

Your guide to tax on relationship breakdown

Overview

Different tax rules apply depending on whether a couple are married, separated or divorced. This guide provides a summary of the tax implications on relationship breakdown for both married and unmarried couples.

For tax purposes a couple are treated as ceasing to be a married couple from the point of separation, rather than the start of the divorce proceedings. Under legislation, separation is defined as the point at which a couple are separated under a court order, or in circumstances in which the separation is likely to be permanent. Tax advantages that apply to a married couple are withdrawn at different stages of the divorce process.

Reference in this guide to spouse equally applies to a civil partner.

Capital gains tax

Capital gains tax (CGT) is a tax on the profit when you sell or 'dispose' of an asset in a tax year. It is the gain you make that is taxed, not the amount of money you receive. The definition of a disposal includes not only a sale of an asset, but also a disposal by way of gift or a transfer under a divorce settlement. You only pay CGT on your overall gains above your tax-free allowance (called the Annual Exempt Amount). To find out what the annual exemption is for the current tax year visit: [CGT allowances](#)

Losses can be offset against the chargeable gain. Losses are firstly offset against gains arising in the same tax year. If losses exceed the gains arising in the same year, the losses are carried forward to be offset against future chargeable gains.

If you dispose of an asset you jointly own with someone else, you only pay CGT on your share of the gain.

What assets do you pay CGT on?

You pay CGT on the gain when you sell or dispose of chargeable assets, examples of which include:

- Personal possessions worth £6,000 or more each, apart from your car.
- Property that is not your main home.
- Your main home if previously let, used for business purposes or if the garden and grounds exceed 0.5 of a hectare (just over an acre or 5,000 square metres) and do not meet certain tests.
- Shares not held in an ISA or PEP.
- Business assets (subject to meeting required conditions).

If you sell or give away crypto assets (like crypto currency or bitcoin), you should check if you have to pay CGT.

What assets are exempt from CGT?

You do not pay CGT on gains you make from:

- Your car, including classic cars.
- Gifts to UK registered charities.
- Personal belongings or chattels where the sale proceeds are less than £6,000 each.
- ISAs or PEPs.
- UK government gilt-edged securities, for example, national saving certificates, premium bonds and loan stock issued by the Treasury.
- Betting, lottery or pools winnings.
- Personal injury compensation.
- Cash.

- Foreign currency held for your own use.

Working out your taxable gain

To calculate whether CGT is payable you will need the following information:

- Acquisition cost.
- Current market value or, if a sale has taken place, the sale price/net proceeds of sale.
- If additional funds have been used to buy, sell or improve the property the following can be deducted:
 - Fees or commission for professional advice or services, e.g. CGT valuation, solicitor and estate agent fees.
 - Improvement costs increasing the value of the property, but not maintenance costs such as repairs or decorating.
 - Stamp duty and VAT.
- Capital losses on disposals in the same tax year and capital losses brought forward from previous tax years.

CGT on asset transfers – married couples/civil partnership

During marriage/civil partnership

Individuals who are married can transfer chargeable assets between themselves, without any CGT arising. The transfer takes place on a no gain/no loss basis. The recipient is deemed to have purchased the asset for the same price that their spouse paid for it, so no capital gain arises.

After separation

When a married couple separate permanently, they are considered to be 'connected parties' for CGT purposes, until the date of the final divorce order. This is relevant as transfers of assets between connected parties are deemed to take place at market value, regardless of the actual proceeds that are paid (if any). A chargeable disposal will arise, and CGT will be due (subject to any annual exemptions, reliefs and losses available).

Any transfers made under a court order, but at a later date than the date of the order, are deemed to have taken place on the date of the order.

The exceptions to this rule:

- Any transfers which arise in the 3 years after permanent separation of the married couple are treated as no gain/no loss.
- Any transfers between the married couple as part of their formal divorce agreement. There is no limit if this exception applies.

The above exceptions apply to disposals that occur on or after 6 April 2023.

CGT on asset transfers – unmarried couples

There are no special tax rules relating to unmarried couples. As a general rule, transactions that are not at arm's length must be recalculated as having been at market value. A transaction between a cohabiting couple may therefore be treated as not having been at arm's length.

In this situation, the sale is deemed to take place at market value, regardless of the actual proceeds that are paid (if any). A chargeable disposal will arise, and CGT will be due (subject to any annual exemptions, reliefs and losses available).

CGT on overseas assets or if you are abroad

You may have to pay CGT if your asset is overseas, for example a holiday home that is not listed as part of the financial settlement. If this applies, the impact of foreign currency movements on the disposal will need to be considered. In addition, there may be local taxation issues to consider. In the same way as for any other chargeable asset, the acquisition cost and value on disposal of a property will be calculated by reference to Sterling at the relevant dates. This can give rise to seemingly paradoxical results, whereby the value of a property may have decreased in local currency terms but have increased in Sterling terms (or vice versa) as a result of movements in exchange rates.

You have to pay tax on gains you make on property and land in the UK, even if you're non-resident for tax purposes. You do not pay CGT on other UK assets, for example shares in UK companies, unless you return to the UK within 5 years of leaving.

Principal private residence relief

Principal private residence relief (PPR) provides an exemption from CGT on an individual's main residence (including grounds of up to half a hectare). An individual can only have one PPR at a time.

No relief is available for any proportion of the property that is used exclusively for business purposes, including a letting business. For example, if a garage has been converted into a therapy room, no PPR relief will be given on the proportion of the gain relating to the garage. The split is usually calculated based on area, but any just and reasonable method of apportionment can be used. HMRC accepts that the position is different if the tenant is a lodger sharing communal spaces with the owner.

Lettings relief may be claimed if owners have occupied the property at the same time as their tenants, provided they were not carrying on a trade or business.

During marriage/civil partnership

For married couples, only one property can be their main residence and therefore qualify for the relief. If an individual or couple own more than one property that can be occupied as a residence, they may elect which of their properties will be considered their main residence and qualify for the relief. Such an election must be made within 2 years of acquiring the additional property. A home is only eligible for PPR relief for a tax year in which the individual disposing of the property is either:

- Resident in the same territory as the property; or
- Non-resident, but the individual (or his or her spouse) spent at least 90 nights in that property (or all their properties in that territory).

After separation - married couples/civil partnership

When a married couple permanently separate, the no gain/no loss rules still apply in the 3 years following permanent separation.

After the tax year of permanent separation, spouses are each entitled to relief on their own PPR. If either has more than one residence, they are separately entitled to nominate which property should be considered their main residence for the purposes of PPR relief.

A special extension to PPR may apply where the spouse who moves out of the matrimonial home, transfers their interest in that home to the other spouse under a court order, or other agreement made in contemplation of a permanent separation.

In this situation, provided the transferee has continued to occupy the property as their residence throughout the period since the transferor left the property, PPR relief will be extended from the date the transferor moved out of the property up to the date of the transfer. There is no maximum time that can be covered by this relief, however, the transferor will not be able to claim PPR on any other property during the extended relief period.

This additional relief will not apply if the property is being sold to a third party.

If the transferring spouse has left the matrimonial home for a period that exceeds 9 months, the property will not have been his or her PPR for the full period, so any resulting gain may not fully qualify for PPR relief.

After separation - unmarried couples

PPR is only available for the period in which the individual has lived in the property, no other exemptions are available for unmarried couples.

If the relevant person has moved out of the property prior to its sale or transfer and that period of absence exceeds 9 months, any gain must be time apportioned to the period of living in the property (plus a 9 month exemption) and the remaining period of ownership. The remaining period of ownership will be subject to CGT.

When is CGT payable?

A 60-day reporting and payment period is required on residential property. A standalone return will be required to be submitted to HMRC within 60 days of completion, along with a payment on account of CGT based on an estimated calculation of the gain. Capital losses and available reliefs can be factored in. The reporting period is reduced to 30 days if you are non UK resident at the time of sale.

Using a family owned company to fund a financial settlement

It is essential to seek professional advice if you are intending to dispose of shares or assets in a private limited company. There are a number of ways the business can fund a settlement and it is essential that you get advice on the best way of extracting the funds, and the reliefs and exemptions available.

Business Asset Disposal Relief (formerly Entrepreneurs Relief) is available to individuals who are disposing of shares or assets in a private limited trading company. The individual must own at least 5% of the overall share capital and have held the shares for at least 24 months prior to the disposal.

Inheritance tax

During marriage/civil partnership

Transfers between spouses are exempt from IHT (though there are restrictions if the donee is not domiciled in the UK and has not elected to be UK domiciled for UK IHT). This exemption continues to apply until the date of the final divorce order.

After final divorce order or unmarried couples

Transfers after the final order are considered potentially exempt transfers (PETs), unless specific exemptions apply. These PETs will come within the scope of IHT if the donor dies within seven years of making the gift.

Income tax

When considering a potential settlement, it is important to consider whether a party's income tax position will change as a result of the transfer of an income bearing asset, such as shares or rental properties.

Consideration should also be given to any child benefit payments (tapered if income exceeds £50,000) whether you are married or unmarried and annual allowances for pension contributions.

During marriage/civil partnership

Marriage Allowance relief may be available. This relief allows you to transfer up to 10% of the value of the full personal allowance to your spouse. If the lower earner is a non-tax payer and the higher earner is a basic rate taxpayer.

After separation

Married Couple's Allowance is only available if the couple are living together. It will be available in the tax year of permanent separation.

Marriage Allowance is available until a couple divorce, with the date of cessation dependent on who cancels the allowance transfer.

Individuals are treated as no longer married for income tax purposes from the date of permanent separation.

Pension freedoms and lifetime allowance

Since 2015 pension freedoms have enabled people to access their pension funds subject to tax from age 55. This increased freedom also applies to recipients of pension sharing orders.

Occupational and personal pension rules were overhauled in 2006, with pension funding being controlled by two primary restrictions: how much can be contributed or accrued annually (Annual Allowance) and how much can be accumulated over a lifetime (Lifetime Allowance).

The Money Purchase Annual Allowance (MPAA) prevents people cashing in their pension and reinvesting in a pension to gain tax advantages. The MPAA is triggered by taking any income under a flexi-access drawdown, taking an uncrystallised funds pension lump sum, or taking income from capped drawdown in excess of the cap and triggering flexi-access drawdown.

The Lifetime Allowance (LTA) was designed to restrict the amount an individual could accumulate in registered pension schemes over their lifetime, before LTA tax charges are imposed. LTA charges apply where an individual's pension benefits are crystallised (taken) in excess of the LTA, with the LTA test being applied only at the point of crystallisation. There are a number of different crystallisation events where the LTA test is applied.

The value of pension benefits in a UK registered pension scheme for testing against the LTA, is not necessarily the same as the cash equivalent value.

You can check the current allowance rates by using the following link [Pension scheme rates](#)

From 6 April 2024 the LTA will be abolished as announced during the Spring Budget 2023.

Stamp duty land tax (SDLT)

Married couples/civil partnership

The transfer of property (e.g. all or part of the family home) is exempt from SDLT and higher rate for additional dwellings if it is effected in pursuance of a court order, or an agreement between the parties in connection with divorce, dissolution, nullity or judicial separation/civil partnership separation order in relation to SDLT but not the additional dwellings rate.

Otherwise, SDLT and the additional dwellings rate will be charged, based on the consideration given for the transfer including:

- any cash payment;
- any assumption of a liability to pay a mortgage: the liability assumed is taken to be a proportion of the outstanding mortgage corresponding to the proportion of the share of the property that is acquired.

The additional dwellings rate will not be charged where there is a property exchange between spouses/civil partners or where a co-owner adds to an existing interest in their main residence.

Unmarried couples

If joint owners are unmarried when they transfer an interest in land or property from one joint owner to another they may have to pay SDLT.

SDLT is not payable if 2 or more people jointly own property (as joint tenants or tenants in common) and they divide it physically and equally and own each part separately.

If one person takes a bigger share, or all of the other's share, SDLT will be charged on any transfer, based on the consideration given for the transfer including:

- any cash payment;
- any assumption of a liability to pay a mortgage: the liability assumed is taken to be a proportion of the outstanding mortgage corresponding to the proportion of the share of the property that is acquired.

The additional dwellings rate will not be charged where there is a property exchange where a co-owner adds to an existing interest in their main residence.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.