

Divorce/Separation and Capital Gains Tax – an Update

Some changes have recently been made to the CGT rules concerning divorce/separation.

Tax-free transfers - spouses

The default position continues to be that transfers of assets between married persons and between civil partners are regarded as being made on a **"no gain, no loss"** basis for capital gains tax purposes.

This means that married couples or those in a civil partnership can transfer assets between themselves without a charge to capital gains tax arising.

This treatment applies automatically (and cannot be disapplied) whilst the couple are **'living together'**.

The definition of 'living together' is broader than the literal interpretation. It applies such that individuals who are married to, or are civil partners of, each other are treated as living together unless they are:

- separated under a court order or separation deed, or
- in fact separated in circumstances which render permanent separation likely.

For either of the above exclusions to apply, the marriage or civil partnership must have broken down permanently.

Where either spouse or civil partner is non-UK resident but can still be treated as 'living together', the "no gain, no loss" treatment continues to apply even if the transfer results in an asset leaving the UK tax net. This can present a valuable planning opportunity where only one spouse or civil partner is UK tax resident.

Effect of the transfer

A transfer which occurs at "no gain, no loss" means that any gains or losses from the transfer are deferred until the asset is disposed of by the receiving spouse or civil partner, who will be treated as having acquired the asset at the same original cost as the transferring spouse or civil partner.

Transfers following divorce/separation

Historically, the "no gain, no loss" provisions have applied only for the remainder of the tax year in which a divorce or separation takes place. If a decree absolute was granted before the end of that tax year, the "no gain, no loss" transfer would cease to be available from the date of grant.



Any transfer, even one made under a Court order, which occurred in the tax year following separation, or after decree absolute had been granted would be treated as a normal disposal for capital gains tax purposes, meaning a CGT charge may have arisen.

New Rules

New rules which came into effect from 6th April 2023 have been designed to improve this and will allow more time for couples to plan the division of their assets and transfer property after separation without the pressures of an imminent tax deadline.

Under the new rules, separating couples will be able to benefit from the "no gain, no loss" relief on transfers for an additional three years from the end of the tax year of separation. As before, if a decree absolute is granted before the end of the third tax year, the "no gain, no loss" transfer would cease to be available from the date of grant.

The new rules also allow the "no gain, no loss" provisions to apply beyond the three years where assets are transferred after that window under a formal divorce or separation agreement.

Additionally, a spouse or civil partner who retains an interest in the former matrimonial home will have the option to claim Private Residence Relief (a separate CGT exemption) when it is sold (provided the conditions for relief would have been met at the time they moved out).

Finally, individuals who transferred their interest in the former matrimonial home to their ex-spouse or civil partner, and are entitled to receive a percentage of the proceeds when that home is eventually sold, will be able to apply the same tax treatment on the receipt of those proceeds that applied when they transferred their original interest in the home to their ex-spouse or civil partner. This may well mean that no CGT is payable on that later receipt.

How can Verfides help?

Our team of experts is ready to help you with any capital gains tax questions or queries you may have, so please email the team tax_team@verfides.com to see what we can do for you.

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