
Tax Treatment of Married, Separated and Divorced Persons

Part 44-01-01

This document should be read in conjunction with Part 44 of the Taxes Consolidation Act 1997 and the following staff instruction manuals

- [15.01.05](#) Incapacitated Child Credit
- [15.01.17](#) Special Tax Credit for Widowed Person or Surviving Civil Partner
- [15.01.41](#) Single Person Child Carer Credit
- [44a.01.01](#) Tax Treatment of Civil Partners
- [45.01.01](#) Non-Residents and Tax Credits

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1. Introduction

This manual sets out the tax treatment of Married Couples.

With effect from 16th November 2015 following the enactment of the Marriage Act 2015 the provisions of the Taxes Consolidation Act will apply to all married couples regardless of whether the marriage is between two persons of the opposite sex or of the same sex.

Where a same sex couple were married outside the State and the marriage is recognised in accordance with the Civil Partnership and Certain Rights and Obligation Act 2010, the provisions of Part 44 or Part 44A will apply as appropriate. Please refer to details of [foreign marriages recognised in the State](#) for further information.

2. Year of marriage (Section 1020 TCA. 1997)

Definitions

“income tax month” means a calendar month;

“year of marriage”, means the tax year in which the marriage took place.

2.1 Year of marriage

In the year of marriage both individuals will be taxed as single individuals.

However, additional relief for the year of marriage may be available on review under section 1020 if the aggregate of the tax payable by the couple as single individuals for the year of assessment exceeds the tax that would have been payable if the couple had been jointly assessed to tax throughout the year, (s.1020).

With effect from 16th November 2015 following the enactment of the Marriage Act 2015 s.1020 will apply in the case of same sex couples.

Note: Couples who have entered into a Civil Partnership are also taxed in the same manner. See [Tax and Duty Manual 44a.01.01](#) for further details.

The relief is calculated by the formula:

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

where

A is the amount by which the sum of the tax payable by the couple as single individuals exceeds the amount that would have been paid had the couple been married for the whole of the tax year and jointly assessed, and

B is the number of calendar months during the year for which the couple have been married.

For the purposes of calculating the number of applicable months, part of a month is treated as a whole month.

Any overpayment of tax to be repaid will be divided between the husband and wife based on the tax payable by each spouse.

Example 2.1

A couple were married on 10th July 2016. Details of their income are as follows:

Spouse 1 Income: €48,000

Spouse 2 Income: €24,000

Tax payable as single individuals in 2016**Spouse 1****Income €48,000**

€33,800 x 20%	€6,760
€14,200 x 40%	€5,680
Total	€12,440

Tax Credits

Personal Tax Credit	€1,650
PAYE Tax Credit	€1,650
Total Credits	€3,300

Tax payable (€12,440 – €3,300) €9,140

Spouse 2**Income 24,000**

24,000 x 20%	€4,800
Total	€4,800

Tax Credits

Personal Tax Credit	€1,650
PAYE Tax Credit	€1,650
Total Credits	€3,300

Tax payable (€4,800 – €3,300) €1,500

Combined tax payable as single persons

€9,140 + €1,500 €10,640

Tax payable under joint assessment in 2016

Income €48,000 + €24,000 €72,000

€67,600 x 20%	€13,520
€4,400 x 40%	€1,760
Total	€15,280

Tax Credits

Personal Tax Credit	€3,300
PAYE Tax Credit (€1,650 + €1,650)	€3,300
	€6,600

Tax payable (€15,280 – €6,600) €8,680

Tax payable as single individuals: €10,640

Tax payable under joint assessment: €8,680

Difference: €1,960

Date of Marriage	10/07/2016
Repayment €1,960 x 6/12	€980

Repayment

Spouse 1: €980 x €9,140/€10,640 **€841.84**

Spouse 2: €980 x €15,00/€10,640 **€138.16**

2.2 Entitlement to the Single Person Child Carer Credit in the year of marriage

Entitlement to the Single Person Child Carer Credit (SPCCC), which replaced the one parent family tax credit (OPFTC) from 1 January 2014, will be determined by reference to the circumstances that apply on 1 January in a year of assessment.

If a couple marries after 1 January in a year of assessment and, prior to that date, either spouse was entitled to the SPCCC, the credit should not be withdrawn from that spouse in his or her individual tax computation for the year of marriage.

However, when determining, on review, if any additional 'Year of Marriage' relief is due under section 1020, (see [section 1.1](#)), the SPCCC should be excluded from the computation of tax payable under joint assessment. SPCCC is excluded, as a joint personal tax credit is available under section 461(a) where a couple is jointly assessed. (SPCCC is not available to an individual entitled to the joint personal tax credit).

The SPCCC is withdrawn for future years from either spouse who had previously qualified for it.

2.3 Entitlement to the one-parent family tax credit in the year of marriage (2013 and previous years)

The one-parent family tax credit (OPFTC) ceased with effect from 1st January 2014.

For all years up to and including 2013 inclusive, entitlement to the one-parent family tax credit was determined by reference to the circumstances applying on 1 January in the relevant year of assessment.

If a couple married after 1 January in the year of assessment and, prior to the date of marriage, either spouse was entitled to the one-parent family tax credit, the credit was not to be withdrawn from that spouse in his or her individual tax computation for the year of marriage.

However, when determining, on review, if any additional 'Year of Marriage' relief was due under section 1020, (see [section 1.1](#)), the OPFTC was to be excluded from the computation of tax payable under joint assessment. OPFTC was excluded on the basis that a joint personal tax credit was available under section 461(a) is being

granted in that computation. (OPFTC is not available to an individual entitled to the joint personal tax credit.)

The OPFTC was then withdrawn for future years from either spouse who had previously qualified for it.

3. Subsequent Years - Basis of assessment (sections 1016, 1017, 1018, 1019 and 1023 T.C.A. 1997)

There are various assessment options available to married couples. These options are:

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

A taxpayer may choose the option best suited to their circumstances.

3.1 Joint Assessment

Under joint assessment (sections 1017 and 1019), a spouse is chargeable to tax, not alone on his/her own total income, but also on the total income of his/her spouse.

Joint assessment is the option that benefits most couples as it allows them to split their tax credits and rate band.

In joint assessment cases the following rate bands and basic credits apply:

Standard Rate Band (Section 15)

Where one spouse is in receipt of income, the following amount is chargeable to income tax at the standard rate:

From 2015-2017	€42,800
From 1 January 2018	€43,550

Where both spouses are in receipt of income, the standard rate band is further increased by the following amount:

From 2015-2017 earning spouse	The lesser of €24,800 or the income of the lower-
From 1 January 2018 lower-earning spouse	The lesser of €25,550 or the income of the

This increase is non transferrable.

Basic Credit (Section 461)

A joint basic personal tax credit of €3,330 for jointly assessed couples. This replaces the individual basic personal tax credit of €1,650 that was available to each spouse prior to marrying.

The Revenue office will automatically apply this basis of assessment once a taxpayer notifies the office that they have married regardless of whether

- one or both spouses have taxable income, or
- either or both spouses are self employed or taxed under the PAYE system.

This automatic election does not prevent a taxpayer for electing for Separate Assessment or Separate Treatment.

The spouse who is chargeable to tax on the income of both spouses is known as the “assessable spouse”. The assessable spouse continues to be the assessable spouse unless the couple jointly elect to nominate the other spouse (See 4.1.1 below).

The assessable spouse is responsible for filing tax returns, if required to do so, and paying any tax due.

Most reliefs and credits from income tax may be granted to the assessable spouse for the period they are jointly assessed. However, jointly assessed couples cannot transfer

- the Employee Tax Credit,
- employment expenses or
- the increase in standard rate band of €25,550

Where the Revenue office does not receive a request for the allocation of tax credits and reliefs in a particular way, it will normally give all credits and reliefs (other than the other spouse's Employee tax credit, employment expenses and standard rate band increase) to the assessable spouse.

Couples taxed under Joint Assessment can specify how they wish their tax credits and standard rate band to be allocated between them (other than Employee tax credits, employment expenses and standard rate band increase) by completing a Form 12 online using myAccount. Where changes are made, a new Tax Credit Certificate will issue within a few days with the amended details included.

If a refund is due at the end of the year, this will be repaid to each person in proportion to the amount of tax each has paid.

3.1.1 Nomination of Assessable Spouse

The couple themselves elect which of them is to be the assessable spouse (sections 1018 and 1019). This election may be made by completing an [Assessable Spouse Election Form](#) to determine the assessable spouse. The nomination must be made to a Revenue office on or before 31 March in the tax year.

Where the election is made before the commencement of the tax year (1 January), a couple can ensure that the correct tax credits and standard rate band are allocated to each spouse from the commencement of the tax year.

In the absence of a nomination, Revenue will automatically select the spouse with the highest income in the latest year for which both spouses' income are known to be the assessable spouse.

Where such an automatic election is made, the assessable spouse will continue to be the assessable spouse until

- the couple jointly elect that the other spouse is to be the assessable spouse or,
- either spouse opts for either Separate Assessment or Separate Treatment.

Where an eForm12 is submitted by a couple at the end of the tax year, (for example to claim health expenses), either spouse may complete the form. If the spouse who completes the form is not the current assessable spouse, they will become the assessable spouse for that tax year only.

Example 3.1 A

Roger and Anna married in 2016 and are jointly assessed. Following their marriage, Roger and Anna jointly elected for Roger to be the assessable spouse.

In 2017, Anna got into an accident and incurred significant medical bills as a result of this accident. Anna completes an eForm 12 for the year 2017 in April 2018 in order to claim tax relief on his medical expenses. Following the submission of this form, Anna became the assessable spouse for 2017.

Roger will continue to be the assessable spouse for tax years 2018 onwards unless:

- Anna submits an eForm 12 for any future year,
- the couple jointly elect that Anna shall become the assessable spouse, or
- either spouse opts for either Separate Assessment or Separate Treatment.

3.1.2 Tax Credit Certificate

If both spouses are in employment, a tax credit certificate is issued to each spouse.

All of the tax credits and reliefs due to a couple in a marriage, where Joint Assessment applies, are shown on both spouses' certificates.

Both certificates state the amount of tax credits and standard rate band allocated to each spouse.

Where either spouse has multiple sources of PAYE income, the amount of tax credits and standard rate band allocated to each employment or pension is also shown on the certificate.

Example 3.1 B

Jennifer and Martin are jointly assessed. Jennifer's total income for 2018 is her employment income of €45,000. Her husband Martin has investment income of €26,000. Tax payable under joint assessment in the year 2018 is as follows:

Total Income for both spouses €71,000

€69,100 x 20%	€13,820
€1,900 x 40%	€760
Total	€14,580

Tax Credits

Personal Tax Credit	€3,300
PAYE Tax Credit	€1,650
Total Credits	€4,950

Tax payable (€14,580 – €4,950) €9,360

3.2 Separate Assessment

Under separate assessment, each spouse is assessed on their own income with tax credits and reliefs divided between the civil partners in accordance with section 1024.

If separately assessed, the spouses are both taxed as single people during the year. They can complete a single or a joint tax return. If they complete a joint tax return, it must include the income and expenses for both spouses.

The following tax credits are divided equally between spouses:

- Married or Civil Partner's Personal Tax Credit
- Age Tax Credit
- Blind Person's Tax Credit
- Incapacitated Child Tax Credit

Any unused tax credits and reliefs etc. (other than the Employee tax credit, employment expenses and increase in the standard rate band of €25,550) can be transferred to the other spouse. The tax credits may not generally be adjusted until after the end of the tax year.

As the as the unused tax credits, reliefs and rate bands of one spouse may be transferred to the other spouse in the same manner as joint assessment, separate assessment is also known as “separate assessment within joint assessment.” - The aggregate of the tax payable by each spouse under separate assessment cannot exceed the tax payable had the spouses elected to be jointly assessed.

3.2.1 Election for Separate Assessment

Separate Assessment may be claimed for in writing. The claim can be made by either spouse and must be made between the 1 of October of the preceding year and the 31 March in the year that the couple want separate assessment to apply.

A claim to be assessed under separate treatment cannot be backdated and it lasts until withdrawn. Whichever spouse initially makes the claim must also be the one to withdraw it.

Example 3.2

Jennifer and Martin are separately assessed. Jennifer’s total income for 2018 is her employment income of €45,000. Her husband Martin has investment income of €26,000. Tax payable under separate assessment in the year 2018 is as follows:

Jennifer’s Income	
€34,550 x 20%	€6,910
€10,450 x 40%	€4,180
Total	€11,090

Tax Credits	
Personal Tax Credit	€1,650
PAYE Tax Credit	€1,650
Total Credits	€3,300

Tax payable (€11,090 – €3,300) €7,790

Martin’s Income	
€26,000 x 20%	€5,200

Tax Credits	
Personal Tax Credit	€1,650

Tax payable (5,200 – €1,650) €3,550

Combined Tax Payable €11,340
(€7,790 + €3,550)

Additional tax relief is available in the form of unused tax credits, reliefs and rate bands. In this example, Martin can transfer his unutilised standard rate tax band of €8,550 (€34,550 – €26,000) to Jennifer. Jennifer can then recalculate her liability as follows:

Jennifer's Income

€43,100 x 20%	€8,620
€1,900 x 40%	€760
Total	€9,380

Tax Credits

Personal Tax Credit	€1,650
PAYE Tax Credit	€1,650
Total Credits	€3,300

Tax payable (€9,380 – €3,300) €6,080

The full €8,550 can be transferred to Jennifer as her income taxed at the standard rate band will remain less than or equal to €43,550 i.e. the standard rate band available to the higher earner in a married couple.

Revised Combined Tax Payable €9,630
(€6,080 + €3,550)

Therefore the net combined tax payable will be €9,630 (€11,340 – €1,710), the same amount of tax payable as under joint assessment.

Jennifer and Martin transfer the rate bands by completing a Form 12 online using myAccount.

3.3 Separate Treatment (Assessed as a Single Individual)

Under separate treatment, also known as single assessment, (section 1016), each spouse is treated for tax purposes as if they had not married. Each spouse is assessed and charged on his/her own income.

Both spouses:

- are taxed on their own income
- receive tax credits and the standard rate band due to a single person
- pay their own tax
- complete their own Return of Income form and claim their own tax credits

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 spouse.

Separate treatment often results in a higher aggregate liability for the couple as compared with separate assessment or joint assessment, if one spouse does not earn sufficient income to avail of all their personal tax credits, reliefs or rate bands.

The Home Carer's Tax Credit cannot be claimed in respect of a spouse who cares for a dependent person and who may otherwise qualify for the relief if assessed jointly or under separate assessment.

3.3.1 Election for Separate Treatment

Separate Treatment may be claimed for in writing. Either spouse or civil partner can make the claim and the election lasts until withdrawn by the spouse or civil partner who claimed it. A claim for Separate Treatment, if required, must be made within the tax year (preferably at the beginning).

Example 3.3

Jennifer and Martin are separately treated. Jennifer's total income for 2018 is her employment income of €45,000. Her husband Martin has investment income of €26,000. Tax payable under separate treatment in the year 2018 is as follows:

Jennifer's Income	
€34,550 x 20%	€6,910
€10,450 x 40%	€4,180
Total	€11,090
Tax Credits	
Personal Tax Credit	€1,650
PAYE Tax Credit	€1,650
Total Credits	€3,300
Tax payable (€11,090 – €3,300)	€7,790
Martin's Income	
€26,000 x 20%	€5,200
Tax Credits	
Personal Tax Credit	€1,650
Tax payable (5,200 – €1,650)	€3,550
Combined Tax Payable	€11,340
(€7,790 + €3,550)	

4. Non-residence – Aggregation of income in cases where one or both spouses are non-resident

Entitlement to the joint tax credit and standard rate bands is dependent upon the assessable spouse i.e. the person responsible for making a joint tax return on behalf of both spouses, being chargeable to tax in accordance with section 1017 TCA 1997 (the aggregation basis of assessment or joint assessment).

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

4.1 Non-residence - Tax Treatment where only one spouse is resident in the State and that spouse has income chargeable to tax in the State.

Where only one spouse is resident in the State and in receipt of income chargeable to tax in the State, he/she -

- is chargeable on that income on the basis of separate treatment as a single person; and
- may be granted single person's tax credits and reliefs, subject, to the practice outlined hereunder.

In cases where only one spouse is resident in the State and that spouse has income chargeable to tax in the State, if satisfied that the other spouse has no income and the earnings of the spouse working in the State are the only source of income of the couple, aggregation basis may be applied (i.e. the joint tax credit and the increased rate band may be given).

Aggregation may only be applied after the end of the tax year. The resident spouse will need to complete a return of income, including a declaration of their spouse's income in order to receive the joint tax credit and the increased rate band.

Even if the non-resident spouse has income, a measure of relief may, depending on the level of that income, be due where the Irish tax payable under separate treatment in respect of the income chargeable to Irish tax exceeds the tax that would have been payable in respect of that income if the total income of both spouses had been chargeable to tax on the basis of aggregation.

To avail of this practice, the spouses should make a specific election for aggregation basis after the end of the tax year. The resident spouse will need to complete a return of income, including a declaration of their spouse's income in order to receive the joint tax credit and the increased rate band.

Example 4.1

In 2017, Peter has income of €45,000 from an Irish employment. Peter's spouse, who is non-resident, has foreign investment income of €10,000.

Peter's income tax liability on the basis of separate treatment is:

Peter's Income for 2017: €45,000	
€33,800 x 20%	€6,760
€11,200 x 40%	€4,480
	€11,240
Tax Credits	
Personal Tax Credit	€1,650
PAYE Tax Credit	€1,650
	€3,300
Tax payable	€7,940
(€11,240 – €3,300)	

At the start of 2018, Peter decides to review his affairs and make a claim for aggregation relief for tax year 2017 by completing a return of income for 2017.

Resident Spouse (Peter's) Earnings	€45,000
Non-Resident Spouse Investment Income	€10,000
	€55,000
€52,800 x 20% = €10,560	€10,560
€2,200 x 40% = €880	€880
	€11,440
Tax Credits	
Personal Tax Credit	€3,300
PAYE Tax Credit	€1,650
	€4,950
Tax payable	€6,490
(€11,440 – €4,950)	
Tax attributable to Irish income	€5,310
€6,490 x (€45,000/€55,000)	
Additional relief due to the resident spouse	€2,630
(€7,940 - €5,310)	

Peter is entitled to additional relief of €2,630 after completing the return of income.

4.2 Cases where both spouses are non-resident but one spouse has income chargeable to tax in the State

The most common type of case is that of a spouse who is a cross-border worker or who is working in this country on a temporary assignment. Where neither spouse is resident in the State but one spouse is in receipt of income chargeable to tax in the State (e.g. income from exercising an employment here), he/she:

- is chargeable to Irish tax on that income on the basis of separate treatment as a single person; and
- may be granted the single person's tax credits and reliefs or a proportion thereof in accordance with the provisions of section 1032 TCA 1997 which provides for tax credits and allowances to be granted to non-resident in certain circumstances [Part 45.01.01](#).

Where section 1032 TCA 1997 applies, any apportionment of the tax credits etc. should be carried out by reference to the world-wide income of the spouse with the Irish source of income. The income of the other spouse should not be taken into account.

Where both spouses are non-resident but one spouse has income chargeable to tax in the State, if Revenue are satisfied that the other spouse has no income and the earnings of the spouse working in the State are the only source of income, aggregation basis may be applied in the normal way; (i.e. the joint tax credit and the increased rate band should be given accordingly).

Even if the other spouse has income, a measure of relief may, depending of the level of that income, be due where the Irish tax payable under separate treatment in respect of the income chargeable to Irish tax exceeds the tax that would have been payable in respect of that income if the total income of both spouses had been chargeable to tax on the basis of aggregation..

To avail of this practice, the couple should make a specific election for aggregation basis and the spouse with income chargeable to Irish tax should be requested to give details of the couple's total incomes (i.e. the income of both spouses including income not chargeable to Irish tax). In cases of difficulty, a separate return should be requested from each spouse.

Note: As regards section 1032, residents of another member state of the European Union are entitled to full personal tax credits and reliefs in respect of any tax year in which 75% or more of their worldwide income is taxable in Ireland, [section 1032(3)].

Example 4.2

For 2017, both spouses are resident in the United Kingdom. One spouse has €10,000 from an Irish non-proprietary directorship and €22,000 from a UK employment. The other spouse has no income.

The spouse's income tax liability on the basis of separate treatment and relief under section 1032 TCA is:

Tax liability without aggregation

Irish directorship Income €10,000	
€10,000 x 20%	€2,000

Tax Credits

Personal credit	€516
(€1,650 x €10,000/€32,000)	
PAYE credit	€516
(€1,650 x €10,000/€32,000)	

Total Credits	€1,032
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Tax payable	€968
(€11,240 – €3,300)	

Tax liability on aggregation basis

Irish directorship	€10,000
U.K. employment	€22,000
Total Income	€32,000

€32,000 x 20%	€6,400
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Tax Credits

Personal Tax Credit	€3,300
PAYE Tax Credit	€1,650
Total Credits	€4,950

Tax chargeable	€1,450
(€6,400 - €4,950)	

Tax attributable to Irish income	€453
(€1,450 x €10,000/€32,000)	

Additional relief due	€515
(€968 - €453)	

In relation to Example 4.2, it should be noted that the procedures outlined in these instructions are ancillary to and not in substitution for section 1032 TCA 1997.

Where the normal operation of section 1032 TCA 1997 (applied on the basis of a single treatment) produces a lower liability, that liability should not be increased by reference to these procedures. (e.g. if in Example 4.2, the tax attributable to the Irish income in the joint assessment computation exceeded the tax on the Irish directorship as shown in the first computation (€968), the tax due should not be increased by the excess.)

Normally, the tax attributable to the Irish income will be greater only in circumstances where part of the person's income is chargeable to tax at the higher rate.

5. Tax credits in the year of death of a spouse

The tax credits in the year of death will depend on how the spouses were assessed prior to the death of the spouse.

5.1 Taxed under joint assessment prior to the death of a spouse

If the “assessable spouse” (i.e. the person responsible for making a joint tax return on behalf of both spouses) dies, the surviving spouse will be entitled to the increased basic personal tax credit in accordance with section 461(b) and the income to be assessed is in respect of the period from the date of death to the following 31 December.

Note: In the year of bereavement the Single Person Child Carer Credit cannot be granted to the surviving spouse with children in accordance with section 462B(b) which states:

“(b) This section shall apply to an individual who is not entitled to a basic personal credit referred to in paragraph (a) or (b) of section 461.

In the case of the death of the non-assessable spouse the surviving spouse continues to be entitled to the married person’s tax credit and appropriate standard rate band for the full year. S/he will be assessed on his/her own income for the full tax year plus the late spouse’s income from 1 January to the date of death.

The widowed person's standard rate band (or increased rate band if they have dependent children) will apply for this period.

Example 5.1.1

John and Alice are taxed under joint assessment. John is the assessable spouse. Alice dies in 2018.

John is taxed as follows:

Year	Rate Band	Personal credits	Taxable income
2017	€42,800 @ 20% + increase of €24,800. Balance @ 40%	Married €3,300	Joint income from 1 January–31 December
2018 (year of death)	€43,550 @ 20% + increase of €25,550. Balance @ 40%	Married €3,300	Own income from 1 January–31 December Alice’s income from 1 January to date of death

Example 5.1.2

John and Alice are taxed under joint assessment. John is the assessable spouse. John dies in 2016. Alice is taxed as follows:

Year	Rate Band	Personal credits	Taxable income
2018(year of death)	€34,550 @ 20% Balance @ 40%	Married (year of death) €3,300	Own income from date of John's death to 31 December

5.2 Taxed as single persons

If the spouses were assessed on the basis of separate treatment prior to the date of death the only alteration in the tax credits and rate bands by reason of the death of either spouse is that the surviving spouse is entitled to the widowed person's tax credit [section 461(b)] in substitution for the single tax credit for the year of death.

5.3 Taxed under the basis of Separate Assessment

In the case of the death of a spouse where separate assessment is applicable, the other spouse is entitled to an allocation of part of his/her tax credits in respect of the pre-death period and to tax credits etc. in his/her own right in respect of the post-death period.

If the surviving spouse is the assessable spouse, he/she will continue to be taxed under separate assessment on his/her spouse's income from 1 January to the date of their death.

6. Maintenance of spouses living apart (Sections 1025 and 1026 T.C.A. 1997)

Sections 1025 and 1026 contain the provisions regarding the taxation of couples who are living apart and also divorced couples who have entered into maintenance arrangements that are legally enforceable.

“maintenance arrangement” means -

an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of —

- (a) the dissolution or annulment of a marriage, or
- (b) such separation of the parties to a marriage as is referred to in section 1015(2); i.e. legally separated or living apart permanently

“payment” means a payment or part of a payment, as the case may be.

6.1 Section 1025

Where **legally enforceable** (by way of an agreement) maintenance payments are payable by one spouse to his or her separated spouse the following will apply-

- (a) the paying spouse will make the payments gross;
- (b) the paying spouse will be allowed, in computing his or her total income, a deduction for maintenance payments made in the year of assessment for the benefit of the other spouse;
- (c) the recipient will be taxable under Case IV, Schedule D, in respect of such maintenance payments received; and
- (d) both will be taxed as single persons.

The same treatment will apply in respect of couples whose marriages have been dissolved or annulled and to couples who are living apart permanently provided the payments are—

- 1) made at a time when the couple are living apart;
- 2) legally enforceable; and
- 3) annual or periodic,

and the agreement under which the payments are being made was entered into on or after 8th June 1983.

Note only payments made for the benefit of the other spouse will qualify for tax relief. Payments which are made for the benefit of a child will not be regarded as maintenance for the purposes of tax relief. Tax relief may be granted in respect of direct and indirect payments; e.g. medical insurance paid by the former spouse may be treated as maintenance payments.

6.1.1 Foreign Divorce

Maintenance payments made under a settlement agreement arising from a divorce obtained outside the State will qualify for relief provided the divorce is recognised in this State and the maintenance payments have been paid in accordance with the agreement.

In cases of doubt evidence of the payment made should be sought.

6.2 Section 1026

This section provides an alternative basis of assessment – aggregation – for couples who have a maintenance arrangement as set out in section 1025. This alternative basis of assessment applies to all couples who are living apart in circumstances that are likely to be permanent and also to couples whose marriage has been dissolved under either-

- (a) Section 5 of the Family Law (Divorce) Act 1996,
- or,**
- (b) the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State.

This basis of assessment will apply provided a joint application is received, i.e. signed by both parties, and-

1. both parties are resident in the State for tax purposes for the year of assessment, and
2. neither spouse has entered into another marriage or civil partnership.

Where an election by both parties is made under section 1026 the maintenance payments are ignored for tax purposes; i.e.

1. the payer will get no deduction for the maintenance payments
2. the recipient will not be taxable on the maintenance; and
3. where both individuals have income, the couple will be assessed as if an application for separate assessment had been made under **Section 1023 TCA 1997**.

Where a maintenance arrangement provides for the payment for the benefit of a child of specified sums or of amounts which are quantifiable under the terms of the maintenance arrangement -

- (a) the payments are to be made gross,
- (b) the payer is not allowed a deduction for such payments, nor are they to be treated as income of the recipient,
- (c) the payment does not count as income of the child, and
- (d) the payer will be regarded as having contributed to the extent of such payments, to the maintenance of the child for the purposes of any claim to incapacitated child allowance or part thereof under section 465(6) TCA 1997.

6.3 Charging of recipient under Case IV in respect of maintenance payment

Where the recipient of a maintenance payment is in employment and the aggregate of the maintenance amount and any other non-PAYE income for the year of assessment is below the threshold for a "chargeable person" (€5,000 for 2016 and subsequent years of assessment- s.959B TCA) the Case IV liability may be brought to account by way of restriction of tax credits.