

Tax Treatment of Former Cohabitants

Payments arising under a maintenance arrangement or asset transfers on cessation of the relationship

Part 44b-01-01

This document should be read in conjunction with sections 1031P, 1031Q and 1031R of Taxes Consolidation Act 1997

Document last updated February 2018

Table of Contents

1. Introduction.....	3
2. Tax position of a legally enforceable maintenance arrangement	3
3. Cessation of income tax relief.....	4
4. Capital Gains Tax on the transfer of assets between former cohabitants – section 1031R Taxes Consolidation Act 1997	4
Appendix 1 – Definitions.....	5

1. Introduction

Sections 1031P and 1031Q Taxes Consolidation Act 1997 contain the provisions for the taxation of maintenance payments between cohabitants where the relationship ends.

Key definitions are set out in Appendix 1.

2. Tax position of a legally enforceable maintenance arrangement

In the case of former cohabitants **only** maintenance arrangements made under section 175 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 will give rise to a legally enforceable arrangement which will qualify for tax relief. The application for the maintenance order must be made by a qualified cohabitant (see Appendix 1).

Tax relief for the maintenance payment is only allowed in respect of the payment made for the support of the qualified cohabitant. Broadly, the tax treatment is similar to the tax treatment of separated spouses or former civil partners.

The relief is available as follows:

- The cohabitant making the payments (payer) will make the payments gross
- The 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 qualified cohabitant
- The recipient will be taxable under Case IV, Schedule D, in respect of such maintenance payments received
- Both individuals will be taxed as single persons

3. Cessation of income tax relief

Tax relief for maintenance payments will cease if the qualified cohabitant:

- marries or re-marries,
 - enters into a recognised foreign marriage, or
 - enters into a civil partnership (**applies on or before 15 November 2015 only¹**)
;
- or
- enters into a recognised foreign partnership, which is recognised by virtue of section 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (**applies on or before 15 May 2016 only¹**).

4. Capital Gains Tax on the transfer of assets between former cohabitants – section 1031R Taxes Consolidation Act 1997

Where an order is made under section 174 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, on or following on from the ending of a cohabiting relationship and, under that order, either of the cohabitants disposes of an asset to the other cohabitant, the cohabitant disposing of the asset is treated as if no gain or loss arose on the disposal. This treatment does not apply where the individual acquiring the asset could not be charged to capital gains tax in the State, in respect of a gain on that disposal, if that individual had disposed of the asset in the year in which the acquisition took place. This is an anti-avoidance provision to deal with the situation where an individual is non-resident and a double tax treaty gives the right to tax the asset to the country in which the individual resides.

Any subsequent disposal by the cohabitant who acquires the asset will be treated as if he/she had acquired it at the time and cost at which it was originally acquired by the other cohabitant.

¹ Following the passing of Marriage Act 2015 :

- (a) couples can no longer enter into civil partnerships in Ireland on or after 16 November 2015, and
- (b) civil partnerships entered into abroad on or after 16 May 2016 are not recognised in Ireland.

Appendix 1 – Definitions

Sections 1031P and 1031Q TCA 1997 contain the following definitions:

Cohabitant	Has the same meaning as in section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.
Qualified cohabitant	<p>Has the same meaning as in section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.</p> <p>It refers to a party who was in a cohabiting relationship for at least 5 years, or at least 2 years where the parties involved are parents of a dependent child.</p>
Maintenance arrangement	Means an order of a court under section 175 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 giving rise to a legally enforceable obligation.
Payment	Means a payment or part of a payment, as the case may be.