

# **Income Tax Treatment of Married Persons and Civil Partners**

## **Part 44-01-01**

This document should be read in conjunction with Parts 44 and 44A of the Taxes Consolidation Act 1997

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## Referenced Tax and Duty Manuals:

<a href="#">Part 15-01-05</a>	Incapacitated Child Credit
<a href="#">Part 15-01-29</a>	Home Carer Tax Credit
<a href="#">Part 15-01-41</a>	Single Person Child Carer Credit
<a href="#">Part 45-01-01</a>	Non-Residents and Tax Credits

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## 1. Introduction

This manual sets out the income tax treatment of Married Persons and Civil Partners.

- The tax treatment of married persons is set out in Part 44 of the Taxes Consolidation Act 1997 (TCA).
- The tax treatment of civil partnerships is set out in Part 44A of the TCA.

This manual also covers the income tax treatment of couples in the year of the death of a spouse or civil partner and in the year of separation/divorce/dissolution. It also covers the tax treatment of maintenance payments.

## 2. Recognition of Same Sex Marriage and Civil Partnership

### 2.1 Recognition of Civil Partnership

Following the passing of The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the TCA was amended to introduce legislation to provide for the tax treatment of civil partners.

Part 44A of the TCA applies for the year of assessment 2011 and subsequent years of assessment in respect of civil partnerships recognised in the State.

Following the commencement of the Marriage Act 2015 on 16 November 2015, marriage is available in Ireland for same sex couples. From this date, couples can no longer serve notice of intention to enter into a civil partnership in the State.

Any existing civil partners will continue as civil partners. Their tax treatment is not affected by the Marriage Act 2015.

Same sex couples who entered into a registered partnership on or before 15 May 2016 in another jurisdiction will be recognised as civil partners in the State, provided the legal relationship is recognised in the State under a section 5 Order of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

Any new civil partnership entered into outside the State from 16 May 2016 is not recognised as a civil partnership in the State.

Full details of foreign registered relationships which are treated as equivalent to a civil partnership under Irish law are available in the attached [Appendix](#).

## 2.2 Marriage Act 2015

With effect from 16th November 2015, following the enactment of the Marriage Act 2015, the provisions of the Taxes Consolidation Act will apply to all married couples regardless of whether the marriage is between two persons of the opposite sex or of the same sex. These provisions are set out in Part 44 of the Act.

Where a marriage was contracted lawfully between two persons of the same sex in another jurisdiction, that marriage will be recognised automatically in the State as of 16 November 2015, or from the date of marriage, if later.

Please refer to details of [foreign marriages recognised in the State](#) for further information.

### Example 1

Isobel and Jen were legally married in Spain in the year 2010. They relocated to Galway in 2011 and registered for Irish tax. This was recognised as a civil partnership for Irish tax purposes up to 15 November 2015. With effect from 16 November 2015 they are recognised as a married couple in the State.

### Example 2

Jaziel and João were registered as civil partners in the UK in the year 2010. They relocated to Athlone and registered for Irish tax on 1 July 2011. They got married in the State on 1 July 2017. The couple are recognised as civil partners for Irish tax purposes up to 30 June 2017 and as a married couple with effect from 1 July 2017.

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

[...]

### 3. The Year of Marriage/Registration

#### 3.1 Year of Marriage/Registration Relief

In the year of marriage or registration, both individuals will be taxed as single individuals for that year of assessment.

However, additional relief for the year of marriage or registration may be available on review, if the aggregate of the tax payable by the couple 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 (See [Chapter 4.2](#) for further details on Joint Assessment).

The relief is available under section 1020 TCA for married couples and section 1031G TCA for civil partners.

#### **Tax Relief**

Tax relief is calculated by the formula:

$$\frac{A \times B}{12}$$

Where:

**A:** is the amount by which the sum of the tax payable by the couple as single individuals exceeds the amount that would have been paid had the couple been jointly assessed for the whole of the tax year, and

**B:** is the number of calendar months during the year for which the couple have been married or in a civil partnership.

For the purposes of calculating the number of applicable months, part of a month is treated as a whole month.

Any overpayment of tax to be repaid will be divided between the couple based on the tax paid and payable by each individual as single individuals on their respective total incomes for the year of marriage/registration.

**Example 3**

A couple were married on 10<sup>th</sup> July 2018. Income details are set out below:

Spouse 1 Income: €48,000

Spouse 2 Income: €24,000

**Tax payable as single individuals in 2018**

Spouse 1		Spouse 2	
Income €48,000		Income 24,000	
€35,300 x 20%	€7,060	24,000 x 20%	€4,800
€12,700 x 40%	€5,080		
Total Tax	€12,140	Total Tax	€4,800
Tax Credits		Tax Credits	
Personal Tax Credit	€1,650	Personal Tax Credit	€1,650
PAYE Tax Credit	<u>€1,650</u>	PAYE Tax Credit	<u>€1,650</u>
Total Credits	€3,300	Total Credits	€3,300
Tax payable (€12,140 – €3,300)	€8,840	Tax payable (€4,800 – €3,300)	€1,500
Combined tax payable as single persons			
€8,840 + €1,500	€10,340		

**Tax payable under joint assessment in 2018**

Income (€48,000 + €24,000)	€72,000
€70,600 x 20%	€14,120
€1,400 x 40%	€560
Total	€14,680
Tax Credits	
Personal Tax Credit	€3,300
PAYE Tax Credit	<u>€3,300</u>
(€1,650 + €1,650)	
Total Credits	€6,600
Tax payable (€14,680 – €6,600)	€8,080



**Amount Repayable to Couple**

Tax payable as single individuals:	€10,340
Tax payable under joint assessment:	<u>€8,080</u>
Difference:	€2,260
Date of Marriage	10 July 2018
Repayment €2,260 x 6/12	€1,130

**Repayment to Each Spouse**

Spouse 1: €1,130 x €8,840/€10,340	€966
Spouse 2: €1,130 x €1,500/€10,340	<u>€164</u>
Total	€1,130

**Note:** PRSI and USC are ignored for the purpose of the examples.

The tax treatment illustrated above is the same for married couples and civil partners.

### 3.2 Entitlement to the Single Person Child Carer Credit in the year of Marriage/Registration

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 a year of assessment.

If a couple married or entered into a civil partnership after 1 January in a year of assessment and, prior to that date, either individual was entitled to the SPCCC, the credit should not be withdrawn from that individual in his or her individual tax computation for the year of marriage.

However, when determining on review if any additional 'Year of Marriage/Registration' relief is due (see [Chapter 2.1](#)), the SPCCC should be excluded from the computation of tax payable under joint assessment. SPCCC is excluded, as a joint personal tax credit is available under section 461(a), where a couple is jointly assessed (SPCCC is not available to an individual entitled to the joint personal tax credit).

The SPCCC is withdrawn for future years from either individual who had previously qualified for it.

## 4. Subsequent Years - Basis of Assessment

### 4.1 Overview

There are various assessment options available to married couples and civil partners. These options are:

- joint assessment (also known as aggregation) - [see Chapter 4.2](#),
- separate assessment – [see Chapter 4.3](#), and
- separate treatment (treated as single persons) - [see Chapter 4.4](#).

A taxpayer may choose the option best suited to his or her circumstances.

### 4.2 Joint Assessment

Under joint assessment a spouse or civil partner is chargeable to tax, not only on his or her own income, but also on the total income of his or her spouse or civil partner.

Generally, joint assessment is the option that benefits most couples as it allows them to split their tax credits and rate band.

The rules for joint assessment for married couples are set out in sections 1017 and 1019 of the TCA. The rules for joint assessment for civil partners are included in section 1031C TCA.

Revenue will automatically apply this basis of assessment once a taxpayer gives notification that he or she has married or entered into a recognised civil partnership regardless of whether:

- one or both spouses or civil partners have taxable income; or
- either or both individuals are self-employed or taxed under the PAYE system.

However, this treatment by Revenue does not prevent a taxpayer from electing for Separate Assessment or Separate Treatment.

#### 4.2.1 Assessable Spouse/Nominated Civil Partner

In the case of married persons, the spouse who is chargeable to tax on the income of both spouses is known as the “assessable spouse”.

In the case of civil partners, the partner who is chargeable to tax on the income of both civil partners is known as the “nominated civil partner”.

The person chargeable to tax continues in this role unless the couple jointly elect to nominate the other person. He or she is responsible for filing tax returns, if required to do so, and paying any tax due.

#### 4.2.2 Nomination of Assessable Spouse/Nominated Civil Partner

A couple may elect which of them is to be chargeable to tax. This election is made by married couples by completing an [Assessable Spouse Election Form](#) and by civil partners by completing a [Nominated Civil Partner's Election Form](#).

The nomination must be made to the appropriate Revenue Branch/Division on or before 31 March in the tax year.

Where the election is made before the commencement of the tax year (1 January), a couple can ensure that the correct tax credits and standard rate band are allocated to each spouse or civil partner from the commencement of the tax year.

In the absence of an election, Revenue will automatically select the spouse or civil partner with the higher income to be the chargeable person for tax purposes.

Where such an automatic election is made, that person will continue to be chargeable to tax until:

- the couple jointly elect that the other spouse is to be chargeable to tax or,
- either spouse or civil partner opts for either Separate Assessment or Separate Treatment.

Where an eForm 12 is submitted by a couple at the end of the tax year, (for example to claim health expenses), either spouse or civil partner may complete the form. If the spouse who completes the form is not currently chargeable to tax, they will become chargeable to tax for that tax year only.

#### **Example 4**

Roger and Anna married in 2016 and are jointly assessed. Following their marriage, Roger and Anna jointly elected for Roger to be chargeable to tax (the assessable spouse).

In 2017, Anna incurred significant medical bills as a result of an accident. Anna completed an eForm 12 in April 2018 (for the year 2017) in order to claim tax relief on her medical expenses. Following the submission of this form, Anna became the assessable spouse for 2017.

Roger will continue to be the assessable spouse for tax years 2018 onwards unless:

- Anna submits an eForm 12 for any future year,
- the couple jointly elect that Anna shall become the assessable spouse, or

- either spouse opts for either Separate Assessment or Separate Treatment.

#### 4.2.3 Application of Credits, Reliefs and Rate Bands

In joint assessment cases the following rate bands and basic credits apply:

##### **Standard Rate Band (section 15 TCA)**

Where one spouse or civil partner is in receipt of income, the following amount is chargeable to income tax at the standard rate<sup>1</sup>:

From 2015-2017	€42,800
From 1 January 2018	€43,550
From 1 January 2019	€44,300

Where both spouses or civil partners are in receipt of income, the standard rate band is increased by the following amount:

From 2015-2017	The lesser of €24,800 or the income of the lower-earning spouse or civil partner
From 1 January 2018	The lesser of €25,550 or the income of the lower-earning spouse or civil partner
From 1 January 2019	The lesser of €26,300 or the income of the lower-earning spouse or civil partner

This increase is non-transferrable.

##### **Basic Credit (section 461 TCA)**

A basic personal tax credit of €3,330 is applicable to jointly assessed couples. This replaces the individual basic personal tax credit of €1,650 that was available to each individual previously.

Most reliefs and credits from income tax may be granted to the assessable spouse or nominated civil partner for the period they are jointly assessed. However, jointly assessed couples cannot transfer:

- the Employee Tax Credit;
- employment expenses; or
- the increase in the standard rate band.

Where Revenue does not receive a request for the allocation of tax credits and reliefs in a particular way, it will normally give all credits and reliefs (other than the other spouse's/civil partner's Employee Tax Credit, employment expenses and standard rate band increase) to the assessable spouse/civil partner.

<sup>1</sup> The standard rate is currently 20%

Couples taxed under Joint Assessment can specify how they wish their tax credits and standard rate band to be allocated between them (other than Employee Tax Credits, employment expenses and standard rate band increase) by completing a Form 12 online using myAccount.

Where changes are made, a new Tax Credit Certificate will issue within a few days with the amended details included.

If a refund is due at the end of the year, this will be repaid to each person in proportion to the amount of tax each has paid.

### Example 5

Philip and Mark are jointly assessed. Philip's total income for 2018 is his employment income of €45,000. His civil partner Mark has investment income of €26,000. Tax payable under joint assessment in the year 2018 is as follows:

Total Income for Philip and Mark €71,000

€69,100 x 20%	€13,820
€1,900 x 40%	<u>€760</u>
Total	€14,580

Less

Personal Tax Credit	€3,300
PAYE Tax Credit	<u>€1,650</u>
Total Credits	€4,950

Tax payable (€14,580 – €4,950) €9,360

### 4.3 Separate Assessment

Under separate assessment, each spouse or civil partner is assessed on his or her own income with tax credits and reliefs divided between them in accordance with rules set out in legislation. For married couples, the provisions are set out in section 1024 TCA, and for civil partners the provisions are set out in section 1031I TCA.

If separately assessed, each spouse or civil partner is taxed as a single person during the tax year. They can complete a single or a joint tax return. If they complete a joint tax return, it must include the income and expenses for both parties.

The following tax credits are divided equally:

- Married or Civil Partner's Personal Tax Credit
- Age Tax Credit
- Blind Person's Tax Credit
- Incapacitated Child Tax Credit

Any unused tax credits and reliefs, etc. (other than the Employee Tax Credit, employment expenses and standard rate band increase) can be transferred to the other spouse or civil partner. The tax credits may not generally be adjusted until after the end of the tax year.

Unused tax credits, reliefs and rate bands of one spouse or civil partner may be transferred in the same manner as in joint assessment cases. Separate assessment is also known as "separate assessment within joint assessment". The aggregate of the tax payable by each spouse or civil partner under separate assessment cannot exceed the tax payable had the parties elected to be jointly assessed.

#### 4.3.1 Election for Separate Assessment

A claim for separate assessment must be made in writing to Revenue. The claim to Revenue can be made by either spouse or civil partner and must be made between the 1st October of the preceding year and 31st March in the year that the couple want separate assessment to apply.

A claim to be assessed under separate treatment cannot be backdated and, once granted, it remains in place until it is withdrawn. Whichever spouse or civil partner initially makes the claim must also be the one to withdraw it.

#### Example 6

Jonathan and Mark are separately assessed. Jonathan's total income for 2018 is his employment income of €45,000. His civil partner Mark has investment income of €26,000. Tax payable under separate assessment in the year 2018 is as follows:

Jonathan's Income	
€34,550 x 20%	€6,910
€10,450 x 40%	<u>€4,180</u>
Total Tax	€11,090
Less	
Personal Tax Credit	€1,650
PAYE Tax Credit	<u>€1,650</u>
Total Credits	€3,300
Tax payable (€11,090 – €3,300)	€7,790

Mark's Income	
€26,000 x 20%	€5,200
Less	
Personal Tax Credit	<u>€1,650</u>
Tax payable (5,200 – €1,650)	<u>€3,550</u>
Combined Tax Payable	€11,340
(€7,790 + €3,550)	

Additional tax relief is available in the form of unused tax credits, reliefs and rate band. In this example, Mark can transfer his unutilised standard rate tax band of €8,550 (€34,550 – €26,000) to Jonathan. Jonathan can then recalculate his liability as follows:

Jonathan's Income	
€43,100 x 20%	€8,620
€1,900 x 40%	€760
Total	€9,380
Less	
Personal Tax Credit	€1,650
PAYE Tax Credit	<u>€1,650</u>
Total Credits	€3,300
Tax payable (€9,380 – €3,300)	€6,080

The full €8,550 can be transferred to Jonathan as his income taxed at the standard rate band will remain less than or equal to €43,550 i.e. the standard rate band available to the higher earner in a married couple.

Revised Combined Tax Payable	€9,630
(€6,080 + €3,550)	

Therefore, the net combined tax payable will be €9,630 (€11,340 – €1,710), the same amount of tax payable as under joint assessment.

Jonathan and Mark may transfer the rate bands by completing a Form 12 online using myAccount.

#### 4.4 Separate Treatment (Assessed as a Single Individual)

Under separate treatment, also known as single assessment, each spouse or civil partner is assessed and charged on his or her own income.

The rules for single assessment for married couples is set out in section 1016 TCA, and for civil partners it is included in section 1031B.

When separate treatment applies each spouse or civil partner:

- is taxed on his or her own income,
- receives tax credits and the standard rate band due to a single person,
- pays his or her own tax, and
- completes his or her own return of income form and claims his or her own tax credits.

The main difference between separate treatment and separate assessment is that, under separate treatment, one spouse's or civil partner's unused tax credits, reliefs and rate bands cannot be transferred.

Separate treatment often results in a higher aggregate tax liability for the couple as compared with separate assessment or joint assessment, if one spouse or civil partner does not earn sufficient income to avail of all his or her personal tax credits, reliefs or rate bands.

The Home Carer's Tax Credit cannot be claimed in respect of a spouse or civil partner who cares for a dependent person and who might otherwise qualify for the relief if assessed jointly or under separate assessment.

##### 4.4.1 Election for Separate Treatment

Separate treatment must be claimed for in writing to Revenue. Either spouse or civil partner can make the claim and the election lasts until withdrawn by the spouse or civil partner that made the claim. A claim for separate treatment must be made within the tax year (preferably at the beginning).



**Example 7**

Jonathan and Mark are subject to tax under separate treatment. Jonathan's total income for 2018 relates to employment income of €45,000. His civil partner Mark has investment income of €26,000. Tax payable under separate treatment in the year 2018 is as follows:

Jonathan's Income	
€34,550 x 20%	€6,910
€10,450 x 40%	<u>€4,180</u>
Total	€11,090
Less	
Personal Tax Credit	€1,650
PAYE Tax Credit	<u>€1,650</u>
Total Credits	<u>€3,300</u>
Tax payable (€11,090 – €3,300)	<u>€7,790</u>
Mark's Income	
€26,000 x 20%	€5,200
Less	
Personal Tax Credit	<u>€1,650</u>
Tax payable (5,200 – €1,650)	<u>€3,550</u>
Total tax payable under separate treatment (€7,790 + €3,550)	€11,340

## 5. Non-Residence – Aggregation of Income where One or Both Spouses/Civil Partners is/are Non-Resident

Entitlement to the joint tax credit and standard rate bands is dependent upon the assessable spouse or nominated civil partner being chargeable to tax in accordance with the aggregation basis of assessment or joint assessment. For married couples the rules are set out in section 1017 TCA and for civil partners they are contained in 1031C TCA.

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

[...]

### 5.1 Tax Treatment where only One Spouse/Civil Partner is Resident in the State and has Income Chargeable to Tax in the State.

Where only one spouse or civil partner is resident in the State and in receipt of income chargeable to tax in the State, he or she –

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

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

Aggregation may only be applied after the end of the tax year. The resident spouse or civil partner will need to complete a return of income, including a declaration of his or her spouse's or civil partner's income in order to receive the joint tax credit and the increased rate band.

Even if the non-resident spouse or civil partner has income, then, depending on the level of that income, a measure of relief may 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 the couple had been chargeable to tax on the basis of aggregation.

To avail of this treatment, the couple should make a specific election for aggregation basis after the end of the tax year. The resident spouse or civil partner will need to complete a return of income, including a declaration of his or her spouse's or civil partner's income in order to receive the joint tax credit and the increased rate band.

**Example 8**

In 2017, Peter has income of €45,000 from an Irish employment. Peter's spouse, who is non-resident, has foreign investment income of €10,000. Peter's income tax liability on the basis of separate treatment is:

Peter's Income for 2017: €45,000	
€33,800 x 20%	€6,760
€11,200 x 40%	€4,480
	<u>€11,240</u>
Less	
Personal Tax Credit	€1,650
PAYE Tax Credit	€1,650
Total Credits	<u>€3,300</u>
Tax payable for 2017 (€11,240 – €3,300)	<u>€7,940</u>

At the start of 2018, Peter decides to review his affairs and make a claim for aggregation relief for tax year 2017 by completing a return of income for 2017.

Resident Spouse (Peter's) Earnings	€45,000
Non-Resident Spouse Investment Income	€10,000
	<u>€55,000</u>
Taxed as follows:	
€52,800 x 20%	€10,560
€2,200 x 40%	€880
Tax	<u>€11,440</u>
Less	
Personal Tax Credit	€3,300
PAYE Tax Credit	€1,650
Total Credits	<u>€4,950</u>
Tax payable (€11,440 – €4,950)	€6,490
Tax attributable to Irish income €6,490 x (€45,000/€55,000)	€5,310
Additional relief due to the resident spouse (€7,940 - €5,310)	€2,630

Peter is entitled to additional relief of €2,630 after filing the return of income.

## 5.2 Cases where Both Spouses/Civil Partners are Non-Resident, but one Spouse/Civil Partner has Income Chargeable to Tax in the State

Where neither spouse or civil partner is resident in the State, but one spouse or civil partner is in receipt of income chargeable to tax in the State (e.g. income from exercising an employment in the State or in relation to Irish rental income), he or she:

- is generally 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 basic tax credits and reliefs or a proportion thereof in accordance with the provisions of section 1032 TCA, which provides for tax credits and allowances to be granted to non-resident in certain circumstances [Part 45-01-01](#).

Under 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 the State.

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

Where the couple are non-resident but one spouse or civil partner has income chargeable to tax in the State, if Revenue are satisfied that the other spouse or civil partner has no income and the earnings of the spouse or civil partner 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 or civil partner has income, then, depending on the level of that income, a measure of relief may 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 the couple had been chargeable to tax on the basis of aggregation.

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

**Example 9**

For 2018, both spouses are resident in the United Kingdom. One spouse has €10,000 from an Irish non-proprietary directorship and €22,000 from a UK 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 is:

**Tax liability without aggregation**

Irish directorship Income €10,000	
€10,000 x 20%	€2,000
Less	
Personal credit	€516
(€1,650 x €10,000/€32,000)	
PAYE credit	€516
(€1,650 x €10,000/€32,000)	
Total Credits	€1,032
Tax payable	
(€11,240 – €3,300)	€968

**Tax liability on aggregation basis**

Irish directorship	€10,000
U.K. employment	€22,000
Total Income	€32,000
€32,000 x 20%	€6,400
Less	
Personal Tax Credit	€3,300
PAYE Tax Credit	€1,650
Total Credits	€4,950
Tax chargeable	
(€6,400 - €4,950)	€1,450

Tax attributable to Irish income (€1,450 x €10,000/€32,000)	€453
Additional relief due (€968 - €453)	€515

Where the operation of section 1032 TCA (applied on the basis of a single treatment) produces a lower liability, that liability should not be increased by reference to these procedures. (For example, if in Example 9, 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 person's income is chargeable to tax at the higher rate.

## 6. Widowed Persons/Surviving Civil Partners

### 6.1 Tax Credits in Year of Death of Spouse/Civil Partner

The tax treatment in the year of death will depend on how the couple were assessed prior to the death of the spouse or civil partner.

#### 6.1.1 Taxed under Joint Assessment

Where the assessable spouse or nominated civil partner dies, the surviving spouse or civil partner will be entitled to the increased basic personal tax credit in accordance with section 461(b) TCA. He or she will be assessed on his or her income for the period from the date of death to the end of the year.

In the case of the death of the non-assessable spouse or non-nominated civil partner, the surviving spouse or civil partner continues to be entitled to the married person's tax credit and appropriate standard rate band for the full year. He or she will be assessed on his or her own income for the full tax year plus the late spouse or civil partner's income from 1 January to the date of death.

#### Example 10

Kris and Ashley are taxed under joint assessment. Kris is the nominated civil partner. Ashley dies in 2018. Kris is taxed as follows:

Year	Rate Band	Personal credits	Taxable income
2017	€42,800 @ 20% plus increase up to €24,800. Balance taxed at @ 40%	Married €3,300	Joint income from 1 January–31 December
2018 (year of death)	€43,550 @ 20% plus increase up to €25,550. Balance taxed @ 40%	Married €3,300	Own income from 1 January-31 December  Ashley's income from 1 January to date of death

#### Example 11

Kris and Ashley are taxed under joint assessment. Kris is the nominated civil partner. Kris dies in 2018. Ashley is taxed as follows:

Year	Rate Band	Personal credits	Taxable income
2018 (year of death)	€34,550 @ 20% Balance @ 40%	Married (year of death) €3,300	Own income from date of Kris's death to 31 December

### 6.1.2 Taxed under Separate Treatment

If the couple 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 or civil partner is that the surviving spouse or civil partner is entitled to the surviving person's tax credit (section 461(b) TCA) in substitution for the single tax credit for the year of death.

### 6.1.3 Taxed under Separate Assessment

In the case of the death of a spouse or civil partner where separate assessment is applicable, the status of the couple should be examined to determine which person would have been the assessable spouse or civil partner under joint assessment (i.e. if separate assessment had not been claimed). This is to ensure that the tax payable in the year under joint assessment is the same as tax payable under separate assessment.

The person who would have been the assessable spouse or nominated civil partner is:

- the person who was the assessable spouse or nominated civil partner prior to the election for separate assessment being made; or
- in the absence of a prior election, the spouse or civil partner with the higher income.

If the person who died would have been the non-assessable spouse or non-nominated civil partner:

- The deceased spouse or civil partner is assessable on his or her income from 1 January to the date of death and is entitled to the single person's basic tax credit and single rate band. Unused allowances, reliefs and rate bands are transferrable (in accordance with the rules of joint assessment generally) to the surviving spouse or civil partner.
- The surviving spouse or civil partner is assessable on his or her income for the full year and is entitled to the single person's basic tax credit and single rate band as well as the unused allowances, reliefs and rate bands of the deceased spouse or civil partner.

If the spouse or civil partner who died would have been the assessable spouse or nominated civil partner:

- The deceased spouse or civil partner is assessable on his or her income from 1 January to the date of death and is entitled to the single person's basic tax credit and single rate band. Unused allowances, reliefs and rate bands are transferrable to the surviving spouse or civil partner for the pre-death period.
- The surviving spouse or civil partner:



- in the pre-death period, is assessable on his or her income from 1 January until the date of death and is entitled to the single person's basic tax credit and single rate band as well as the unused allowances, reliefs and rate bands of the deceased spouse or civil partner.
- in the post death period, is assessable on his or her income from the date of death to 31 December and is entitled to a new single person's rate band and increased basic personal tax credit of €3,300 for this period.

#### 6.1.4 Age Exemption and Marginal Relief

Even though a widowed spouse or surviving civil partner may be in receipt of a higher personal tax credit, the exemption limit applicable to that person for the purposes of section 188 TCA is the limit applicable to a single person. This is the case as although the personal tax credit he or she receives is the same amount as that allowed to a married person or a civil partner, the credit is granted under subparagraph (b) rather than subparagraph (a) of section 461 TCA.

In joint assessment cases where the non-assessable spouse or non-nominated civil partner dies, the surviving spouse or civil partner will retain their higher exemption limit for the year of bereavement as he or she remains entitled to the joint personal tax credit under section 461(a) TCA in that year.

See [Tax and Duty Manual \(TDM\) Part 07-01-18](#) – Tax Exemption and Marginal Relief – for further information.

## 6.2 Single Person Child Care Credit

In the year of bereavement, the Single Person Child Carer Credit (SPCCC) cannot be granted to a surviving spouse or civil partner with children. This is because the SPCCC cannot be claimed by someone who is either:

- claiming an increased personal tax credit under section 461(b) TCA; or
- retaining the joint personal tax credit

in the year of bereavement.

In the years following the year of bereavement, the credit may be available where the criteria are met (See [TDM Part 15-01-41](#) – Single Person Child Carer Credit - for further information). The individual may be able to claim both

- the SPCCC and
- the Widowed Parent Tax Credit, (section 463). (See [Chapter 6.4](#))

### 6.3 Additional Tax Credit for Certain Widowed Persons/Surviving Civil Partners

Following the year of bereavement, a widowed person or a surviving civil partner who does not qualify for the SPCCC (See Chapter 6.2) is entitled to the following basic personal tax credits:

- The single person basic tax credit under section 461(c) TCA, currently €1,650;
- An additional credit under section 461A TCA, currently €540.

This additional €540 credit is not available to a widowed person or a surviving civil partner who marries or enters into a new civil partnership.

### 6.4 Widowed Parent Tax Credit

The provisions covering the tax credit for a widowed person or a surviving civil partner who has a qualifying child resident with him or her are contained in section 463 TCA.

To qualify for the credit for a particular tax year, the following conditions must be satisfied:

- the claimant has not married or entered into a civil partnership before the commencement of the year (note, however, that the credit is available to a claimant, who marries or enters into a civil partnership during the year); and
- the claimant has a qualifying child resident with him or her for the whole or part of the year.

The meaning of qualifying child for the purposes of this credit is the same as that for the SPCCC (See [TDM Part 15-01-41](#) – Single Person Child Carer Credit - for further information).

Note the following:

- this credit is in addition to the single person basic tax credit under section 461(c) TCA, currently €1,650;
- this credit is not due in the year of bereavement (for details of personal credits due in year of bereavement (see [Chapter 6.1](#));
- the single person child carer credit (SPCCC) may also be claimed in addition to this credit (see [Chapter 6.2](#)); and
- the credit is not due for any year where a claimant is cohabitating.

**Amount of the Tax Credit**

The tax credit is due for each of the five years following the year of bereavement as follows:

First Year:	€3,600
Second year:	€3,150
Third year:	€2,700
Fourth year	€2,250
Fifth year	€1,800

**Example 12**

For a taxpayer bereaved in 2016 the widowed parent tax credit is:

2017:	€3,600
2018:	€3,150
2019:	€2,700
2020:	€2,250
2021:	€1,800

## 7. Separation/Divorce/Dissolution

### 7.1 Income Tax in Year of Separation, Divorce or Dissolution

The tax treatment in the year of separation, divorce or dissolution will depend on how the couple were assessed prior to the separation, divorce or dissolution.

#### 7.1.1 Joint Assessment

The assessable spouse or nominated civil partner continues to be entitled to the married person's tax credit and appropriate standard rate band for the full year. He or she will be assessed on his or her own income for the full tax year plus the former spouse or civil partner's income from 1 January to the date of separation.

The non-assessable spouse or non-nominated civil partner will be assessed on his or her income for the period from the date of separation to the following 31 December. He or she will be entitled to a single person's basic tax credit under section 461(c) TCA (currently €1,650) and the Single Person Child Carer Credit (SPCCC) (see [TDM Part 15-01-41](#) – Single Person Child Carer Credit - for further information) where the qualifying criteria are met.

#### 7.1.2 Separate Assessment

The rules for jointly assessed couples in the year of separation are similarly applied to separately assessed couples.

In the case of separation where separate assessment is applied, the status of the couple should be examined to determine which person would have been the assessable spouse or nominated civil partner under joint assessment (i.e. if separate assessment had not been claimed). This is to ensure that the tax payable in the year under joint assessment is the same as tax payable under separate assessment.

The person who would have been the assessable spouse or nominated civil partner is:

- the person who was the assessable spouse or nominated civil partner prior to the election for separate assessment being made, or
- in the absence of a prior election, the spouse or civil partner with the higher income.

The assessable spouse or civil partner is assessable on his or her income from 1 January to the date of separation and is entitled to the single person's basic tax credit and single rate band. Unused allowances, reliefs and rate bands are transferrable to the non-assessable spouse or civil partner for the pre-separation period.

The non-assessable spouse or civil partner:

- in the pre-separation period, is assessable on his or her income from 1 January until the date of separation and is entitled to the single person's basic tax credit and single rate band and any unused allowances, reliefs and rate bands are transferrable to the assessable spouse or civil partner for the pre-separation period; and
- in the post separation period, is assessable on his or her income from the date of separation to 31 December and is entitled to a new single person's basic tax credit and single rate band for this period.

### 7.1.3 Separate Treatment (Single Assessment)

If the couple were assessed on the basis of separate treatment prior to the date of separation, there should be no change in their tax treatment in the year of separation, except that the single person child carer credit (SPCCC) may be available where the qualifying criteria have been met by either spouse or civil partner (see [TDM Part 15-01-41](#) – Single Person Child Carer Credit - for further information).

## 7.2 Maintenance of Spouses /Civil Partners Living Apart

Special income tax rules exist for:

- couples who are living apart;
- couples who have divorced or dissolved their civil partnerships; and
- certain cohabitants who have ended their relationship

and who have entered into legally enforceable maintenance arrangements.

For married couples, the rules are set out in sections 1025 and 1026 TCA and for civil partners, the provisions are set out in sections 1031J and 1031K TCA.

The rules for maintenance payments between cohabitants are set out in [TDM Part 44B-01-01](#) - Tax Treatment of Former Cohabitants.

“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 –
  - the dissolution or annulment of a marriage; or
  - such separation of the parties to a marriage as is referred to in section 1015(2) (i.e. legally separated or living apart permanently);
- an order of a court, under Part 5 or 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; and
- a 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 –

- the dissolution or annulment of a civil partnership, or
- living separately in the circumstances referred to in section 1031A(2)

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

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

- (a) the paying spouse or civil partner will make the payments gross;
- (b) the paying spouse or civil partner 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 marriage or partnership 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:** Tax relief may be granted in respect of direct and indirect payments; e.g. medical insurance paid by the former spouse or civil partner may be treated as maintenance payments.

Only payments made for the benefit of the other spouse or civil partner will qualify for tax relief. 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.

Supporting documentation may be requested by Revenue to confirm the correct tax treatment.

### 7.3 Foreign Divorce/Dissolution

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.

### 7.4 Aggregation Basis ('Joint Assessment for Separated Couples')

There is an alternative basis of assessment – aggregation - for couples who have a legally enforceable maintenance arrangement under section 1025 or 1031J TCA.

This basis of assessment is set out in section 1026 TCA for married couples and for civil partners it is provided for in section 1031K TCA.

This alternative basis of assessment applies to all couples who are living apart in circumstances that are likely to be permanent and couples whose marriage or civil partnership has been dissolved under any of the following:

- Section 5 of the Family Law (Divorce) Act 1996;
- Section 110 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, or deemed to be such a dissolution under Section 5(4) of that Act; and
- the law of a country or jurisdiction other than the State, being a divorce or dissolution 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 party has entered into another marriage or civil partnership.

Where an election is made by both parties for the aggregation basis of assessment, the maintenance payments are ignored for tax purposes; thus:

1. the payer will get no deduction for the maintenance payments; and
2. the recipient will not be taxable on the maintenance.

Where both individuals have income, the couple will be assessed as if an application for separate assessment had been made under section 1023 or 1031H TCA.

### 7.5 Charging of Recipient under Case IV in Respect of Maintenance Payments

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.



## Appendix – Foreign Relationships Recognised as Civil Partnerships in the State

Lists of legal relationships recognised as Civil Partnerships in the State are included in the following Statutory Instruments:

- [S.I. No. 649 of 2010](#)
- [S.I. No. 642 of 2011](#)
- [S.I. No. 505 of 2012](#)
- [S.I. No. 490 of 2013](#)
- [S.I. No. 212 of 2014](#)
- [S.I. No. 132 of 2016](#)

If any relationship listed in the above instruments is a marriage that was contracted lawfully between two persons of the same sex in another jurisdiction, that marriage will be recognised automatically in Ireland as a marriage from 16 November 2015, or from the date of marriage, if later.