

Taxation and Redress Scheme for Cohabiting Couples

Frequently Asked Questions

The FAQs are for information purposes only to explain some of the aspects of the proposed legislation that is going before the Dáil. They will not come into effect until the legislation is passed by both Houses of the Oireachtas and signed into law by the President.

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1. Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

1.1 What is the CPCROC Act 2010?

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (CPCROC Act) was enacted on 19 July 2010. The Act establishes the following:

- A civil partnership registration scheme for same-sex couples which confers a range of rights, obligations and protections consequent on registration. It also sets out the manner in which civil partnerships may be dissolved and with what conditions; **and**
- A redress scheme for long-term opposite-sex and same sex cohabiting couples who are not married or registered in a civil partnership.

This FAQ focuses on Taxation and the Redress Scheme. For FAQs concerning civil partnerships, see ‘Taxation and Civil Partnerships’ at www.revenue.ie

1.2 When did the Act come into effect?

The CPCROC Act came into effect on 1 January 2011.

1.3 When will taxation changes be introduced?

Legislative changes required to give effect to the taxation changes arising from the Act are included in the Finance (No.3) Bill (<http://www.oireachtas.ie/viewdoc.asp?DocID=18098&&CatID=59>) and are expected to come into effect in July 2011 once debated and voted on by both Houses of the Oireachtas and signed into law by the President. The information in this FAQ relates to the position **after** the various tax provisions contained in the Bill are passed.

Finance (No.3) Bill does not give opposite-sex cohabiting couples or same-sex cohabiting couples the same tax treatment as married couples or civil partners.

The only income tax provision for cohabiting couples is to grant relief for maintenance payments made to a financially dependant former cohabitant as ordered by the Courts on the ending of a long-term cohabiting relationship.

Where one of the former cohabiters is granted redress by the Courts through the transfer of an asset, the changes in the Bill mean that this transaction will not now be liable to stamp duty or capital acquisitions tax. It will also mean the donor of the property will not have a capital gains tax liability on the transfer of that property. Previously, the former cohabiting couple would have been deemed unconnected and subject to full capital acquisitions tax, stamp duty and capital gains tax.

2.CPCROC Act 2010 and tax consequences of redress scheme for long-term opposite-sex cohabiting couples who are not married and same sex cohabiting couples who are not registered in a civil partnership

2.1 What will be the tax consequences for cohabitants arising from the redress scheme for long-term opposite-sex cohabiting couples who are not married and same sex cohabiting couples who are not registered in a civil partnership?

Following on from the break-up of a cohabiting arrangement, an individual who has been in such a relationship for a period of 5 years or more (known as a qualified cohabitant), or for a reduced period of 2 years where they are the parents of dependant children, can now apply to the court for a maintenance order.

Any maintenance payment ordered by the court is treated as income of the person who received the payment, and this person is taxable on that amount. The amount of the maintenance payment is allowed as a deduction from the income of the person who is legally obliged to make the payment.

To qualify for tax relief the maintenance order must have been determined by the court rather than being an informal arrangement between the parties involved.

These taxation changes are included in the Finance (No.3) Bill.

2.2 How will I be assessed on maintenance payments received from my former cohabiting partner?

If you are a PAYE employee, the tax on your maintenance payments arising under a legally enforceable agreement can be collected by reducing your tax credits and rate bands, or if above a certain limit and it is not possible to collect through the PAYE system you may be required to register for income tax.

If you are self employed or a PAYE worker you will have to declare this income in your Return of Income.

If the only income you are in receipt of is the maintenance payment you will have to register as a self employed individual.

2.3 If I am required to make support payments for a dependent child under the court order can I claim tax relief on this payment?

No, tax relief is not available for maintenance payments made in respect of dependant children.

2.4 What happens if the court orders that a property be transferred as part of the maintenance arrangement?

Where a property adjustment order is made in respect of a specified property, the transfer of the property shall be on the basis of a no gain or no loss for the person transferring the property. The person now getting ownership of the property will be treated as if they acquired the property at such a price that there was no capital gains tax liability for the original owner.

There will be no capital gains tax, gift or inheritance tax issues on the transfer, and no stamp duty will be payable.

In any subsequent disposal of this property the full period of ownership of the property by both cohabitants will be taken into consideration for the purposes of determining whether any capital gains tax is payable on the later disposal.