IT 3

What to do about tax on the breakdown of a marriage, civil partnership or cohabiting relationship

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Revenue
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Irish Tax and Customs

CONTENTS

Introduction

This leaflet outlines the tax changes which occur when:

- a married couple separate in such circumstances that the separation is likely to be permanent, legally separate, divorce, or obtain a civil annulment
- civil partners separate in circumstances where reconciliation is unlikely, dissolve a civil partnership or obtain a decree of nullity
- a cohabiting relationship breaks down

This can be a difficult and stressful time and there will be many issues, including financial matters, to be considered as a result of the change in personal circumstances. When sorting out financial matters it is important to be aware of the taxation implications of any agreements entered into, particularly any legal arrangements. While your Revenue office will provide any information needed regarding taxation issues there may be other practical and legal matters which should be taken into account on which professional advice may be required.

Revenue will treat the information you give us in confidence and ensure that it will not be used or disclosed except as provided for by law.

The above is an extract from Revenue's Customer Service Charter.

[1]Where the terms 'taxed' 'chargeable to tax' or 'taxable' are used in this leaflet they include the charge to Universal Social Charge (USC) unless otherwise stated.

SECTION 1 – MARRIED COUPLES

Income Tax

Do I need to tell Revenue if I am separated?

Yes, you should let your Revenue office know as soon as possible after the separation, so that any necessary adjustments to your tax position can be made. A list of the details which Revenue will need is attached in the Appendix on page 22.

How are married couples treated for tax purposes?

Before dealing with the tax consequences of separation, it may be helpful to give a summary of how married couples are treated for tax purposes. The following three options are available:

- **Joint Assessment/Aggregation:** Under Joint Assessment the tax credits and reliefs available can be divided between each spouse to suit their circumstances. One spouse is nominated as the **assessable spouse** and as such is responsible for completing the tax return for the couple and is chargeable to tax on their joint income. Joint Assessment, which is generally the most favourable treatment for tax purposes, is automatically given by your Revenue office, unless either of the following options are specifically requested.
- **Separate Assessment:** Under Separate Assessment tax credits and standard rate band are either apportioned equally between each spouse or given in proportion to the cost borne by each. An adjustment can be claimed at the end of the tax year to ensure that any **transferable** tax credits or standard rate band, not used by one spouse are utilised by the other spouse. The amount of tax paid under Separate Assessment is the same as that payable under Joint Assessment.
- **Separate Treatment (Assessment as a Single Person):** Under Separate Treatment each spouse is taxed as a single person and there is no right to transfer tax credits or standard rate band from one spouse to the other.

Note: The Universal Social Charge (USC) is charged on the aggregate income of each individual. Therefore, in the case of Joint Assessment and Separate Assessment, the thresholds that apply to each spouse individually when calculating the liability to USC cannot be combined where one spouse is below the threshold and the other above.

Further information about the taxation of married persons is available in Leaflet IT2 - *'Taxation of Married Persons and Civil Partners'*

Separation

A couple are considered separated for tax purposes if the separation is likely to be permanent or it has been made legal.

What happens during the tax year in which a married couple separate and the separation is likely to be permanent?

Where they separate during a tax year they are taxed as follows:

Where they were Jointly Assessed prior to Separation:

The assessable spouse, i.e. the person who is chargeable to tax on the couple's joint income will be:

- entitled to the Married Person or Civil Partner Tax Credit and the relevant standard rate band for the full tax year. Details of the current amount of tax credits and standard rate bands are given in Leaflet IT1.
- taxed on their own income for the full year and their spouse's income from the start of the tax year to the date of separation.

Note: Once a couple are no longer living together they are no longer entitled to joint assessment, (except as outlined above for the year of separation), unless there are legally enforceable maintenance payments in which case they can elect to be jointly assessed. See section on maintenance payments below.

The non-assessable spouse will be:

- entitled to single person's tax credits and standard rate band,
- taxed on his or her own income from the date of separation to the end of that tax year.

Where they were Separately Assessed prior to Separation:

Where Separate Assessment applied prior to separation, the situation is the same as that outlined for joint assessment.

- the spouse, who was the assessable spouse prior to the claim for separate assessment, is the assessable spouse for the year of separation,
- any unused tax credits and relevant standard rate band for the period prior to separation may be transferred from one spouse to the other.

Where they were Assessed as Single Persons prior to Separation:

Where Separate Treatment applied prior to separation there is no change of treatment after separation. Each spouse continues to be taxed as a single person for the full tax year.

Years following Separation, Divorce or Civil Annulment

How are separated, divorced or persons whose marriages have been annulled taxed in the years following their separation, divorce or annulment?

The effect of separation, divorce or annulment on each spouse's tax liability depends mainly on whether there are maintenance payments for the benefit of the other spouse, and if so, whether such payments are **voluntary payments** or are made under a **legally enforceable arrangement.** Each of these is covered separately in the following paragraphs.

Note: A Church annulment does not constitute an annulment for the purposes of civil law.

What happens if there are no maintenance payments involved?

Where a spouse separates or divorces or obtains a civil annulment and no maintenance payments are made, each spouse will be taxed as a single person. Each spouse will be responsible for filing his or her own tax return and paying tax on his or her own income.

Voluntary Maintenance Payments

How are voluntary maintenance payments treated for tax purposes?

Voluntary maintenance payments (i.e. payments which are not legally enforceable) are **not** taken into account when calculating either spouse's tax liability, i.e.

- the spouse who makes the payments is not entitled to a tax deduction for them,
- the spouse who receives the payments is not taxed on them,
- both spouses are taxed on their own income as single persons,
- maintenance payments for children are ignored for tax purposes - See section on *'Maintenance payments made to children'*.

Yet, if the voluntary payments are sufficient to **wholly or mainly maintain** the spouse, the payer will be entitled to claim the Married Person or Civil Partner Tax Credit. **However, only single person's standard rate band is due.** The spouse receiving the payments can also claim single person's tax credit against his/her income (if any).

Example 1 - Voluntary Payments

A married couple are living apart for the past two years. One spouse has an annual salary of €25,000 and makes a voluntary maintenance payment of €6,000 a year to the other spouse who has a salary of €15,000.

- the spouse making the maintenance payment is not entitled to a tax deduction for the payment of €6,000,
- the spouse receiving the maintenance payment is not taxed on the payment of €6,000,
- each spouse is taxed as a single person.

Example 2 - Voluntary Payments/Married Person or Civil Partner Tax Credit claimed

A married couple are living apart. One spouse has an annual salary of €40,000 and makes a voluntary annual maintenance payment of €12,000 to the other spouse whose only other income is €8,000.

- the spouse making the voluntary maintenance is not entitled to a tax deduction for the payments of €12,000,
- the spouse receiving the voluntary maintenance is not taxable on the payments of €12,000.

Where there is a voluntary maintenance arrangement between spouses, each spouse will be entitled to the single person's rate band. The spouse making the voluntary maintenance payment will be entitled to claim the Married Person or Civil Partner Tax Credit, because the payment is sufficient to wholly or mainly maintain the other spouse, i.e. €12,000 is greater than €8,000, and the recipient spouse is entitled to claim single credit.

Legally Enforceable Maintenance Payments

What are legally enforceable maintenance payments?

These include annual or periodic payments made under an order of court, deed of separation, decree of divorce, rule of court, trust, covenant, agreement, arrangement or any other act which gives rise to a legally enforceable obligation. The maintenance payments must be in consideration or in consequence of a separation.

The following rules apply to maintenance payments made under a legally enforceable arrangement for the benefit of a spouse or former spouse:

- the payments are made without deduction of tax,
- the spouse who makes the payments is entitled to a deduction from the income chargeable to tax and USC in respect of the maintenance payments made for the other spouse or former spouse's benefit,
- the spouse who receives the maintenance is taxable on the payments,
- both spouses are taxed as single persons (unless they opt to be taxed as a married couple - See Leaflet IT2 - *'Taxation of Married Persons and Civil Partners'*,
- maintenance payments for children are ignored for tax purposes - See section on '*Maintenance payments made to children'*.

Example - Legally Enforceable Payments

A married couple are living apart. One spouse pays maintenance of €6,000 to the other spouse and maintenance of €2,000 for their children. They have not opted to be taxed as a married couple.

- the spouse making the payment is entitled to a deduction from taxable income and a deduction in calculating the USC for the maintenance payments of €6,000,
- the spouse in receipt of the payment is taxable on the maintenance payments of €6,000,
- both spouses are taxed as single persons,
- maintenance payments for the children are ignored for tax purposes.

Can separated or divorced couples opt to be taxed as a married couple?

Yes, a separated couple can elect to be treated as a married couple for income tax purposes if:

- maintenance payments by one to the other are legally enforceable, **and**,
- they are both resident in the State.

A divorced couple also has the option of electing to be treated as a married couple for income tax purposes if:

- maintenance payments by one to the other are legally enforceable,
- they are both resident in the State, **and**,
- neither spouse has re-married or entered into a civil partnership.

The couple must submit a joint election if they wish to be taxed as a married couple. This election must be made in writing before the end of the tax year and must be signed by both spouses.
If such an election is made, the maintenance payments are ignored. The spouse making the payments does not get a tax deduction for them and the spouse who receives the payments is not taxable on them.

Where only one spouse has income, the full tax credits, reliefs and the appropriate Married Person or Civil Partner standard rate band will be given to that spouse.

Where both spouses have income, separate assessment will apply. Tax credits and standard rate band will be apportioned between the spouses, subject to a review at the end of the year. This ensures that any unused tax credits or relevant standard rate band are given to the other spouse.

Note: Where a civil annulment is obtained there can be no election to be taxed as a married couple.

How are maintenance payments made to or for children treated for tax purposes?

Maintenance payments made for the benefit of a child(ren) are ignored for tax purposes:

- the payments are made without deduction of tax,
- the payer is **not** entitled to a tax deduction for the payments,
- the payments are **not** taxable,
- the payments are **not** regarded as income of the child.

How is tax collected on legally enforceable maintenance payments?

Legally enforceable maintenance payments to an individual for his or her benefit, from a separated or former spouse, under a formal separation agreement are an assessable source of income.

If an individual receives maintenance payments and also has income which is taxed under PAYE, it may be possible to collect some or all of the tax due on the maintenance payments by reducing their tax credits and standard rate band. Restriction of tax credits will not collect the USC due on the maintenance payments. The USC will be collected by PAYE review at the end of the year or by assessment.

If an individual receives maintenance payments only, this income is taxed under the Self-Assessment system. Leaflet IT10 - *'A Guide to Self-Assessment,* gives information on registering for income tax and how the self-assessment system operates.

It is very important that persons registering for income tax also register for PRSI purposes. Form SE3, which is available from the Department of Social Protection, should be completed.

Other Matters – Single Person Child Carer Credit, Mortgage Interest, Department of Social Protection Payments and PRSI

Can a separated or divorced person claim the Single Person Child Carer Credit (SPCCC)?

With effect from 1 January 2014, SPCCC may be claimed by a single parent or a person who has custody of and maintains a child who is living with him or her (whether widowed, single, deserted, separated or divorced) who has a qualifying child resident with him or her for the whole or greater part of the year. This individual is known as the primary claimant. The primary claimant may relinquish his or her entitlement to this tax credit in favour of a secondary claimant if he or she wishes to do so.

SPCCC cannot be claimed in the case of a couple who are cohabiting or who receive Married Person or Civil Partner tax credit.

See **http://www.revenue.ie/en/tax/it/credits/single-person-child-carer-credit.html** for more information on the SPCCC.

The one-parent family tax credit has been abolished with effect from 31 December 2013. However, it can still be claimed for years up to and including 2013, subject to Revenue's 4-year time limit on submitting claims.

Leaflet IT9 - '*One-Parent Family Tax Credit*' gives more detailed information.

Can tax relief be claimed on mortgage interest, which is paid in respect of a mortgage on a residence for a separated spouse?

Yes, provided that the person is obliged to pay the interest and the loan is used for the purchase, repair, development or improvement of the spouse's sole or main residence. If interest is paid on one's own sole or main residence, tax relief will be available on both properties, subject to the maximum limits available to a single person. Leaflet IT1 - '*Tax Credits, Reliefs and Rates' and 'Mortgage Interest Tax Relief at Source (TRS)'* - FAQs give more detailed information.

How are Department of Social Protection Payments treated for tax purposes?

Payments paid by the Department of Social Protection such as One-Parent Family Payment or Deserted Wife's Benefit/Allowance are taxable and should be declared to your Revenue office. However, such payments made under the Social Welfare Acts and other similar payments made, for example, by the Health Service Executive, are not liable to the USC.

The Department of Social Protection does not deduct tax at source from these payments. If an individual taxed under PAYE has income in addition to a Department of Social Protection payment, their tax credits and standard rate band will be reduced to collect the tax due.

If tax is payable under self-assessment (e.g. the only other income is maintenance payments) the Department of Social Protection payment will be included in the notice of assessment.

Are maintenance payments subjected to PRSI?

The person making the maintenance payments

Spouses who pay legally enforceable maintenance under a formal separation agreement are entitled to relief for PRSI paid. The method of giving this relief will depend on whether they are a PAYE taxpayer or a self-assessed taxpayer.

- **Taxpayers assessed under PAYE** - Relief is given, by way of repayment at the end of the year, on any PRSI paid on the payments made by them.
- **Self-Assessed Taxpayers** - A deduction for maintenance payments will be given in their assessment when calculating the PRSI due.

In the case of taxpayers assessed under PAYE, the claim for repayment of PRSI should be made to the Department of Social Protection, PRSI Refunds, Oisin House, 212 - 213 Pearse St, Dublin 2, who will arrange for the return of the contributions paid in respect of the maintenance payment.

The person receiving the maintenance payments

- The spouse in receipt of maintenance payments under a legally enforceable arrangement is liable to PRSI on the amount he or she receives, subject to the normal thresholds and exemptions that apply (See **www.welfare.ie**).

Capital Gains Tax

How are disposals of assets between spouses treated for Capital Gains Tax purposes?

Generally, disposals of assets between spouses who are living together are specifically exempted from Capital Gains Tax. Assets, including the shared home, but excluding trading stock, transferred between spouses on foot of a court order will not give rise to a Capital Gains Tax liability.

Unused allowable losses may be transferred between spouses in the year of separation.

What is the Capital Gains Tax position for disposal of assets between former spouses following Separation/Divorce?

A charge to Capital Gains Tax does not arise where a person disposes of an asset to a spouse as a consequence of any of the following:

- Part II of the Family Law Act 1995.
- Part II of the Judicial Separation and Family Law Reform Act 1989.
- Deed of Separation.
- A relief order (within the meaning of the Family Law Act 1995).
- An order made by a foreign court, similar to a relief order within the meaning of the Family Law Act 1995, and recognised as valid in the State. This applies to disposals on or after 10/2/2000.
- Family Law (Divorce) Act 1996.

The relief does not apply to assets which form, or are intended to form, part of the trading stock of a trade or business.

Where relief does apply, each asset is treated as being disposed of for an amount that gives rise to neither a gain or a loss in the hands of the disponer. The spouse acquiring the asset is deemed to acquire the asset on the same day and at the same cost as the spouse who originally acquired it.

Any other disposals from one spouse to the other which takes place outside of a court order are treated as disposals at full market value as if between strangers, and Capital Gains Tax is calculated in the normal way.

Example

A couple separate. As part of a deed of separation or maintenance order, one spouse transfers the following assets to the other spouse:

- shares worth €100,000 (which he or she had purchased ten years previously for €20,000),
- his or her interest in the shared home (cost €30,000 twenty years previously).

The spouse transferring the assets will not be liable for any Capital Gains Tax on either of these disposals to the spouse acquiring the assets, regardless of whether the transfers take place in the year of separation or subsequently.

If the spouse acquiring the assets subsequently sells any of the shares, he or she will be liable for any Capital Gains Tax which arises. The gain will be calculated as if he or she had originally purchased the shares ten years previously at the original cost of €20,000.

If the spouse acquiring the assets decides at a later date to sell the shared home he or she will be exempt on any gain arising, if it was occupied by him or her as a principal private residence throughout the period of ownership.

Further information on the taxation of Capital Gains Tax is available in booklet CGT1 - *'Guide to Capital Gains Tax'.*

Capital Acquisitions Tax and Stamp Duty

What is the Capital Acquisitions Tax and Stamp Duty position for disposal of assets between former spouses following Separation/Divorce?

There is no Capital Acquisitions Tax (CAT) or Stamp Duty on property passing between spouses. When married couples separate, these exemptions continue to apply, as those couples remain legally married.

Where a couple obtains an Irish divorce, transfers between former spouses made on foot of an Irish Court Order governing the divorce are exempt from CAT and Stamp Duty.

Transfers of property between former spouses made under Foreign Court Orders or other determinations in respect of the dissolution of marriage, which are recognised as valid in the State, are also exempt from CAT and Stamp Duty where such orders or determinations are made on or after 10 February 2000.

A Church annulment does not invalidate a marriage in civil law. The former spouses are still the legal spouses and the remarried spouses are deemed not to be legal spouses for the purposes of CAT and Stamp Duty.

With effect from 15 June 2000 if a separated or divorced individual purchases another house he or she may be deemed, for Stamp Duty purposes, to be a First Time Buyer if the following conditions are satisfied:

- the individual has left the shared home,
- the individual has not retained an interest in the shared home, **and**,
- the former spouse continues to occupy the house, which was the shared home prior to the separation or dissolution of the marriage.

Further information and the rates of Stamp Duty for First Time Buyers are available on **www.revenue.ie** under Tax and Duties, Stamp Duty. Relevant legislation can be found in Sections 96 and 97 of the Stamp Duties Consolidation Act 1999.

SECTION 2 – CIVIL PARTNERS

Income Tax

Do I need to tell Revenue if I have separated from my civil partner?

Yes, you should let your Revenue office know as soon as possible after you have separated, so that any necessary adjustments to your tax position can be made. A list of the details which Revenue will need is attached in the Appendix on page 20.

How are civil partners treated for tax purposes?

Before dealing with the tax consequences of the breakdown of a civil partnership, it may be helpful to give a summary of how civil partners are treated for tax purposes. The following three options are available:

- **Joint Assessment/Aggregation:** Under Joint Assessment the tax credits and reliefs available can be divided between each civil partner to suit their circumstances. One civil partner is nominated as the **nominated civil partner** and as such is responsible for completing the tax return for the couple and is chargeable to tax on their joint income. Joint Assessment, which is generally the most favourable treatment for tax purposes, is automatically given by your Revenue office, unless either of the following options are specifically requested.
- **Separate Assessment:** Under Separate Assessment tax credits and standard rate band are either apportioned equally between each civil partner or given in proportion to the cost borne by each. An adjustment can be claimed at the end of the tax year to ensure that any **transferable** tax credits or standard rate band, not used by one civil partner are utilised by the other civil partner. The amount of tax paid under Separate Assessment is the same as that payable under Joint Assessment.
- **Separate Treatment (Assessment as a Single Person):** Under Separate Treatment each civil partner is taxed as a single person and there is no right to transfer tax credits or standard rate band from one civil partner to the other.

Note: The Universal Social Charge (USC) is charged on the aggregate income of each individual. Therefore, in the case of Joint Assessment and Separate Assessment, the thresholds that apply to each civil partner individually when calculating the liability to USC cannot be combined where one civil partner is below the threshold and the other above.

Further information about the taxation of civil partners is available in Leaflet IT2 - '*Taxation of Married Persons and Civil Partners'.*

Separation

Civil partners are considered not to be living together for tax purposes where they are living separately and apart in circumstances where reconciliation is unlikely.

What happens during the tax year in which civil partners separate in circumstances where reconciliation is unlikely?

Where this occurs during a tax year they are taxed as follows:

Where they were Jointly Assessed prior to Separation:

The nominated civil partner, i.e. the person who is chargeable to tax on the couple's joint income will be:

- entitled to the Married Person or Civil Partner Tax Credit and the relevant standard rate band for the full tax year. Details of the current amount of tax credits and standard rate bands are given in Leaflet IT1,
- taxed on their own income for the full year and their civil partner's income from the start of the tax year to the date of the separation.

Note: Once a couple are no longer living together they are no longer entitled to joint assessment, (except as outlined above for the year of separation), unless there are legally enforceable maintenance payments in which case they can elect to be jointly assessed. See section on *maintenance payments*.

The non-assessable civil partner will be:

- entitled to single person's tax credits and standard rate band,
- taxed on his or her own income from the date the civil partners separated to the end of that tax year.

Where they were Separately Assessed prior to separation:

Where Separate Assessment applied prior to the separation, the situation is the same as that outlined for joint assessment.

- the civil partner, who was the nominated civil partner prior to the claim for separate assessment, is the nominated civil partner for the year of dissolution of a civil partnership.

- any unused tax credits and relevant standard rate band for the period prior to the separation may be transferred from one civil partner to the other.

Where they were Assessed as Single Persons prior to the separation:

Where Separate Treatment applied prior to the separation there is no change of treatment after dissolution of a civil partnership. Each civil partner continues to be taxed as a single person for the full tax year.

Years Following the Separation of Two Civil Partners, or Dissolution of a Civil Partnership or Award of a Decree of Nullity

How are civil partners who have separated or who were in a civil partnership which has been dissolved or annulled taxed in the years following their separation, dissolution or annulment?

The effect of separation, dissolution or annulment on each civil partner's tax liability depends mainly on whether there are maintenance payments for the benefit of the other civil partner, and if so, whether such payments are **voluntary payments** or are made under a **legally enforceable arrangement.** Each of these is covered separately in the following paragraphs.

What happens if there are no maintenance payments involved?

Where civil partners separate or obtain a dissolution or a decree of nullity and no maintenance payments are made, each civil partner will be taxed as a single person. Each civil partner will be responsible for filing his or her own tax return and paying tax on his or her own income.

Voluntary Maintenance Payments

How are voluntary maintenance payments treated for tax purposes?

Voluntary maintenance payments (i.e. payments which are not legally enforceable) are not taken into account when calculating either civil partner's tax liability, i.e.

- the civil partner who makes the payments is not entitled to a tax deduction for them,
- the civil partner who receives the payments is not taxed on them,
- both civil partners are taxed on their own income as single persons,
- maintenance payments for children are ignored for tax purposes - See section on '*Maintenance payments made to children'.*

Yet, if the voluntary payments are sufficient to **wholly or mainly maintain** the civil partner, the payer will be entitled to claim the joint assessment tax credit. **However, only single persons standard rate band is due**. The civil partner receiving the payments can also claim single person's tax credit against his or her income (if any).

Example 1 - Voluntary Payments

Two civil partners are living apart for the past two years. One civil partner has an annual salary of €25,000 and makes a voluntary maintenance payment of €6,000 a year to the other civil partner who has a salary of €15,000.

- the civil partner making the maintenance payment is not entitled to a tax deduction for the payment of €6,000,
- the civil partner receiving the maintenance payment is not taxed on the payment of €6,000,
- each civil partner is taxed as a single person.

Example 2 - Voluntary Payments/Married Person or Civil Partner Tax Credit claimed

Two civil partners are living apart. One has an annual salary of €40,000 and makes a voluntary annual maintenance payment of €12,000 to the other whose only other income is €8,000.

- the civil partner making the voluntary maintenance is not entitled to a tax deduction for the payments of €12,000,
- the civil partner receiving the voluntary maintenance is not taxable on the payments of €12,000.

Where there is a voluntary maintenance arrangement between civil partners, each will be entitled to the single person's standard rate band. The civil partner making the voluntary maintenance payment will be entitled to claim the Married Person or Civil Partner Tax Credit, because the payment is sufficient to wholly or mainly maintain the other, i.e. €12,000 is greater than €8,000, and the recipient civil partner will claim single person's tax credit.

Legally Enforceable Maintenance Payments

What are legally enforceable maintenance payments?

These include annual or periodic payments made under an order or a rule of court for the maintenance of a civil partner or on the dissolution of a civil partnership.

The following rules apply to payments made for the benefit of a civil partner;

- the payments are made without deduction of tax,
- the civil partner who makes the payments is entitled to a deduction from the income chargeable to tax and USC in respect of the maintenance payments made for the other civil partner or former civil partner's benefit,
- the civil partner who receives the maintenance is taxable on the payments,
- both civil partners are taxed as single persons (unless they opt to be taxed jointly),
- maintenance payments for children are ignored for tax purposes - See section on **'***Maintenance payments made to children'*.

Example - Legally Enforceable Payments

Two civil partners are living apart. One civil partner pays maintenance of €6,000 to the other civil partner. They have not opted to be taxed as civil partners.

- the civil partner making the payment is entitled to a tax deduction for the maintenance payments of €6,000,
- the civil partner in receipt of the payment is taxable on the maintenance payments of €6,000,
- both civil partners are taxed as single persons.

Can civil partners who are no longer living together or who were in a partnership which is now dissolved, opt to be taxed jointly?

Yes, civil partners who are no longer living together and whose civil partnership has now been dissolved or annulled can elect to be treated jointly for income tax purposes if:

- maintenance payments by one to the other are made under an order or rule of court, **and**,
- they are both resident in the State.

Civil partners in a civil partnership which has been dissolved also have the option of being treated jointly for income tax purposes if:

- maintenance payments by one to the other are made under an order or rule of court,
- they are both resident in the State, **and,**
- neither civil partner has registered in a new civil partnership or married.

The couple must submit a joint election if they wish to be taxed jointly. This election must be made in writing before the end of the tax year and must be signed by both civil partners. If such an election is made the maintenance payments are ignored. The civil partner making the payments does not get a tax deduction for them and the civil partner who receives the payments is not taxable on them.

Where only one civil partner has income, the full tax credits, reliefs and the appropriate Married Person or Civil Partner standard rate band will be given to that civil partner.

Where, both civil partners have income, separate assessment will apply. Tax credits and standard rate band will be apportioned between the civil partners, subject to a review at the end of the year. This ensures that any unused tax credits or relevant standard rate band are given to the other civil partner.

Note: Where a decree of nullity is obtained there can be no election to be taxed jointly.

How are maintenance payments made to or for children treated for tax purposes?

Maintenance payments made for the benefit of a child(ren) are ignored for tax purposes:

- the payments are made without deduction of tax,
- the payer is **not** entitled to a tax deduction for the payments,
- the payments are **not** taxable,
- the payments are **not** regarded as income of the child.

How is tax collected on legally enforceable maintenance payments?

Maintenance payments under an order or rule of court made to an individual for his or her benefit, by a civil partner from whom he or she is living apart or arising from the dissolution of their civil partnership, are an assessable source of income.

If an individual receives maintenance payments and also has income which is taxed under PAYE, it may be possible to collect some or all of the tax due on the maintenance payments by reducing their tax credits and standard rate band. Restriction of tax credits will not collect the USC due on the maintenance payments. The USC will be collected by PAYE review at the end of the year or by assessment.

If an individual receives maintenance payments only, this income is taxed under the Self-Assessment system. Leaflet IT10 - '*A Guide to Self-Assessment'* gives information on registering for income tax and how the self-assessment system operates.

It is very important that persons registering for income tax also register for PRSI purposes. Form SE3, which is available from the Department of Social Protection, should be completed.

Other Matters – Single Person Child Carer Credit, Mortgage Interest, Department of Social Protection Payments and PRSI

Can a separated civil partner or a former civil partner in a civil partnership which has been dissolved claim Single Person Child Carer Credit (SPCCC)?

With effect from 1 January 2014, SPCCC may be claimed by a single parent or a person who has custody of and maintains a child who is living with him or her (whether surviving civil partner, single, deserted, separated, or a former civil partner in a civil partnership which has been dissolved) who has a qualifying child resident with him or her for the whole or greater part of the year. This individual is known as the primary claimant. The primary claimant may relinquish his or her entitlement to this tax credit in favour of a secondary claimant if he or she wishes to do so.

SPCCC cannot be claimed in the case of a couple who are cohabiting or who receive Married Person or Civil Partner Tax Credit.

See **http://www.revenue.ie/en/tax/it/credits/single-person-child-carer-credit.html** for more information on the SPCCC.

The one-parent family tax credit has been abolished with effect from 31 December 2013. However, it can still be claimed for years up to and including 2013, subject to Revenue's 4-year time limit on submitting claims.

Leaflet IT9 - '*One-Parent Family Tax Credit'* gives more detailed information.

Can tax relief be claimed on mortgage interest, which is paid in respect of a mortgage on a residence for a civil partner who is living apart from his or her civil partner or who was formerly in a civil partnership which has been dissolved?

Yes, provided that the person is obliged to pay the interest and the loan is used for the purchase, repair, development or improvement of the other civil partner's sole or main residence. If interest is paid on one's own sole or main residence, tax relief will be available on both properties, subject to the maximum limits available to a single person. Leaflet IT1 - '*Tax Credits, Reliefs and Rates' and 'Mortgage Interest Tax Relief at Source (TRS)'* - FAQs give more detailed information.

How are Department of Social Protection Payments treated for tax purposes?

Payments paid by the Department of Social Protection such as One Parent Family Payment are taxable and should be declared to your Revenue office. However, such payments made under the Social Welfare Acts and other similar payments made, for example, by the Health Service Executive, are not liable to USC.

The Department of Social Protection does not deduct tax at source from these payments. If an individual taxed under PAYE has income in addition to a Department of Social Protection payment, their tax credits and standard rate band will be reduced to collect the tax due.

If tax is payable under self-assessment (e.g. the only other income is maintenance payments) the Department of Social Protection payment will be included in the notice of assessment.

Are maintenance payments subjected to PRSI?

The person making the maintenance payments

Civil partners who pay maintenance payments under an order or rule of court are entitled to relief for PRSI paid. The method of giving this relief will depend on whether they are a PAYE taxpayer or a self-assessed taxpayer.

- **Taxpayers assessed under PAYE -** Relief is given, by way of repayment at the end of the year, on any PRSI paid on the payments made by them.
- **Self-Assessed Taxpayers -** A deduction for maintenance payments will be given in their assessment when calculating the PRSI due.

In the case of taxpayers assessed under PAYE, the claim for repayment of PRSI should be made to the Department of Social Protection, PRSI Refunds, Oisin House, 212 - 213 Pearse St, Dublin 2, who will arrange for the return of the contributions paid in respect of the maintenance payment.

The person receiving the maintenance payments

- The civil partner in receipt of maintenance payments is liable to PRSI on the amount he or she receives, subject to the normal thresholds and exemptions that apply (See **www.welfare.ie**).

Capital Gains Tax

How are disposals of assets between civil partners treated for Capital Gains Tax purposes?

Generally, disposals of assets between civil partners who are living together are specifically exempted from Capital Gains Tax. Assets, including the shared home, but excluding trading stock, transferred between civil partners on foot of a court order following the dissolution of a civil partnership will not give rise to a Capital Gains Tax liability.

Unused allowable losses may be transferred between civil partners in the year of dissolution of a civil partnership.

What is the Capital Gains Tax position for disposal of assets between former civil partners on the Dissolution of a Civil Partnership?

A charge to Capital Gains Tax does not arise where a person disposes of an asset to a former civil partner under Part 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

The relief does not apply to assets which form, or are intended to form, part of the trading stock of a trade or business.

Where relief does apply, each asset is treated as being disposed of for an amount that gives rise to neither a gain or a loss in the hands of the disponer. The civil partner acquiring the asset is deemed to acquire the asset on the same day and at the same cost as the civil partner who originally acquired it.

Any other disposals from one civil partner to the other which takes place outside of a court order are treated as disposals at full market value as if between strangers, and Capital Gains Tax is calculated in the normal way.

Example

Civil partners dissolve a civil partnership. As part of a maintenance order, one civil partner transfers the following assets to the other civil partner.

- shares worth €100,000 (which he or she had purchased ten years previously for €20,000),
- his or her interest in the shared home (cost €30,000 twenty years previously).

The civil partner transferring the assets will not be liable for any Capital Gains Tax on either of these disposals to the civil partner acquiring the assets, regardless of whether the transfers take place in the year of dissolution of the civil partnership or subsequently.

If the civil partner acquiring the assets subsequently sells any of the shares, he or she will be liable for any Capital Gains Tax which arises. The gain will be calculated as if he or she had originally purchased the shares ten years previously at the original cost of €20,000.

If the civil partner acquiring the assets decides at a later date to sell the shared home he or she will be exempt on any gain arising, if it was occupied by him or her as a principal private residence throughout the period of ownership.

Further information on the taxation of Capital Gains Tax is available in booklet CGT1 - *Guide to Capital Gains Tax.*

Capital Acquisitions Tax and Stamp Duty

What is the Capital Acquisitions Tax and Stamp Duty position for disposal of assets between former civil partners following a dissolution of the civil partnership?

There is no Capital Acquisitions Tax (CAT) or Stamp Duty on property passing between civil partners. When civil partners live apart, these exemptions continue to apply, as those couples remain legally in a civil partnership.

Where a couple obtains a dissolution of a civil partnership, transfers between former civil partners made on foot of a court order governing the dissolution of a civil partnership under Part 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 are exempt from CAT and Stamp Duty.

If a civil partner in a partnership which has been dissolved, purchases another house he or she may be deemed, for Stamp Duty purposes, to be a First Time Buyer if the following conditions are satisfied:

- the individual has left the family home,
- the individual has not retained an interest in the family home, **and,**
- the former civil partner continues to occupy the house, which was the family home prior to the dissolution of the civil partnership.

Further information and the rates of Stamp Duty for First Time Buyers are available on **www.revenue.ie** under Tax and Duties, Stamp Duty. Relevant legislation can be found in Sections 96 and 97 of the Stamp Duties Consolidation Act 1999.

SECTION 3 - COHABITANTS

Maintenance and Property Issues

What is the tax position of former cohabitants with regard to court ordered maintenance payments?

On the break-up of a cohabiting arrangement, an individual who has been in such a relationship for a period of five years or more (known as a qualified cohabitant), or for a reduced period of two years where they are the parents of dependent children, can now apply to the court for a maintenance order. These include annual or periodic payments.

The following rules apply to payments made for the benefit of a former cohabitant:

- the payments are made without deduction of tax,
- the cohabitant who makes the payments is entitled to a deduction from the income chargeable to tax and USC in respect of the maintenance payments made for the other cohabitant,
- the cohabitant who receives the maintenance is taxable on the payments.

Both cohabitants continue to be taxed as single persons.

If you are a PAYE employee, the tax on any maintenance payments arising under a legally enforceable agreement can be collected by reducing your tax credits and standard rate band, or if above a certain limit and it is not possible to collect through the PAYE system, you may be required to register for Income Tax. It is very important that persons registering for income tax also register for PRSI and USC.

If you are self-employed or a PAYE worker, you will have to declare this income in your Return of Income. If the only income you are in receipt of is the maintenance payment, you will have to register as a self-employed individual.

Maintenance for dependents

No tax relief is available for maintenance payments made in respect of dependent children.

Property transfers

A charge to Capital Gains Tax does not arise where a person disposes of an asset to a former cohabitant as a consequence of a court order under Part 15 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

The relief does not apply to assets which form, or are intended to form, part of the trading stock of a trade or business.

Where relief does apply, each asset is treated as being disposed of for an amount that gives rise to neither a gain or a loss in the hands of the disponer. The former cohabitant acquiring the asset is deemed to acquire the asset on the same day and at the same cost as the cohabitant who originally acquired it.

Transfers between former cohabitants made on foot of a court order are also exempt from CAT and Stamp Duty.

Full details can be found on **www.revenue.ie** regarding Taxation and Redress Scheme for Cohabiting Couples.

Leaflets

Summary of Revenue Information Leaflets, which may be of further assistance:

IT1 - Tax Credits, Reliefs and Rates
IT2 - Taxation of Married Persons and Civil Partners
IT9 - One-Parent Family Tax Credit
IT10 - Guide to the Self-Assessment System
IT18 - Incapacitated Child Tax Credit
CGT1 - Guide to Capital Gains Tax

Dept. of Social Protection Leaflets, which may be of assistance:

SW74 - A Guide to PRSI for the Self-Employed
SW8 - Guide to Voluntary Contributions
SW14 - PRSI Contribution Rates and User Guide

Further Information

If you are a PAYE customer, your tax affairs are dealt with in the region where you live. If you need further information, call Revenue PAYE LoCall Service (Republic of Ireland only) at:

Border Midlands West Region Cavan, Donegal, Galway, Leitrim, Longford, Louth, Mayo, Monaghan, Offaly, Roscommon, Sligo, Westmeath	**1890 777 425**
Dublin Region Dublin (City and County)	**1890 333 425**
East & South East Region Carlow, Kildare, Kilkenny, Laois, Meath, Tipperary, Waterford, Wexford, Wicklow	**1890 444 425**
South West Region Clare, Cork, Kerry, Limerick	**1890 222 425**

If you are calling from outside the Republic of Ireland phone + 353 1 7023011.

If you are taxed under the Self-Assessment system you may contact the Revenue office shown on your notice of assessment.

Forms and Leaflets - To request any Revenue Form or Leaflet LoCall 1890 306 706 (ROI only), + 353 1 702 3050 (from abroad), visit any Revenue public office or see **www.revenue.ie**

Please note that the rates charged for the use of **1890 (LoCall)** numbers may vary among different service providers.

Time Limit for Repayment Claims

A claim for repayment of tax must be made within four years after the end of the tax year to which the claim relates.

Accessibility - if you are a person with a disability and require this leaflet in an alternative format the Revenue Access Officer can be contacted at **accessofficer@revenue.ie**

Any **PRSI** queries should be directed to Department of Social Protection, Information Service at (01) 704 3000.

General information on **Stamp Duty** is available at LoCall 1890 48 25 82 or from Revenue's Stamp Duty section on **www.revenue.ie.**

Appendix

When contacting Revenue you will be asked for some or all of the following:

- Date of separation or dissolution of civil partnership.
- Whether separation or dissolved civil partnership is legal or likely to be permanent.
- Details of any maintenance payments being made/received.
- Details of any payments from Department of Social Protection.
- Completed Form SPCC1 or SPCC2 (or Form OP1 prior to 1 January 2014) if you have a dependant child/children.
- Copies of any legal documents governing the separation or dissolution of civil partnership.

Please remember to give your name, address and PPS (Personal Public Service) number, when contacting Revenue.

Revenue Commissioners
June 2014