

## Tax treatment of Married, Separated and Divorced Persons

*Updated January 2016*

This manual explains the tax treatment of Married Couples under the following headings –

<a href="#">Paragraph 1</a>	Year of marriage
<a href="#">Paragraph 2</a>	Basis of assessment for married couples
<a href="#">Paragraph 3</a>	Cases involving non-residence
<a href="#">Paragraph 4</a>	Year of death
<a href="#">Paragraph 5</a>	Maintenance payments where the marriage has been annulled or dissolved or where the couples are separated or living apart

### **Related manuals**

<a href="#">15.01.03</a>	<i>Non-residents - Section 1032 TCA 1997</i>
<a href="#">15.01.05</a>	<i>Incapacitated child credit</i>
<a href="#">15.01.17</a>	<i>Special tax credit for Widowed Person or Surviving Civil Partner</i>
<a href="#">15.01.41</a>	<i>Single Person Child Carer Credit</i>
<a href="#">44a.01.01</a>	<i>Tax treatment of civil partners</i>

### **Related leaflets**

Revenue leaflet <a href="#">IT 2</a>	<i>“Taxation of married persons and civil partners”</i>
Revenue leaflet <a href="#">IT 3</a>	<i>“What to do about tax on the breakdown of a marriage, civil partnership or co-habiting relationship”</i>
Revenue leaflet <a href="#">IT 40</a>	<i>“Tax treatment of widowed persons or surviving civil partners”</i>

## 44.1.1

Revenue leaflet [IT41](#) “Bereavement - tax related information”

A more recent version of this manual is available.

## 1 Year of marriage (Section 1020 T.C.A. 1997)

### Definitions

“*income tax month*” means a calendar month;

“*year of marriage*”, means the tax year in which the marriage took place.

### 1.1 Year of marriage

In the year of marriage both individuals will be taxed as single individuals. Additional relief for the year of marriage may be due on review of each individual’s liability where the aggregate of the tax paid and payable as single individuals for the year of assessment exceeds the tax that would have been payable if the couple had been jointly assessed to tax throughout the year, (s.1020). With effect from 16<sup>th</sup> November 2015 following the enactment of the Marriage Act 2015 s.1020 will apply in the case of same sex couples.

Note:Couples who have entered into a Civil Partnership are also taxed in the same manner. See details in Tax and Duty Manual 44a.01.01

The relief is calculated by the formula  $A \times B/12$ , where

A = the amount by which the aggregate of the tax payable as single individuals exceeds the amount that would have been paid had the couple been married for the whole of the tax year and jointly assessed, and

B is the number of calendar months during the year for which the couple have been married.

For the purposes of calculating the number of months for which a couple are married in the tax year, part of a month is treated as a whole month.

Any overpayment of tax to be repaid will be divided between the husband and wife based on the tax paid or payable by each spouse.

### Example

A couple were married on 10<sup>th</sup> July 2015. Details of their income are as follows:

**Husband/wife €48,000**

**wife/husband €24,000**

#### Tax payable as single individuals

Husband/Wife

Wife/Husband

Income 48,000

Income 24,000

33,800 x 20%= 6,760

24,000 x 20%= 4,800

14,200 x 40%= 5,680

Total 12,440

Tax Credits

Tax Credits

### 44.1.1

Personal Tax Credits	1,650	Personal Tax Credits	1,650
PAYE Tax Credit	<u>1,650</u>	PAYE Tax Credit	<u>1,650</u>
Total	3,300	Total	3,300
Tax payable	9,140 (12,440 – 3,300)	Tax payable	1,500

#### Combined tax payable as single persons

$$9,140 + 1,500 = 10,640$$

#### 2015 - Tax payable under joint assessment

$$\text{Income } 48,000 + 24,000 = 72,000$$

$$67,600 \times 20\% = 13,520$$

$$4,400 \times 40\% = \underline{1,760}$$

$$\text{Total} \quad 15,280$$

#### Credits

$$\text{Personal Tax Credits} \quad 3,300$$

$$\text{PAYE Tax Credit} \quad \underline{3,300}$$

$$6,600$$

$$\text{Tax payable as single individuals} \quad 10,640$$

$$\text{Tax payable under joint assessment} \quad \underline{8,680}$$

$$\text{Difference} \quad 1,960$$

Date of marriage 10/07/2015

$$\text{Repayment } 1,960 \times 6/12 = \text{€}980$$

Repayment

$$980 \times 9140/10640 \text{ €}841.84 \text{ (Husband/Wife)}$$

$$980 \times 1500/10640 \text{ €}138.16 \text{ (Wife/Husband)}$$

## **1.2 Entitlement to the Single Person Child Carer Credit in the year of marriage**

Entitlement to the Single Person Child Carer Credit (SPCCC), which replaced the one parent family tax credit (OPFTC) from 1 January 2014, will be determined by reference to the circumstances that apply on 1 January in the year of assessment. Where a couple marries after 1 January in a year of assessment and, prior to that date, either spouse was entitled to the SPCCC, the credit should not be withdrawn from that spouse in his or her individual tax computation for the year of marriage.

However, in determining any additional relief due on review under subsection (3) of **section 1020 TCA 1997**, (see paragraph 1.1), the SPCCC should be excluded from the computation of tax payable under joint assessment on the basis that a joint personal tax credit under section 461(a) is being granted in that computation. (SPCCC is not available to an individual entitled to the joint personal tax credit.)

The SPCCC should be withdrawn for future years from either spouse who had previously qualified for it.

## **1.3 Entitlement to the one-parent family tax credit in the year of marriage (2013 and previous years)**

The one-parent family tax credit (OPFTC) ceased with effect from 1<sup>st</sup> January 2014. For all years up to and including 2013 inclusive, entitlement to the one-parent family tax credit was determined by reference to the circumstances applying on 1 January in the relevant year of assessment. If a couple married after 1 January in the year of assessment and, prior to the date of marriage, either spouse was entitled to the one-parent family tax credit, the credit should not be withdrawn from that spouse in his or her individual tax computation for the year of marriage.

However, in determining any additional relief due for the year of marriage in accordance with section 1020(3), the OPFTC should be excluded from the computation of tax payable under joint assessment on the basis that a joint personal tax credit under section 461(a) is being granted in that computation. (OPFTC is not available to an individual entitled to the joint personal tax credit.)

The OPFTC should be withdrawn for future years from either spouse who had previously qualified for it.

## **2. Basis of assessment (sections 1016, 1017, 1018, 1019 and 1023 T.C.A. 1997)**

For full information on the basis of assessment see Revenue leaflet [IT 2](#)

With effect from 16<sup>th</sup> November following the enactment of the Marriage Act 2015 the provisions of the Taxes Consolidated Act will apply to all married couples. Where a same sex couple were married outside the State and the marriage is recognised in accordance with the Civil Partnership and Certain Rights and Obligation Act 2010, the provisions of Part 44 or Part 44A will apply as appropriate (please refer to details of [foreign marriages recognised in the State](#) .

#### 44.1.1

### **3. Non-residence – Aggregation of income in cases where one or both spouses are non-resident**

Entitlement to the joint tax credit and standard rate bands is dependent upon the assessable spouse i.e. the person responsible for making a joint tax return on behalf of both spouses, being chargeable to tax in accordance with section 1017 TCA 1997 (the aggregation basis of assessment or joint assessment).

#### **3.1 Non-residence - Tax Treatment where only one spouse is resident in the State and that spouse has income chargeable to tax in the State.**

Where only one spouse is resident in the State and in receipt of income chargeable to tax in the State, he/she -

- is chargeable on that income on the basis of separate treatment as a single person; and
- may be granted single person's tax credits and reliefs, subject, to the practice outlined hereunder.

In cases where only one spouse is resident in the State and that spouse has income chargeable to tax in the State, if satisfied that the other spouse has no income and the earnings of the spouse working in the State are the only source of income of the couple, aggregation basis may be applied in the normal way (i.e. the joint tax credit and the increased rate band may be given).

Even if the non-resident spouse has income, a measure of relief may, depending on the level of that income, be due where the Irish tax payable under separate treatment in respect of the income chargeable to Irish tax exceeds the tax that would have been payable in respect of that income if the total income of both spouses had been chargeable to tax on the basis of aggregation - see [Example 1](#)

To avail of this practice, the spouses should make a specific election for aggregation basis and the spouse with income chargeable to Irish tax should be requested to give details of the couple's total incomes, (i.e. the income of both spouses including income not chargeable to Irish tax). In cases of difficulty, a separate return should be requested from each spouse.

#### **3.2 Cases where both spouses are non-resident but one spouse has income chargeable to tax in the State**

The most common type of case is that of a spouse who is a cross-border worker or who is working in this country on a temporary assignment. Where neither spouse is resident in the State but one spouse is in receipt of income chargeable to tax in the State (e.g. income from exercising an employment here), he/she:

- is chargeable to Irish tax on that income on the basis of separate treatment as a single person; and
- may be granted the single person's tax credits and reliefs or a proportion thereof in accordance with the provisions of section 1032 TCA 1997 which provides for tax

credits and allowances to be granted to non-resident in certain circumstances [Part 45.01.01](#).

Where section 1032 TCA 1997 applies, any apportionment of the tax credits etc. should be carried out by reference to the world-wide income of the spouse with the Irish source of income. The income of the other spouse should not be taken into account.

Where both spouses are non-resident but one spouse has income chargeable to tax in the State, if Revenue are satisfied that the other spouse has no income and the earnings of the spouse working in the State are the only source of income, aggregation basis may be applied in the normal way; (i.e. the joint tax credit and the increased rate band should be given accordingly).

Even if the other spouse has income, a measure of relief may, depending of the level of that income, be due where the Irish tax payable under separate treatment in respect of the income chargeable to Irish tax exceeds the tax that would have been payable in respect of that income if the total income of both spouses had been chargeable to tax on the basis of aggregation. See [Example 2](#).

To avail of this practice, the couple should make a specific election for aggregation basis and the spouse with income chargeable to Irish tax should be requested to give details of the couple's total incomes (i.e. the income of both spouses including income not chargeable to Irish tax). In cases of difficulty, a separate return should be requested from each spouse.

**Note:** As regards section 1032, residents of another member state of the European Union are entitled to full personal tax credits and reliefs in respect of any tax year in which 75% or more of their worldwide income is taxable in Ireland, [section 1032(3)].

#### Example 1

In 2015, an individual has income of €45,000 from an Irish employment. His/her spouse, who is non-resident, has foreign investment income of €10,000. His/her income tax liability on the basis of separate treatment is –

Earnings €45,000

€33,800 @ 20% = €6,760

€11,200 @ 40% = €4,480

€11,240

Credits

Personal credit €1,650

PAYE credit €1,650

€3,300

Tax chargeable €7,940 (11,240 – 3,300)

### 44.1.1

The tax liability on the total income of the spouses on the basis of aggregation would be -

Resident Spouse Earnings	€45,000
Non-Resident Spouse Investment Income	<u>€10,000</u>
	€55,000

€52,800 @ 20%= €10,560

€2,200 @ 40%= € 880

€11440

Credits

Personal credit €3,300

PAYE credit €1,650

€4,950

Tax chargeable €6,490 (11,440 – 4,950)

The tax attributable to the Irish income is – €6,490 x 45,000 = €5,310

55,000

The additional relief due to the resident spouse is – €7,940 - €5,310 = €2,630

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

#### Example 2

For 2015, both spouses are resident in the United Kingdom. One spouse has €10,000 from an Irish non-proprietary directorship and €22,000 from a U.K. employment. The other spouse has no income. The spouse's income tax liability on the basis of separate treatment and relief under section 1032 TCA 1997, is -

Irish directorship = €10,000

€10,000 @ 20% = €2,000

Credits

Personal credit €1,650 x 10,000/32,000 = €516

PAYE credit €1,650 x 10,000/32,000= €516

Total Credits €1,032

Tax chargeable €2,000 – €1,032 = €968

Tax liability on the total income on the basis of aggregation

Irish directorship €10,000

U.K. employment €22,000

Total €32,000

€32,000 @ 20% = €6,400

Personal credit €3,300

PAYE credit €1,650

Total Credit €4,950

Tax chargeable €1,450

Tax attributable to the Irish income is –

$€1,450 \times 10,000/32,000 = €453$

The additional relief due is –

$€968 - €453 = €515$

In relation to [Example 2](#), it should be noted that the procedures outlined in these instructions are ancillary to and not in substitution for section 1032 TCA 1997. Where the normal operation of section 1032 TCA 1997 (applied on the basis of a single treatment) produces a lower liability, that liability should not be increased by reference to these procedures. (e.g. if in Example 2, the tax attributable to the Irish income in the joint assessment computation exceeded the tax on the Irish directorship as shown in the first computation (€968), the tax due should not be increased by the excess.) Normally, the tax attributable to the Irish income will be greater only in circumstances where part of the the person's income is chargeable to tax at the higher rate.

## 44.1.1

### 4. Tax credits in the year of death of a spouse

The tax credits in the year of death will depend on how the spouses were assessed prior to the death of the spouse.

#### 4.1 Taxed under joint assessment prior to the death of a spouse

If the “assessable spouse” (i.e. the person responsible for making a joint tax return on behalf of both spouses) dies, the surviving spouse will be entitled to the increased basic personal tax credit in accordance with section 461(b) and the income to be assessed is in respect of the period from the date of death to the following 31 December. Note that in the year of bereavement the Single Person Child Carer Credit cannot be granted to the surviving spouse with children in accordance with section 462B(b) which states:

“(b) This section shall apply to an individual who is not entitled to a basic personal credit referred to in paragraph (a) or (b) of section 461.

In the case of the death of the non-assessable spouse the surviving spouse continues to be entitled to the married person’s tax credit and appropriate standard rate band for the full year. S/he will be assessed on his/her own income for the full tax year plus the late spouse’s income from 1 January to the date of death.

#### 4.2 Taxed as single persons

If the spouses were assessed on the basis of separate treatment prior to the date of death the only alteration in the tax credits and rate bands by reason of the death of either spouse is that the surviving spouse is entitled to the widowed person’s tax credit [section 461(b)] in substitution for the single tax credit for the year of death.

#### 4.3 Taxed under the basis of Separate Assessment

In the case of the death of a spouse where separate assessment is applicable, the other spouse is entitled to an allocation of part of his/her tax credits in respect of the pre-death period and to tax credits etc. in his/her own right in respect of the post-death period.

Revenue leaflets [ITt 40](#) and [IT41](#) provide additional information.

### 5. Maintenance of spouses living apart (Sections 1025 and 1026 T.C.A. 1997)

Sections 1025 and 1026 contain the provisions regarding the taxation of couples who are living apart and also divorced couples who have entered into maintenance arrangements that are legally enforceable.

“maintenance arrangement” means -

an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of —

- (a) the dissolution or annulment of a marriage, or
- (b) such separation of the parties to a marriage as is referred to in section 1015(2); i.e. legally separated or living apart permanently

“**payment**” means a payment or part of a payment, as the case may be.

## 5.1 Section 1025

Where legally enforceable maintenance payments are payable by one spouse to his or her separated spouse the following will apply -

- (a) the spouse (payer) will make the payments gross;
- (b) the spouse (payer) will be allowed, in computing his or her total income, a deduction for maintenance payments made in the year of assessment for the benefit of the other spouse;
- (c) the recipient will be taxable under Case IV, Schedule D, in respect of such maintenance payments received; and
- (d) both will be taxed as single persons.

The same treatment will apply in respect of couples whose marriages have been dissolved or annulled and to couples who are living apart permanently provided the payments are—

- 1) made at a time when the couple are living apart;
- 2) legally enforceable; and
- 3) annual or periodic,

and the agreement under which the payments are being made was entered into on or after 8<sup>th</sup> June 1983.

**Note** only payments made for the benefit of the other spouse will qualify for tax relief. Payments which are made for the benefit of a child will not be regarded as maintenance for the purposes of tax relief. Tax relief may be granted in respect of direct and indirect payments; e.g. medical insurance paid by the former spouse may be treated as maintenance payments.

### Foreign Divorce

Maintenance payments made under a settlement agreement arising from a divorce obtained outside the State will qualify for relief provided the divorce is recognised in this State and the maintenance payments have been paid in accordance with the agreement. In cases of doubt evidence of the payment made should be sought.

## 44.1.1

### 5.2 Section 1026

This section provides an alternative basis of assessment – aggregation - for couples who have a maintenance arrangement as set out in section 1025. This alternative basis of assessment applies to all couples who are living apart in circumstances that are likely to be permanent and also to couples whose marriage has been dissolved under either-

a) Section 5 of the Family Law (Divorce) Act 1996

or

b) the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State.

This basis of assessment will apply provided a joint application is received, i.e. signed by both parties, and-

1. both parties are resident in the State for tax purposes for the year of assessment, and
2. neither spouse has entered into another marriage or civil partnership.

Where an election by both parties is made under section 1026 the maintenance payments are ignored for tax purposes; i.e.

1. the payer will get no deduction for the maintenance payments
2. the recipient will not be taxable on the maintenance; and
3. where both individuals have income, the couple will be assessed as if an application for separate assessment had been made under **Section 1023 TCA 1997**.

Where a maintenance arrangement provides for the payment for the benefit of a child of specified sums or of amounts which are quantifiable under the terms of the maintenance arrangement -

- (a) the payments are to be made gross,
- (b) the payer is not allowed a deduction for such payments, nor are they to be treated as income of the recipient,
- (c) the payment does not count as income of the child, and
- (d) the payer will be regarded as having contributed to the extent of such payments, to the maintenance of the child for the purposes of any claim to incapacitated child allowance or part thereof under section 465(6) TCA 1997.

### **5.3 Charging of recipient under Case IV in respect of maintenance payment**

Where the recipient of a maintenance payment is in employment and the aggregate of the maintenance amount and any other non-PAYE income for the year of assessment is below the threshold for a “chargeable person” (€5,000 for 2016 and subsequent years of assessment- s.959B TCA) the Case IV liability may be brought to account by way of restriction of tax credits.

A more recent version of this manual is available.