Separated Spouses: transfer of assets

Part 44-02-02

This document should be read in conjunction with section 1030 of the Taxes Consolidation Act 1997

Document last reviewed August 2023

Introduction

Section 1030 of the Taxes Consolidation Act 1997 ("TCA 1997") applies where a person disposes of an asset to his/her spouse as a consequence of—

- an order made on or following a judicial separation,
- a deed of separation,
- a relief order under the **Family Law Act 1995**, or
- an order of a foreign court, which is recognised as valid in the State, made on or following a divorce or legal separation of spouses.

2.1 Relief disallowed

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, rested with a foreign jurisdiction.

2.2 Subsequent disposal

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.