

# **Notes for Guidance - Taxes Consolidation Act 1997**

**Finance Act 2023 edition**

## **Part 44A Tax Treatment of Civil Partnerships**

**December 2023**



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## Notes for Guidance - Taxes Consolidation Act 1997

### Finance Act 2023 edition

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## PART 44A TAX TREATMENT OF CIVIL PARTNERSHIPS

### CHAPTER 1 *Income Tax*

#### **Overview**

This Chapter deals primarily with the tax treatment of Civil Partners and the various assessment options available to them. These options are —

- joint assessment (also known as aggregation),
- separate assessment, and
- separate treatment.

In the absence of an election to the contrary, civil partners are deemed to have elected for joint assessment. Under joint assessment, one of the civil partners is chargeable to tax, not alone on his/her own total income, but also on the total income of his/her civil partner. The civil partner who is chargeable to tax on the income of both civil partners is known as the “nominated civil partner”.

Under separate assessment (*section 1031H*), each civil partner is assessed on his/her own income with tax credits and reliefs divided between the civil partners in accordance with *section 1031I*. Separate assessment is also known as “separate assessment within joint assessment” as the unused tax credits, reliefs and rate bands of one civil partner may be transferred to the other civil partner (that is, the aggregate of the tax payable by each civil partner under separate assessment cannot exceed the tax payable had the civil partners elected to be jointly assessed).

Under separate treatment (*section 1031B*), each civil partner is treated for tax purposes as if they had not entered into a civil partnership. The main difference between separate treatment and separate assessment is that, under separate treatment, one spouse’s unused tax credits, reliefs and rate bands *cannot* be transferred to the other civil partner.

Where civil partners register a civil partnership within a year of assessment, relief is provided by way of repayment of tax and divided between each civil partner (*section 1031E*). The Chapter goes on to provide for repayment of tax to couples jointly assessed (*section 1031F*) and for tax due on one civil partner where the nominated civil partner does not pay any or enough tax (*section 1031G*).

Finally, the Chapter deals with maintenance payments for separated civil partners (*section 1031J*), for the adaptation of certain provisions to allow for the joint assessment of separated and certain divorced civil partners.

## **1031A Interpretation (Chapter 1)**

### **Summary**

This section is an interpretation provision and defines certain references that are used throughout the Chapter.

### **Details**

The “inspector” is any inspector who the individual 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; (1)

“nominated civil partner” means the civil partner in a civil partnership who is nominated for the purposes of this Chapter in accordance with section **1031D**;

“other civil partner” means the civil partner in a civil partnership who is not the nominated civil partner.

A civil partner is regarded as living with his or her civil partner for income tax purposes unless they are living separately in such circumstances that the separation is likely to be permanent. (2)

The other civil partner’s income includes any income (including income deemed to be that civil partner’s income), which would be included in computing his or her total income. (3)(a)

References to an individual who has elected to be assessed in a particular way include references to a person who is deemed to have elected to be assessed in such a way. Similarly, references to a nominated civil partner being assessed on the joint income of the civil partners include references to the civil partners being separately assessed. (3)(b)

Any notice concerning the taxation of civil partners may be served by post. (4)

## **1031B Assessment as single persons**

This section provides that, where civil partners are treated as living together, each civil partner is to be assessed and charged on his/her own income as if they were not in a civil partnership, unless they elect to be jointly assessed. (1)

Where they make this election in a given year, this section does not apply for that year. (2)

## **1031C Assessment of nominated civil partner in respect of income of both civil partners.**

### **Summary**

This section provides for the assessment of the nominated civil partner in respect of the total income of both civil partners. The total income of the other civil partner is treated as the total income of the nominated civil partner in addition to his or her own and all reliefs from income tax may be granted to the nominated civil partner for the period they elect to be assessed in this manner.

## Details

Where a couple in a civil partnership elect to be jointly assessed to tax, then the nominated civil partner is assessed, not only in respect of his or her total income, but also in respect of the total income of the other civil partner. As such, any reliefs from income tax due to the other civil partner in that year of assessment are granted to the nominated civil partner. A similar charge follows through in death cases where the nominated civil partner's executors or administrators may be chargeable.

This section does not address the question of whether the income of the other civil partner is chargeable to tax. (1)(b)

## 1031D Election for assessment under *section 1031C*

### Summary

This section enables a couple in a civil partnership to elect to be jointly assessed under *section 1031C*. Provision is also made for the withdrawal of this election. Where such an election has not been made, a couple are automatically jointly assessed. Either civil partner may request to be assessed separately and further may withdraw this notice at a later time.

### Details

#### *Election to be jointly assessed*

The civil partners may elect, at any time during a year of assessment, to be jointly assessed by giving a notice in writing to the inspector. Where such an election is made, the income of both civil partners is assessed accordingly for that year and each subsequent year of assessment. The civil partners may also elect which of them is to be the nominated civil partner. (1) & (2)

Where notice in writing is given to withdraw this election in any year of assessment, then such election is not to have effect for that year and each subsequent year of assessment. (3)

#### *Automatic joint assessment*

Where civil partners living together have not elected to be jointly assessed under this section, they are deemed to have done so and the Revenue Commissioners shall deem one of the civil partners to be the nominated civil partner unless before the end of the year of assessment either of them gives notice in writing to the inspector that they wish to be assessed as single persons under *section 1031B*. (4)(a)

Once this notice has been given, joint assessment is not to apply until such time as the civil partner who applied to be assessed as a single person withdraws such application. (b)

## 1031E Special provisions relating to year of registration of civil partnership

## Summary

This section provides that civil partners are taxed as single persons throughout the year of assessment in which they entered into a civil partnership. However, a measure of relief is given by way of repayment after the end of that year where the total tax which would have been paid and payable by the civil partners under this arrangement exceeds the total tax that would have been payable had they been civil partners throughout the year. Such a repayment is divided between the civil partners and is governed by general rules relating to tax credits, deductions, reliefs and repayments.

## Details

### *Definitions*

“income tax month” means a calendar month. (1)

“year of registration” in relation to 2 individuals who are civil partners of each other means—

- (a) in the case of civil partners who have entered into a civil partnership with each other which was registered in the State, is the year of assessment in which the civil partnership was registered and
- (b) in the case of civil partners whose legal relationship, entered into in another state is recognised pursuant to an order made under section 5 of the Civil Partnership and Certain Rights and obligations of Cohabitants Act 2010, the year of assessment in which falls the day on which, by virtue of subsection (2) of that section, the civil partners are to be treated as civil partners under the law of the State.

### *Relief*

Where the aggregate of — (3)

- the tax paid and payable by the nominated civil partner on his or her total income for the year of registration, and
- the tax paid and payable by the other civil partner on his or her total income for the year of marriage,

exceeds the tax which would have been payable by the nominated civil partner on both their incomes (under joint assessment) if they had been civil partners throughout the year of registration, then the relief provided is calculated by way of the formula —

$$A \times \frac{B}{12}$$

“A” is the amount of the excess.

“B” is the number of months (including part of a month) from the date of registration of their civil partnership to the end of the year of assessment.

Civil partners may not opt for joint assessment under *section 1031D* for the year of registration but may do so for any subsequent year of assessment. (2)

### ***Repayment of tax***

If a couple in a registered civil partnership wish to obtain a repayment of tax under this section they must make a joint claim to the inspector after the end of the year of registration. (5)

Where any repayment of tax is due, it is divided between the civil partners according to the tax paid and payable by them. (4)

The general provisions relating to allowances, deductions and reliefs (*section 459* and *paragraph 8 of Schedule 28*) and the rate of tax at which repayments are to be made (*section 460*) apply in the same manner to repayments under this section. (6)

### **1031F Repayment of tax in case of certain civil partners**

This section applies in a year of assessment to civil partners who are jointly assessed under *section 1031C* and to whom *section 1031H* (separate assessment) does not apply. (1)

Any repayment of tax due to the civil partners is to be divided between the civil partners on the basis of the tax paid by them for the relevant year of assessment. For administrative reasons, if the amount repaid is below €25 it is to be repaid to the nominated civil partner. (2)

Where an inspector is satisfied that a repayment or most of a repayment is due in respect of a tax credit or relief which, if separate assessment or separate treatment had applied, would be payable to one civil partner only, the repayment may be divided between the civil partners in such a manner as the inspector feels is just and reasonable. (3)

### **1031G Special provisions relating to tax on individual's civil partner's income**

#### **Summary**

This section applies where civil partners are jointly assessed to tax. It allows the Revenue Commissioners to collect income tax from the other civil partner where the nominated civil partner has failed to pay the tax, or has failed to pay all the tax, assessed. The amount of unpaid tax, which can be recovered from the other civil partner, is limited to that which is attributable to the income of the other civil partner. In other words, the section does not allow Revenue to recover from the other civil partner any unpaid tax assessed on the nominated civil partner, which is attributable to the income of the nominated civil partner. The section also allows the nominated civil partner to disclaim any liability for unpaid tax attributable to his/her deceased civil partner's income for any year in which he/she is assessed to tax on their combined income. This gives the nominated civil partner the option, where there is unpaid tax which is attributable to a deceased civil partner, of ensuring that the tax is collected from the assets in the estate of the deceased civil partner rather than from his/her income.

The provisions of the section also apply for the purposes of capital gains tax by virtue of *section 1031N*.

#### **Details**

#### ***Application***

Where an assessment for any year is made on an individual (or on an individual's trustee, guardian or committee or on an individual's executors or administrators) and the (1)

Revenue Commissioners are of the opinion that, if the civil partners had been assessed separately, an assessment in respect of income tax would have been made on the civil partner of the individual, or on the representative of, or on the executors or administrators of the individual's civil partner then, if the whole or part of the tax due remains unpaid for 28 days after it is due, the Revenue Commissioners may, by notice in writing, require the other civil partner to pay the amount which would have been assessed on the nominated civil partner or the amount left outstanding (whichever is the lesser).

Where such a notice is served on the civil partner of the individual referred to in **subsection (1)**, the same consequences are to follow in respect of liability to pay tax, priorities in bankruptcy, appeals, etc, as would have ensued if a separate assessment had been made on the other civil partner or the other civil partner's representative or on the other civil partner's executors or administrators. (2)

#### ***Payment of interest on tax due***

The amount of tax required to be paid under the notice ceases to be recoverable under the original assessment. Similarly, the interest on overdue tax is calculated as if the amount which ceases to be recoverable had never been charged. (3)

#### ***Appeal against a notice***

Where, as a result of an appeal against a notice, the amount of tax payable is reduced, the Revenue Commissioners will give such relief as appears just and reasonable to the civil partners. In this instance the amount of the reduction again becomes recoverable under the original assessment. (4)

#### ***Information***

The Revenue Commissioners have the same powers in relation to obtaining information for the purposes of serving a notice under this section as they would in relation to making an assessment if an application for separate assessment under **section 1031H** had been in force. (5)

#### ***Case of a deceased civil partner***

Civil partners have the right to disclaim liability for tax on the income of their deceased civil partner for any year of assessment (or part of a year) for which he/she was assessed on their combined incomes. The notice of the disclaimer must be given to the executors or administrators and to the inspector within 2 months from the date of the grant of probate or letters of administration, subject to an extension of this time limit with the consent of the deceased civil partner's executors or administrators. (6)

The notice to the inspector is invalid unless it specifies the names and addresses of the deceased civil partner's executors or administrators. (7)

Where such a notice has been given to a deceased civil partner's executors or administrators and to the inspector, the Revenue Commissioners must exercise the powers contained in this section to recover the tax from the deceased civil partner's executors or administrators. The Revenue Commissioners must assess tax on, and collect it from, the deceased civil partner's executors and administrators — (8)

- as if he/she was to be assessed separately for the year in question, and
- as if he/she had been assessed separately for previous years.



The words “all assessments previously made had been made accordingly” is used to ensure that the Revenue Commissioners may raise additional assessment(s) in relation to earlier years if he/she had been under-assessed in any of those years (for years to which Self Assessment applies, original assessments are usually amended).

The Revenue Commissioners may delegate the operation of this section to Revenue officers nominated by them in writing. (9)

### **1031H Application for separate assessments**

#### **Summary**

Separate assessment is an option open to civil partners. This section sets out how it is to apply and provides for the application of income tax provisions to the civil partners as if they were not in a registered civil partnership, while at the same time ensuring that they do not —

- lose out on personal reliefs, and
- pay more tax than they would if they had been assessed together.

While either civil partner may send a return for both incomes, the Revenue Commissioners may, where they are not satisfied, require a further return from either civil partner.

#### **Details**

##### ***Definition***

“personal reliefs” are defined, for the purposes of this section and *section 1031I* as relief under any of the provisions specified in the Table in *section 458*, apart from relief for certain widowed persons, one-parent families and widowed parents (*sections 461A, 462B* and *463*). (1)

##### ***Application for separate assessment***

Civil partners, who have elected to be jointly assessed to tax on their combined incomes, may, if either of them applies in the manner and form prescribed by the Revenue Commissioners, have their incomes separately assessed and charged to tax for the year of assessment (to which the application relates) as if they were not civil partners of each other. (2)

In such circumstances, the provisions of the Income Tax Acts with respect to the assessment, charge and recovery of tax apply as if they were not civil partners, except that —

- the total amount of personal reliefs allowed to the civil partners is to be the same as if they were not separately assessed,
- the total tax payable by the civil partners for that year is to be the same as if they had not been separately assessed, and
- the provisions for apportioning the personal reliefs between the civil partners and on charging tax on the income of each civil partner apply as set out in *section 1031I*.

In applying for separate assessment, the application must be made — (3)

- in the case of civil partners who register a civil partnership during the course of a year, before the 1st of April of the following year,
- in any other case, within 6 months before the 1<sup>st</sup> of April in the particular year of assessment.

An application for separate assessment has effect for the year in which it is made and (4) for all subsequent years of assessment. If, however, this application is withdrawn by written notice before the 1<sup>st</sup> of April in any subsequent year, the couple will not be separately assessed for the year in which the application is withdrawn or for any subsequent year of assessment.

An application for separate assessment can only be withdrawn by the civil partner who made the original application.

### ***Income tax returns***

A return of the total incomes of the civil partners may be made by either one of the civil (5) partners but if the Revenue Commissioners are not satisfied with the return they may require a return to be made by the civil partners, as the case may be.

The Revenue Commissioners may by notice require returns to be made at any time. (6)

## **1031I Method of apportioning reliefs and charging tax in cases of separate assessments**

### **Summary**

This section sets out the method of apportioning personal reliefs between the civil partners, and to charging tax on the income of each civil partner in cases where separate assessment is claimed under *section 1031H*. The section provides that any personal allowances and reliefs which are unused, by reason of the fact that they exceed the amount of income of either of the civil partners, are to be set against the income of the other civil partner. Similarly, any benefit from the application of the lower rate of tax not used by one civil partner is to be passed on to the other civil partner.

### **Details**

#### ***Apportionment***

Where civil partners opt to be separately assessed to tax, the benefits flowing from the (1) & personal reliefs may be given by way of repayment of tax already paid, by way of (2)(a) reduction of the amount to be paid or by both means as may be necessary, and the allocation between the civil partners is to be as follows —

- (a) In the proportion in which they incurred the expenditure giving rise to the following reliefs —
- relief for interest paid on certain home loans (*section 244*),
  - owner-occupiers for expenditure on construction, refurbishment or conversion, as appropriate, of a qualifying premises (*sections 372AR* and *372AAB*),
  - relief for health expenses (*section 469*),
  - relief for insurance against expenses of illness (*section 470*),

- relief for premiums under qualifying long-term care policies (*section 470A*),
  - age-related tax credit for health insurance premiums (*section 470B*),
  - allowance for rent paid by certain tenants (*section 473*),
  - relief for contributions to permanent health benefit schemes (*section 471*),
  - relief for fees paid for third level education (*section 473A*),
  - relief for fees paid for training courses (*section 476*),
  - relief for service charges (*section 477*),
  - relief for new shares purchased on issue by employees (*section 479*).
  - allowances to owner-occupiers in certain areas other than the Custom House Docks Area (*paragraph 12 of Schedule 32*), and
  - relief for expenditure on certain buildings in certain areas (*paragraph 20 of Schedule 32*).
- (b) In the proportion of half and half —
- relief in relation to the basic personal tax credit (*section 461*),
  - age tax credit (*section 464*),
  - incapacitated child tax credit (except where the child is in the sole custody of the claimant – see (c) below) (*section 465*), and
  - relief for blind persons’ tax credit (*section 468*).
- (c) According to who maintains the child or dependent relative —
- relief in respect of an incapacitated child where the child is in the sole custody of the claimant (*section 465(3)*), and
  - dependent relative tax credit (*section 466*).
- (d) Others —
- in the proportion in which they bear the cost of employing a person to take care of an incapacitated individual (*section 467*),
  - the Employee (PAYE) tax credit is given to the civil partner who has income subject to tax under PAYE (*section 472*),
  - the deduction for the long-term unemployed (*section 472A*) and the seafarers allowance (*section 472B*) are given to the qualifying individual in each case,
  - in the proportion in which they made a film investment (*section 481*),
  - according as the civil partner made the relevant donation to the approved body (*section 848A(7)*), and
  - in the proportion in which they subscribed for the eligible shares giving rise to the relief (*Part 16*).

***Allocation of exemptions and standard rate bands***

Income tax exemption under *188* are to be split between civil partners in proportion to the amount of income tax that would have been payable by each if the exemptions had not applied. (2)(b)

Where civil partners opt for separate assessment, each civil partner is given half the standard rate band (*section 15*), in accordance with the rate band due to individuals assessed in accordance with section 1031C, with the balance being charged at the higher rate. (2)(c)

### ***Transfer of surplus between civil partners***

Where one civil partner’s tax is reduced to nil without using up all the tax credits and reliefs due to that civil partner, as apportioned under this section, any balance of relief is to be granted to the other civil partner. (3)

If one civil partner has insufficient taxable income to utilise his/her full entitlement at a particular rate of tax, then the balance of that rate band of tax is transferable to the other civil partner if this results in a reduction of the amount payable by the other civil partner. (4)

## **1031J Maintenance of civil partners living apart**

### **Summary**

This section provides that payments made under a maintenance arrangement by one party in a civil partnership to the other civil partner of that civil partnership will —

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

While civil partners living apart are treated for tax purposes as if they are not civil partners of each other, there is provision in *section 1031K* for the civil partners to jointly elect for joint assessment in which case maintenance payments are ignored for tax purposes and the foregoing paragraph will not apply.

### **Details**

#### ***Definitions***

A “maintenance arrangement” means an order of a court under Part 5 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 giving rise to a legally enforceable obligation, or any legally enforceable arrangement under which payments are made by one person to another in consideration, or in consequence, of the annulment or dissolution of a civil partnership or of a separation of the kind referred to in *section 1031A(2)*. (1)

It is not intended that any regard be had for tax purposes to unenforceable payments.

A “payment” means a payment or part of a payment.

References to a child of a person includes a child in respect of which, before making the maintenance arrangement, the person concerned was entitled to relief under *section 465* in respect of an incapacitated child. (1A)

#### ***Application***

This section applies to payments made, directly or indirectly, by a party to a civil partnership, under or pursuant to a maintenance arrangement relating to the civil partnership, for the benefit of his or her child, or for the benefit of the other party to the civil partnership. The payments must be — (2)(a)

- made at the time when the civil partners are not living together,
- legally enforceable, and
- annual or otherwise periodical.

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. For example, if the payment is conditional on the recipient maintaining the child without specifying the amount that must be spent on the child, that payment is treated as the recipient's income. While payments to third parties are excluded, payment of rent or school fees are treated as of benefit to the recipient civil partner or child and not the landlord or owner of the school.

Where an ascertainable sum is allocated under the maintenance arrangement for the benefit of the child, such sum is not considered to be income of the recipient civil partner, but is treated as income of the paying civil partner (under *section 795* income settled on a minor is deemed to be the income of the settlor).

(2)(c)

***Tax treatment where payment is for benefit of the recipient civil partner***

Where the payment is for the benefit of the recipient civil partner, and the civil partners are assessed to tax as single persons —

(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.

Where the payment is for the benefit of the recipient civil partner, and the civil partners are assessed to tax as single persons —

(3A)

- 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,
- 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, and
- for the purposes of a claim to the incapacitated child allowance, the payment is regarded as a contribution towards the child's maintenance by the person making the payment, even though the payment may be made to that person's spouse for the maintenance of the child. This, in effect, gives the payer a right to all or part of the incapacitated child allowance.

### ***Application of general income tax provisions***

Where a civil partner is claiming a deduction of the amount of maintenance from total income, this section applies the general income tax provisions governing — (4)

- 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*).

### **1031K Dissolution or annulment of civil partnerships: adaptation of provisions relating to civil partners**

#### **Summary**

This section allows permanently separated civil partners and, in certain circumstances, civil partners whose partnership has been dissolved to elect to be assessed jointly for income tax purposes under *section 1031D*, subject to certain adaptations of that section.

#### **Details**

#### ***Adaptation of section 1031D***

Where an enforceable maintenance payment to which *section 1031J* applies is made in a year of assessment by a party to a civil partnership (which has not been annulled or dissolved) and both civil partners are resident in the State, then *section 1031D* will apply as if — (1)

- the condition that the civil partner must be living with the other civil partner were deleted, and
- the provision for the automatic joint assessment to tax on the civil partners or notice to change such an assessment or the withdrawal of such a notice, were deleted.

This allows separated individuals to elect to be jointly assessed (that is, as if the separation had not taken place).

#### ***Method of assessment***

Where separated civil partners elect to be jointly assessed under *section 1031D* (subject to the adaptations contained in this section) then, as respects any year for which the election has effect — (2)

- the Income Tax Acts apply to those civil partners as they would to civil partners living together who elect to be jointly assessed,
- the total incomes of both parties is computed for tax purposes as if any maintenance payments had not been made (that is, they would be totally disregarded for tax purposes), and
- income tax is charged, assessed and recovered on the income or incomes of the civil partners as if an application for separate assessments had been made by one of the civil partners under *section 1031H*.

### ***Joint assessment for civil partners whose civil partnership has been dissolved***

Where an enforceable maintenance payment has been made by one party to a dissolved civil partnership for the benefit of another, this section may also apply to them in circumstances where — (3)

- the dissolution is under section 110 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, or deemed to be such a dissolution under section 5(4) of that Act
- both civil partners are resident in the State for tax purposes, and
- neither civil partner has entered into another civil partnership or married.

## CHAPTER 2 *Capital Gains Tax*

### **Overview**

This Chapter deals with the capital gains tax assessment of civil partners (***section 1031M***), the charge of capital gains tax on one civil partner where the other civil partner has not paid (***section 1031N***), and the rules regarding the transfer of assets where a civil partnership is dissolved (***section 1031O***).

### **1031L Interpretation (Chapter 2)**

#### **Summary**

This is an interpretation section for the purposes of this Chapter.

#### **Details**

This section contains terms used in this Chapter. (1)

- ‘inspector’, in relation to a notice, means any inspector who the civil partner giving a notice under this Chapter might reasonably be the inspector to whom the notice should be sent or any inspector who indicates his or her willingness to accept the notice;
- ‘nominated civil partner’, in relation to a civil partnership, means the civil partner who has been jointly nominated to be the assessable civil partner, responsible for the making of the joint return and to whom the assessments will be issued;
- ‘other civil partner’ means the civil partner who is not the nominated civil partner.

A reference in the Capital Gains Tax Acts to an individual who has been nominated to be the nominated civil partner in accordance with ***section 1031M*** includes a reference to an individual who is deemed to be the nominated civil partner in accordance with that section. (2)

Any notice required to be served under any section in this Chapter can be served by post. (3)

### **1031M Civil partners**

## Summary

This section deals with the assessment treatment of civil partners for capital gains tax purposes. It sets out the method of joint assessment, makes provision for applications for separate assessment and provides rules for the transfer between civil partners of unutilised losses. It also provides rules for the treatment of disposals between civil partners, and subsequent disposals of any assets which had previously been disposed of between civil partners.

## Details

### *Nomination of civil partner for purposes of Chapter 2*

An individual and his or her civil partner who are living together may, for a year of assessment, by written notice given to the inspector on or before 1 April in the year following that year of assessment, jointly nominate which of them is to be the nominated civil partner for the purposes of *Chapter 2*. (1)(a)

If the notice under *paragraph (b)* is not given on or before the date mentioned, the Revenue Commissioners will deem one of the civil partners to be the nominated civil partner. (1)(b)

### *Joint assessment*

Capital gains tax on the chargeable gains of a civil partner living with another civil partner is to be assessed and charged on the civil partner who is the nominated civil partner. The total tax charged is not to be different from what it would be if each civil partner were to be assessed separately. (2)

### *Separate assessment*

Joint assessment under *subsection (1)* will not apply for a year of assessment if, on or before 1 April of the following year, either civil partner makes an application that *subsection (1)* will not apply. This effective application for separate assessment remains in force for future years of assessment until a notice of withdrawal of the application is made. Such a notice of withdrawal is not valid unless it is made on or before 1 April in the year following the year of assessment for which the notice of withdrawal is given. (3)

### *Losses*

If in a year of assessment one civil partner has allowable losses which he/she cannot utilise because of an insufficiency of chargeable gains from which those allowable losses would be deductible under *section 31*, the balance of the losses after being set off against that civil partner's gains (if any) can be offset against the other civil partner's gains in the year of assessment. This treatment does not operate for a year of assessment where either civil partner makes an application, that this subsection (*subsection (3)*) does not apply, on or before 1 April of the following year. (4)

### *Disposal from one civil partner to another*

A disposal from one civil partner to another is deemed to have been made at a value such that no gain or loss arises to the civil partner making the disposal. However, this no gain/no loss rule does not apply to the disposal of trading stock by the civil partner making the disposal or if the asset is acquired as trading stock for the purposes of a trade carried on by the civil partner who acquires the asset. (5)



The no gain/no loss rule effectively overrules the capital gains tax provisions which fix the consideration deemed to have been given on the disposal or acquisition of an asset, for example, at market value for disposals not made at arm's length. (6)

The no gain/loss rule does not, however, apply if the civil partner who acquires the asset from the other civil partner 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. (7)

### ***Subsequent disposal***

Where the no gain/no loss treatment provided in **subsection (5)** applies in relation to the disposal of an asset and the civil partner who acquired the asset subsequently disposes of it (the subsequent disposal not being a disposal to which **subsection (5)** 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 civil partner. (8)

### ***Prescribed forms***

An application for separate assessment under this section and a notice of withdrawal of such an application must be made in the prescribed form. (9)

## **1031N Application of section 1031G for purposes of capital gains tax**

### **Summary**

By applying the provisions of **section 1031G** (special provisions relating to tax on a civil partner's income) with any necessary modifications, this section gives Revenue the right to issue a demand notice to a civil partner (or, if he or she is dead, to his or her executors) for capital gains tax attributable to chargeable gains accruing to him or her but which was assessed on his or her civil partner. Such a demand may be made where the amount of capital gains tax assessed on the civil partner remains unpaid 28 days after it became due. Any such demand is confined to the amount of capital gains tax which would have been payable by him or her if he or she had been assessed separately or the total amount assessed on the civil partner, whichever is the lesser.

## **1031O Transfers of assets where civil partnership dissolved**

### **Summary**

This section provides that where a person who has obtained a decree of dissolution under Part 12 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 disposes of certain assets pursuant to a court order under that Act to his or her former civil partner, a charge to capital gains tax does not arise. The section also provides that where the former civil partner to whom the disposal is made subsequently disposes of the asset, he/she is treated as having acquired it at the same time and cost as the other civil partner.

## Details

### ***Disposals of certain assets where civil partnership dissolved***

Where one civil partner disposes of an asset to the other civil partner by virtue of or in consequence of — (1)

- an order made under Part 12 of the Civil Partnership and Certain Rights and Obligations Cohabitants Act 2010, on or following the granting of a decree of dissolution, or a dissolution deemed under section 5(4) of that Act to be a dissolution under section 110 of that Act, or
- a deed of separation, agreement, arrangement or other legally enforceable arrangement as a result of the civil partners are living separately and apart in such circumstances that the separation is likely to be permanent,

then, subject to **subsection (3)**, the asset is treated for the purposes of the Capital Gains Tax Acts as having been disposed of at a price which gives rise to no gain or loss to the civil partner making the disposal.

The no gain/loss rule does not, however, apply if the civil partner who acquires the asset (2) (from the other civil partner) 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***

The no gain/no loss treatment provided for in **subsection (1)** does not apply if the asset (3) disposed of is one which formed part of the trading stock of the civil partner 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 civil partner receiving it. In each such case the actual consideration is taken into account and the rules for computing trading income generally apply.

### ***Subsequent disposal***

Where the no gain/no loss treatment provided in **subsection (1)** applies in relation to the (4) disposal of an asset and the civil partner 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 civil partner.