

Divorced persons: transfer of assets (S.1031)

Part 44-02-03

This document should be read in conjunction with Section 1031 of the Taxes Consolidation Act 1997

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Introduction

Section 1031 of the Taxes Consolidation Act 1997 (“TCA 1997”) provides that where a person who has obtained a decree of divorce under the Family Law (Divorce) Act 1996 disposes to their former spouse certain assets pursuant to a court order under that Act, a charge to Capital Gains Tax does not arise. The section also provides that where the former spouse to whom the disposal is made subsequently disposes of the asset, they are treated as having acquired it at the same time and cost as the other spouse.

3.1 Application

Section 1031 TCA 1997 applies where a person obtains a decree of divorce under the Family Law (Divorce) Act 1996 and disposes of certain assets to their former spouse pursuant to a court order under that Act.

3.2 Trading stock / taxing rights

Subject to the following paragraph, where an asset is transferred from one spouse to another by virtue of or in consequence of an order made under Part III of the Family Law (Divorce) Act 1996 following a divorce, 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.

3.3 Acquisition date and cost

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 they are treated as if they had acquired it at the time and cost at which it was originally acquired by the other spouse.