

## **Tax Treatment of Former Cohabitants**

### **Payments arising under a maintenance arrangement or asset transfers on cessation of the relationship**

#### **Part 44b-01-01**

This document should be read in conjunction with sections 1031P, 1031Q and 1031R of Taxes Consolidation Act 1997

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## 1. Introduction

Part 44B Taxes Consolidation Act 1997 (TCA), entitled “Tax Treatment of Cohabitants”, makes provision for cases where a non-marital, non-civil partnership cohabiting relationship ends. It contains three sections.

Section 1031P TCA defines certain terms for the purposes of Part 44B TCA, using definitions from the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. Key definitions are set out in [Appendix 1](#) of this Manual.

Section 1031Q TCA contains the provisions for the taxation of maintenance payments between cohabitants where the relationship ends. Please see paragraphs 2 and 3 below.

Section 1031R covers the Capital Gains Tax treatment of transfers of assets between cohabitants where the relationship ends. Please see paragraph 4 below.

## 2. Income tax treatment of a legally enforceable maintenance arrangement

In the case of former cohabitants, only maintenance arrangements made under [section 175 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010](#) give rise to a legally enforceable arrangement which qualifies for tax relief. The application for the maintenance order must be made by a qualified cohabitant (see [Appendix 1](#)).

Tax relief for the maintenance payment is only allowed for the payment made for the support of the qualified cohabitant. The tax treatment is broadly similar to that of separated spouses or former civil partners (for details please refer to TDM [Part 44-01-01](#)).

Section 1031Q TCA, which contains the tax relief, provides that:

- the individual making the payments (payer) is not entitled to deduct or retain out of the payment any amount representing income tax on the payment;
- the payer is allowed, in computing his or her total income, a deduction for maintenance payments made in the year of assessment for the benefit of the qualified cohabitant;

the recipient is taxable under Case IV, Schedule D, in respect of such maintenance payments received; and

both individuals are taxed as single persons.

### 3. Cessation of income tax relief

Tax relief for maintenance payments will cease if the qualified cohabitant:

- marries or re-marries,
  - enters into a recognised foreign marriage,
  - enters into a civil partnership (applies on or before 15 November 2015 only<sup>1</sup>);
- or
- enters into a foreign partnership, which is recognised in Ireland by virtue of [section 5 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010](#) (applies on or before 15 May 2016 only<sup>1</sup>).

### 4. Capital gains tax on the transfer of assets between former cohabitants

Where an order is made under [section 174 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010](#), on or following on from the ending of a cohabiting relationship and, under that order, either of the cohabitants disposes of an asset to the other cohabitant, the cohabitant disposing of the asset is treated as if no gain or loss arose on the disposal.

This treatment does not apply where the individual acquiring the asset could not be charged to capital gains tax in the State in respect of a gain on that disposal, if the individual had disposed of the asset in the year in which the acquisition took place. This is an anti-avoidance provision to deal with cases where an individual is non-resident and a double tax treaty gives the right to tax the asset to the country in which the individual resides.

Any subsequent disposal by the cohabitant who acquires the asset will be treated as if s/he had acquired it at the time and cost at which it was originally acquired by the other cohabitant.

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<sup>1</sup> Following the passing of [Marriage Act 2015](#):

- (a) couples can no longer enter into civil partnerships in Ireland on or after 16 November 2015, and
- (b) civil partnerships entered into abroad on or after 16 May 2016 are not recognised in Ireland.

## Appendix 1 – Definitions

Sections 1031P and 1031Q TCA 1997 contain the following definitions:

<b>Cohabitant</b>	Has the same meaning as in <a href="#">section 172 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</a> .
<b>Qualified cohabitant</b>	Has the same meaning as in <a href="#">section 172 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</a> .  It refers to a party who was in a cohabiting relationship for at least five years, or at least two years where the parties involved are parents of a dependent child.
<b>Maintenance arrangement</b>	Means an order of a court under <a href="#">section 175 Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010</a> giving rise to a legally enforceable obligation.
<b>Payment</b>	Means a payment or part of a payment, as the case may be.