Capital Taxation of CPO Compensation and the Need for CPO Rollover Relief

There is a serious injustice in relation to Capital Taxation of CPO compensation money which cannot be avoided due to the lack of CPO rollover relief. The core principal of compulsory purchase is the principal of equivalence. In *Horne v Sunderland Corporation (1941)* Scott L.J. stated in relation to the Land Clauses Consolidation Act of 1845:

"what is gives to the owner compelled to sell is compensation – the right to be put, so far as money can do it, in the same position as if his land had not been taken from him. In other words, he gains the right to receive a money payment not less than the loss imposed on him in the public interest, but on the other hand no greater."

Up until 2002 a landowner receiving compensation for a compulsory purchase had the right to repurchase lands with the proceeds and avail of CPO rollover relief. This meant that after the replacement lands had been acquired the owner would effectively have reverted to the pre-CPO situation in that the monies would again be invested in farmland. By doing this the tax could have been avoided completely or alternatively the tax could have been paid but refunded by the Revenue when the acquisition of the replacement land was concluded.

The main points in relation to the CPO rollover relief that pertained in 2002 were as follows:

- An actual CPO was not required for the relief to apply. It was sufficient that the disposal was made to an authority with compulsory purchasing powers and that the disposal was for road widening and road building purposes. There was no particular reason at the time why CPO rollover relief was confined to road widening and road building purposes as landowners affected by other compulsory acquisitions were going to be impacted exactly the same and it didn't matter to the landowner what the acquisition was for as the consequences were the same.
- The relief, which went back to the 1995 budget, applied where the proceeds of the disposal were reinvested in certain other assets and the tax charge was then deferred which would otherwise have arisen until the time of disposal of those assets if they were disposed of in the future.
- To be eligible for the relief in 2002, the proceeds of the disposal had to be reinvested in assets for the purposes of any trade but not necessarily the persons then current trade i.e. not necessarily farming.
- Effectively, the transaction was treated for Capital Gains Tax purposes as if there was no disposal of the old assets and no acquisition of the new assets. The new replacement assets were treated as if they were in fact the old assets with the same acquisition date, same cost and same market value as the old assets.
- In the 2002 Finance Act, the time frame within which the proceeds of a CPO on land could be invested so as to avail of the rollover relief was extended to 2 years before and 8 years after the disposal of the land from the previous 1 year before and 3 years after disposal.

The following points are relevant to the restoration of CPO rollover relief:

a. It is a serious injustice to acquire compulsorily an asset and then apply Capital Gains Tax to the proceeds and leave the landowner in a position where he or she has a significantly reduced sum to reacquire a replacement similar asset.

b. Capital Gains Tax was only introduced in the early 1970s in the U.K. and in 1975 in Ireland so before this time it was not a problem and the CPO law and practice did not therefore have to address this issue.

c. Current government strategy is to promote the agricultural sector and included in this strategy is the Food Harvest 2020 plan. A farm can be quite seriously impacted by a compulsory acquisition and in order to return it to a viable state then the only logical thing that the landowner can do is to acquire replacement lands. However if Capital Gains Tax has to be paid out of the proceeds of the compensation then the money has been drastically reduced which could be used to reinvest in farmland.

d. A concession has already been made in relation to farm consolidation and Capital Gains Tax and the reintroduction of CPO rollover relief would only be a further extension of this same principle.

e. At the time that CPO rollover relief was removed the rate of Capital Gains Tax was 20%. Currently, August 2013, the rate of Capital Gains Tax is 33% so therefore the loss of compensation to Capital Gains Tax would be significantly higher currently than in 2002. The net amount available to acquire alternative land therefore would be significantly reduced compared to 2002 if CPO rollover relief is not reintroduced.

f. The commission on taxation has already reported that CPO rollover relief for farmers should be restored. (http://www.commissionontaxation.ie/downloads/Part%201.pdf)

g. CPO rollover relief should apply to any acquisition of land even where a CPO has not been exercised. It should be sufficient that the acquirer had CPO powers at the time of the acquisition or that the land could have been acquired for them by an authority having CPO powers.

Conclusion

The number of landowners around the country currently affected by CPOs is hugely reduced compared to a number of years ago. Nevertheless an individual landowner who loses a substantial portion of land to a CPO, and then has to pay a relatively high rate of Capital Gains Tax out of the compensation, is in a seriously disadvantaged position when attempting to acquire replacement land. There is a clear and obvious injustice involved in the lack of CPO rollover relief which can be readily resolved by the restoration of this CPO rollover relief.