



Year of Marriage or Registration of Civil Partnership

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The Civil Partnership and Certain Rights and Obligations of Cohabitants Acts 2010 (CPCROCA 2010) came into effect on 1st January 2011. Civil Partners will now be treated the same as married couples for the purpose of taxation. With that in mind, and following the relatively poor performance of some students in question 1 in the April 2012 examination, we will look in the following article at how married couples and civil partners are dealt for Income Tax purposes.

Year of Marriage or Registration of Civil Partnership

Once married or registered in a civil partnership, the individuals should advise their local Revenue office of the date of the marriage or civil partnership registration and quote his / her own and his / her spouse's or civil partner's Personal Public Service (PPS) numbers.

For tax purposes, both partners continue to be treated as two single persons in the year of marriage or the year of civil partnership was registered. However, if the tax payable as two single persons in that year is greater than the tax payable if they had been taxed as a couple in a marriage or civil partnership, a refund of the difference can be claimed. Any refund due is only from the date of marriage or registration of civil partnership and will be calculated at the end of that tax year.

A refund of tax for the year of marriage or registration of civil partnership would normally only arise where a couple are taxed at different tax rates and one spouse or civil partner could benefit from the unused standard rate band or from some of the unused tax credits of the other spouse or civil partner.

Example:

Joe & Jim registered their civil partnership on 1/7/2011.

Joe earned €48,000 in 2011 and Jim earned €24,000.

Tax payable by Joe & Jim as Single People:

Joe	€	€
Income	48,000	
Standard Rate Band	32,800 x 20% =	6,560
	15,200 x 41% =	<u>6,232</u>
		12,792
 Tax Credits	€	
Personal Tax Credit	1,650	
PAYE Tax Credit	<u>1,650</u>	<u>3,300</u>
 Tax Payable (12,792 - 3,300) =		<u>9,492</u>

Jim	€	€
Income	24,000	
Tax Bands	24,000 x 20% =	4,800

Tax Credits	€	
Personal Tax Credit	1,650	
PAYE Tax Credit	<u>1,650</u>	<u>3,300</u>

Tax Payable (4,800 - 3,300) = 1,500

Combined Tax Payable	Joe	9,492
	Jim	<u>1,500</u>
		10,992

Tax payable by Joe & Jim under Joint Assessment as a Couple in a marriage or civil partnership would be:

		€	€
Income	Joe	48,000	
	Jim	<u>24,000</u>	
Total		<u>72,000</u>	

Tax Payable		
	€41,800 x 20% =	8,360
	€23,800 x 20% =	4,760
	€6,400 x 41% =	<u>2,624</u>
		15,744

Tax Credits		
Civil partners Tax Credit	3,300	
PAYE Tax Credit x 2	<u>3,300</u>	<u>6,600</u>

Tax payable (15,744 - 6,600) = 9,144

The difference between the tax payable by Joe & Jim as single persons and the tax payable by them as a civil partnership is €1,848 i.e. €10,992 less €9,144. This amount of €1,848 is apportioned by the number of months for which they have been registered in a civil partnership in the tax year i.e. €1,848 x 6/12 = €924.

Joe & Jim can claim a refund of this €924 after the end of the tax year. The refund is apportioned between them in proportion to the tax payable by each of them as follows:

The amount to be repaid to Joe is:

$$(\text{€}924 \times \text{€}9,492) / \text{€}10,992 = \text{€}797.91$$

The amount to be repaid to Jim is:

$$(\text{€}924 \times \text{€}1,500) / \text{€}10,992 = \text{€}126.09$$

Subsequent Years

After the initial year of marriage or registration of civil partnership, the following options are available to the couples:

- Joint Assessment
- Separate Assessment
- Separate Treatment (Assessed as Single Individual).

They may choose the method of taxation which is best suited to their circumstances.

Joint Assessment

Joint Assessment is usually the most favourable basis of assessment for couples in a marriage or civil partnership. It is automatically given by the couple's local Revenue office once they have advised them of their marriage or civil partnership registration. However, this doesn't prevent the couple from electing for either of the other options.

Under Joint Assessment, the tax credits and standard rate band can be allocated between spouses or civil partners to suit their circumstances. For example:

- If only one spouse or civil partner has taxable income, all tax credits and the standard rate band will be given to that individual
- If both spouses or civil partners have taxable income, they can decide which spouse or civil partner of them is to be the assessable spouse or nominated civil partner and request their local Revenue office to allocate the tax credits and standard rate band between them in whatever way they wish. [PAYE tax credit, employment expenses and the basic standard rate band of €23,800 are non transferable.]

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 the tax credits (other than the other spouse's or civil partner's PAYE and expense tax credits) to the assessable spouse or nominated civil partner.

The couple themselves elect which of them is to be the assessable spouse or nominated civil partner. In the absence of a nomination, the assessable spouse or nominated civil partner is the spouse or civil partner with the highest income in the latest year for which details of both spouses' or civil partners' income are known.

The assessable spouse must complete the return of income for the couple and is chargeable to tax on the joint income of the couple.

Separate Assessment

Under Separate Assessment the couple's tax affairs are independent of those of their spouse or civil partner.

The following tax credits are divided equally between them:

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

The balance of the tax credits are given to each of them in proportion to the cost borne by them. The PAYE tax credit and employment expenses, if any, are allocated to the appropriate spouse or civil partner. Any tax credits, etc., other than the PAYE tax credit and employment expenses, which are unused by one spouse or civil partner may be claimed by the other spouse or civil partner. The tax credits may not generally be adjusted until after the end of the tax year.

Any unused tax credits (other than the PAYE tax credit and employment expenses) and standard rate band up to €41,800 can be transferred to the other spouse or civil partner, but only at the end of the tax year. The increase in the standard rate band of up to €23,800 is not transferable between spouses or civil partners.

Separate Assessment can be claimed either verbally or in writing. The claim can be made by either spouse or civil partner, and must be made in the six months between the 1st of October of the preceding year and the 31st March in the year of the claim. It cannot be backdated and it lasts until withdrawn.

Separate Treatment (Assessed as a Single Individual)

Under Separate Treatment each spouse or civil partner is treated as a single person for tax purposes. Separate Treatment should not be confused with Separate Assessment.

Both spouses or civil partners:

- 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. One spouse or civil partner cannot claim relief for payments made by the other and there is no right to transfer tax credits or standard rate band to each other.

This basis of assessment can be unfavourable in some circumstances because any unused tax credits or standard rate band cannot be transferred. Home Carer's Tax Credit cannot be claimed in respect of a spouse or civil partner who cares for a dependent person and who may otherwise qualify for the relief.

Divorce or Seperation

What happens when a couple divorce or separate? How are they treated for Income Tax purposes?

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 the local 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.

The Revenue should be notified as soon as possible after the separation, so that any necessary adjustments to each of the separating person's tax position can be made.

Years of Separation

What happens during the tax year in which a couple separate?

A couple are considered separated for tax purposes if the separation is likely to be permanent or it has been made legal. The tax treatment during the year of separation of a couple that separate during a tax year depends upon whether the couple had elected for:

1. Joint Assessment prior to separation
2. Separate Assessment prior to separation, or
3. Assessment as Single Persons prior to separation.

1. Joint Assessment prior to separation:

The assessable spouse or 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's or civil partner tax credit and the relevant standard rate cut-off point for the full tax year.
- Taxed on his / her own income for the full year and his / her spouse's or civil partner's income from the start of the tax year to the date of separation
- Entitled to a tax deduction for maintenance payments made for spouses or civil partner's benefit or taxed on maintenance payments received, under a legally enforceable separation arrangement. Maintenance payments in respect of a child(ren) are ignored for tax purposes.

The non-assessable spouse or civil partner will be:

- Entitled to single person's tax credits and single rate bands.
- Taxed on his / her own income from the date of separation to the end of that tax year.
- Taxed on maintenance payments received for his / her own benefit or entitled to a deduction for maintenance payments made for their spouses or civil partner's benefit, under a legally enforceable separation agreement.
- Maintenance payments in respect of a child(ren) are ignored for tax purposes.

2. Separate Assessment prior to Separation

Where Separate Assessment applied prior to separation, the situation is the same as that outlined for joint assessment. The spouse or civil partner, who was the assessable spouse or civil partner prior to the claim for separate assessment, is the assessable spouse or civil partner for the year of separation.

Maintenance payments made under a legally enforceable arrangement entered into on or after 8 June 1983 are payable without deduction of tax. The following rules apply to payments made for the benefit of a spouse or civil partner:

- The payments are to be made without deduction of tax
- The spouse or civil partner who makes the payments is entitled to a tax deduction for them
- The spouse or civil partner who receives the maintenance is taxable on the payments.

Any unused tax credits and relevant standard rate cut-off point for the period prior to separation may be transferred from one spouse or civil partner to the other.

3. Assessment as Single Persons prior to Separation

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

Maintenance payments made under a legally enforceable arrangement entered into on or after 8 June 1983 are payable without deduction of tax. The following rules apply to payments made for the benefit of a spouse or civil partner:

- The payments are to be made without deduction of tax
- The spouse or civil partner who makes the payments is entitled to a tax deduction for them.
- The spouse or civil partner who receives the maintenance is taxable on the payments

Years following Separation / Divorce / Civil Annulment

The effect of separation, divorce or annulment on each spouse's or civil partner's tax liability depends mainly on whether there are maintenance payments for the benefit of the other spouse or 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 a spouse or civil partner separate or divorce and no maintenance payments are made, each spouse or civil partner will be taxed as a single person. Each spouse or civil partner will be responsible for filing their own tax return and paying tax on their own income.

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 or civil partners tax liability, i.e.,

- The spouse or civil partner who makes the payments is not entitled to a tax deduction for them
- The spouse or civil partner who receives the payments is not taxed on them
- Both spouses or civil partners are taxed on their own income as single persons
- Maintenance payments for children are ignored for tax purposes

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

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. These include cash payments, mortgage payments, health care costs etc. Mortgage interest relief can be claimed on the mortgage paid on a separated spouse's or civil partner's main residence subject to the normal limits applicable to a single person.

Maintenance payments made under a legally enforceable arrangement entered into on or after 8 June 1983 are payable without deduction of tax. The following rules apply to payments made for the benefit of a spouse or a civil partner:

- The payments are made without deduction of tax
- The spouse or civil partner who makes the payments is entitled to a tax deduction for them
- The spouse or civil partner who receives the maintenance is taxable on the payments
- Both spouses or civil partners are taxed as single persons (unless they opt to be taxed as a married couple.
- Maintenance payments for children are ignored for tax purposes

A separated couple can elect to be treated as a married couple or as civil partners for income tax purposes if:

- They are both resident in the State **and**
- Maintenance payments are legally enforceable.

A divorced couple also have the option of being treated as a married couple or as civil partners for income tax purposes if:

- They are both resident in the State **and**
- Neither spouse has re-married.

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

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

Where only one spouse or civil partner has income the full tax credits, reliefs and the appropriate married couple or civil partners standard rate cut-off point will be given to that spouse or civil partner. **However, where a civil annulment is obtained there can be no election to be taxed as a married couple.**