

[19.6.2] Replacement of business and other assets (S.597)

Relief under Section 597 was discontinued for disposals on or after 4 December 2002. Gains arising on disposals before that date may continue to be “rolled over” while the vendor continues to invest the consideration for subsequent disposals of qualifying assets in replacement qualifying assets.

- 2.1 Where the proceeds of the disposal of assets which have been used exclusively for the purpose of a trade for the whole of the period of ownership by the person disposing of them are used in the purchase of assets for use in the trade or a trade set up within two years of the cessation of an old trade, the person may elect to have the charge on the gain deferred until such time as he ceases to trade.

There are rules for giving limited relief where the proceeds of a disposal are partly reinvested in new assets; and for apportionment where the assets disposed of were used only partly for the purposes of the trade, or were used wholly for those purposes for less than the full period of ownership.

The relief applies to professions, offices or employments, and also in relation to commercial woodlands, trade protection associations, certain non-profit making bodies, amateur sports bodies, farming and the discharge of the functions of a public authority.

- 2.2 **Section 597** provides for deferment of the charge to Capital Gains Tax on gains realised from the disposal of business assets if the proceeds of disposal are applied in acquiring new business assets and if both the old and the new assets are assets of a kind listed in **Par.7**

For the treatment of compensation, etc. -

- (a) used to restore an asset (other than a wasting asset) not lost or destroyed, see [Tax Instruction 19.1.7 Par. 1](#), and
- (b) used to replace an asset (other than a wasting asset) which is destroyed, see [Tax Instruction 19.1.7 Par.2](#).

- 2.3 **Section 597** is drafted with respect to “a person carrying on a trade” but **subsection (2)** provides that the section shall also apply, with the necessary modifications, in relation to the following:-

- (a) The discharge of the functions of a public authority.
- (b) The occupation of woodlands where these are managed by the occupier on a commercial basis and with a view to the realisation of profits.
- (c) A profession, office or employment. “Profession” includes vocation (**Section 5(1)**). Note - The extension of the relief to offices and employments is of importance in cases such as, for example, insurance agents (who may have a right to sell their “insurance books”) and

employees of luxury hotels (who may sell their rights to tips). These assets are essentially goodwill.

- (d) Such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed. Note - It is important to note that the extension is only to trade or professional associations or similar bodies. If an employer's association or trade union satisfies the conditions, however, the relief may be admitted. The section does not apply to clubs or other mutual concerns. See, however, (f) below in relation to bodies engaged in promoting athletic or amateur games etc.
- (e) The activities of unincorporated bodies not established for profit whose activities are carried on otherwise than for profit as, for example, a trade union or a sports club not qualifying under (f) below. In the case of such bodies both the "old" and the "new" assets must be used by the body for its activities, and where those assets are land or buildings they must also be occupied by the body for its activities; the relief does not apply to let property or investments.
- (f) Such of the activities of a body of persons established for the sole purpose of promoting athletic or amateur games or sports as are directed to that purpose.
- (g) farming (see **Par.4**).

2.4 The word "trade" is to be given the same meaning as it has for Income Tax purposes.

Section 597(11)(a), however, extends the application of the relief to a person who carries on two trades in different localities (provided that these are wholly or mainly concerned with goods or services of the same kind). In such a case, the several trades are treated (for **Section 597** purposes only) as the same trade, i.e., in relation to "old assets" used for the purposes of one trade and "new assets" used for the purposes of another. This ensures that the benefits of the relief will be available if a person disposed of one business and acquires another business of the same kind in a different place.

Section 597(11)(b) further extends the application of the relief to a person who disposed of one or more ("old") trades and commences to carry on a new trade or trades provided that -

- (i) the person has carried on the old trade for a period of ten years or more,
and
- (ii) the new trade is set up or commenced within a period of two years after the disposal of the old trade.

Where these conditions are satisfied the old and the new trades are treated as the same trade for the purposes of **Section 597**, notwithstanding that they may not be concerned with goods or services of the same kind and that they may not be located in the same place.

As regards members of a group of companies, see **Tax Instruction 20.1.4 Par. 1**.

- 2.5** The word “farming” is to be given the same meaning as it has for Income Tax purposes, namely:

“farming farm land, that is, land in the State wholly or mainly occupied for the purposes of husbandry other than market garden land within the meaning of **Section 654**.”

The relief afforded by **Section 597** applies to farming as it applies in relation to a trade. In applying **Par. 4** all farming carried on by a person should be treated as one trade irrespective of the size of the holding or holdings and so long as there is continuation. Thus the benefits of the relief will be available to a farmer who disposes of his holding and invests in another holding or in a business (say, a retail shop).

- 2.6** The conditions of relief are that -

- (a) the “old assets” have been used solely for the purposes of the trade throughout the trader’s period of ownership of them, and
- (b) the whole of the disposal proceeds are invested in “new assets”, being assets of a kind listed in **Par. 7**, which are then used solely for the purposes of trade. See, however, **Par. 8** where only part of the disposal proceeds is re-invested.

The trader may claim to have his Capital Gains Tax liability determined as if any chargeable gain accruing on the disposal of the old assets did not accrue until such time as he ceases to use the new assets for the purposes of the trade. In effect, the gain on the “old assets” is not taxed when realised but the charge is deferred until such time as the “new assets” come to be disposed of (unless the proceeds are again invested in assets of a kind listed in **Par. 7**).

Relief must not be claimed unless, at the time the claim is made, the conditions governing the relief have been satisfied. When making a return for an accounting period or year of assessment during which business assets are sold, a claim under **Section 597** should be made only if the consideration has in fact been re-invested or an unconditional contract for the acquisition of the replacement assets has been entered into at the time of filing the return and all other conditions of **Section 597** are fulfilled.

The relief may be allowed where the investment of the whole (or part) of the disposal proceeds does not technically involve an acquisition, e.g., where on property already owned a replacement building is erected and is occupied and used for the trade, or where additions are made to buildings already owned and occupied and used for the purposes of the trade.

The relief is due only where the acquisition of the new assets is strictly for the purposes of the trade. It should not be given if the assets were acquired with a view to resale at a profit.

A claim under **Section 597** does not affect the treatment for Capital Gains tax purposes of the other parties to transactions involving either the old or the new assets.

2.7 For the purposes of **Section 597**, the qualifying assets are as follows:-

- (a) Plant or machinery.
- (b) Except where the trade is a trade of dealing in or developing land, or of providing services for the occupier of land in which the person carrying on the trade has an estate or interest
 - (i) any building or part of a building and any permanent or semi-permanent structure in the nature of a building occupied (as well as used) only for the purposes of the trade, and
 - (ii) any land occupied (as well as used) only for the purposes of the trade (excluding development land, as defined in **Section 648** - but see **Par.16**).
- (c) Goodwill.

Example

In May 1985, a trader buys for £72,000 (including expenses of purchase) a shop which he occupies exclusively for his trade. In June 1988, he sells the shop for £90,000 and incurs £2,400 expense of sale. To replace the shop he is selling, he buys in September, 1988 a new shop for £96,000 (including expenses of purchase). He claims relief under **Section 597** in respect of the gain on the sale of the first shop.

He sells the second shop in June 1995 for £150,000 (incurring £5,000 expenses of sale) and closes his business. The chargeable gains all accruing in 1995/96 are -

<u>Gain on first shop</u>			£
sale price			90,000
<u>Less</u> cost price	£72,000 x 1.103 =	£79,416	
costs of sale		<u>£2,400</u>	<u>81,816</u>
			8,184
<u>Gain on second shop</u>			
sale price			150,000
<u>Less</u> cost price	£96,000 x 1.217 =	£116,832	
costs of sale		<u>£5,000</u>	<u>121,832</u>
			28,168
		£	£
Liability		36,352	
Less Personal Allowance		<u>2,000</u>	
(married person)		34,352 @ 40% =	13,740.80

- 2.8** In general, **Section 597** does not apply if part only of the disposal proceeds are invested in new assets. If, however, the amount not so invested is less than the gain, it follows that part of the gain has been re-invested. **Section 597(5)** provides for that part to qualify for relief.

Example

If, in the Example in **Par. 7**, the new shop had cost £84,000 (including expenses of purchase) instead of £96,000 the amount not re-invested would be £88,600 (£90,000 after expenses of sale £2,400) less £84,000 = £4,600. This £4,600 would be a chargeable gain accruing in 1988/89. The relief under **Section 597** would then be-

	£
Gain on first shop	8,181
Part not re-invested	<u>4,600</u>
Relief	3,581

The amount to be charged to Capital Gains Tax in addition to the gain on the disposal of the second shop when the trader ceases to carry on business would then be £3,581 instead of £8,181 as in the Example in **Par. 7**.

- 2.9** Relief may only be claimed where the individual who disposed of the old assets is also the individual who re-invests the proceeds in acquiring new assets. If the individual does not fully re-invest roll-over relief may be limited or may not be due at all.

In the case of a married couple where the old assets were solely owned by one spouse but the new assets are acquired jointly by both spouses, full roll-over relief would not be clearly due. However, if both spouses had been actively engaged in the trade and so continue after the acquisition of the new assets, roll-over relief may be allowed provided the other requirements are satisfied.

Where a case of the kind mentioned above arises, a formal signed claim to relief under **Section 597(4)**, specifying the amounts of chargeable gain to be “deferred” should be obtained.

Tax Briefing 35 confirms that roll-over relief is not available where assets which are owned by an individual and used by his/her company are sold and the consideration re-invested in new assets which, in turn, are used by the company. This is because the asset is not disposed of by the person carrying on the trade

- 2.10** The relief may be claimed only where the new assets were acquired in the period beginning twelve months before and ending three years after the disposal of the old assets. The Revenue Commissioners retain a discretionary power to extend these time limits.

It may happen that a local authority with compulsory purchase powers may acquire land well in advance of any development or building thereon. Where this occurs the authority may allow the trader (or farmer) to remain in possession for a period prior to the commencement of development and that period may exceed three years. In such a case a claim for an extension of the time limit may be allowed by the District Inspector for a period of twelve months after the property ceases to be used by the trader for the trade if the disposal proceeds are reinvested in qualifying assets within this extended period.

Any other claim for extension of the time limit should be considered on the basis of the relevant facts.

An asset should be treated as acquired within the statutory time limit if an unconditional contract to acquire it has been made within that period. Where an unconditional contract has been made, provisional relief may be given subject to appropriate adjustment when all the facts are available. The adjustment may be made by assessment or repayment or discharge of tax, and assessments may be made without regard to time limits.

- 2.11** A partner in a partnership must have an interest in both the old and the new assets in order to qualify for relief. Thus he is not entitled to relief if he has retired from the partnership between the sale of the old asset and the purchase of the new one.

Example

Suppose that the business in the Example in **Par. 7** is carried on by A and B in partnership, each being entitled to a half share of the assets. On the sale of the first shop to a third party, A agrees that he will buy the new shop and let it to the partnership. The chargeable gain on the sale of the first shop is £8,184 (as in **Par. 7**) and half (£4,092) is chargeable on each. A's share of the sale proceeds, i.e., £43,800 (£90,000-£2,400 = 87,600 ÷ 2 = 43,800) has been wholly invested in the new shop. Accordingly, if A so claims, relief under **Section 597** is allowable in respect of his share of the gain (£4,092).

B does not own a share in the new shop so that he is unable to make a claim. Consequently, his share of the gain (£4,092) is chargeable to tax for 1988/89.

If, in the previous example B had reinvested £40,000 for a five-twelfth share in the new, shop, the position would be -

<u>Old Shop</u>	A	B
Share of net proceeds	£43,800	£43,800
Share of gain	4,092	4,092
 <u>New shop</u>		
Cost	£56,000	£40,000
Proceeds of old shop re-invested	£43,800	£40,000
The relief under Section 597 would then be:-		£
A: full share of gain		4,092
B: part of gain re-invested		292

The balance of B's gain (£3,800) would be a gain accruing in 1988/89 and chargeable accordingly.

Relief is available to an individual partner where an asset used in the partnership trade is not owned by the partnership but by the individual partner, even if rent is paid by the partnership to that partner.

As regards the method of charging partnership gains see [Tax Instruction 2.3.2 Par.2](#) et seq.

- 2.12** Where over the whole period of ownership part only of a building has been used for trade purposes, that part (with any land ancillary to it which has been so used) is to be treated as a separate qualifying asset. The disposal proceeds and the acquisition price should be apportioned in such a manner as is "just and reasonable".
- 2.13** An apportionment on a "just and reasonable" basis should also be made where the old assets were used for business purposes during part only of the period of ownership.

Example

On 1 January, 1983, a trader buys for £80,000 (including expenses) a building which he uses for the purposes of his trade except for the top floor which is occupied by a sitting tenant under a lease. On a "just and reasonable" apportionment, the part which he occupies is worth four-fifths of the whole.

On 31 December, 1990, the lease expires and from 1 January, 1991, the trader occupies the whole building for purposes of the trade. On 31 December, 1995, he sells the building for £180,000 (after deduction of expenses of sale) and uses the whole proceeds to buy a new building for the purposes of his trade.

Computation	£
Sale price	180,000
Less cost price £80,000 x 1.57 =	<u>125,600</u>
Gain	54,400

Four-fifths of the building was occupied and used for the purposes of the trade for the whole period of ownership, while one-fifth of the building was so occupied for five out of the thirteen years of ownership. The appropriate fraction is therefore -

$$\frac{4}{5} + \left(\frac{1}{5} \times \frac{5}{13} \right) = \frac{57}{65}$$

The relief due is $\frac{57}{65} \times £54,400 = £47,705$, leaving a gain of £6,695 chargeable in respect of 1995/96.

- 2.14** Where, for Capital Gains Tax purposes, an asset is deemed to pass for a consideration other than the actual consideration (e.g. in the case of a transaction between "connected persons" ([Tax Instruction 19.2.9 Par. 9](#)), the provisions under which the consideration is deemed to be the market value of the asset ([Tax Instruction 19.2.6 Par. 3](#)) should be applied before computing the relief due under **Section 597**.

Rate of tax on clawback of roll-over relief

- 2.15** Roll-over relief may be clawed-back in certain circumstances including, for example, death, the sale of the new assets without further re-investment and the cessation of trade.

In calculating the tax on the deferred gain, **Tax Briefing 52** confirms that the rate of tax is the rate applying at the date of the event which gives rise to the crystallization of the deferred gain, not that which applied at the date of the original disposal of the asset. It should be borne in mind, however, that indexation will apply only to the date of the original disposal.

Example:

A trader owned an asset for seven years and sold it in May 1979, giving rise to a chargeable gain of £20,000, the appropriate rate of tax was 21%. He reinvested the proceeds of sale and because of the rollover relief provisions, the gain was deemed not to have accrued until he ceased trading in June 1995. The chargeable gain is assessable for the year 1995/96 as follows:-

Chargeable gain	£20,000	
Less: Personal relief (single) (1995/96)	<u>£1,000</u>	(not £500)
	£19,000	
Tax @ 40% (1995/96)	£7,600	(not @ 21%).

Restriction of rollover relief on the disposal of Development Land

As noted above, relief under Section 597 was discontinued for disposals on or after 4 December 2002. This discontinuance of relief also applies to Section 605.

2.16 Section 652 provides that rollover relief under **Section 597**, or the rollover relief under **Section 605** for compulsory acquisitions, are not available in the case of disposals of **development land** made on or after 28 January 1982. [S.652 (1) and (4) refer]

Exceptions

Notwithstanding the general non-availability of the reliefs, the legislation provides that relief will continue to be available in certain specific circumstances as follows:

1. Relief under **Section 597** or **Section 605** was always available for disposals made by a body of persons established for the sole purpose of promoting athletic or amateur games or sports, where the disposal is made in relation to such of the activities of that body as are directed to that purpose. [S. 652(6) refers]
2. Relief under **Section 597** is available on the production of a certificate from a relevant local authority certifying that, on the basis of guidelines issued by the Minister for the Environment (see under "General" below), the land being disposed of is subject to a use which is inconsistent with the protection and improvement of the amenities of the general area within which that land is situated or is otherwise damaging to the local environment. [S. 652(2) refers]
3. Relief under **Section 597** is also available on the disposal of certain assets by authorised racecourses and greyhound race tracks.
4. Relief under **Section 605** is available in cases where land is acquired by an authority possessing compulsory purchase powers where the land involved is farmland and is acquired by

the authority for road building or road widening purposes. [S. 652(5) refers]

General

- The “guidelines issued by the Minister for the Environment”, referred to in 2 above, were included in the Department of the Environment's *Memorandum on the Disposal of Development Land under Section 39 of the Finance Act, 1982 (as amended by Section 73 of the Finance Act, 1995)* which issued in June 1996 - copy immediately hereafter. [Note: Section 39 FA 1982 is now **Section 652 TCA 1997**]
- The availability of relief is subject to all the usual requirements of the respective reliefs being met.

Appendix [to Tax Instruction 19.6.2 Par.16]

**Memorandum on the
Disposal of
Development Land
under Section 39 of the
Finance Act, 1982
(as amended by Section 73 of
the Finance Act, 1995)**

Memorandum on the Disposal of Development Land under Section 39 of the Finance Act, 1982 (as amended by Section 73 Of the Finance Act, 1995)

1. Introduction

(a) Under section 39(4) of the Finance Act, 1982, as inserted by Section 73 of the Finance Act, 1995, capital gains tax relief is available in respect of transactions for the disposal of development land entered into on or after 6 April, 1995, where the relevant local authority certifies, on the basis of guidelines issued by the Minister for the Environment, "that the land being disposed of is subject to a use which is inconsistent with the protection and improvement of the amenities of the general area within which that land is situated or is otherwise damaging to the local environment". The guidelines for the Purpose of section 39(4) are set out in paragraph 2 of this Memorandum.

(b) In this Memorandum -

"development land" has the meaning set out in section 36 (1) of the Finance Act, 1982; and

"relevant local authority" means the council of a county or the corporation of a county or other borough or, where appropriate, the urban district council, in whose functional area the development land being disposed of is situated.

(c) This Memorandum is issued without prejudice to the provisions of the Local Government (Planning and Development) Acts, 1963 to 1993, the Fire Safety Act, 1981, the Building Control Act, 1990, the Derelict Sites Act, 1990, and any regulations made under those Acts.

2. Guidelines for the purposes of certifications under section 39(4) Or the Finance Act, 1982

In determining whether development land being disposed of can be deemed to be subject to a use within the meaning of section 39(4) of the Finance Act, 1982, the relevant local authority must be satisfied that-

(a) The development land is subject to a use-

(i) which is inconsistent with the zonings or objectives for the area set out in the Development Plan adopted by the relevant local authority under section 19 of the Local Government (Planning and Development) Act, 1963 (hereafter referred to as the "Development Plan"), or

a draft, or draft variation, of the Development Plan (hereafter referred to as "draft Development Plan" and "draft variation", respectively), or

(ii) the discontinuance, in its current location, of which is a stated objective in the Development Plan, draft Development Plan or draft variation, or

(iii) which, where no zonings or objectives apply to the area in which the land is situated, is at variance with the proper planning and development of the area;

and

(b) The use of the development land seriously detracts from the amenity, character or appearance of the general area within which the development land is situated; or

the development land is subject to a use which, having regard to the nature of materials used, transported or stored, or of discharges, emissions or other waste, is damaging to the local environment.

3. Certification Process

(a) Compliance with the terms of paragraph 2 of this Memorandum must be certified by the relevant local authority. In order to obtain a certificate, the person making the disposal of the development land should make a formal application, in writing, to the relevant local authority.

(b) An application for certification to the relevant local authority should include:-

The name, address, telephone and fax number of the person making the disposal of the development land;

The address of the development land for which the certification is sought, a physical description of the location of the development land including a site location map on a scale of not less than 1:2,500 (the site boundary is to be clearly delineated in colour);

The grounds on which the person making the disposal of development land considers that the use satisfies the guidelines set out in paragraph 2 of this Memorandum;

Such other documentation as the relevant local authority may require for the purposes of its consideration of the application for certification.

- (c) Where, on the basis of the information received in an application for certification, the relevant local authority is satisfied that the development land satisfies the requirements set out in paragraph 2 of this Memorandum, it will issue a certificate to that effect to the person making the disposal of the development land. The certification of the relevant local authority is to take the form of a letter to the person making the disposal confirming that the local authority is satisfied that the land being disposed of is subject to a use which is inconsistent with the protection and improvement of the amenities of the general area within which that land is situated or is otherwise damaging to the local environment.