

RPG CROUCH CHAPMAN



Capital Gains Tax and Divorce
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What are the new rules for CGT and divorce or dissolving a civil partnership?

For Capital Gains Tax (CGT) purposes, individuals are able to transfer assets between spouses or civil partners without incurring an immediate CGT liability provided they are not separated from them. In the past, when couples divorced or dissolved a civil partnership they had until the end of the tax year in which to make all the transfers necessary in order for the transfers to be made on a "no gain, no loss" basis.

Under the new Capital Gains Tax (CGT) rules, which came into place in April 2023, couples that are to divorce or dissolve a civil partnership will now have up to three years after the tax year from when they stop living together to make a 'no gain, no loss' disposal for CGT purposes.

What is the definition of separation for tax purposes?

An individual is separated from their spouse or civil partner for CGT purposes if they are separated:

- under a court order; or
- by a formal deed of separation; or
- in such circumstances that the separation is likely to be permanent.

If they separated from their spouse or civil partner in circumstances likely to be permanent before the date of the relevant court order or formal deed of separation (as will generally be the case), then the date of separation for CGT purposes will be the earlier date.

What were the previous rules on CGT and divorce, separation or dissolving of civil partnership?

Previously couples who parted ways, had until the end of the tax year of separation to plan the division of their assets tax-efficiently.

Where matrimonial homes are concerned, in cases where the transfer was not made before 5 April in the year of separation, the departing spouse could make the tax free transfer within 9 months from the date the matrimonial home was no longer their principal residence (PPR), to avoid any CGT arising.

What are the changes to CGT?

From 6 April 2023, transfers of chargeable assets between spouses will be treated as occurring at 'no gain no loss' for up to three years from the end of the tax year of separation. So, in cases where the departing spouse moved out of their former matrimonial home in 2023/24 tax year, they will have until 5 April 2027 to make the transfer to their former spouse making use of the "no gain, no loss" provisions.

The new rules are planned to come into effect for disposals and transfers which occur on or after 6 April 2023 (currently awaiting Royal Assent). It will be the date of the transfer which determines whether the new rules apply, not the date of separation.

Where assets are being transferred under a court approved divorce or dissolution agreement, the "no gain no loss" treatment will apply for any longer reasonable amount of time that may be required. The recipient spouse will, however, need to be mindful that they'll inherit their ex-spouse's acquisition history and therefore any accrued capital gain.

If, apart from the matrimonial home, other assets are being transferred, the spouse retaining the matrimonial home may have a higher CGT liability when they come to sell the assets in the future. It is always advisable to seek tax advice at an early stage in divorce negotiations to ensure that any such inherent chargeable gains are factored in to the valuations of marital property when considering suitable asset division.

The new rules from 6 April 2023, will ensure that where a spouse retains an interest in the former marital home following their departure, they will be given an option to claim main residence exemption (PPR) for their period of non-occupation upon a sale of the property. Any such claim would be at the expense of claiming the PPR exemption for the same period on a replacement home that has been acquired.

If a new replacement property is acquired that is owned by them (not rented) consideration should be given as to whether a main residence election may be beneficial, to ensure the optimum tax position is achieved across the properties overall.

Furthermore, an extended main residence exemption will be available in circumstances where a spouse transfers their share of the home to the other spouse but retains a right to proceeds upon a later sale under a deferred sale agreement. The receipt of the deferred sale proceeds for CGT under the new rules will be subject to main residence exemption based on the same eligibility that applied at the time of the earlier ex-spouse transfer.

In summary, legislation was introduced in Spring Finance Bill 2023 provides that:

- Separating spouses or civil partners be given up to three years after the year they cease to live together in which to make no gain/no loss transfers.
- No gain/no loss treatment will also apply to assets that separating spouses or civil partners transfer between themselves as part of a formal divorce agreement.
- A spouse or civil partner who retains an interest in the former matrimonial home be given an option to claim PRR when it is sold.
- Individuals who have transferred their interest in the former matrimonial home to their ex-spouse or civil partner and are entitled to receive a percentage of the proceeds when that home is eventually sold, will be able to apply the same tax treatment to those proceeds when received that applied when they transferred their original interest in the home to their ex-spouse or civil partner.

If you would like to speak to a member of our Tax team regarding CGT, disposal or transfer of assets between spouse or civil partner, or indeed any other area of personal tax planning including Inheritance Tax, Self-Assessment or trading as a sole trader, please contact us or telephone us on 020 3697 7147.



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- Self-assessment tax returns
- International Tax



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