

Reimbursement of purchaser's costs

(Lecture P1059 – 8.39 minutes)

When calculating the capital gain on the sale of a property, S38 TCGA 1992 permits the deduction of a number of specific costs. Put briefly, these are:

- the property's original acquisition value;
- the expense of enhancing the value of the property;
- the expense of establishing, preserving or defending the vendor's title to, or rights over, the property; and
- any incidental costs of the disposal.

Normally, the vendor would have paid these costs. However, in *O'Donnell v HMRC* (2017), the First-Tier Tribunal had to consider whether a vendor's reimbursement of certain items of expenditure that were incurred by the purchaser of a property was allowable against the vendor's capital gain.

S38 TCGA 1992 expressly permits deductions for fees and other amounts paid for various professional services (such as those of surveyors, valuers, accountants and legal advisers), together with any transfer or conveyance costs incurred wholly and exclusively for the purposes of the disposal.

O'Donnell v HMRC (2017) is a complicated property case, but, drilling down to the essential point, the Tribunal decided that the vendor's reimbursement of the purchaser's legal costs facilitated the sale because it was part of the agreement reached in connection with the deal. This meant that the relevant expenditure was, in the end, incurred by the vendor and that it met the 'wholly and exclusively' test.

Taxpayers should note both the potential availability of, and the limits on, the deductibility of purchasers' costs on a property disposal. The fact that some costs are primarily those of the purchaser does not necessarily prevent the vendor from accessing a deduction, but each case must be analysed carefully to ensure that:

- any such payment is only made by the vendor by way of reimbursement;
- the amount reimbursed falls within the categories set out in S38 TCGA 1992; and
- there is no reason for the reimbursement other than to secure that the disposal goes ahead.

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