Capital Gains Tax and married persons (S.1028)

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Capital Gains Tax and married persons (S.1028)

1.1 Capital gains tax on the chargeable gains of a married woman living with her husband is to be assessed and charged on the husband. The total tax charged is not to be different from what it would be if each spouse were to be assessed separately. The expression "living with" is to be interpreted in accordance with **Section 1015(2)** i.e. a husband and wife will be treated as living with each other unless they are separated by a court Order or Deed of Separation or are in fact separated in such circumstances that the separation is likely to be permanent.

In this connection, the residence, etc., status of each spouse should be considered individually to decide whether or not that person is chargeable to Capital Gains Tax.

1.2 Joint assessment will not apply for a year of assessment if, on or before 1 April of the following year, either spouse makes an application to that effect. This effective application for separate assessment remains in force for future years of assessment until a notice of withdrawal of the application is made. Such a notice of withdrawal is not valid unless it is made on or before 1 April in the year following the year of assessment for which the notice of withdrawal is given. If in a year of assessment one spouse has allowable losses which he/she cannot utilise because of an insufficiency of chargeable gains (from which those allowable losses would be deductible under **section 31**), the balance of the losses after being set off against that spouse's gains (if any) can be offset against the other spouse's gains in the year of assessment. This treatment does not operate for a year of assessment where either spouse makes an application to that effect on or before 1 April of the following year.

1.3 Subject to the following paragraph where an asset is transferred from one spouse to another, a chargeable gain or allowable loss does not arise.

The no gain/no loss rule does not apply to the disposal of trading stock between spouses (or if an asset is acquired as trading stock). Neither does it apply if the acquiring spouse could not be taxed in the State (for the year of assessment in which the acquisition occurs) on a disposal of the asset in that year and a gain had accrued on that disposal. Such a scenario might arise where the taxing rights on such a disposal, under a Double Taxation Agreement, rested with a foreign jurisdiction.

1.4 Where the no gain/no loss treatment outlined above applies in relation to the disposal of an asset and the spouse who acquired the asset subsequently disposes of it other than to the spouse from whom it was acquired he/she is treated as if he/she had acquired it at the time and cost at which it was originally acquired by the other spouse.

1.5 Where an asset is owned by a husband and wife jointly, and each has subscribed some part of the purchase money, each (in the absence of some express agreement to the contrary) should be regarded as the owner of a half share in the asset. If all the purchase money was paid by one spouse, **Tax Instruction 19.3.3 Par. 3** applies.

1.6 Where an asset has been transferred between a husband and wife the original acquisition of the asset by the one spouse and the final disposal of it by the other should be treated as made by one person.