

Ordinance 10 of 2017

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**CAPITAL GAINS TAX (AMENDMENT) ORDINANCE
2017**

An Ordinance to amend the Capital Gains Tax Ordinance 2006

J. Illingworth
ADMINISTRATOR

13 December 2017

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

Short title

1. This Ordinance may be cited as the Capital Gains Tax (Amendment) Ordinance 2017.

Commencement

2. This Ordinance comes into force on 22 December 2017.

Amendment of the Capital Gains Tax Ordinance 2006

3. The Capital Gains Tax Ordinance 2006(a) is amended as follows.

Amendment of section 2

4.—(1) Section 2 (interpretation) is amended as follows.

(2) In the definition of “gains” for “provided they are not gains which fall within” substitute “including gains exempt from taxation under”.

(3) For the definition of “property” substitute—

““property” means—

- (i) immovable property situated in the Areas;
- (ii) shares in a company whose assets include immovable property situated in the Areas;
- (iii) shares in a company which participates directly or indirectly in the administration, control or capital of another company (A), where the asset value of A is derived by 50% or more from the market value of immovable property situated in the Areas; or
- (iv) rights derived from a contract of sale or exchange of immovable property situated in the Areas;”.

(4) For the definition of “reorganisation” substitute—

““reorganisation” means the direct or indirect disposal or transfer of property carried out for the purpose of reducing or paying off any credit facility, grant or debt;”.

(5) At the appropriate place in alphabetical order insert—

““lease with a registered right to purchase” means a lease which gives the lessee the right to purchase the property and where such right is registered under the Immovable Property (Tenure, Registration and Valuation) Ordinance(b);”.

Amendment of section 5

5. At the end of section 5 (exceptions) insert—

“(4) No tax shall be payable for any gain upon the disposal of a main dwelling house used by the owner exclusively for own occupation if such gain does not exceed €350,000 and the disposal is carried out—

- (a) in the process of reorganisation after 1 January 2018;
- (b) under the provisions of the Bankruptcy Ordinance(c);
- (c) under a company liquidation order or during the appointment of an examiner by the court under the provisions of the Companies Ordinance 2007(d);
- (d) under the provisions of Part 6 (sale of mortgaged property) of the Immovable Property (Transfer and Mortgage) Ordinance 1966(e) before 31 December 2017.

(5) Where property, other than a main dwelling house used by the owner exclusively for own occupation, is disposed of in the process of reorganisation, no tax shall be payable for any gain upon the disposal of such property.

(a) Ordinance 2/2006, as amended by Ordinances 1/2009, 18/2011 and 7/2014.

(b) Cap. 224, Laws of Cyprus (1959 ed.). Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369 (UK)). Schedule 2 to the Interpretation Ordinance 2012 makes provision for the interpretation of such legislation.

(c) Cap. 5, Laws of Cyprus (1959 ed.). Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369 (UK)). Schedule 2 to the Interpretation Ordinance 2012 makes provision for the interpretation of such legislation.

(d) Ordinance 2/2007.

(e) Ordinance 16/1966, as amended by Ordinances 14/1970, 8/1978, 11/2012 and 9/2016.

(6) If, following the disposal of property under subsections (4) and (5), any gain is retained by or returned to the owner, the tax exempted under those subsections is paid on the amount of gain that is retained or returned.”.

New section 5A

6. After section 5 (exceptions) insert—

“5A. Special provisions

(1) No tax shall be payable on any disposal of land if the land was acquired—

- (a) between 16 July 2015 and 31 December 2016; and
- (b) by sale or contract of sale.

(2) Subsection (1) does not apply in respect of transactions between associated persons.

(3) In this section “associated person” has the same meaning as is given to that term by subsection 27(3) of the Income Tax Ordinance 2003(a).”.

Amendment of section 6

7.—(1) Section 6 (determining gains) is amended as follows.

- (2) In subsection (1), in paragraph (a)(iv) omit “and no new property title has been issued”.
- (3) In subsection (1), at the end of paragraph (b) for “.” substitute “;”.
- (4) In subsection (1), after paragraph (b) insert—

“(c) any expenditure incurred in relation to assigning rights derived from a lease, a contract of sale or exchange of property;

(d) any sum collected following the cancellation of a lease, a contract of sale or exchange;

(e) where company shares are disposed of, the proportionate value of immovable property of the company on the latest of—

- (i) 1 January 1980;
- (ii) the date such property was acquired by the company; or
- (iii) the date the shares were acquired.”.

Amendment of section 9

8.—(1) Section 9 (proceeds from disposal of property) is amended as follows.

(2) Number the existing text as subsection (1).

(3) At the beginning of subsection (1) (as numbered by subsection (2) above) insert “Unless subsection (2) applies,”.

(4) In subsection (1) (as numbered by subsection (2) above) for “The proceeds” substitute “the proceeds”.

(5) In subsection (1) (as numbered by subsection (2) above), in paragraph (i) for “:” substitute “.”.

(6) In subsection (1) (as numbered by subsection (2) above) omit paragraph (ii).

(7) After subsection (1) (as numbered by subsection (2) above) insert—

“(2) Where this subsection applies, the proceeds from the disposal of property shall be determined by the Fiscal Officer on the basis of the market value of immovable property owned by a company (C) or another company (A) at the time of the disposal of the shares

(a) Ordinance 29/2003, as amended by Ordinances 19/2011, 13/2012, 31/2013 and 17/2014.

of C, where C participates directly or indirectly in the administration, control or capital of A.

(3) Subsection (2) applies where shares in C are disposed of, and—

(a) C owns immovable property situated in the Areas; or

(b) C participates directly or indirectly in the administration, control or capital of A and the asset value of A is derived by 50% or more from the market value of immovable property situated in the Areas.

(4) In this section “proceeds from the disposal of property” includes proceeds—

(a) accrued from assigning rights derived from a lease, a contract of sale or exchange of property; or

(b) collected following the cancellation of a lease, contract of sale or exchange.”.

Amendment of section 10

9.—(1) Section 10 (disposal of property) is amended as follows.

(2) In the opening text, for “the donation of property as well as the abandonment, use or enjoyment of any relevant right” substitute “the donation of property, the abandonment of use or enjoyment of any relevant right and the collection of any sum following the cancellation of a lease, a contract of sale or exchange”.

(3) In paragraph (j)(v) for “.” substitute “;”.

(4) At the end of the section insert—

“(k) a lease or transfer of a lease with a registered right to purchase.”.

Amendment of section 12

10. In section 12 (notification of intention to dispose of property), after subsection (1) insert—

“(1A) Where the property is subject to a lease with a registered right to purchase and is disposed of to a person other than the lessee and not for the benefit of the lessee, the lessee is to be treated as the person disposing of the property.”.

Amendment of section 17

11. In section 17 (manner of payment of tax), after subsection (2B) insert—

“(2C) In the case where the property is subject to a lease with a registered right to purchase and is disposed of to a person other than the lessee and not for the benefit of the lessee, the lessor shall pay the tax assessed.”.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

1. This explanatory note relates to the Capital Gains Tax (Amendment) Ordinance 2017 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance amends the Capital Gains Tax Ordinance 2006 (“the principal Ordinance”).

3. Section 2 (interpretation) makes amendments to the definitions of “gains”, “property” and “reorganisation”.

4. The definition of “gains” is amended to include gains exempt from taxation under the Income Tax Ordinance 2003.

5. The definition of “property” is amended to include shares in companies with direct or indirect interest in any company based in the Areas, where the asset value of that company is by at least 50% derived from the market value of immovable property in the Areas.

6. The definition of “reorganisation” is amended to include reorganisation process carried out by individuals. Previously, “reorganisation” was applicable to companies only.

7. Section 5 (exceptions) is amended to include two new exceptions where capital gains tax is not payable. The effect of the changes is that no capital gains tax is payable on: a) the sale of a main dwelling house where certain conditions are met; and b) the disposition of other property in the process of reorganisation.

8. A new section 5A (special provisions) is inserted. The section exempts from payment of capital gains tax the disposition of land acquired by sale or contract of sale between 16 July 2015 and 31 December 2016. This exemption does not apply to transactions involving spouses or relatives. It is irrelevant when the disposition of the land takes place.

9. Section 6 (determining gains) is amended by making provision for deducting the following for the purposes of determining gains: a) expenditure incurred in relation to assigning rights derived from a lease, a contract of sale or a contract of exchange; b) a sum collected as a result of the cancellation of a lease, a contract of sale or exchange; and c) in the case of the disposition of company shares, the value (proportionate to the number of shares) on a specific date of immovable property owned by the company.

10. Section 9 (proceeds from disposal of property) is amended. New provisions are inserted for determining the proceeds from disposal of company shares. Previously, the proceeds were determined by way of the contracting parties making a declaration in respect of the sum of the proceeds. Now the Fiscal Officer determines the proceeds on the basis of the market value of immovable property owned by the company (C) or, where C has a direct or indirect interest in another company (A), the property owned by A. This provision applies only where C and/or A have property situated in the Areas.

11. Section 10 (disposal of property) is amended to widen the scope of transactions constituting disposal of property, which now includes the collection of any sum following the cancellation of a lease, a contract of sale or a contract of exchange. A lease (or transfer of a lease) with a registered right to purchase the property is excluded and does not constitute disposition of property for the purposes of the principal Ordinance.

12. Section 12 (notification of intention to dispose of property) is amended to the effect that the lessee is treated as a person disposing of property where the property, subject to a lease with a registered right to purchase, is disposed of not to the lessee or to any other person who may hold it for the benefit of the lessee.

13. Section 17 (manner of payment of tax) is amended by placing the responsibility for payment of capital gains tax on the lessor in the case where the property, subject to a lease with a registered

right to purchase, is disposed of to a person other than the lessee or any other person who may hold it for the benefit of the lessee.

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