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Marriage, separation and divorce

Major personal milestones with implications for tax.

Relationship matters

For tax purposes, the same rules apply whether you are married or in a registered civil partnership. The terms 'spouse' and 'couple' are used here to refer to both relationships.

If you are cohabiting — living with someone without a formal, legal basis to the relationship — the basic tax position can be different. Though some coverage here will be relevant to you, such as the rules on the High Income Child Benefit Charge (HICBC), further advice is recommended, especially as regards what happens to the family home on death or separation.

Income Tax

Income is taxed separately for each spouse, with each having their own Personal Allowance and basic rate band: this is the basis of independent taxation. However, looking at household income and assets as a whole can often provide useful opportunities to maximise tax efficiency. This may involve transferring assets and their associated income between you.

In general, it is efficient for couples to arrange ownership of income producing assets to use available Personal Allowances fully; and minimise exposure to tax at higher rates.

Where assets are owned jointly, any income arising is assumed to be shared equally for tax purposes, even if the asset is not in fact owned 50:50. This can be changed to reflect the actual share of ownership, by making a declaration of beneficial interests in joint property and income to HMRC, on Form 17. Form 17 cannot be used for partnership income; income from furnished holiday letting; or income from shares in a close company — a category including most family companies. Evidence that your beneficial interests in the property are unequal, such as a declaration or deed, must also be provided.

There are special rules for dividends from jointly owned shares in close companies,

taxing them according to the actual ownership of the shares involved.

In limited circumstances, allowances can be transferred between spouses. The Marriage Allowance can be used where neither person pays tax at more than basic rate; and the Blind Person's Allowance, if unused, can be transferred to the other spouse. The Married Couple's Allowance may also reduce tax payable, where at least one spouse was born before 6 April 1935.

Capital Gains Tax

Capital gains are also taxed separately. Each spouse has an annual exemption: this is £3,000 for 2024/25. The annual exemption cannot be transferred between you. Neither can you set a loss made by one party against a gain or gains of the other.

What is possible, however, is to transfer assets between you on a no gain/no loss basis. No tax charge arises immediately, and if the recipient later disposes of the asset, they are treated as if they had paid an amount equal to the original acquisition cost. No gain/no loss transfers can be an important planning tool. Where a sale of assets is envisaged, it can, for instance, be used to take advantage of an otherwise unused annual exemption, or perhaps a lower rate of tax.

Any such transfer must constitute an outright gift, and that the donor must not retain any benefit from, or control over, the gift after it is made. If you are in business, it is also important that the arrangement does not fall foul of the rules on income shifting.

This is a particularly complex area. To ensure that any transfer achieves your aims, do please discuss the position with us beforehand.

Availability of Private Residence Relief (PRR) on the disposal of your main residence is another key area. You can only have one main residence between you while living together as defined for tax purposes (see below). If you both own a residence, you can jointly nominate which should be treated as the main residence.

We can advise further here.

Inheritance Tax (IHT)

The estate of each spouse has its own nil rate band: this is £325,000 until 2028. A residence nil rate band may also be available, where a residence is left to your direct descendants. Any unused nil rate band and residence nil rate band can be transferred to the estate of the surviving spouse/civil partner in due course.

Each spouse has an annual exemption, currently £3,000, and their own set of allowances, such as the small gift allowance; the allowance for gifts for weddings/civil partnerships; and gifts constituting normal expenditure out of income.

There is normally no IHT to pay if you leave everything to your spouse/civil partner. Lifetime transfers between you are exempt. If, however, one of you is non-UK domiciled, there is a cap to the value of assets that can be transferred free of IHT, equal to the IHT nil rate band.

High Income Child Benefit Charge

The charge applies regardless of your relationship: so here, 'partner' means someone you are married to; or are in civil partnership with; or someone you are living with 'as if you are married'. The charge can apply so long as you are not separated under a court order, or separated in circumstances likely to be permanent.

It's the higher earner of the couple who has to pay the HICBC, even if they aren't the one making the claim. The charge claws back Child Benefit payments where the highest earner in a household has adjusted net income over a set threshold.

Before 6 April 2024, this was £50,000. It is now £60,000. The taper has also changed so that Child Benefit payment is now clawed back at 1% for every £200 of income over £60,000. By the time adjusted net income exceeds £80,000, all benefit of receiving payment is lost. Plans to move towards a system using household income, rather than individual income, have been announced, but there is as yet no detail.

If liable to the charge, you can choose to make a claim, but opt out of receiving payments. The advantage to this is that National Insurance credits towards State Pension entitlement still accrue while your child is under 12; and the child automatically gets a National Insurance number in due course.

When a relationship ends

There are various points to consider on separation, divorce, or dissolution of a civil partnership. Advance planning is likely to produce better outcomes and we can work with you to try to achieve this.

Maintenance payments

Maintenance payments are free of tax for the recipient. No tax relief for the person paying maintenance applies, unless at least one of you was born before 6 April 1935.

Capital Gains Tax

For CGT purposes, you are treated as living together, unless the relationship has broken down and you are separated: under a court order; by a formal Deed of Separation executed under seal; or in such circumstances that the separation is likely to be permanent.

For disposals on or after 6 April 2023, couples now have up to three years after the year of separation to make no gain/no loss transfers of assets. If divorced, or legally separated by court order before the end of this period, the no gain/no loss window closes from the date the divorce is finalised. Where assets are the subject of a formal divorce agreement, on the other hand, the timeframe is unlimited.

What happens to the family home is key: and since April 2023 there have been significant changes to the CGT treatment of the family home.

If there is a deferred sale agreement, perhaps while children are young, and one spouse remains in the property, PRR may be available to the departing spouse on the eventual sale proceeds.

If the departing spouse retains an interest in the property under a divorce agreement, and there is a later sale to a third party, PRR may be available to them by election.

As a backstop, no gain/no loss provisions will apply to transfers of shares in the family home under a divorce agreement.

These options have different CGT consequences, and it is also important to factor in any purchase of a new residence by the departing spouse. Whilst the new rules on the main residence are a step in the right direction, there are still pitfalls to avoid, and we can advise in more detail here.

High Income Child Benefit Charge

If you claim Child Benefit, HMRC must be notified of a change in circumstances, such as a change to your marital status, splitting up from someone you live with, or moving in with a new partner. The requirement applies regardless of whether you receive Child Benefit payments, or have opted out.

Liability for the HICBC when you split up, or when you move in with someone who is claiming Child Benefit, is not intuitive.

It's not only the person who claims or gets Child Benefit payments that matters; nor whose child the payments are for. It can be that making maintenance payments is sufficient to create a connection for HICBC purposes. The higher earner is liable to pay. In some circumstances, this can mean a liability arises even where a child isn't living with the Child Benefit claimant.

A case that went to the Tax Tribunal recently shows some of the potential danger areas. Taxpayer, Mr Meades, had originally made the Child Benefit claim, though payments were always made to his wife. The couple separated, and the child lived with the mother. Mr Meades remarried while continuing to support the child financially.

But Mr Meades was still within scope of the HICBC, even some years later, because he

hadn't stopped the Child Benefit claim; and because his financial support was at least equivalent to the amount of Child Benefit that was still being paid to his ex-wife. If the claim had been made by Mr Meades' former wife, he would have had no liability.

When a relationship breaks down, it is therefore advisable to review whose name any Child Benefit claim is in. If necessary, an existing claim should be cancelled, and a new claim started.

Pensions

Like other assets, pension funds are generally taken into account on divorce or dissolution of a civil partnership. There are a number of ways in which this can be done: for example, via a pension sharing order; or by offsetting, where one party keeps their pension fund, but the other takes a bigger share of other assets, such as the home. The law on pensions and divorce is different in Scotland. Whereas, for example, in England and Wales, it's the total value of pension rights, regardless of when they were built up, that is at issue: in Scotland, the value of pension funds is approached differently. State Pension is broadly excluded from these calculations.

Note that couples who are living together generally do not have the same legal protection as regards pensions, although there are some differences in treatment under Scots law.

It's always important to check that your pension has a named beneficiary: a person designated to receive the lump sum or pension payments on your death. On the breakdown of a relationship, or the beginning of a new one, this should be reviewed to make sure the named beneficiary is still appropriate, and changes made where required.

How we can help

We have only been able to highlight key points for consideration here. Please do contact us for an in-depth discussion.