

How the changes to CGT on property transactions from 6 April 2020 might impact separating or divorcing couples

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Despite many significant fiscal measures which the Government is introducing owing to Covid-19, there is no change to the new CGT rules which had already been announced and remain due to be introduced on 6 April 2020.

We look in general terms at the impact the changes to capital gains tax (CGT) on property transactions might have on separating or divorcing couples.

We also reference some of the unforeseen implications, the timing of the introduction of these new tax rules has brought, owing to Covid-19.

For the purposes of this article wherever divorce, spouses or marriage are referenced, these references are interchangeable with dissolution, civil partners and civil partnerships.

The usual approach to CGT on the transfer of family assets

Generally, the transfer of assets between spouses or civil partners does not create either a taxable gain or loss, although the party who receives the property takes over the original cost history of the person who is passing the asset to them. This means the recipient spouse/partner becomes liable for the CGT, but only when they eventually dispose of the asset. The couple also benefit from their individual annual CGT exemption (£12,000 for 2019/20) and be responsible for their own tax returns for chargeable gains.

These rules continue during the 'tax year of permanent separation' so there can be advantages of making inter spouse/civil partner transfers during this period even immediately after permanent separation.

However, the method of determining the date of permanent separation and hence in which tax year that date falls is ambiguous. In effect it can sometimes be the date from when the couple deem/decide their separation to be 'permanent'. Is this when one spouse/civil partner announces to the other that they want to separate? Is it when they separate physically from their shared home? (Many couples who plan to separate, live together for a long time before they divorce.) Or is it perhaps only once the divorce/dissolution petition is issued?

It is most tax efficient for separating and divorcing married couples'/ civil partners' permanent date of separation to be on or as soon after 6 April (the start of the new tax year) as possible as that then gives them until the following April to transfer assets without creating either a taxable gain or loss. Given this, it can be important that advice is sought from a specialist family lawyer, accountant or tax specialist to discuss the impact of a client's possible date of permanent

separation on their particular circumstances.

CGT and The Marital / Civil Partnership Home

The CGT changes proposed for the marital/civil partnership home are potentially hugely significant for separating, divorcing couples or those dissolving civil partnerships.

The marital/civil partnership home is usually exempt from CGT upon divorce / dissolution. However, when one of the parties leave the property, Final Period Exemption Relief is available and currently provides exemption from CGT for 18 months after he or she vacate the property. From 6 April 2020 this period is to reduce to just 9 months. (It might be possible to extend this period if, for example, the family have only vacated the marital/civil partnership home owing to a relocation for work abroad.)

Currently, if a couple both move out of the marital/civil partnership home to let the property, they can qualify for Lettings Relief, which is up to £40,000 each (£80,000 for a couple). This relief currently has no time limit from the date they moved out, but from 6 April 2020 this too will only apply to a period of 9 months after the spouses/civil partners both left their family home. (It is possible to extend this period if one spouse remains in occupation with a tenant.)

When is CGT on a property transaction due for payment to HMRC?

Currently it can be possible to defer CGT payments for up to 21 months after exchange of contracts dependent upon the date of exchange. However, from 6 April 2020 the due date for payment of CGT will be just 30 days from completion of the property transaction.

Failure to pay within 30 days of completion will result in HMRC imposing interest and potential penalties.

Examples of how the proposed changes to CGT on Property Transactions from 6 April 2020 might impact on couples who are separating and divorcing

- The proposed changes do not affect couples who are both still occupying and only own one property (their family home)
- Upon separation, it is usual for one of the spouses/civil partners to leave the former family home and for the parties to only then talk about whether the family home should be sold or transferred. Many couples do not want to commence divorce proceedings or finalise their long-term financial arrangements immediately after separation and it is not uncommon for couples to wait several months or even years before they start formal divorce proceedings (if applicable). It can also take longer than 9 months to reach a financial settlement in family proceedings, particularly if the breakdown and resulting arrangements require the matter to be assisted with by a court process. The proposed reduction to 9 months for the qualifying period for Final Period Exemption Relief is therefore likely to impact a significant number of separating families
- A number of separating couples might initially think their priority is to transfer any potentially chargeable property before 5 April. However, from a family law perspective huge care must also be taken if this is before any final financial settlement pursuant to any separation or divorce is agreed or ordered
- The proposed change to paying any CGT due on a property transaction within 30 days of completion will also need to be factored into any financial negotiations pursuant to separation; particularly where there might be liquidity issues for the party paying the CGT, if not from net proceeds. The scope for refinancing or awaiting the maturity of certain other investments to pay the tax bill will be more limited
- It will be increasingly important to calculate CGT as precisely as possible prior to concluding any financial settlement. (In family matters this work is commonly completed prior to settlement anyway as net values are adopted for negotiations.) However, it's still important to allow enough time to prepare the relevant CGT calculation. Costs of renovation works can offset some CGT (but to calculate this, all receipts for such works need collating). The separating couples' individual chargeable gains will also need to be considered
- Indemnities and undertakings might also be needed in family financial orders, to ensure the party paying the CGT pays it within the 30-day period (or otherwise remains solely liable between the spouses/civil partners for any

subsequent penalties by HMRC)

- These proposed new rules might also affect decisions about vacating, selling or letting properties the couple own. Where they own more than one property, they might even adjust their thinking about which properties they wish to retain in any settlement

How Covid-19 might impact those who have been rushing to transfer or sell property before 5 April 2020 owing to these changes to CGT

Some couples might have found that their transaction has come to a halt, for example owing to:

- The restrictions placed on removal companies and moving possessions between properties
- Those in their chain losing funds through the sharp decline in the stock market or adverse currency fluctuations; or
- Mortgage companies no longer feeling confident about property valuations when assessing the mortgage ability of the purchaser or recipient of the transfer

For others, who have factored in the transfers or sales as part of an overall financial settlement upon separation, divorce or dissolution, there might also be renewed concern about the fairness of the overall agreement. If you have such concerns, please contact iFLG.

COVID-19 might also now make it even harder for couples to transfer or sell potentially chargeable property within the year of permanent separation.

Other tax issues affecting couples

There are other aspects of CGT upon relationship breakdown affecting second properties, cars and other assets, not covered here. iFLG publishes an annual a guide to taxation on marriage, separation, divorce and dissolution It can be found here.

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