

Capital Gains Tax and married persons (S.1028)

Part 44-02-01

This document should be read in conjunction with section 1028
of the Taxes Consolidation Act 1997

Document last reviewed February 2022

Introduction

Section 1028 of the Taxes Consolidation Act (“TCA 1997”) deals with the treatment of married persons for Capital Gains Tax (“CGT”) purposes. It sets out the rules relating to joint assessment, makes provision for separate assessment and provides rules for the transfer of unutilised losses between spouses. It also provides rules for the treatment of disposals between spouses, and subsequent disposals of any assets which had previously been disposed of between spouses.

1.1 Joint assessment

CGT on the chargeable gains of a married woman living with her husband is to be assessed and charged on the husband. The total tax charged is not to be different from what it would be if each spouse were to be assessed separately. The expression “living with” is to be interpreted in accordance with **section 1015(2) TCA 1997**, i.e. a husband and wife will be treated as living with each other unless they are separated by a court Order or Deed of Separation or are in fact separated in such circumstances that the separation is likely to be permanent.

In this connection, the residence, etc., status of each spouse should be considered individually to decide whether or not that person is chargeable to CGT.

1.2 Separate assessment

Joint assessment will not apply for a year of assessment if, on or before 1 April of the following year, either spouse makes an application to that effect. This effective application for separate assessment remains in force for future years of assessment until a notice of withdrawal of the application is made. Such a notice of withdrawal is not valid unless it is made on or before 1 April in the year following the year of assessment for which the notice of withdrawal is given. If in a year of assessment one spouse has allowable losses which he or she cannot utilise because of an insufficiency of chargeable gains (from which those allowable losses would be deductible under **section 31 TCA 1997**), the balance of the losses after being set off against that spouse’s gains (if any) can be offset against the other spouse’s gains in the year of assessment. This treatment does not operate for a year of assessment where either spouse makes an application to that effect on or before 1 April of the following year.

1.3 Transfer of assets between spouses

Subject to the following paragraph, where an asset is transferred from one spouse to another, a chargeable gain or allowable loss does not arise.

The no gain/no loss rule does not apply to the disposal of trading stock between spouses (or if an asset is acquired as trading stock). Neither does it apply if the acquiring spouse could not be taxed in the State (for the year of assessment in which the acquisition occurs) on a disposal of the asset in that year and a gain had accrued on that disposal. Such a scenario might arise where the taxing rights on such a disposal, under a Double Taxation Agreement, rests with a foreign jurisdiction.

1.4 Base cost of assets transferred between spouses

Where the no gain/no loss treatment outlined above applies in relation to the disposal of an asset and the spouse who acquired the asset subsequently disposes of it other than to the spouse from whom it was acquired he or she is treated as if he or she had acquired it at the time and cost at which it was originally acquired by the other spouse.

1.5 Assets held jointly

Where an asset is owned by a husband and wife jointly, and each has subscribed some part of the purchase money, each (in the absence of some express agreement to the contrary) should be regarded as the owner of a half share in the asset. If all the purchase money was paid by one spouse, [Tax and Duty Manual Part 19-03-03](#) applies.

1.6 Subsequent disposal

Where an asset has been transferred between a husband and wife the original acquisition of the asset by the one spouse and the final disposal of it by the other should be treated as made by one person.