

8 September 2022

HM Revenue & Customs CGT Policy Team

Via email: cgtbudget@hmrc.gov.uk

Dear Sirs

Capital Gains Tax: transfers of assets between spouses and civil partners in the process of separating

We are writing in response to the draft Finance Bill 2023 legislation, in particular to proposed changes to capital gains tax (CGT) for separating couples.

We would like to make three points:

First, whilst we are pleased to see a three-year extension of the no-gain/no-loss (NG/NL) window beyond the tax year of separation, we are disappointed to see that the new rules will only apply to disposals taking place after 6 April 2023. Couples who are already separated, yet within a three-year NG/NL window, may have already transferred assets between themselves before now; only those who have kept hold of their assets and can wait to transfer them until after April 2023 will benefit from this change. For example, whilst a couple who separated in year 2020/21 would be within the new NG/NL window, any assets already disposed of after April 2021 would remain potentially chargeable to CGT and they would have to refrain from disposing of further assets until April 2023. This change would potentially benefit more people if there were an option to elect for the April 2023 disposal date criterion to be backdated to 6 April 2022, which would allow at least some of those already separated to benefit further from this legislation by bringing exchanges in the current tax year into the extended NG/NL window.

Second, sub-section 1A in the draft legislation (being incorporated into s.58 TCGA 1992), makes reference to one individual disposing of an asset to another individual. There may be a situation whereby individual A transfers the asset into bare trust for individual B. The trustee could well be individual A, in which case the legal transfer has not been made to another individual; or the trustee could even be a body corporate, so not made to an individual at all. We would hope that the transparent nature of bare trusts, as recognised in CGT legislation, would deem individual B as the recipient in any event, but we would welcome clarification/confirmation of whether individual's B ownership of the asset meet the requirements of the legislation if held as such.

Our third point (and somewhat related to the second point above concerning disposals to individual B) concerns transfers of value rather than actual disposals of assets: for example, the surrender of a lease, the freehold of which is already owned by B, or the waiver of an option or right of pre-emption over an asset owned by B. In these instances, there will be no actual disposal of assets to individual B, but a transfer of value would nevertheless occur by individual A's actions. Likewise, there could be scenarios involving shareholdings owned by A and B, with B receiving additional value through changes made to A's shares. Whilst this may be potentially amount to a deemed chargeable disposal under s.29 TCGA 1992, it would not constitute an actual disposal of shares as envisaged in this draft legislation. As with the bare trust scenario above, we would welcome guidance/clarification from HMRC as to whether value transfers like these would satisfy the new legislation.

Yours faithfully,

Danny Clifford
Chair of the Private Client (UK) Technical Committee, CIOT

The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.