 35 working days the sales proceeds can be paid out.

Rental Income

If the property was rented, Revenue also want confirmation that all relevant income tax returns have been filed and all income tax due has been paid.

Where the income tax returns were filed by a resident agent on behalf of the non-resident landlord, details of the agent PPS number must also be provided.

Law Society Practice Note

Dealing with disposals for non-resident vendors Taxation

Committee 25/09/2018

The Taxation Committee wishes to remind practitioners that they may have a secondary liability to Capital Gains Tax and/or Income tax in circumstances where they act for a non-resident Vendor in relation to the sale of a property in the State. Sections 1043, 1034 and 1035 of the Taxes Consolidation Act 1997 (“TCA”) refer.

Practitioners should ensure that they have sufficient information to prepare a return, if necessary, and that they should seek an Indemnity from their client in respect of any liability to tax, penalties and interest arising by virtue of sections 1034, 1035 and 1043 TCA.

The Committee further recommends that Practitioners ensure that they have an irrevocable authority from their client to deduct and remit Capital Gains Tax/Income Tax to the Revenue Commissioners and to withhold the sales

Points to Consider

The following points should be borne in mind:-

- the clearance procedure covers property, but not other assets. A solicitor who acts in the sale of a company deriving most of its value from Irish land for a non-resident vendor is still liable for any CGT on sale.
- there are specific residence rules for bodies of persons, such as personal representatives (take their residence from the deceased under S. 573 TCA 97) and trusts.
- personal representatives cannot avail of the remittance basis on gains accruing on the disposal of assets situated outside Ireland (TDM Part 02-03-01 & S. 568 (2) TCA 97).

Residence

One key point to consider is the residence of the vendor as S. 1034 & s. 1043 TCA 97 only apply to non-residents.

Under Irish tax legislation an individual is resident in Ireland for a tax year if he is present in Ireland for 183 days or more in that tax year, or for a total of 280 days or

more between the relevant tax year and the tax year before it.

A person will not be resident in Ireland in any tax year in which he spends 30 days or less in Ireland, and no account shall be taken of the 30 days or less for the purpose of the 280 day test.

Up to Finance (No.2) Act 2008 a person was deemed to be present in Ireland if he was in the country at midnight so effectively it was nights spent in Ireland that counted. The Finance (No.2) Act 2008 provides that, for the tax year 2009 and subsequent tax years, an individual shall be deemed to be present in the State for a day if the individual is present in the State at any time during that day, with limited exceptions for individuals in transit or forced to be present due to force majeure circumstances outside their control.

Ordinary Residence

An individual will become ordinarily resident in Ireland for a year of assessment if he has been resident for three consecutive years of assessment prior to the year in question.

An individual who is ordinarily resident in Ireland will continue to be ordinarily resident in Ireland and will only cease to be ordinarily resident for a tax year once he has not been resident in Ireland for each of the three preceding years of assessment.

Declaration of Tax Residence

Revenue have set out a Declaration of non-residence to be signed by taxpayers to confirm their residence position in the year of disposal. It includes a statement of the total of days spent in Ireland in the current year and the previous year and a statement of residence. The signed form is sent to Revenue as part of the clearance procedure. A precedent Non-resident Vendor Declaration re CGT is available on the O'Hanlon Tax Limited website.

Proof of Tax Residence

The declaration puts the onus on the client to establish his own residence. The starting point for Revenue will be the PPS number, and Revenue may check what address is linked to it. In addition the current income tax return has a statement of residence ordinary residence and domicile on it.

If a client is asked to bring evidence to support the declaration, Revenue may look at the following:-

- where the client is living day to day (supported by address ID)
- travel pattern (shown by a diary and evidence of movement in and out of Ireland such as boarding cards)
- if there is more than one residence in question Revenue may look for evidence of day to day occupation such as:

Revenue may look at the following factors if they are carrying out a detailed verification check into the tax residence position of a taxpayer:

1. Any diary showing days in and out of Ireland (boarding cards)
2. Travel records connected with trips into and out of the State
3. Other transactions carried out in the course of day to day living abroad and in the State (e.g. pay slips, tax records, social welfare records etc.)
4. Details of income tax returns filed if applicable (income tax returns may have a statement of residence)
5. Any statements of residence given to a bank in the context of the deduction of Irish Deposit Interest Retention Tax (DIRT)
6. Any statements of residence given to a company in the context of the deduction of Dividend Withholding Tax (DWT)
7. The acquisition and disposal of property abroad and in the State (e.g. rent agreements, mortgage documents).