

[44a.01.01] Tax treatment of Civil Partners

Revised March 2016

Following the passing of The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 the Taxes Consolidated Act 1997 was amended to introduce legislation to provide for the tax treatment of Civil Partners.

This manual explains the correct tax treatment of Civil Partners under the following headings –

Paragraph 1	Year of assessment in which a civil partnership is registered in the State;
Paragraph 2	Basis of assessment for Civil Partners;
Paragraph 3	Cases involving non-residence;
Paragraph 4	Year of death of either civil partner;
Paragraph 5	Maintenance payments where the civil partnership has been annulled or dissolved or where civil partners are separated or living apart;
Paragraph 6	Capital Gains Tax on transfer of assets between civil partners as part of a separation agreement or on dissolution of the civil partnership.

1. Year of assessment in which a Civil Partnership is registered in the State (Taxes Consolidated Act 1997 - section 1031E)

Definitions

“income tax month” means a calendar month;

“year of registration” in relation to individuals who are civil partners means –

- (a) where the civil partnership was registered in the State, the year of assessment in which their civil partnership was first registered; and
- (b) where the legal relationship was entered into in another State, and which is recognised by way to an order made under section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, the year of assessment in which, by virtue of subsection (2) of that section, the civil partners are so recognised under the law of the State.

Note: In cases of doubt as to whether a foreign civil partnership is recognised for tax purposes in the State please contact Income and Capital Taxes Division, Personal Income Tax (No. 1) Branch, following the Guidelines on Revenue's Service to Practitioners and Business Taxpayers contained in the Manual at Part 37-00-00a.

1.1 Year of registration

In the year of registration of a civil partnership the civil partners will continue to be taxed as single individuals during that year of assessment. Additional relief for the year of registration may be due on review of the civil partners' liability where the aggregate of the tax paid and payable by each the civil partner as a single individual for the year of assessment exceeds the tax that would have been payable if the civil partners had been jointly assessed to tax throughout the year of registration. Any overpayment of tax to be repaid will be divided between the civil partners based on the tax payable or paid by each civil partner.

Example

A couple registered a civil partnership on 10/7/2013 and details of the income of the civil partners are €48,000 and €24,000 respectively.

Tax payable as single individuals

2013			
<u>1st Civil Partner</u>		<u>2nd Civil Partner</u>	
Income		Income	24,000
	48,000		
32,800 x 20%	6,560	24,000 x 20%	4,800
15,200 x 41%	<u>6,232</u>		
	12,792		4,800
Tax Credits		Tax Credits	
Personal Tax		Personal Tax	
Credits	1,650	Credits	1,650
PAYE Tax		PAYE Tax	
Credit	1,650	Credit	1,650
	<u>3,300</u>		<u>3,300</u>
Tax payable	9,492	Tax payable	1,500
Combined			
tax payable	9,492 + 1,500		10,992
Tax payable under joint assessment			
Income	48,000 + 24,000		72,000
	65,800 x 20%	13,160	
	6,200 x 41%	<u>2,542</u>	
		15,702	
Personal Tax			
Credits	3,300		
PAYE Tax			
Credit	<u>3,300</u>	<u>6,600</u>	
		9,102	

Tax payable as single individuals	10,992
Tax payable under joint assessment	<u>9,102</u>
Difference	1,890

Date of registration of Civil Partnership	10/07/2013
Repayment	$1,890 \times 6/12 = \text{€}945$

Repayment	$945 \times 9492/10992$	€816.04	(1 st Civil Partner)
	$945 \times 1500/10992$	€128.96	(2 nd Civil Partner)

1.2 Entitlement to the Single Person Child Carer Credit in the year of registration

For 2014 and subsequent years entitlement to the Single Person Child Carer Credit (SPCCC) should be determined by reference to the circumstances applying on 1 January in the year of assessment. If the registered civil partnership takes place after that date and, prior to the registration of the civil partnership, either civil partner had been entitled to SPCCC, the credit should not be withdrawn for the year of registration of the civil partnership.

In determining any additional relief due on review under subsection (3) of **section 1031E** the SPCCC should be excluded from the computation of tax payable on the basis that both civil partners had been living together throughout the year.

The SPCCC should be withdrawn for future years for either civil partner who had previously qualified for it, as parties to a civil partnership, who are not separated or living apart, are not entitled to the credit.

1.3 Entitlement to the one-parent family tax credit in the year of registration (2011 to 2013 only)

The One-Parent Family Tax Credit (OPFTC) was ceased with effect from 31 December 2013. For the years 2011 to 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 the registered civil partnership took place after that date and, prior to the registration of the civil partnership, either civil partner had been entitled to one-parent family tax credit, the credit should not be withdrawn for the year of registration of the civil partnership.

However, in determining any additional relief due on review under subsection (3) of **section 1031E** the OPFTC should be excluded from the computation of tax payable on the basis that both civil partners had been living together throughout the year.

2.. Basis of assessment for Civil Partners (Taxes Consolidation Act 1997 sections 1031B, 1031C, 1031D, 1031H)

For full information on the basis of assessment see Revenue leaflet IT2
<http://www.revenue.ie/en/tax/it/leaflets/it2.html>

3. Taxation of Civil Partners – Aggregation of income of civil partners - cases involving non-residence

Entitlement to the joint tax credit and standard rate bands is dependent upon the nominated civil partner being chargeable to tax in respect of the joint total incomes of both civil partners in accordance with section 1031C TCA 1997 i.e. aggregation basis of assessment or joint assessment

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

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

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

In cases where only one civil partner is resident in the State and that civil partner has income chargeable to tax in the State, if satisfied that the other civil partner has no income and the earnings of the civil partner 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 civil partner 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 civil partners had been chargeable to tax on the basis of aggregation -see Example 1 (below).

To avail of this practice, the civil partners should make a specific election for aggregation basis and the 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 civil partners including income not chargeable to Irish tax). In cases of difficulty, a separate return should be requested from each civil partner.

3.2 Cases where both civil partners are non-resident but one civil partner has income chargeable to tax in the State

The most common type of case is that of a civil partner who is a cross-border worker or who is working in this country on a temporary assignment.

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

- i. is chargeable to Irish tax on that income on the basis of separate treatment as a single person; and
- ii. 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.

subject of course, to the Practice outlined below.

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

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.

Where both civil partners are non-resident but one civil partner has income chargeable to tax in the State, if Revenue are satisfied that the other civil partner has no income and the earnings of the 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 civil partner 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 civil partners 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 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 civil partners including income not chargeable to Irish tax). In cases of difficulty, a separate return should be requested from each civil partner.

Example 1

In 2013, an individual has income of €45,000 from an Irish employment. His/her civil partner, 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
€32,800 @ 20%	€6,560	
€12,200 @ 41%	<u>€5,002</u>	€11,562
Credits		
Personal credit	€1,650	
PAYE credit	<u>€1,650</u>	<u>€3,300</u>
		€8,262

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

Earnings (Resident Civil Partner)	€45,000	
Investment Income (Non-Resident Civil Partner)	<u>€10,000</u>	
	€55,000	
€51,800 @ 20%	€10,360	
€3,200 @ 41%	<u>€ 1,312</u>	€11,672
Credits		
Personal credit	€3,300	
PAYE credit	<u>€1,650</u>	<u>€4,950</u>
		€6,722

The tax attributable to the Irish income is –

$$€6,722 \times \frac{45,000}{55,000} = €5,500$$

The additional relief due to the resident civil partner is –

$$€8,262 - €5,500 = €2,762$$

The following material is either exempt from or not required to be published under the Freedom of Information Act 1997.

[...]

Example 2

For 2013, civil partners are resident in the United Kingdom. One civil partner has €10,000 from an Irish non-proprietary directorship and €22,000 from a U.K. employment. The other civil partner has no income.

The civil partner'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
Personal credit €1,650 x $\frac{10,000}{32,000}$	= €516

$$\text{PAYE credit} \quad \frac{10,000}{\text{€1,650} \times 32,000} = \text{€516} \quad \frac{\text{€1,032}}{\text{€968}}$$

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

Irish directorship	€10,000
U.K. employment	<u>€22,000</u>
	€32,000
€32,000 @ 20%	€6,400
Personal credit	€3,300
PAYE credit	€1,650
	<u>€4,950</u>
	€1,450

The tax attributable to the Irish income is –

$$\frac{10,000}{\text{€1,450} \times 32,000} = \text{€453}$$

The additional relief due is –

$$\text{€968} - \text{€453} = \text{€515}$$

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 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 involving a charge at the higher rates.

4. Tax credits in the year of death of a civil partner

The tax credits in the year of death will depend on how the civil partners were assessed prior to the death of the civil partner.

4.1 Taxed under joint assessment prior to the death of a civil partner

If the late civil partner was the "nominated civil partner", i.e. the person responsible for making a joint tax return on behalf of both civil partners, the surviving civil partner will be entitled to the increased basic personal tax credit in accordance with section 461(b). The income to be assessed is in respect of the period from the date of death to the following 31 December. The widowed person's or surviving civil

partner's standard rate band (or increased rate band if you have dependent children) will apply for this period.

In the case of death of the other civil partner the “nominated civil partner” is entitled to the increased civil partner's tax credit and appropriate standard rate band for the remainder of the tax year. The nominated civil partner will be assessed on his/her own income for the full tax year plus the late civil partner's income from 1 January to the date of death.

4.2 Taxed as single persons

If the registered civil partners were assessed on the basis of separate treatment prior to the death of the nominated civil partner's death, the only alteration in the tax credits and rate bands by reason of the death of the nominated civil partner is that the surviving civil partner is entitled to the surviving person's tax credit 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 the “nominated civil partner” where separate assessment is applicable the other civil partner is entitled to an allocation of part of his/her nominated civil partner's 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 leaflet IT41 <http://www.revenue.ie/en/tax/cat/leaflets/it41.html>

5. Maintenance of civil partners living apart (Taxes Consolidated Act 1997 section 1031J and 1031K)

“maintenance arrangement” means -

- (a) an order of a court, under Part 5 or 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

or

- (b) 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 —
 - (i) the dissolution or annulment of a civil partnership, or
 - (ii) 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.

5.1 Section 1031J of the TCA 1997 provides that in relation to maintenance payments where civil partners are living separately and payments are made by one civil partner for the benefit of his/her civil partner or former civil partner -

- (a) the civil partner (payer) will make the payments gross;

- (b) the civil partner (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 civil partner;
- (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.

Alternatively where –

- (a) a civil partnership has **not** been dissolved or annulled -

section 1031K TCA 1997 provides that where both parties are resident in the State for the year, **they may jointly elect** under **Section 1031D TCA 1997** for aggregation basis. In this event, the payer will get no deduction for the maintenance payments nor will the recipient be taxable on them. If the recipient has other income, however, the couple will be assessed as if an application for separate assessment had been made under **Section 1031H TCA 1997**,

or

- (b) Civil partnership **has** been dissolved under either-

- (I) 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,

or

- (II) the law of a country or jurisdiction other than the State, being a dissolution that is entitled to be recognized as valid in the State

and

- (i) both civil partners are resident in the State for tax purposes for the year of assessment, and
- (ii) neither civil partner has entered into another civil partnership, or married

then the couple may jointly elect for aggregation as if their civil partnership had not been dissolved.

Where the **maintenance arrangement** provides for the payment, for the benefit of a **child** (whether paid to the recipient or to any other person), 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 other civil partner,
- (c) the civil partner will be regarded as having contributed, to the extent of such payments, to the maintenance of the child for the purposes of a claim

to incapacitated child allowance or part thereof under Section 465(6) TCA 1997.

5.2 Charging of recipient under Case IV in respect of maintenance payment.

If the recipient civil partner is employed it may be possible to restrict this Case IV source from the tax credits.

Relevant sections of the Taxes Consolidated Act 1997 are **sections 1031J and 1031K**.

Leaflet IT3 <http://www.revenue.ie/en/tax/it/leaflets/it3.html>

6. Joint assessment for civil partners for Capital Gains Tax purposes

Civil partners living together may nominate which partner is to be the assessable person for the purposes of Capital Gains Tax – **section 1031M**. Allowable losses of one partner may be used in determining the liability of the other civil partner.

The transfer of assets between the civil partners in a year of assessment shall be on the basis of “no gain, no loss”.

6.1. Capital Gains Tax on the transfer of assets between separated civil partners, or following the dissolution of a civil partnership

Where by virtue of -

- (a) an order made under Part 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, or following the granting of a decree of dissolution under section 5(4) of that Act, or
- (b) a deed of separation, agreement, arrangement or any other act giving rise to a legally enforceable obligation, and made or done as a result of separation in the circumstances referred to in section 1031A(2),

either civil partner disposes of an asset to the other civil partner, that transfer shall be on the basis of “no gain, no loss” – section 1031O.

This provision does not apply in circumstances where the civil partner acquiring the asset is not subject to tax in the State in the year in which the acquisition took place.