



#### **The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (referred to informally as the CPA 2010) was signed on 19 July 2010 and came into effect from 01 January 2011.

The first public civil partnership ceremony took place in April 2011 (following the 3 month waiting period for civil ceremonies). In exceptional cases, such as illness, a court can grant an exemption to the three-month notice period, and a few exemptions were granted early in 2011.

The CPA 2010 provides for the registration of civil partnerships to give same sex couples a legal framework similar to that which is available to spouses through marriage. It also makes provision for couples in informal but long-term cohabiting relationships. The Act deals with succession to property, pension entitlements, domestic violence, and maintenance in the event of a breakdown of a relationship. However the Act does not include any tax or social welfare provisions.

The relevant social welfare legislation was passed in the Social Welfare and Pensions Act, 2010, signed on 21 December 2010. The Finance (No 3) Act 2011 was passed and signed into law on 27 July 2011.

The Act is intended to ensure that registered civil partners receive the same tax treatment as married couples in respect of income tax, stamp duty, capital

*“This is one of the most important pieces of civil rights legislation to be enacted since independence. Its legislative advance has seen an unprecedented degree of unity and support within both Houses of the Oireachtas”.*

Minister for Justice & Law Reform 19 July 2010

acquisitions tax, capital gains tax and VAT, and the main tax provisions in the Act are outlined in this article.

#### **Civil Partnerships: Income Tax**

The following income tax credits and reliefs, which were limited to married couples, have been extended to Civil Partnerships:

- Joint assessment for income tax.
- Income tax deduction for certain maintenance payments.
- “Year of registration” relief will be available - mirroring spouses’ “year of marriage” relief.
- Income tax exemption for over 65s is now based on age of either spouse, or either civil partner.
- Changes in basic tax credits (to bring civil partners in line with married persons).
- Age credit can now be claimed based on a spouse’s age or a civil partner’s age.
- The dependant relative tax credit can now be claimed by a person caring for a relative of his/her civil partner.
- Credit for third level fees and rent credit.

Throughout the Taxes Consolidation Act 1997 (TCA 97) definitions including spouses have been extended to include civil partners. For example, a company car which is made available to an employee’s civil partner is now treated as a benefit in kind of that employee.

#### **Civil Partnerships: Capital Gains Tax (CGT)**

Civil partners are able to transfer property to each other without incurring a CGT cost and transfer CGT losses, provided that they are living together, the assets

transferred are not trading stock, and the civil partner receiving the assets is within the charge to CGT. This relief mirrors the existing CGT spouse relief.

CGT relief is available on the dissolution of a civil partnership following the granting of a decree of dissolution, in the same way as CGT relief is available on the transfer of property following the dissolution of a marriage.

CGT Principal Private Residence (“PPR”) relief is more flexible for spouses than for other taxpayers as ownership and occupation can be passed from spouse to spouse. If a property is transferred from a husband to a wife, the wife takes the ownership and the occupation of the husband for the purposes of PPR relief. The Act provides that civil partners are also able to transfer ownership and occupation in this way.

#### **Civil Partnerships: Stamp Duty**

The stamp duty relief for spouses has been extended to exempt transfers between civil partners from stamp duty. The usual proviso applies, i.e. relief is not available if any party other than the civil partners is a party to the deed.

The stamp duty relief for transfers between spouses following the dissolution of a marriage has been extended to transfers between civil partners following the dissolution of the civil partnership.

Consanguinity relief has been extended to include transfers made to an individual's civil partner, the civil partner of a parent, or the civil partner of a lineal descendant. The relief is limited in application since the Finance Act 2011 abolished consanguinity relief for residential property.

#### **Civil Partnerships: Capital Acquisitions Tax**

The spouse's exemptions contained in S. 70 (gifts) and S. 71 (inheritances) have been extended to civil partners. The exemption from CAT on dissolution of a marriage has been amended to extend it to the dissolution of a civil partnership. (S. 88 CATCA 03).

The relationships of various parties become complex when civil partners are factored in, and qualifying relationships are set out in detail in some provisions of the CAT legislation. Relations linked by civil partnerships have now been included in the CAT tax free thresholds. Class (a) has been extended to include:-



- The child of a civil partner, and the minor child of a deceased child of a civil partner.
- The minor child of the civil partner of a deceased child (the equivalent of a step grandchild for spouses).
- The minor child of the civil partner of a deceased child of the disponent's civil partner (the equivalent of the stepchild of a deceased stepchild for spouses).

Class (b) has been extended to include the child of a civil partner of a brother or a sister.

Surviving spouse relief has been extended to surviving civil partners, who take their deceased civil partner's threshold if that civil partner was a nearer relative of the disponent.

Favourite nephew relief has been extended so that it is available to the child of the civil partner of a brother or sister, as well as to the child of a brother or sister.

The relief which applies to policies of insurance from CAT (known colloquially as S. 60 policies) have been extended to include policies relating to civil partners.

Civil partners and children of civil partners have been included in the group of relatives and other person whose shares will be counted together when valuing private company shares.

#### **Civil Partnerships: Discretionary Trust Tax**

The initial 6% charge to Discretionary Trust Tax (“DTT”) will not arise while there is a principal object of the trust under the age of 21. The definition of principal objects for the purposes of DTT has been extended to allow for civil partnerships.

For DTT purposes “principal objects” now includes the disponent's civil partner, spouse and children and this is the equivalent of the existing spouse and child provision. However the

legislation becomes more complex as it goes on to include the following:-

- The children of the civil partner (the equivalent of including stepchildren for spouses).
- The children of a predeceased child of the civil partner (the equivalent of including a deceased stepchild's children for spouses).
- A predeceased child's civil partners' children (the equivalent of including a pre-deceased child's stepchildren for spouses).
- The children of a civil partner of a deceased child of the disponer's civil partner (the equivalent of the stepchild of a deceased stepchild for spouses).

#### Civil Partnerships: Value Added Tax

A landlord's option to tax on the grant of a lease under the new VAT on Property regime, is restricted where the lease is to a connected party, and the definition of connected party has been extended to provide that a person is connected to his/her civil partner.

#### LRC Paper: Rights and Duties of Cohabitees

In 2004 the Law Reform Commission published a consultation paper (available [here](#)) on the Rights and Duties of Cohabitees. The Commission's view was that cohabitation should not be equated with marriage;

*"A tax regime, which equated cohabitation with marriage, would cause massive administrative problems because of 'serial cohabitation' and the potential desire of many people to have themselves regarded as qualified cohabitants for taxation purposes. Apart from the administrative costs involved, the potential cost to the Exchequer would be enormous... As a result, the Commission has proposed a scheme whereby a qualified cohabitants would be entitled to .... limited relief only".*

As the proposal was that cohabitation would not be equated with marriage the Commission did not recommend any change to the CGT or income tax treatment of cohabiting couples.

The Commission accepted that the lack of a CAT exemption for cohabitants might cause considerable hardship, particularly if one

cohabitant died and left the family home to the other. However the Commission noted that CAT dwelling house relief applies in many cases. The Commission made a recommendation that qualified cohabitants should have a class (a) CAT threshold, and suggested that qualified cohabitants would get stamp duty consanguinity relief (reducing stamp duty by 50%) putting them in the same position as relatives.

#### Taxation of Cohabitants

The Act does not make many changes to the general tax treatment of cohabitants, and does not implement the LRC's suggestions. Instead the Minister focused on providing tax relief for the CPA 2010 redress scheme which provides a financial 'safety-net' for long-term cohabitants by providing that a Court can order maintenance.

A new S. 1031Q TCA 97 was introduced to deal with maintenance paid where a relationship between cohabitants has ended. It provides that where a Court orders maintenance to be paid under S. 175 CPA 2010 the person paying the maintenance should pay gross, and can deduct the maintenance payment for income tax purposes. The recipient will then be subject to income tax on the maintenance payment. This mirrors the current tax treatment of court ordered maintenance payments between spouses.

The Minister did not include any CGT relief for general transfers between cohabitants but a new S. 1031R was introduced which provides relief where one cohabitant disposes of an asset to the other by reason of a Court Order under S. 174 CPA 2010 on or after the dissolution of the relationship. The disposal is treated as not giving rise to CGT and the original base cost and acquisition date pass to the acquiring cohabitant with the asset. This new provision mirrors CGT spouse relief.



The relief does not apply to assets held as trading stock or where the acquiring cohabitant would not be taxed in Ireland on a subsequent disposal of the asset in that year. This latter clause is an anti-avoidance provision designed to prevent cohabitants tax planning to avoid the CGT “exit tax” by using the break-up exemption in conjunction with a move abroad, and similar provisions apply to spouses.

The Minister introduced stamp duty relief on transfers under court orders on the break-up of cohabitants’ relationship, so that no stamp duty arises (provided that no other person is a party to the transfer). Again this mirrors the existing spouse exemption.

### Cohabitants’ Gifts & Inheritances

The Minister did not change the group threshold that applies to cohabitants for CAT purposes, so they remain in class (c) with a CAT tax free threshold of €16,604 in 2011.

The most valuable asset owned by many people is the family home and if CAT dwelling house relief applies this may provide a cohabitant with an exemption from CAT on the value of the home. However it should be noted that in many cases CAT dwelling house relief may not be available.

If the dwelling is transferred by way of a gift (for example if a house is placed in joint names to protect it from actions that might be brought to challenge an inheritance), and both cohabitants are living in it, then the exemption will only apply if the donor is “old” (for this purpose old age starts at 65), or if he suffers from infirmity, throughout the 3 years period of occupation which is required to qualify for the relief.



*“The Finance (No. 3) Bill 2011 will .... provide for the necessary taxation changes to the various Taxation Acts arising from the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010. I expect....the Act to be enacted before the summer.”*

*Michael Noonan: Parliamentary Question 1 June ‘10*

If the cohabitant receiving the property has a beneficial interest in another dwelling the exemption will not apply, regardless of how fragmented, or low in value, the interest is. For example if a parent dies leaving a share in a holiday home valued at €100,000 to 5 children each has a beneficial interest in a dwelling which is only worth €20,000, but this interest will preclude a claim for dwelling house relief.

The CAT Act looks at the ownership of an interest rather than at real value. If the cohabitant receiving a property has a beneficial interest in his/her own residence, and it was bought when prices were high in 2006 and now has substantial negative equity, the commercial value of the interest will be nil, but ownership of the property will preclude dwelling house relief.

### Revenue CAT Manual: Hardship

The CAT Manual deals with “common law spouses” in paragraph 19.9, which confirms that the class (c) threshold applies. However the Manual notes that the hardship provisions of S. 59 CATCA 2003 may apply where the financial position of a surviving common law spouse and their children is particularly difficult, e.g. where the principal asset was the family home and it is affected by a substantial CAT liability on the death of one of the “spouses”. This may be relevant if cohabitants cannot avail of dwelling house relief.

### Commencement Date

The Act provides that the legislation will come into effect for 2011 (CGT and income tax), and that it applies to instruments executed on or after 01 January 2011, and gifts and inheritances taken on or after 01 January 2011.

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**Caveat:** *These notes are intended as a general guide to Finance No 3 Act 2011. OHT has endeavoured to provide an accurate commentary but general notes cannot cover all circumstances, and draft legislation may change before it is enacted. OHT would strongly recommend that formal tax advice should be obtained before any steps are taken that may have a tax effect.*