

Capital Gains Tax – Proposed New Rules Transfer of assets between separating spouses\civil partners From 6 April 2023

Current law

The Capital Gains Tax legislation dealing with the transfer of assets between an individual living with their spouse or civil partner is found at section 58 of Taxation of Chargeable Gains Act 1992. This provides that transfers of assets between spouses and civil partners who are living together are made on a “no gain or no loss” basis in any tax year in which they are living together. This 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.

When spouses or civil partners separate, no gain or no loss treatment is only available in relation to any disposals in the remainder of the tax year in which the separation happens. After that, transfers are treated as normal disposals for capital gains tax purposes.

Proposed revisions

Legislation will be introduced in Finance Bill 2022-23 that will provide for the following changes to the CGT rules for separating spouses/civil partners:

- *Separating married couples will continue to have ‘no gain no loss’ CGT treatment applied on transfers of assets to each other for up to three years from the end of the tax year of separation.*
- *However, if the couple divorces (or otherwise they become legally separated by court order) before the end of the three-year period, ‘no gain no loss’ treatment will end at the date the divorce is finalised, **unless** the transfer of assets takes place as part of a formal divorce (or court separation) agreement – see next bullet.*
- *Where assets are transferred as part of a formal divorce (or court separation) agreement, there is no time limit applied to ‘no gain no loss’ treatment of asset transfers.*
- *The draft legislation also includes a change to how capital gains are calculated on the sale of the former marital home, where one party moves out following separation and there is an agreement for that person to receive a percentage of the proceeds from the sale. This change can allow that party to have any [private residence relief](#) on their share of the gain unaffected by the fact they did not live in the property between their moving out and the property being sold.*

The new rules are planned to come into effect for disposals and transfers which occur on or after 6 April 2023. It will be the date of the disposal which determines whether the new rules apply, not the date of separation. See the examples below for more information.

We therefore provide the following as an overview of the potential impact of these rules, particularly for couples who may have already separated and are yet to make transfers of assets.

For married couples who separated in 2019/20 or 2020/21. Separations occurring in these years will also fall within the proposed rules from 6 April 2023 (as these years will be within the three-year time frame). Separations from even earlier tax years may also have 'no gain no loss' treatment applied if transfers are made on or after 6 April 2023 as part of a formal divorce (or court separation) agreement.

However, the proposed new rules would provide greater flexibility in terms of timings. They could have up to the end of 2025/26 to make transfers at 'no gain no loss', or an unlimited amount of time if the transfer of the assets takes place as part of a formal divorce (or court separation) agreement.

Operative date

These changes apply to disposals that occur on or after 6 April 2023.

Meanwhile, if you are recently separated or in the process of separating you may wish to [seek advice](#) in relation to the transfer of assets in light of the proposed changes.

Should you have any queries, please do not hesitate to contact us

Leofric House, Binley Road
Coventry, CV3 1JN
Tel: +44 (0)24 7625 1333

Euston House, 12 Euston Place
Leamington Spa, CV32 4BN
Tel: +44 (0)1926 88 88 65
www.leigh-christou.co.uk

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