

IFA Concerns about the Proposed 80% Capital Gains Tax on Windfall Gains

The Government Proposal

On the 10th September, the statement by the Minister of Finance on the formal publication of the NAMA Bill included the following sentence, *“The Minister will bring forward a Committee Stage amendment to ensure that windfall gains on rezoned land will be subject to Capital Gains Tax at the rate of 80%.”*

The fact that the proposal is not part of the normal budget process but instead attached to the NAMA Bill, currently before the Dail, means that it is not subject to normal pre-budget representation by IFA and other interests. Thus IFA is setting out to Government the concerns of farmers on this exceptionally severe and penal proposal.

General Concerns of IFA

IFA is very concerned that the proposal 80% rate of CGT on the disposal of rezoned land will have major negative consequences for farmers and for the rural economy for the following reasons:

- It is an attack on the right to free sale of private property.
- It may drive sales of farmland into the 'black economy'.
- It is an inequitable imposition on farmers who intend to stay farming but have land rezoned by State or Local Authorities.
- It will strongly discourage disposal of land and thus will stifle development in rural Ireland.
- It is viewed by farmers as a political over-reaction to national economic and financial problems not caused by farmers, but farmers are to be the main victims of this decision.

IFA also wishes to point out to Government that because windfall gains are much more a feature of the recent past than the immediate future, and also because a tax rate of 80% is likely to discourage disposals, such a tax will yield very little to the exchequer.

Specific Concerns of IFA

While recognising that there is a precedent from the 1980s for a somewhat higher rate of CGT on disposal of development land, the differential in the rate was 20%. The Minister's proposal involves a differential over the normal rate of CGT of 55%. Indeed, tax rates as high as 80% are generally viewed as extremely regressive and distortionary measures.

IFA is strongly opposed to the 80% CGT proposal, and is appealing to the Government to take into account the following issues in preparing the detailed draft legislation.

1. The 80% rate

The 80% rate is such an exceptionally high rate of tax that it should not apply to normal gains but only to very large gains, e.g. above €5m, based on a rising scale from 25%, linked to the size of the gain.

Also, there should be an exemption threshold. For example, the existing "Site to Child" CGT relief is €500,000.

2. The definition of "rezoned land"?

Land which is rezoned from agriculture use to residential or commercial use is clearly intended to be covered. Consideration must also be given to two other situations where land is disposed of at prices higher than agricultural land prices.

(i) CPO land: Land that is sold for road building involves a change of use but is not rezoned. It is important to remember that the basis of the CPO system is market value based on existing use. The Commission on Taxation report acknowledged this fact in the section dealing with CGT Rollover relief – CPO on Farmland, where it states: "*We note that the governing legislation provides that the compensation is at market value and compensation provides an amount to restore the landowner to his or her pre-compulsory purchase order position.*" IFA is totally opposed to the 80% CGT applying to land compulsorily sold through the CPO process.

(ii) "Other Non-Rezoned Land": Agricultural land that is not rezoned can have a market value much higher than average 'agricultural' value due to local demand factors and location. IFA is totally opposed to non-rezoned land disposed of at a price above agricultural land prices being subject to the 80% tax.

Other Concerns of IFA on the NAMA Bill

Compulsory Purchase Acquisition of Land: Section 155 of the Bill provides that NAMA may compulsorily acquire land if in its opinion it is necessary to do so for the reasons or circumstances specified in the Bill. The Bill states that NAMA may only compulsorily acquire land if it has first made a reasonable attempt to acquire the land by agreement.

IFA is opposed to this further extension of CPO powers. If the Government implements this element of the Bill, IFA proposes that the terms of the National Roads CPO agreement negotiated by IFA with the Department of Environment should also apply to CPOs under the NAMA legislation.

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