



REV BN 28: Tax And Civil Partners

Who is likely to be affected?

1. Same-sex couples.

General description of the measure

2. The measure paves the way for changes to all existing tax legislation, both primary and secondary, so that civil partners formed as a result of the Civil Partnership Act 2004 (CPA) will be treated the same as married couples for tax purposes. It gives the Inland Revenue the power to introduce regulations to effect those changes.

Operative date

3. The tax changes will take effect from 5 December 2005 – the date the CPA comes into force.

Current law and proposed revisions

4. Married and unmarried couples are usually treated differently for tax purposes. For example a husband and wife are protected from tax charges that might otherwise arise if they transfer assets between them. This protection is not available to unmarried couples. On the other hand, there are situations where husband or wives can be taxed on certain benefits that are provided for their spouse but if the persons concerned are unmarried that is not the case. There are, in addition, limited circumstances in which unmarried couples are treated as if they were married.

5. The CPA creates an entirely new legal status of civil partner, giving same-sex couples in the UK the opportunity of acquiring a legal status for their relationship. Couples who enter into a civil partnership will gain a package of rights and responsibilities reflecting those already available to a married couple.

6. For tax purposes, the Government has announced that civil partners will be treated the same as married couples. Therefore, from the start of the civil partnership scheme, tax charges and reliefs and anti-avoidance rules will apply equally to married couples and civil partners, and those treated as such.

7. Full details will be published with the regulations. The key areas affected include: Inheritance Tax (IHT)

8. Transfers between married couples in lifetime or on death are generally exempt from IHT without limit. On a par with married couples, civil partners will be able to make gifts or bequests to their partners with the benefit of IHT exemption.

9. There will be consequential changes elsewhere in the IHT code to extend to civil partners other provisions currently applying to spouses. For example, IHT antiavoidance provisions that apply to marriage will be applied to civil partnerships. Capital Gains Tax (CGT)

10. CGT will apply in relation to civil partners as it applies in relation to married couples. In particular:

- Private Residence Relief. Only one property owned by a couple, whether that property is owned solely or jointly, may be treated as the principal private residence of either of them at any time for

- CGT purposes and thus qualify for private residence relief;
- transfers of assets between persons who are civil partners who are living together will be on a no-gain no-loss basis, and thus not attract an immediate CGT charge; and
 - civil partners will be “connected persons” in the same way as husbands and wives. They will also be connected with certain other persons, such as close relatives of their civil partner, in the same way as husbands and wives. Furthermore, where one partner settles property into a settlement under which the other partner can benefit, the settlor may be liable to CGT by reference to capital gains realised by the trustees if the relevant conditions as to the residence of the settlor, and certain other conditions, are met.

ISAs

11. There are two minor areas where the ISA rules will be amended to cover a civil partner: firstly the eligibility of a spouse of a Crown employee serving overseas to subscribe to an ISA; and secondly the ability of a husband or wife to subscribe to an ISA account on behalf of their spouse who lacks the mental capacity to operate their own ISA account.

Bank and building society interest paid to individuals

12. Banks and building societies are required by law to deduct tax at the lower rate (20%) before paying interest to savers, unless they have authority to pay the interest gross, that is, without tax taken off. The category of people who can sign a gross registration declaration (on form R85) on behalf of a person who lacks the mental capacity to operate their own bank or building society account will be extended to include civil partners.

Pension Schemes (other than state)

13. The current pension tax legislation will be amended so that references to husband, wife, ex-husband, ex-wife, spouse, ex-spouse, surviving spouse, widow, widower will include civil partner, former civil partner and surviving civil partner under the terms of the CPA. Changes will also be made to the pension tax simplification legislation that takes effect from 6 April 2006 to account for the terms of the CPA.

Settlements

14. Anti-avoidance legislation will be extended to include civil partners in the same way as spouses. The anti-avoidance Settlements legislation prevents people avoiding tax by transferring their income to other people who pay less tax. There are special rules for husbands and wives and these will be extended to civil partners.

Beneficial Ownership - Sections 282A and 282B ICTA 1988

15. Married couples frequently own property jointly and the Inland Revenue treats them as though the property is held equally so any income arising is taxed 50/50. However, if the couple are not in fact entitled to half the income each, they can elect to have income from property they hold jointly taxed on a basis other than 50/50. Civil partners will be treated in exactly the same way.

Company Control Tests

16. Section 416 of the Income and Corporation Taxes Act provides various tests for identifying who controls a company. It also deems a company to be under the control of a person if it is controlled by an associate of that person. The term “associate” is defined in section 417 and includes husband or wife. The definition of “associate” will also include civil partner.

Stamp Duty and Stamp Duty Land Tax (SDLT)

17. There is currently an exemption from stamp duty and SDLT for transactions carried out in connection with divorce such as a transfer of shares or the transfer of the marital home from joint ownership into the sole ownership of one of the exspouses. There will be a similar exemption for transactions carried out in

connection with the dissolution of a civil partnership.

Transfer of assets abroad

18. Civil partners will be treated in the same way as married persons under the transfer of assets abroad legislation in sections 739-746 ICTA 1988. This legislation aims to prevent individuals avoiding income tax by means of the transfer of assets. It applies where, as a result of a transfer and/or any associated operations, income becomes payable to persons resident or domiciled outside the UK.

19. The legislation provides that an income tax charge may arise on the husband or wife of an individual who makes a transfer of assets, where the spouse is involved in the transfer or associated operations. This will in future apply equally to civil partners.

20. In addition, we will extend to civil partners the practice of not normally seeking to tax under section 739 UK domiciled individuals in relation to income of their nondomiciled husband or wife, where that spouse would be outside the section 739 charge because of his or her entitlement to the remittance basis.

Married couple's allowance

21. Married couple's allowance is currently available to married couples where one of the spouses was born before 6 April 1935. Civil partners will have similar rights so that from the date that the registration scheme commences, civil partnerships and also new marriages meeting the age criteria will have an allowance based on the income of the highest earner. There will be no change to the arrangements for existing marriages.

Blind person's allowance

22. The Blind Person's Allowance (BPA) contains a provision that any unused allowance (because the person does not have sufficient income) can be transferred to their spouse. Surplus BPA will also be transferable to a civil partner.

Further advice

23. If you have any questions about these proposals, please contact Mark Taylor on 020 7147 2386 or Sara Woollard 020 7147 2380. Information about Budget measures is available on the [Inland Revenue website](#).

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