

Transfers of Assets between Civil Partners

Part 44a-02-01

This document should be read in conjunction with sections 1031M and 1031O of the Taxes Consolidation Act 1997

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Introduction

Chapter 2 of Part 44a of the Taxes Consolidation Act 1997 (“TCA 1997”) provides for the Capital Gains Tax (“CGT”) assessment of civil partners, the treatment of transfers of assets between civil partners and the treatment of subsequent disposals of assets which had previously been transferred between civil partners (section 1031M TCA 1997). It also provides for the rules regarding the transfer of assets where a civil partnership is dissolved (section 1031O TCA 1997).

1.1 Civil Partnerships - Assessment and transfer of assets

Section 1031M TCA 1997 provides that civil partners living together may nominate which partner is to be the assessable person for the purposes of CGT.

The transfer of assets between the civil partners is treated as having been made on a “no gain, no loss” basis. This treatment does not apply where the civil partner acquiring the asset could not be charged to CGT in Ireland in respect of a gain on a subsequent disposal of that asset in the year in which the acquisition took place.

The relief does not apply to trading stock.

Allowable losses of one civil partner in a tax year may be offset against gains of the other civil partner.

Any subsequent disposal by the civil partner who acquired the asset is treated as if that civil partner had acquired it at the same time and cost at which it was originally acquired by the other civil partner.

Joint assessment will not apply for a year of assessment if, on or before 1 April of the following year, either civil partner makes an application that joint assessment will not apply. 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.

1.2 Transfers of assets where civil partnership dissolved

Section 1031O TCA 1997 provides that 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 where the civil partners are living apart and reconciliation is unlikely,

either civil partner disposes of an asset to the other civil partner, that disposal is treated as having been made on a “no gain, no loss” basis.

This treatment does not apply in circumstances where the civil partner acquiring the asset could not be subject to CGT in Ireland in respect of a gain on a subsequent disposal of that asset in the year in which the acquisition took place.

The relief does not apply to trading stock.

Any subsequent disposal by the civil partner who acquired the asset is treated as if that civil partner had acquired it at the same time and cost at which it was originally acquired by the other civil partner.