



DEALING IN LAND

The Revenue have given some indication of their attitude to the Provisions of Section 20, 21 and 22 of the Finance (Miscellaneous Provisions) Act 1968, as amended by Section 29 of the Finance Act, 1981, which have caused concern over the past number of years. These Sections are based almost entirely on Sections 488 and 489 of the U.K. Taxes Act 1970 but without the relieving Provisions.

Section 20¹ applies to any Gain of a Capital nature realised on or after the 6th day of April, 1981 and obtained from the disposal of land. The Section is concerned mainly with Developing or Trading in land by a Developer.

If a gain is realised in these circumstances, it is treated as Income which arises at the time the gain is realised and chargeable under Case IV of Schedule D for the period in which the gain was realised. It is regarded as being Income of the person by whom the gain was realised.

The Section should be read in detail as it defines what land is, what dealing in land is, etc.

Section 21² provides that where a person is assessed to tax under these provisions and the assessment arises in consequence of or in respect of consideration received by another person, the assessed person is entitled to recover from that other person any part of the tax which he has paid. If any part of the tax remains unpaid after six months from the date on which it becomes due and payable, the Revenue Commissioners may recover it from that other person as if he was the person assessed but without prejudice to their right to recover from the assessed person.

In this instance, the person who pays the tax is entitled to a Certificate specifying the amount of Income in respect of which the tax has been paid and the amount of tax paid and this Certificate is evidence in any proceedings.

The Indemnity given by the Section is of no use if the person for whom the gain is realised is a non-resident, as an Irish Revenue Debt cannot be enforced abroad. Sub-section 2 concerns the "direction" and provides that if it appears to the Revenue Commissioners that any person, entitled to any consideration or other amount and is chargeable with tax under Section 20³ is not resident in the State, they may direct that Section 434⁴ of the Income Tax Act 1967, (which provides that Income payable to a non-resident is to be paid after deduction of tax) shall apply to any such payment as if the payment were an annual payment charged with tax under Schedule D. This means that the person paying the proceeds must deduct tax at 35% before paying the proceeds over to the vendor or his Solicitor.

1. Now S.643 of the Taxes Consolidation Act, 1997 (TCA 1997)
2. Now S.644, TCA 1997
3. Now S.643, TCA 1997
4. Now S.238, TCA 1997



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(Contd.)

The Act gives no clear indication as to whether the Revenue Commissioners can make such a direction in retrospect. It has never been accepted by the Law Society that such retrospective direction could be made and Counsel's Opinion was obtained. The matter was then discussed fully with the Revenue Commissioners and by letter dated 19th March, 1985, they are prepared to accept that directions under the relevant provisions cannot be made retrospectively.

This means that if a Purchaser's Solicitor is satisfied that on the day of the completion of a sale, no such direction has issued, it is safe for the Solicitor to complete that transaction on receipt of a certification to that effect from the Vendor's Solicitors.