# Husband and wife, civil partners, divorce, dissolution and separation

**Contacts**

Please phone:
- the number printed on page TR 1 of your tax return
- the SA Helpline on **0845 9000 444**
- the SA Orderline on **0845 9000 404** for helpsheets

or go to **www.hmrc.gov.uk**

This helpsheet explains how husbands and wives and civil partners are treated for Capital Gains Tax. The first part deals with transfers between spouses and civil partners who are living together. The second part is concerned with the situation where separation has occurred. But it is only an introduction. If you are in any doubt about your circumstances you should ask your tax adviser. We will also be pleased to help you and provide any forms you may need. You can also consult our Capital Gains Manual, which explains the rules in more detail, at **www.hmrc.gov.uk**

This helpsheet will help you fill in the *Capital gains summary* pages of your tax return.

## Capital Gains Tax liability

You and your spouse or civil partner are treated as separate individuals for Capital Gains Tax purposes. Each of you will pay tax only on your own gains and you will get relief only for your own losses. However, although you are taxed separately, you may be treated as 'connected' with each other and with each other's relatives for certain purposes.

If you and your spouse or civil partner are living together, any transfer of an asset between you is treated as giving rise to neither a gain nor a loss to the person transferring it. Any amount actually paid is ignored. If the person receiving the asset later disposes of it, he or she will be treated as if they had paid an amount equal to the total of your costs. The phrase 'living together' is defined on page 3.

If you are not living together or the asset involved is trading stock, any asset transferred between you is treated as transferred at its market value at the time of the transfer. So, in these circumstances, the person transferring the asset may make a chargeable gain or an allowable loss. Similarly, any asset transferred at the time of death is treated as acquired at its market value at that date. But in that case there is no chargeable gain or allowable loss.

For transfers on death see Helpsheet 282 *Death, personal representatives and legatees*. In general, a person who inherits from their late spouse or civil partner is treated the same as any other person who inherits on death.

### Example 1

Mr Smith bought an asset for £5,000 in March 1984. He sold the asset to his wife for £50,000 in September 1989 when they were living together.

The asset is deemed to have been transferred for an amount which gives neither a gain nor a loss on transfer. The actual amount paid by Mrs Smith is ignored.

The deemed disposal proceeds are calculated as follows:

| | |
|---|---|
| Cost | £5,000 |
| plus indexation allowance<br>March 1984 to September 1989 | |
| £5,000 x 0.333 | £1,665 |
| Deemed disposal proceeds | £6,665 |
| less cost | £5,000 |
| Unindexed gain | £1,665 |
| Indexation allowance | £1,665 |
| | Nil |

Mr Smith has neither a gain nor a loss.

The deemed cost to Mrs Smith for any future disposal of the asset is £6,665.

Mrs Smith sells the asset for £20,000 in June 2010.
The gain arising is:

| | |
|---|---|
| Disposal proceeds | £20,000 |
| minus cost | £6,665 |
| Chargeable gain | £13,335 |

Please note that Indexation Allowance has been abolished for CGT purposes for disposals made on or after 6 April 2008 but may still be allowed in computing the deemed disposal proceeds on no gain/no loss transfers at an earlier time. Indexation Allowance was frozen in the computation of chargeable gains accruing on or after 6 April 1998. So Indexation Allowance is computed only to April 1998.

## Assets held in your name

You are chargeable to Capital Gains Tax if you dispose of an asset held in your name, unless you are holding it on behalf of another person, such as your spouse or civil partner. If you are holding an asset on behalf of your spouse or civil partner, your spouse or civil partner is commonly known as the beneficial owner and will pay tax if a gain is made from its disposal. To decide which of you should return any gain and pay any tax, you should consider:

- whether you and your spouse or civil partner have made a formal declaration about beneficial ownership using form 17 *Declaration of beneficial interests in joint property and income*
- who provided the cost price and whether the asset was bought as a gift for your spouse or civil partner
- who received the proceeds of the disposal.

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## What counts as 'living together'

You and your spouse or civil partner are treated as living together unless:
- you are separated under a court order, or
- you are separated by a formal Deed of Separation executed under seal (in Scotland a deed should be witnessed), or
- you are separated in such circumstances that the separation is likely to be permanent.

In each case the marriage or civil partnership must have broken down. If the marriage or civil partnership has not broken down but the two of you do not live in the same house, you are still treated as living together for Capital Gains Tax purposes.

## Separation, divorce and dissolution

The remainder of this helpsheet explains your Capital Gains Tax liability if you are separated or divorced or your civil partnership is dissolved and you have transferred assets to the spouse or civil partner from whom you are separated, or to a former spouse from whom you are divorced, or to a civil partner from a civil partnership which has been dissolved.

## Year of permanent separation

If you or your spouse or civil partner were living together at some time in a tax year, you can transfer assets between you at any time in that tax year at no gain/no loss. There is no requirement that you should be living together at the time of transfer.

**Example 2**

Mr Brown transferred an asset to Mrs Brown on 30 June 2010.

Mr and Mrs Brown separated on 1 December 2010. Mr Brown transferred another asset to Mrs Brown on 1 March 2011.

Both transfers take place for an amount which gives neither a gain nor a loss to Mr Brown. Transfers may take place on this basis up to and including 5 April 2011 even though the couple were not living together after 1 December 2010.

If a transfer occurs between you and your spouse or civil partner after the end of the tax year in which you stop living together, there are rules to decide the date of disposal and the amount of consideration on disposal. These rules depend on your particular circumstances and the information you will need is:
- the date of any decree absolute or dissolution of the civil partnership
- the date of the court order if the asset was transferred by such an order
- the date of any other contract under which the asset was transferred.

As the rules are complicated, they are not included in this helpsheet. Once you hold the necessary information, ask us or your tax adviser for help.

## Private Residence Relief

You may be entitled to Private Residence Relief on any gain arising on the disposal of your only or main residence. You and your spouse or civil partner cannot have more than one residence or main residence between you for the purposes of the relief at any time while you are living together. (You are treated as living together unless you are separated under a court order or

by Deed of Separation, or are otherwise separated in such circumstances that the separation is likely to become permanent.) Following separation, the residence which is your only or main residence for the purposes of the relief need not be the same as that which is your spouse's or civil partner's only or main residence for such purposes.

Where, as part of a financial settlement on separation, divorce or dissolution, the spouse or civil partner who has ceased to occupy the matrimonial or civil partnership home transfers an interest in that home to the other spouse or civil partner, and the date of transfer takes place more than three years after the time when the spouse or civil partner last occupied the matrimonial or civil partnership home, full private residence relief will not be due. However, the former matrimonial or civil partnership home can be treated as the only or main residence of the transferring spouse or civil partner from the date his or her occupation ceased until the earlier of:

- the date of transfer
- the date on which the spouse or civil partner to whom the property is transferred ceases to use it as his or her only or main residence.

However, relief for the same period cannot be given for another property (except for the final three years of ownership of the matrimonial or civil partnership home) so this concession may not be the best choice in every case.

## Hold-over relief

If an asset is transferred from one spouse or civil partner to the other after the end of the tax year in which separation took place, the transfer is treated as taking place at market value. The conditions for a claim to hold-over relief may be satisfied. However, in these circumstances, it is important to know whether any consideration was given by the spouse or civil partner receiving the asset.

If the asset is transferred in exchange for a surrender, by the recipient, of rights they would otherwise be able to exercise to obtain alternative financial provision, the value of the rights surrendered is actual consideration of an amount that would eliminate any hold-over relief.

However, if the asset is transferred under the provisions of a court order, or a Consent Order ratifying a previous agreement, neither party has rights to a financial provision and so there is no surrender of rights constituting actual consideration. To find out more see Helpsheet 295 *Relief for gifts and similar transactions*.