

This technical query paper was submitted to Revenue via the TALC Direct/Capital Taxes sub-committee following a discussion on the matter at the June 2020 TALC Direct/Capital Taxes sub-committee meeting. The Institute submitted a second technical query paper to Revenue in October 2020, see Appendix I below. These technical query papers were subsequently discussed at the February 2021 TALC Direct/Capital Taxes sub-committee meeting and the discussion is reflected in the Minutes.



**ITI Submission to Revenue Seeking Further Clarification on
Section 980 Tax & Duty Manual (Part 42-03-01)
Interaction of Section 980 and consideration applying under Section 615**

05 August 2020

We are asking Revenue to consider including the matter below when updating the [Tax & Duty Manual](#) on section 980 TCA 1997. This relates to a point that first arose at the TALC Direct/Capital Taxes meeting on 28 June 2016 but was mentioned again by Revenue at the TALC Direct/Capital Taxes meeting on 13 February 2020 in the context of Revenue's guidance on section 980 TCA 1997.

At the 2016 meeting, Revenue advised that in their view the consideration that is applied in determining if a CG50 is required under section 980 TCA 1997 is the vendor's deemed consideration that applies to a disposal that gives rise to a no gain/no loss position for the vendor under section 617 TCA 1997. This is now reflected in TDM 42-03-01. The TDM provides that where section 617 TCA 1997 applies to a disposal, the amount of consideration for the purposes of section 980 TCA 1997 is the amount of consideration deemed under section 617 TCA 1997. This is explored in the TDM in a series of short examples: <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-42/42-03-01.pdf>

We understand that Revenue's position with regard to a transfer under section 615 TCA was not discussed in detail at the 2016 meeting and Revenue commented at the meeting that practitioners should make a separate submission in relation to section 615 TCA 1997 – this appears to be confirmed in the minutes of the meeting: <https://www.revenue.ie/en/tax-professionals/documents/talc/direct-and-capital-taxes/minutes-0616.pdf>

At the February 2020 TALC Direct/Capital Taxes meeting, Revenue confirmed that section 980 TCA 1997 should not apply to a disposal of an asset where there is deemed consideration under a gift and we understand that this confirmation would be included in the next iteration of Revenue's TDM on section 980 TCA 1997. This is on the basis that it is not possible to operate withholding tax on a consideration amount where there is nil or nominal actual consideration arising on the disposal.

At that meeting a comment was made by Revenue distinguishing this from Revenue's position relating to deemed consideration arising on an intra-group transfer of assets that results in a no gain/no loss position under section 617 TCA 1997 as well as the no gain/no loss treatment of a disposal under section 615 TCA 1997.

We are seeking confirmation, similar to that provided in respect of section 617 could also be provided in respect of section 615 in the TDM (i.e., that the consideration that applies for the

purposes of section 980 in the context of a no gain/ no loss disposal under section 615 is the amount of consideration deemed under section 615 TCA 1997.)

APPENDIX I



ITI Submission to Revenue Seeking Further Clarification on Section 980 Tax & Duty Manual (Part 42-03-01) Interaction of Section 980 and consideration applying under Section 615

16 October 2020

Following on from our previous submission of 5 August 2020 and as requested by Revenue at the Direct / Capital Taxes TALC Meeting on 3 September 2020, we have set out below additional comments in relation to the interaction of section 980, TCA 1997 and section 615, TCA 1997.

Section 617(1), TCA 1997 provides that where a company that is a member of a CGT group disposes of a chargeable asset to another member of the group, the disposal is to be treated as if the consideration received by the company making the disposal is such that it gives rise to neither a gain nor a loss.

It has been confirmed by Revenue (in [TDM 42-03-01](#)) that where section 617 applies to a disposal, the amount of consideration for the purposes of section 980 is the amount of consideration deemed under section 617 i.e. the original cost of acquiring the asset by the vendor company. Where the original cost to the vendor company does not exceed €500,000 (or €1 million in the case of a house), the requirement to withhold 15% of the purchase price does not apply.

Practitioners are seeking confirmation, similar to that provided in respect of section 617, to also be provided in respect of section 615 in the TDM (i.e. that the consideration that applies for the purposes of section 980 in the context of a no gain/ no loss disposal under section 615 is the amount of consideration deemed under section 615). Given the identical approach to establishing the deemed consideration in sections 615 and 617, it is submitted that the same approach should apply for the purposes of section 980.

Under section 615 where an asset is acquired by the transferee company, this is deemed to occur at an amount that gives rise to neither a gain nor a loss from the transferor's perspective. Therefore, the transferor company under section 615 is in a similar position to the transferor company under section 617, as both companies are deemed to dispose of assets at an amount that gives rise to neither a loss nor a gain. Relevant extracts of both provisions have been set out further below.

On the basis that the approach to establishing the deemed consideration under both sections is identical, in the view of practitioners the same approach should apply to a transfer under section 615 as under section 617 in relation to the requirement for a CG50 under section 980 (i.e. the

deemed consideration under section 615 is also the consideration for the purposes of section 980 and obtaining a Form CG50).

Extracts of wording in sections 615 and 617, TCA 1997

Section 615, TCA 1997	Section 617, TCA 1997
<p><i>“... in so far as relates to corporation tax on chargeable gains, both companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company <u>for a consideration of such amount as would secure that on the disposal by means of the transfer neither a gain nor a loss would accrue to the company making the disposal</u>”</i></p>	<p><i>“both members shall, ... , be treated, in so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired <u>for a consideration of such amount as would secure that on the other member’s disposal neither a gain nor a loss would accrue to that other member ...</u>”</i></p>