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Capital Gains Tax Separation and Divorce

With effect from 6 April 2023, new measures were introduced to the Capital Gains Tax (CGT) rules that apply to transfers of assets between spouses and civil partners who are in the process of separating.

The main effect of the legislation is to extend the time period to make no gain or no loss transfers for CGT purposes and will help to make the process of distributing assets between separating couples less complex. In most cases where divorce and the financial settlement are completed within the three tax years following the year of separation the CGT and Inheritance Tax position will be consistent allowing couples to separate their finances without having to worry about tax charges.

What is a 'no gain or no loss' basis?

Married couples and civil partners are able to transfer chargeable assets, being assets such as properties, shares and business interests, between them without incurring CGT - this is known as the 'no gain or no loss' basis.

No gain or no loss means that any gains or losses from the transfer are deferred until the asset is disposed of by the receiving spouse or civil partner. The recipient of the asset will be treated as having acquired the asset at the same original cost as the transferring spouse or civil partner.

What are the new measures?

The new measures provide more time in which to make no gain or no loss transfers of assets between the separating parties. Previously this was only available in the tax year of separation.

Spouses and civil partners who are in the process of separating will be given:

- + Up to three tax years after the tax year in which they cease to live together in which to make no gain or no loss transfers;
- + Unlimited time if the assets are the subject of a formal divorce agreement;
- + The option to claim Private Residence Relief (PRR) for a future sale of the former matrimonial home, if they have maintained a financial interest in it following separation; and
- + The opportunity to apply the same tax treatment to the proceeds from the sale of the matrimonial home that applied when they transferred their original interest in the home to their ex-spouse or civil partner.

These new provisions only apply to couples separating following the breakdown of a marriage or civil partnership. Couples who have not been married or entered into a civil partnership do not have the same no gain or no loss entitlements.

Timing of the transfer of assets

The legislation applies to the transfer of assets on or after 6 April 2023, irrespective of the date of separation.

Date of transfer

If assets are not transferred under a court order then the date of transfer is the date of the contract. If there is no formal written contract or earlier binding agreement, the date of transfer is the date that the asset is actually transferred.

For assets transferred under court order made before the divorce is final, the relevant date is the earlier of the date of the court order and the decree absolute or dissolution is made final. If the court order is made after the decree absolute or dissolution is made final, then the date of transfer is the date of the court order.

Private Residence Relief

The changes benefit separating couples whose main asset is their home, specifically because of the option to claim PRR when the former matrimonial home is sold.

Previously, the departing spouse or civil partner was no longer able to accrue PRR once they had moved out of the matrimonial home. This could result in a CGT bill on the eventual sale or transfer to the remaining spouse or civil partner if they had been absent from the property for some time.

The extended time limits mean that a departing spouse or civil partner, who has transferred their share to the remaining spouse or civil partner, will have a more realistic chance to make a no gain or no loss disposal.

Where the property is sold to a third party, further specific exemptions will increase the amount of PRR, enabling the departing spouse or civil partner to retain the same tax position as had they remained in the matrimonial home.

How M+A Partners can help

Our experienced Tax Team can help and support you with all aspects of Capital Gains Tax and are here to answer any queries you might have regarding the transfer of assets between spouses and civil partners who are in the process of separating.

Please contact one of our experts detailed below or email enquiries@mapartners.co.uk



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