Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2021 edition

Part 44B
Tax treatment of cohabitants

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PART 44B
TAX TREATMENT OF COHABITANTS

This Part provides for the tax consequences for former cohabitants on the breakdown of a relationship in terms of Court ordered maintenance or property transfers. This Part contains ***sections 1031P*** to ***1031R***. The intent of these sections is to provide for tax relief for the maintenance payments and CGT relief on the transfer of assets to the qualifying cohabitant.

CHAPTER 1
Income Tax

1031P Interpretation

This section contains the definitions applicable to ***Part 44B***;

"**cohabitant**" has the same meaning as in section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. That Act states that a cohabitant is one of 2 adults (whether of the same or opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or married to each other, or civil partners of each other;

"inspector" is any inspector who a cohabitant giving a notice under this Chapter may reasonably consider is the inspector to whom the notice should be sent or any inspector who indicates readiness to accept the notice and

"**qualified cohabitant**" has the same meaning as in section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. This means an adult who was in a cohabiting relationship with another adult, and who, immediately before the time the relationship ended, was living with the other adult as a couple for a period of –

- 2 years or more in the case where they are the parents of dependant children, or
- 5 years or more in any other case.

1031Q Maintenance where relationship between cohabitants ends

This section provides that payments made under a maintenance arrangement by a former cohabitant to the other qualified cohabitant of that relationship will be —

- payable without deduction of tax,
- deductible in computing the total income of the payer, and
- chargeable to income tax in the hands of the recipient.

Subsection (1) contains the definitions to be used in this section. ***(1)***

A "**maintenance arrangement**" is defined as any legally enforceable arrangement made by a court under section 175 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

A "**payment**" includes a part of a payment

Subsection (2)(a) provides that this section applies to payments made, directly or indirectly, by a former cohabitant, under or pursuant to a maintenance arrangement relating to the cohabiting relationship which has broken down. ***(2)(a)***

Subsection (2)(b) provides that any payment which — ***(2)(b)***

- is made under a maintenance arrangement, and
- is not for the benefit of a third party,

is treated as being for the recipient's benefit. This applies whether or not the payment is conditional.

Subsection (3) states that where the payment is for the benefit of a qualifying cohabitant — ***(3)***

- the person making the payment is not entitled to deduct and retain income tax from the payment,
- the person receiving the payment is chargeable to tax under Case IV of Schedule D, and

the person making the payment is entitled, on making due claim, to deduct the payment in computing his/her total income for tax purposes for the year in which the payment is made. ***(4)***

Subsection (4) provides that where a former cohabitant is claiming a deduction of the amount of maintenance from total income, this section applies the general income tax provisions governing—

- deductions allowed in ascertaining taxable income and provisions relating to reductions in tax (***section 458***),
- general provisions relating to allowances, deductions and reliefs (***section 459***), and
- the rate of tax at which repayments are to be made in respect of such a deduction (***section 460***).

CHAPTER 2
Cohabitants-Capital Gains Tax

1031R Transfers of assets where relationship between cohabitants ends

Summary

This section provides rules for the treatment of disposals where the relationship between cohabitants ends and subsequent disposals of any assets which had previously been disposed of between cohabitants.

Details

Disposals of certain assets where relationship between cohabitants ends

Where assets are disposed of by one cohabitant to another cohabitant following the ending of a relationship between those cohabitants under an order made under section 175 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, then, subject to ***subsections (2)*** and ***(3)***, the asset is treated as having been disposed of at a price ***(1)***

which gives rise to no gain or loss.

(2) The no gain/loss rule does not, however, apply if the cohabitant who acquires the asset from the other cohabitant could not be taxed in the State for the year of assessment in which the acquisition took place on a disposal of the asset in that year and a gain had accrued on that disposal. Such a scenario might arise where the taxing rights on such a disposal, under a Double Taxation Agreement, rested with a foreign jurisdiction.

Relief disallowed for trading stock

(3) The no gain/no loss treatment provided for in ***subsection (2)*** does not apply if the asset disposed of is one which formed part of the trading stock of the cohabitant making the disposal. Likewise, that treatment does not apply if the asset is one which is acquired as trading stock for the purposes of a trade carried on by the cohabitant who receives it. In each such case, the actual consideration is taken into account and the rules for computing trading income generally apply.

Subsequent disposal

(4) Where the no gain/no loss treatment provided in ***subsection (1)*** applies in relation to the disposal of an asset and the cohabitant who acquired the asset subsequently disposes of it (not being a disposal to which that subsection applies), he/she is treated as if he/she had acquired it at the time and cost at which it was originally acquired by the other cohabitant.