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01027-17: Budget 18#17 Changes to time limited CGT property [redacted]

To: Minister	**Author:** Pat McColgan
Status: For Review by Minister	**Owner:** Sub_FIN Ministers Office
Purpose: For Decision	**Reviewers:** John Hogan
Division/Office: Tax Division	
Decision By:	

Action Required

To note options for changes to the CGT relief for property purchased between end 2011 and 2014 [redacted]

Executive Summary

Options for changes to the CGT relief for property purchased between end 2011 and 2014 and held for seven years are set out in the detailed document below to inform any decision that you may wish to make in the context of the Budget and Finance Bill. If there is to be a change in the treatment it would be preferable that any change could help encourage and promote sales of properties and mitigate the level of revenue foregone from the CGT relief. In that context option 3 below represents the best possible change to the relief.

[redacted]

Comments

There are no Comments.

Detailed Information

Introduction

Section 604A TCA was introduced in Finance Bill 2012 and extended for a further year in Finance Bill 2013. It provides for a full Capital Gains Tax (CGT) relief from any gain made in respect of the disposal of any property (land or buildings) purchased in the European Economic Area (EEA) between 7 December 2011 and end December 2014 and held for seven years.

The relief applies where the property was acquired for full consideration from a stranger, or for at least 75% of its market value where it was acquired from a relative. Relative for this purpose means a brother, sister, uncle, aunt, niece, nephew, ancestor or lineal descendant. Any income, profits or gains from the use of the property is subject to Irish income tax/corporation tax. The relief contains an anti-avoidance measure to prevent abuse of the provision.

Currently, as Section 604A became effective on 7 December 2011, the earliest date that the first properties acquired in the relevant period can qualify for the CGT relief will be 7 December 2018.

The announced purpose of the relief was to help generate activity in the Irish real estate investment sector in 2011 when there were few transactions and activity. It was introduced at the same time as a reduction in commercial stamp duty rates.

In order to enjoy the full relief from CGT the sale must take place on the seventh anniversary of the purchase as any delay beyond this will result in a reduced relief. There is then tapering of the relief over time which reduces its benefits. As an example the gain on a property bought between 2011 and 2014 and held for seven years before being sold will gain a 7/7 (full) relief from CGT on the gain. If it is held for 3 more years after the date on which it was bought i.e. for 10 years, the gain will enjoy a relief of 7/10 (70% of the CGT on the gain). If a sale takes place six months after the 7th anniversary of the purchase the relief will be 7/7.5 or 93.3% relief on the gain.

Costs of the relief and any future changes

It is not possible to provide an accurate estimate of the quantity/value of land or buildings which was acquired between 2011 and 2014 and which may now be sold to avail of the CGT relief. Therefore it is also impossible to cost the current relief given the difficulty of anticipating future sales of land or property which may benefit from the relief. It is also impossible to cost any changes to the operation of the relief should a decision be made to make a change to the current Section 604A provision.

It is worth noting that some of the properties purchased in the qualifying period may not be subject to CGT (e.g. principal private residences) or may be subject to CGT or equivalent capital taxes where they were purchased in an EEA country where they are sold. Thus they may not benefit from the specific relief. Also not all assets, including land, purchased in the period is intended to be sold on.

Issues to take account in any change in the application of the exemption.

At the time when the relief was introduced the intention was to promote the purchase of land and property and was extended to the purchase of property in the EEA in order to avoid potential conflict with the EU Treaties in terms of freedom of establishment. It is not evident that it would be possible to introduce any changes to 604A which only targeted development land given potential conflict with EU Treaty freedom of establishment rules and possibly State Aid rules. Therefore should a change in the timing or operation of the relief be decided, it will have to apply to all properties acquired in the relevant period in the EEA.

Based on legal advice, it will be necessary to retain the option for those who purchased property between 7 December 2011 and end December 2014 to retain the option to keep the property for the full seven years, and still enjoy the full CGT relief. This is because property/land owners have legitimate expectation that the relief would stay in place for the time set out in the Finance Acts and may have made investment decisions that could be impeded by a possible change in the timing of the relief. There is a risk of legal challenge if the seven year period was to be withdrawn. In terms of the options below, therefore it is essential that individuals retain the option of keeping property for the full seven years before they dispose of it and realise the CGT relief.

Reasons for changing the date of application of the relief

It has been suggested that the 7-year CGT relief is acting to discourage the sale of land that could potentially be used to build residential housing as investors wait to avail of the full CGT relief. However while there may be a general concern about the hoarding of land for construction activity (and comments in respect of the NAMA disposals) in order to benefit from price increases on such land, no specific data has been provided which enumerates the amount or location of development land purchased in the period between 2011 and 2014.

While the first land eligible to benefit from the relief will be able to do so from 7 December 2018, it is assumed that the bulk of the land that will be able to avail of the relief will only do so in 2020-2021, as it is possible that property sales remained low in the initial 12-18 months following its introduction (given the general poor economic climate and lack of purchasers), and were only likely to have gained momentum after that.

In any event given that the CGT exemption is now in place and any land or buildings subject to it have already been purchased the costs of this relief have effectively already been incurred and the revenue from such gains foregone. There may be little difference as to whether the Exchequer cost of the relief is incurred now or in the period commencing in 2018 and it is a timing issue. Indeed if property prices were to continue to increase. it may be that the earlier sales of such property would reduce the level of revenue foregone. but it would be impossible to cost this possible outcome.

Options for making changes to section 604A

All of these options are proposed in the context of the existing provisions of section 604A. It is possible that if there are changes to the timing of the relief there may be pressure to extend the CGT relief to gains on the sale of development land which is currently subject to CGT. Any extension of the current relief is not likely to be needed in the current market environment. It is important that any options agreed would be seen to support and encourage the sale of all assets subject to the CGT relief.

Option 1 - No change

Advantages:

This would provide for certainty in the operation of the tax system where tax payers have confidence that decisions they take in good faith will not be undermined by subsequent changes to tax law. It would provide for the gradual release of land covered by the relief beginning a little over 12 months after Budget 2018 and up to the end of 2021.

Disadvantages:

Land (and buildings) would continue to be held pending access to the relief. Investors holding land so as to avail of the full CGT relief would continue to do so until they have held it for 7 years. Given the assumption, as supported by the CIF, that much of this land will not be eligible until 2020-2021, there will be no marked increase in land being placed on the market until that time so potentially limiting the availability of development land and in turn reducing the level of public or private residential development. Making no change now removes the opportunity to reduce the amount of CGT foregone arising from this measure. Leaving the relief as it now stands in place will mean no CGT will be chargeable on gains made on any eligible land sold after being held for 7 years, whereas other options could result in some CGT being charged on gains.

It seems that given the level of activity in the market that the original intention of making the change which was to improve the volume of sales in the property market has been achieved and it is now appropriate that it would be changed to bring assets into the market.

Option 2: Retain the seven year exemption and introduce an option of a new qualifying period for a minimum of 4 or a maximum of 6 years.

This option will as indicated above require the maintenance of the option to retain the property for seven years due to possible legal challenge. In addition, it is proposed that the time period for holding the property could be reduced to 6 or 4 years.

If reduced to 6 years then all property purchased within the qualifying period (i.e. between 7th December 2011 and 31st December 2014) could benefit from the relief a year earlier than now. If reduced to four years all property purchased within the qualifying period could benefit from the full CGT relief. In the latter case, it would be possible to sell property subject to the CGT relief any time between four and seven years and benefit from the full CGT relief.

The policy option therefore is to determine whether to reduce the time limited nature of the relief by one or more years. The option of introducing a 6 year time period, if decided, is likely to be the one with the least potential impact, while reducing the time period to 4 years represents the maximum extent to which a change could be made given that the qualifying period for the CGT relief ended on 31 December 2014. Anecdotally there are suggestions that significant property was purchased at the end of 2013 and when the qualifying period for the relief was extended through 2014 and that therefore there may be more properties that could benefit from a four year limit. The difference could be characterised between a more and less cautious approach to changes to the time limits.

Advantages:

This avoids issues of legitimate expectations as there remains an option to keep the property for the full seven years.

Land purchased more recently becomes eligible for the full relief from CGT earlier than is intended under the current tax treatment. If the holding period is reduced to six years or less, significant amount of land (and property) purchased with a view to availing of 604A would be able to avail of the relief earlier.

If property prices continue to rise over the next number of years, realising the cost of the relief now may potentially result in a smaller amount of CGT foregone, assuming investors sell earlier than they would otherwise have done and so receive a relief on a smaller chargeable gain.

The purpose of this acceleration of the loss of the relief is to encourage faster sales of property before the benefit of the exemption expires and it also has the benefit of increasing the CGT yield from land and assets sold while availing of the relief.

Drawbacks:

There is the potential for a glut of land and buildings reaching the market if many owners wish to sell to take advantage of the changed relief. The change could also result in bringing forward additional and potentially unquantifiable losses of Exchequer revenue earlier than was planned. It may not result in any change in strategy on the part of owners of development land given the growth in prices who may forego the full CGT relief by holding onto land beyond the date of qualification, in the expectation of price increases potentially exceeding the relief foregone and given the fact that we do not know the extent of any property purchased which may be subject to the relief.

Allowing an option to sell between 4 and 7 seven years provides no pressure on property owners to sell.

There may be deadweight costs. In some circumstances an owner may have planned to sell potentially eligible land before the 7-years had elapsed and bear the CGT cost, but would now be able to sell and enjoy a full relief.

Option 3: Retain existing provision to allow retention of CGT relief on property for seven years and introduce a tiered relief now for all properties and land purchased between 2011 and 2014 so that, for example, if an asset is sold after 6 years then 6/7ths of the relief applies, but if sold after 4, then only 4/7ths of the relief applies.

Advantages:

This avoids legitimate expectations arising as investors are still able to wait for seven years to elapse before selling and would still enjoy a full CGT relief if they do so. Investment decisions continue to be a matter for the investor in terms of their commercial decisions and not via the tax system.

It has the potential to bring forward planned sales as investors could enjoy a partial relief after less than 7 years, so potentially boosting the supply of development land.

Some CGT would be payable on eligible land sold earlier than the 7-year anniversary of its purchase, so in the event that there was uptake on this option if introduced, there would be less CGT foregone as is the case with the current provision.

Disadvantages

Some investors and landowners may decide not sell land or property if there is an expected financial advantage from holding land or property as opposed to the potential loss of any benefit from the CGT exemption. There may not be the level of expected sales but given that it is not clear as to the property purchased between 2011 and 2014 this may not be relevant.

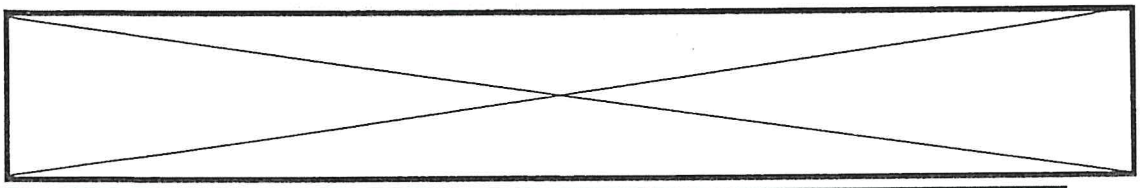
There would continue to be benefits for owners of property who may not benefit from the full CGT exemption on the gain on the sale of the property but could continue to benefit from a partial exemption.

Timing of changes

Any changes to 604A [redacted] will be made effective from 1 January 2018.

[redacted]

[redacted]



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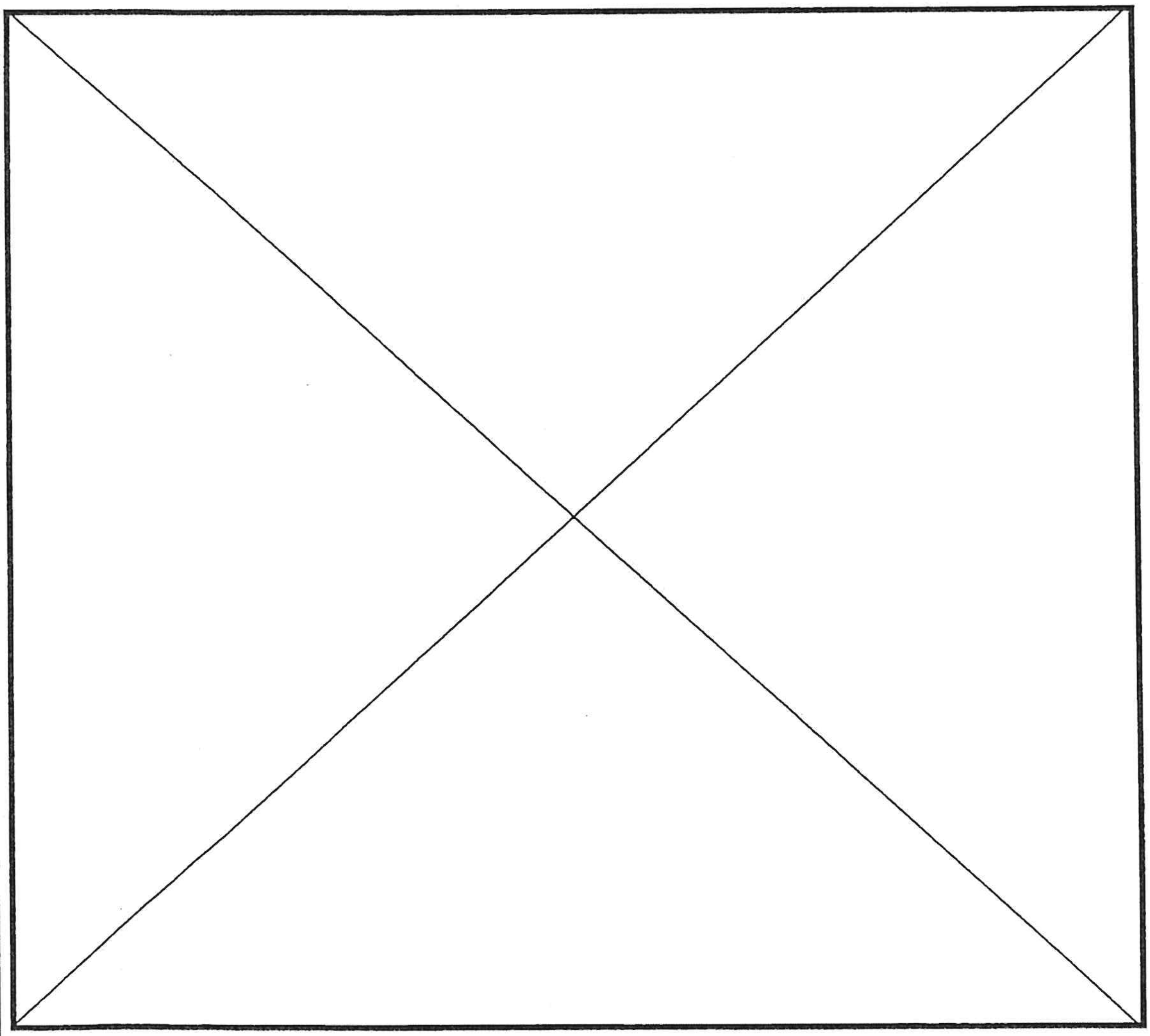

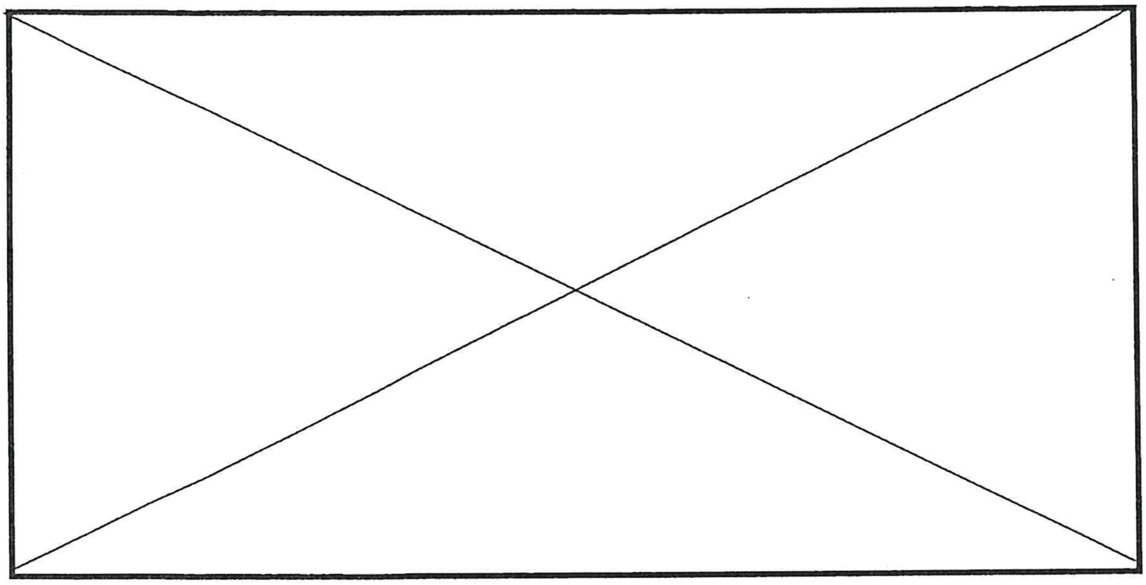

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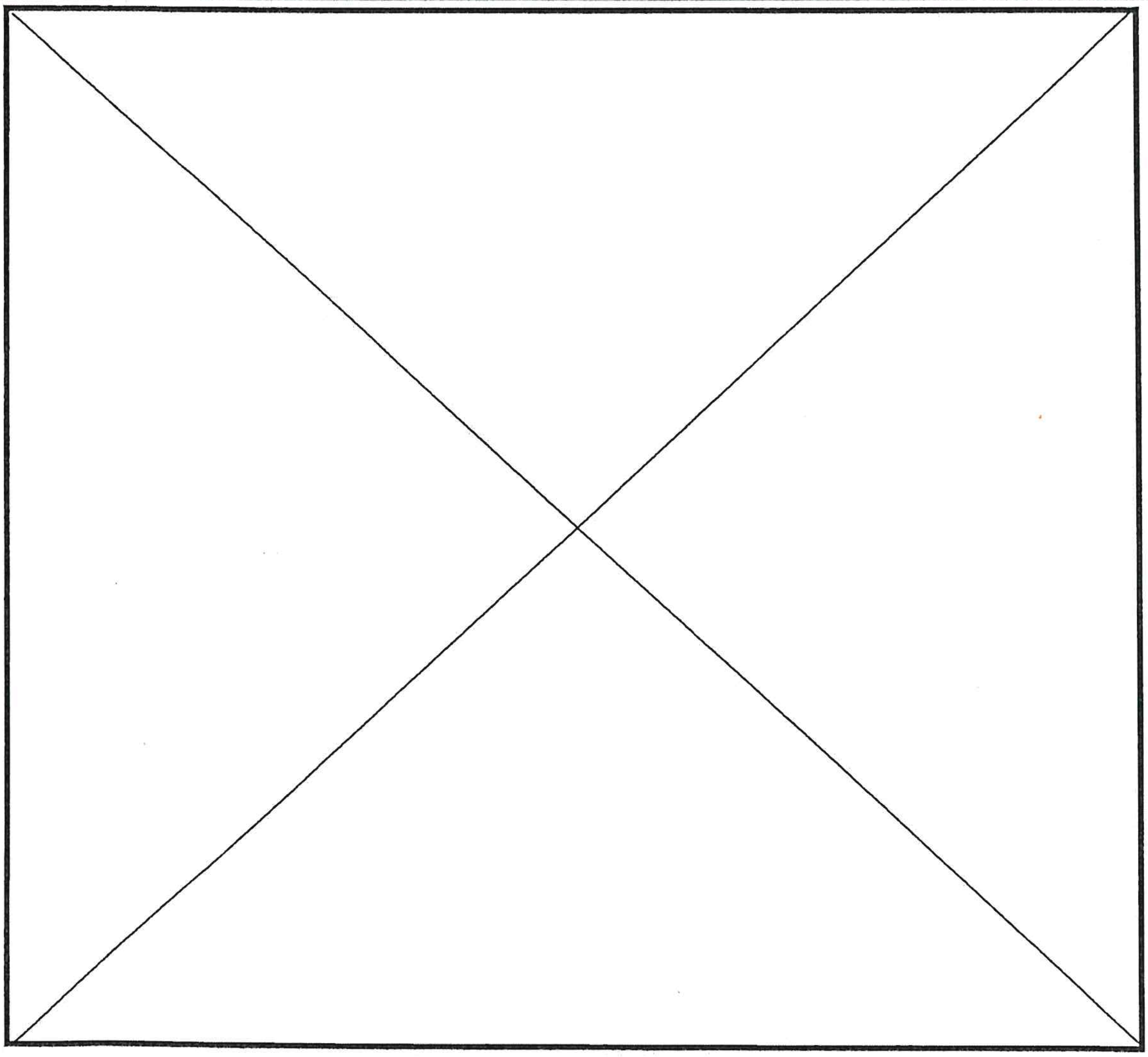

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Related Submissions

There are no related Submissions.

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Action Logs

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