Tax Law Review Committee

Response to

"CIVIL PARTNERSHIPS:
A framework for the legal recognition of same-sex couples"

To: Civil Partnerships and Sexual Orientation Team
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1. Introduction

This is a response by the Tax Law Review Committee of the Institute for Fiscal Studies to the invitation to comment on the questions raised in the consultation paper on civil partnerships, published on 30 June 2003.

The Tax Law Review Committee was set up by the IFS in autumn 1994 to ask whether the tax system was working as intended, efficiently and without imposing unnecessary burdens. Its role is to keep under review the state and operation of tax law in the UK, which it does by selecting particular topics for study. It does not seek to question Government policy as such but to look at whether existing arrangements achieve the policy in a satisfactory and efficient way.

The Committee's members represent a broad cross-section of informed opinion from industry and commerce, the judiciary, academia, the professions and political and public life. The current membership of the Committee is shown at Appendix A.

In preparing this response we are most grateful to have had the benefit of advice from Lucy Cheetham, Barrister, of 4 Paper Buildings, on behalf of the Centre for Child and Family Law Reform, although the contents are the responsibility of the Committee alone.

We have considered only the direct taxes administered by the Inland Revenue and not, for example, any consequences (which we believe to be very minor) of marriage for council tax, transaction taxes such as stamp duty and value added tax, or indeed the other duties and excises administered by HM Customs and Excise. Perhaps more importantly, we have restricted our comments to the current position in the United Kingdom. There is evidently a great deal that could be said about the tax treatment in other countries of marriage and cohabitation, which are almost universally recognised in some ways, but with bewildering variety internationally.

Because the consultative document did not itself address the direct tax issues but instead referred to the usual context of the Budget process, we are copying this response to the Treasury and Inland Revenue.

In the remainder of this response, statutory references are to:

The Inheritance Tax Act (IHTA) 1984
The Income and Corporation Taxes Act (ICTA) 1988
The Taxation of Chargeable Gains Act (TCGA) 1992
The Social Security Contributions and Benefits Act (SSCBA) 1992
The Social Security Administration Act (SSAA) 1992
The Pension Schemes Act (PSA) 1993
The Tax Credits Acts (TCA) 1999 and 2002
The Capital Allowances Act (CAA) 2001
The State Pension Credit Act (SPCA) 2002
The Income Tax (Earnings and Pensions) Act (ITEPA) 2003
successive annual Finance Acts (FA), up to and including 2003

2. The basic premiss of the Government's proposal

The Government's proposal is set out succinctly in section 2 of the consultation document. It wishes to ensure legal recognition of same-sex relationships where that is what the parties desire, and considers that the most effective machinery "is by an opt-in civil partnership registration scheme". The key problem being addressed by the proposal is that of "an inequality that already exists between opposite-sex and same-sex couples", namely, that the option of legal recognition is available to the former (through marriage) but not to the latter.

We note that, "The Government does not believe that the solution for those opposite-sex couples who choose not to marry, is to offer them another way of entering into an equally formal kind of legal commitment to each other."

It is clear from section 2 and the detail of the following sections that, although it is not intended to extend the existing scope of marriage under English law to same-sex couples, the scheme of registration envisaged in the document is, in most respects, closely analogous to that of marriage between parties of opposite sex.

The document is, however, silent on the implications for the tax system. Section 6.6 simply notes, "…the Government believes that the tax system should, wherever possible, adapt to reflect changes in society. It will therefore consider the implications for the tax system of any scheme that is introduced following the outcome of this consultation and, as is usual for tax matters, in the context of the Budget process."

This omission has attracted much adverse public and press criticism, and seems strange given that the proposal at sections 7.19-7.21 for the closely related subject of income-related benefits is clear: registered partners should be treated as a single family unit for income-related benefits purposes, just as in the case of married couples.

The Tax Law Review Committee is therefore responding to the consultation document, not because it has views to express on the merits of the underlying policy decision to introduce a same-sex civil partnership scheme of recognition. Rather, the Committee hopes that it might contribute usefully to the debate by examining briefly the ways in which the tax system in the United Kingdom currently recognises marriage and the family, and by considering the means and consequences of extending that recognition to civil partnerships, as apparently envisaged in the document.

In the course of that examination we take the opportunity to note certain respects in which the current system contains apparent anomalies, disincentives or other difficulties. Rather than extend these to civil partnerships unthinkingly, we suggest that the time may be ripe for a systematic review by the Inland Revenue of the way that the tax system recognises marriage and the family, and to establish whether there is, as we believe, some scope for improvement.

By way of background to this assertion, we note the extent to which social behaviour and attitudes have changed since the introduction of income tax in its recognisably modern form under Lloyd George. At that time almost all children, certainly of taxpaying families, were been borne in wedlock and most marriages would have given rise to children. Of course there were exceptions, but today they are much more numerous. So there is now no evident, general public expectation that marriage is a precondition for parenthood nor, with the advent of modern methods of contraception, that married couples will necessarily have children.[1]

Whereas at one time it might have seemed natural to provide state support for children indirectly through recognition of the institution of marriage, that is probably no longer seen as appropriate by most people. There is a respectably held view that marriage should be financially encouraged by the state because a married couple are more likely to provide a stable and happy upbringing for children than any other family unit; but it is a disputed view and one that goes against the grain of government policy, certainly since 1990. The majority view is probably that support for children and their parents should be provided directly and without discrimination as to marital status and, as described in 4.1.4. below in the case of tax credits, that is generally reflected in the current tax and benefit system.

3. The overall approach of the tax system to marriage

Despite the introduction of independent income taxation in 1990, the tax system overall is neither neutral not consistent with respect to marital status.

For some purposes it matters critically whether two people of opposite sex are married or not, regardless of whether they are living together or separated (in some sense of that word); and in some cases, particularly in relation to inheritance tax, a former marriage is also relevant.

[1] See *Social Trends*, No.33: 2003 edition, chapter 2 for a discussion. In 2001, 40% of all live births in the UK were outside marriage (figure 2.18).

For other purposes it is critical to know of a married couple whether they are "living together", in the meaning of the Taxes Act as explained in 4.1.1. below, or not, i.e. they are permanently living separately (although possibly in the same property).

For yet other purposes it is critical to know of an unmarried couple whether they are "living together as husband and wife" (they could even be divorced from each other but reconciling), which is decided by reference to established social security case law and practice.

To some extent these differences reflect different policy objectives. A husband and wife living together may be regarded as "independent" but they are clearly not "separate" in the same sense as two wholly unconnected individuals drawn at random from the population. They are however "separable", most obviously through divorce, so that their relationship is different to that of blood relatives. The different policy objectives of income taxation and income support as applicable to married or cohabiting couples were clearer when the latter was within the Department of Social Security rather than the Inland Revenue. Now that the two have been brought together in the system of "tax credits", the differences in approach and detail are more striking by virtue of their juxtaposition.

This means that instead of the self assessment tax return asking individuals to state whether they are "single, married, divorced, widowed or separated" (which are not mutually exclusive), as box 22.5 does at present, an exhaustive list would need to be:

- single and not living with a person of the opposite sex as husband and wife
- single but living with a person of the opposite sex as husband and wife
- married and living together
- married but separated
- divorced and not living with a person of the opposite sex as husband and wife
- divorced and living with a person of the opposite sex as husband and wife
- widowed and not living with a person of the opposite sex as husband and wife
- widowed and living with a person of the opposite sex as husband and wife

but this would probably appear to many people to be offensively intrusive.

Considering the treatment of marriage overall in the tax system, on the one hand, a married couple enjoy some benefits relative to cohabiting as an unmarried couple; but on the other hand, they are penalised in certain other respects that will, in some cases, act as a clear disincentive to marriage, according to the nature and extent of the couple's income and wealth.

The overall policy mix – of which we consider the main components in the remainder of this note - looks confused. If left unreformed and carried over *en bloc* to civil partnerships, it could result in a much lower takeup rate than expected – particularly if the parties seek professional advice before reaching their decision.

Conversely, it would seem odd in the context of the proposed civil partnership scheme for the Treasury or Inland Revenue to "cherry pick" and apply only a subset of those tax provisions that apply to married couples to civil partners. This would leave one group worse off than the other.

Tax reform is notoriously difficult whenever it will give rise to any identifiable group of "losers" who will be less well off. For example, a proposal to restrict the surviving spouse exemption from inheritance tax to the matrimonial home, or to subject it to a cap, instead of to all property - but at the same time, to extend the scope of relief beyond married couples, to other dependent relationships - would undoubtedly be highly unpopular with wealthy married couples. Yet in respect of inheritance tax, cohabiting unmarried couples (whether of the same or opposite sex) currently receive no recognition at all.

This current policy gap between the treatment of married and unmarried couples seems odd in the context of overall policy. It is the aspects of the tax system that do discriminate in favour of married couples simply by reference to their marital status – principally, inheritance tax - that appear to have most exercised those who have called for the civil partnerships scheme to be made available to unmarried opposite sex couples, as an alternative to marriage. The Government has ruled this out.

4. The current treatment of marriage for the purpose of the various taxes

4.1. Income tax

Since 1990, income tax has been founded on the principle of independent taxation for married couples. Prior to that date, a married woman's income was treated as that of her husband, subject to the limited right of election for an alternative treatment of earnings only.

Every person is therefore now taxed as an individual, subject to certain exceptions. In the present context it is those exceptions with which we are concerned.

4.1.1. Key definitions

In those parts of the Taxes Acts dealing with taxable benefits - such as income support and jobseeker's allowance - and the working and children tax credits, the expressions "married couple", "unmarried couple" and "family" take their meaning from the Social Security Contributions and Benefits Act 1992, section 137:

> *"**married couple**" means a man and woman who are married to each other and are members of the same household;*
>
> *"**unmarried couple**" means a man and woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances;*
>
> *"**family**" means—*
> *(a) a married or unmarried couple;*
> *(b) a married or unmarried couple and a member of the same household for whom one of them is or both are responsible and who is a child or a person of a prescribed description;*

(c) except in prescribed circumstances, a person who is not a member of a married or unmarried couple and a member of the same household for whom that person is responsible and who is a child or a person of a prescribed description.

The concept of "**living together as husband and wife**" (LTAHAW) is a technical one, developed through social security case law and practice and encapsulated in the Department for Work and Pensions' very detailed "Guide for Decision Makers"[2]. It has the same scope as "cohabiting with a man as his wife", the term used until 1977 in respect of female claimants. The Guide opens with the statement that:

"A couple who are LTAHAW should be treated in the same way as a married couple. The principle behind this is that an unmarried couple should not be treated more or less favourably than a married couple."

These definitions are relatively new to the tax code, and emphatically do not follow the traditional approach, which has developed over a long period and contains certain complexities. Under the traditional approach to direct taxation, a married couple is treated differently to an unmarried couple, provided the spouses are still "living together". So we find the following interlocking definitions in the principal tax Acts:

1. *"**spouse**" refers to one of two spouses who are living together (construed in accordance with [definition **3.** below]);*[3]

2. *a husband and wife shall be treated for income tax purposes as "**living together**" unless -*
(a) they are separated under an order of a court of competent jurisdiction, or by deed of separation, or
(b) they are in fact separated in such circumstances that the separation is likely to be permanent.[4]

3. *References in [TCGA 1992] to a **married woman living with her husband** shall be construed in accordance with [definition **2.** above].*[5]

This is already more confusing than it apparently needs to be. There is no explicit definition of "spouse" in the Taxes Acts, but in English law it clearly means lawfully wedded husband or wife (necessarily, of opposite sex).[6] So references to "husband" or "wife" in the Taxes Acts could be substituted by "spouse", and "husband and wife"

[2] http://www.dwp.gov.uk/publications/dwp/dmg/vol03/ch11b.asp
[3] ICTA 1998, section 576(5); there is no stated requirement that the two spouses should be married to each other rather than to other parties, but that is presumably the intention.
[4] ICTA 1998, section 282; this definition was substituted by FA 1988 with effect from April 1990, i.e. the introduction of independent taxation.
[5] TCGA 1992, section 288(3).
[6] This was the central issue in *Holland*'s case concerning the inheritance tax exemption, discussed in 4.3. below. The ordinary definition of "spouse" is extended for various purposes in the Taxes Acts. At section 660A(3) ICTA 1988, it specifically "does not include the widow or widower of the settlor" whereas at section 80(2) IHTA 1984 it specifically *does* include the widow or widower – which expression is not explicitly defined in the Taxes Act either but is presumed to mean a former spouse who is deceased (regardless of marital status at the time of death and the current marital status of the widowed individual, unless the context requires that to be taken into account).

by “spouses”, extended, as at present, by the caveat “living together” whenever the current policy so requires it.

Whether “separation is likely to be permanent” in the definition of “living together” might be an objective or a subjective test, but since in practice many married couples who have in fact separated for the first time are likely to disagree as to whether their separation will be temporary or permanent, there are inevitable difficulties in applying this test in all cases.

The guidance provided in the relevant Inland Revenue manual, the “Relief Instructions”, pre-dates the introduction of independent taxation in 1990 and is founded on the prior system under which the income of a married woman, while living with her husband, was treated as being his instead of hers. It does not fit very comfortably with the approach of matrimonial law in applying the test of separation for two or five years. These are the relevant guidelines provided by the Inland Revenue:[7]

> *Where there is no Court Order, deed of separation or agreement to separate you will have to decide*
>
> *· whether the couple are separated, and*
>
> *· whether the separation is likely to be permanent.*
>
> *The use of the word ``likely'' indicates that there are no hard and fast rules. Each case is decided on its own facts. Where there is a difference of opinion you may need to interview them to get all the relevant facts. Before accepting that a couple are separated ``in such circumstances that the separation is likely to be permanent'' you must be satisfied that*
>
> *· the husband and wife are living apart, and*
>
> *· there was at the time an intention to break the matrimonial ties by divorce or by remaining apart permanently.*
>
> *It is sufficient for just one of the couple to have the intention to make the separation permanent. The one with that intention does not have to have told their husband or wife of it.*
>
> *You can accept what the couple tell you about their intention to make the separation permanent unless there is strong evidence to contradict it.*
>
> *Often there is no intention to separate permanently and the couple are soon reconciled. If they are reconciled after a short separation, treat them as living together as husband and wife throughout. But see RE1062 if they press their claim to be treated as separated.*
>
> *If you are unable to check the facts with the other person and the separation has continued for at least a year you may accept that the couple are separated for Income Tax purposes. The date of separation will be the date on which one of*

[7] Relief Instructions, RE.1060-1 (http://www.inlandrevenue.gov.uk/manuals/remanual/re0935/10_0027_re1060.htm)

them left the other.

The matrimonial approach, by contrast, is as follows. The relevant proof of irretrievable breakdown is:[8]

> *"The parties to the marriage have lived apart for a continuous period of at least five years [or two years, and the respondent consents to a decree being granted] immediately preceding the presentation of this petition."*

(We also note here in passing that irretrievable breakdown is proved where the respondent has deserted the petitioner for a continuous period of at least two years, although for reasons that are unclear, it is not proposed to carry over this ground of proof in matrimonial law to civil partnerships; nor a ground corresponding in some way to adultery.)

In assessing whether the two or five year test, as appropriate, is met, short periods of reconciliation are not treated as breaching the "continuous period" condition, but rather as extending the time limit (e.g. a one year separation, followed by a month attempted reconciliation, followed by permanent separation will meet the test after two/five years and one month). The couple may in fact be living together at the date of presentation of the petition, provided that they have fulfilled the relevant period of living apart beforehand. However if the period of attempted reconciliation (or aggregate periods of reconciliation) lasts for more than six months, the clock is reset at the start of the latest separation. In matrimonial cases, a couple may continue to live under the same roof whilst "living apart" for the purposes of establishing a continuous period of separation, provided that the court is satisfied that the couple were living as two households. For example, in a case where a wife lives with a man other than her husband in the same household and the husband continues to live in the same house as a paying guest, the couple may be deemed to be living apart.

In the case of a married couple, irretrievable breakdown may also be established by proof of adultery where the petitioner finds it intolerable to live with the respondent (by filing for petition within six months of his or her knowledge of the adultery by the respondent), or of unreasonable behaviour where the petitioner cannot reasonably be expected to live with the respondent. In such cases there will self-evidently be no need to establish a period of living apart in order to prove irretrievable breakdown. In the consultation document, the latter of these two cases is proposed to be recognised for civil partnerships, but not the former. Adultery is by definition committed only between persons of opposite sex, and so would probably not be so relevant in most cases of breakdown of civil partnerships, but no same-sex equivalent concept of infidelity is proposed.

The current tax legislation focuses on separation as a distinctive state between "married and living together" and "divorced", but it is not well defined in law or practice. The scope for confusion about the definition as applied in fact for tax purposes may not be too significant for income tax, but as considered in 4.2 below, it can have severe consequences for capital gains tax.

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[8] See the Court Service's *Divorce Petition Notes for Guidance* D8(Notes) *(http://www.courtservice.gov.uk/forms_and_guidance/forms/d8notese3.pdf)*

4.1.2. Married Couples Allowance

The married couples allowance is now only available in circumstances severely restricted by age:

> If the claimant is, for the whole or any part of the year of assessment, a married man whose wife is living with him, and either of them was born before 6th April 1935, he shall be entitled for that year to an income reduction…[9]

Although the starting point is that the husband benefits, the wife may unilaterally elect, on making a claim, to benefit from half of the reduction to which her husband would otherwise be entitled; and the husband and wife may elect for certain alternative allocations of the allowance between them in various circumstances.

The former Widow's Bereavement Allowance, which has given rise to controversy and litigation[10] because it was payable only to widowed women and not to widowed men in analogous situations, was repealed in relation to deaths occurring after April 2000[11] and so is no longer of concern.

4.1.3. Jointly held property

In the case of unearned income arising from jointly held property of a married couple, the statutory presumption for tax purposes is that they are beneficially entitled to the income in equal shares (unless it is earned income or "sleeping partner" income).[12] Typical examples would be interest on a deposit account, or rent on a let property, in the name of Mr and Mrs Jones. The income arising would be taxed half each. This presumption is only disturbed if husband and wife make a joint declaration that beneficial ownership is not in fact in equal shares.[13]

The problem that this presumption of equal shares in certain types of income is intended to address is a practical one. Establishing the nature of the beneficial interest in the relevant income-producing property is notoriously difficult in the case of cohabiting couples, and is clearly related to the widespread misconception, noted in the consultative document, that there is in England and Wales a status of "common law marriage" that entitles cohabitees to a share in beneficial ownership of assets legally owned by the other partner after a certain period of time. Typically, one partner has legal ownership but the other makes contributions, directly or indirectly, to the acquisition of the property which create a beneficial interest either under a resulting or constructive trust (or by way of proprietary estoppel).

In the case of married couples the court would more readily expect income arising from such property to be shared between the parties, and the divorce courts have

[9] ICTA 1998, section 257A(1).
[10] *Crossland v The United Kingdom*, Application no. 36120/97, European Court of Human Rights Third Section; see also *Wilkinson v Commissioners of Inland Revenue*, [2003] EWCA Civ 184.
[11] By FA 1999, section 34, repealing ICTA 1988, section 262.
[12] ICTA 1988, section 282A.
[13] Provided for in ICTA 1988, section 282B.

virtually unfettered discretion in adjusting the shares in the property or in compensating one party for lost income. So the presumption for tax purposes that beneficial ownership is equally shared does not seem unreasonable.

Two kinds of problem may then arise for married couples. The first is when the couple are separated, or perhaps still living together, and cooperation to make (or maintain) a joint declaration cannot be secured. Then the equal shares rule applies for tax purposes, even though the true beneficial ownership might be quite different and a presumption of equal sharing manifestly unjust to one party.

The second problem arises when the Inland Revenue does not accept the couple's contention as to the division of beneficial interest in the joint property and is able to challenge it by other means. This is currently extremely contentious in the case of dividends from a family owned company, where the wife has received the dividends but the Inland Revenue is intent on taxing the couple as if the husband had received them instead, under the settlements legislation that is referred to in 4.4 below.

Since this provision, requiring a joint declaration or acceptance of equal shares, does not always work well at present, it seems questionable whether it should be carried over to the case of civil partnerships, other than on the general principle that civil partners should be treated in the same way as married couples and the observation that there are no plans to change this particular provision for the latter.

We should however perhaps emphasise that this issue is only relevant for certain types of income. In most cases, particularly in the case of earned income which is excluded from equal shares treatment, it should be clear enough from the facts who is the beneficial owner of the income and should therefore be taxed on it (even if it is routed to some other person in order to take advantage of a lower tax rate).

4.1.4. Tax credits

Tax credits are a relatively new concept, grafting elements of the social security system into the income tax system by means of two new Acts: TCA 1999 and 2002. Since tax and social security law have been developed over a long period by different government departments and courts, it might be expected that there are some significant differences between the two that are difficult to reconcile. That is indeed the case.

As we noted above, it is a key principle of social security law that couples LTAHAW are to be treated in exactly the same way as if they were married. This is quite alien to tax law; but for the time being at least, the tax credit legislation can perhaps be regarded as distinguishable from the rest of the tax code, not least because it is new.

When claiming child tax credit, an unmarried couple LTAHAW are required to file a joint claim. A claim by either partner alone will not be accepted as valid – just as a married couple are required to make a joint claim. It is to be imagined that in many cases this reversal of the principle of independent taxation may have acted as a deterrent to claim, since it requires each partner to disclose their own income to the other and certify the income of their partner to the Inland Revenue. This does seem to be borne out by the early statistics on the number of claimants, showing a much

higher takeup rate by lone parents than by couples (whether married or not)[14] – although the extent of the discrepancy is in itself a little surprising, since many couples qualifying for tax credits will already be used to filing joint claims for housing benefit, for example. By making a joint claim, both parties are accepting joint and several liability to make good any inadvertent overpayment of tax credit.

It seems clear from recent Appeal Court decisions that the effect of Article 14 of the ECHR is to require a same sex couple in an analogous situation to an unmarried opposite sex couple LTAHAW to be treated in the same way as the latter. *Mendoza v Ghaidan*[15], a case on statutory succession to a tenancy, suggests that the Inland Revenue are obliged to recognise same sex couples in this way already, regardless of whether the civil partnership proposals proceed. Admittedly, it is not immediately clear why a same sex couple with the care of eligible children should wish to insist on making a joint claim to child tax credit when a sole claim is more straightforward, but one can imagine it happening as a matter of principle. It would therefore seem advisable that the existing "decision makers' guide" on LTAHAW is amplified to make it clear under what circumstances the authorities will accept that a same sex couple are living together in an analogous situation to an unmarried opposite sex couple LTAHAW, and that they must then be treated in the same way.

Should the civil partnerships proposal proceed, it would seem that the most straightforward way of extending the current legislation would be to provide that a reference to "married couple" is to include "partners in a civil partnership".

The case of polygamous marriages valid under the law of another territory is specifically addressed for the purposes of tax credits by TCA 2002, section 43, and SI 2003/742, The Tax Credits (Polygamous Marriages) Regulations 2003. The issue might arise in the case of civil partnerships (which are intended to be restricted to monogamous unions) whether a polygamous same sex marriage or equivalent recognition valid under the law of another territory should be recognised in the same way as the opposite sex equivalent already is.

4.2. Capital gains tax

The basic scheme of capital gains tax is that each individual is liable to tax in respect of chargeable gains arising on disposals of assets. Gains, net of allowable losses, taper relief and an annual exempt amount, are charged at the individual's marginal rate of income tax for savings income.

The treatment of gifts has always been recognised as difficult. Evidently they cannot be treated in exactly the same way as a disposal for consideration at arm's length, because the giver is receiving nothing in return. On the strictest view, tax should be charged on the gain calculated by reference to market value of the asset at the time of disposal; but then the giver has to pay the tax due without having received any disposal proceeds. This is indeed the general principle; and while there is no longer

[14] See *Working Familes Tax Credit estimates of takeup rates in 2000-01*, Inland Revenue Analysis and Research, Table 1: 77-83% by lone parents and 49-53% by couples. (http://www.inlandrevenue.gov.uk/stats/wftc/wftc_takeup.pdf)
[15] [2002] EWCA Civ 1533

any general relief for gifts[16] allowing indefinite postponement of tax, the system does recognise the potential difficulties by modifying the tax charge in many cases[17].

However, several features of capital gains tax are peculiar in respect of married couples. Historically, concepts and definitions have been borrowed from income tax for the purposes of this tax (which dates only from 1965); so it is a little ironic that, since independent taxation in 1990, the distinctions according to marital and cohabiting status are much less significant for the income tax than they are for the much more esoteric capital gains tax.

4.2.1. No gain/no loss transfers

First, where in the case of

> *…a married woman living with her husband, the man disposes of an asset to the wife, or the wife disposes of an asset to the man, both shall be treated as if the asset was acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.*[18]

What this rather convoluted drafting means is that, whether or not any consideration is actually given for the asset, an artificial price for it must be calculated so as to ensure that the result of calculating the chargeable gain to the disposing spouse is exactly zero – commonly known as "no gain/no loss". Depending on when the asset was originally acquired, this required calculation may be complex, including components of both indexation allowance and taper relief[19]; but it is mandatory and automatic. An alternative mechanism could be used for married couples, such as providing for "holdover" relief as was previously generally available on gifts. Here, if both spouses agree, the recipient could take over the asset from the giver at its original cost, as if he or she had originally owned it. But there would be a need for both spouses to agree, and the mandatory no gain/no loss rule was presumably thought to be more straightforward and less formal.

4.2.2. Separated couples

However, if the "living with" test (discussed in section 4.1.1 above) is no longer satisfied, then although the couple remain married, they are "separated" according to the tax definition and the tax position changes dramatically.

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[16] Such a relief was introduced in FA 1980, section 79 but repealed as from 14 March 1989 by FA 1989, sections 124(1), 187 and schedule 17.

[17] TCGA 1992, section 165 provides a relief for gifts of business assets; section 260 provides a relief for gifts on which inheritance tax is chargeable; section 281 provides for payment of tax on certain gifts in ten yearly instalments; and section 282 provides for tax to be recovered from the donee in certain circumstances if it is not paid by the donor (in which case the donee has the right to try to recover it from the donor).

[18] TCGA 1992, section 58(1).

[19] There is a special rule for taper relief on assets transferred between spouses – TCGA 1992, schedule A1 paragraph 15.

This is because husband and wife are "connected persons"[20]; a transaction between connected persons is treated as being "a transaction otherwise than by way of a bargain made at arm's length"[21]; and in that case, consideration for the disposal is deemed to be equal to the market value of the asset.[22]

So where a married couple have separated, but not yet divorced, then from the start of the following tax year on 6 April, a completely different price must be used to calculate the tax liability on disposal as compared to the position when they were still living together – namely, the market price instead of the "no gain/no loss" price. For the remainder of the tax year in which the couple were last living together, the no gain/no loss rule still applies, allowing a small window of time of up to twelve months for tax-free rearrangement of assets.

Not surprisingly, this situation can give rise to considerable difficulty in practice, since very few married couples are expert in the fine print of the capital gains tax legislation. Legal advice is much more likely to be taken immediately before divorce proceedings than before separation, by which time rearrangement of assets with no thought to the tax consequences may already have occurred and tax liability incurred by other or both parties.

Before explaining how this unfortunate situation may be mitigated by concession, it is first necessary to consider the principal private residence exemption.

4.2.3. Principal private residence

Subject to various detailed rules applicable in particular circumstances[23], any gain on disposal of an individual's only or main residence is exempt from capital gains tax. Where an individual has two or more residences, the question as to which of them is the main residence for any period can be determined by the individual giving notice to the inspector, within two years from the beginning of the period. However,

> *In the case of a man and his wife living with him there can be only one residence or main residence for both, so long as living together and, where a notice [determining which of two or more residences is the main residence] affects both the husband and the wife, it must be given by both.*[24]

In this instance, "living with" and "living together" are apparently being used with different senses. It seems from the qualification that "living together" is here intended to be a more restrictive test (perhaps of fact) than "man and his wife living with him" – but we saw in the discussion at 4.1.1. above that according to the statutory definition

[20] TCGA 1992, section 286(2). The concept of "connected persons", which is defined at ICTA 1988, section 839, is used in many instances throughout the Taxes Acts. Amongst many other circumstances "A person is connected with an individual if that person is the individual's wife or husband, or is a relative, or the wife or husband of a relative, of the individual or of the individual's wife or husband." This could evidently be straightforwardly extended to include civil partners on the same basis as husband and wife.
[21] TCGA 1992, section 18(2).
[22] TCGA 1992, section 17(1)(a).
[23] Set out in TCGA 1992, sections 222 to 226.
[24] TCGA 1992, section 222(6).

of the former expression[25] they are supposed to be interpreted in the same way. If that is so, then the use of the latter expression is either otiose or for added emphasis.

Evidently, for an unmarried couple each having their own residence (or jointly owning two residences) enjoying this exemption, the restriction to just one such exempt residence after marriage can act as a considerable incentive to stay unmarried, and might seem incompatible with the general scheme of independent taxation.

If the couple separate, within the meaning of the tax definition, then this restriction falls away; but as noted in the preceding section, any subsequent disposition of assets between them while they remain married is treated as taking place at market values.

Because cases of hardship or perceived fairness could easily arise in the situation of marital breakdown, an Extra-Statutory Concession (D6) has been seen as necessary by the Inland Revenue:

> *Where a married couple separate or are divorced and one partner ceases to occupy the matrimonial home and subsequently as part of a financial settlement disposes of the home, or an interest in it, to the other partner the home may be regarded for the purposes of [the principal private residence exemption] as continuing to be a residence of the transferring partner from the date his or her occupation ceases until the date of transfer, provided that it has throughout this period been the other partner's only or main residence. Thus, when a husband leaves the matrimonial home while still owning it, the usual capital gains tax exemption or relief for a taxpayer's only or main residence would be given on the subsequent transfer to the wife, provided she has continued to live in the house and the husband has not elected that some other house should be treated for capital gains tax purposes as his main residence for this period.*

The problem in the example given is that the matrimonial home ceases to be a residence of the husband at the point when he leaves it, and so it cannot be nominated by him as his main residence. If he subsequently transfers it to his wife, prior to divorce, since they are no longer living together the market value rule applies to calculate his gain on disposal. Part of that gain will be exempt, reflecting the period of time for which it was his main residence, and up to 36 months thereafter under an extended exemption provided in all cases where the property has ceased to be the only or main residence.[26] But the need for a further concession is undesirable, because it reflects the difficulties that may easily emerge in the course of marital breakdown and give rise to an unexpected tax liability – at a time when the family finances and emotions are likely to be under strain in any case.

More generally, the capital gains legislation would better reflect the spirit of independent taxation if the prohibition on spouses having separate only or main residences while living together was removed, and they were no longer treated as connected persons after separation (so that there would be no mandatory use of market values).

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[25] At TCGA 1992, section 288(3).
[26] TCGA 1992, section 223(1).

4.3. Inheritance tax

In press coverage of the civil partnership proposals, the so-called "surviving spouse" exemption from inheritance tax has been prominent:

> *A transfer of value is an exempt transfer to the extent that the value transferred is attributable to property which becomes comprised in the estate of the transferor's spouse or, so far as the value transferred is not so attributable, to the extent that the estate is increased.*[27]

For the purpose of applying this inheritance tax exemption, it is completely irrelevant whether the two spouses are living together, in any sense, or separated. For certain esoteric purposes of the inheritance tax it may matter whether the spouses are resident or domiciled in different countries, but ordinarily that will usually be clear.

The operation of this provision appears to be straightforward, in practice. A recent Special Commissioners' decision[28] has confirmed that, in England and Wales, "spouse", a term that is not explicitly defined anywhere in the tax statutes, means a person who is legally married and does not include a person who has lived with another as husband and wife (contrast the established social security policy, referred to at section 4.1.1. above).

It is interesting to speculate, however, whether this decision might have been different in Scotland, where there is a concept of marriage established through "cohabitation with habit and repute" – something like the fiction of "common law" in England except that in Scotland it is every bit as valid as a conventionally registered marriage - that is sometimes considered by the courts in respect of the mutual obligations of unmarried couples who have lived together as husband and wife for a long period (although it is evidently difficult to be certain of the starting date).[29]

The Inland Revenue estimate the cost of the suriving spouse exemption in terms of inheritance tax forgone at £1.4 billion[30], and as such it is easily the most quantitatively important tax consequence of marriage.

4.4. Settlements

The concept of a "settlement" in the Taxes Acts is an extended and complex one, with consequences spanning income, capital gains and inheritance taxes. For income tax:

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[27] IHTA 1984, section 18(1).

[28] *K E Holland as executor of M J Holland deceased v.* CIR, SPC00350, November 2002; on the central question of the meaning of "spouse", *Dyson Holdings Limited v Fox* [1976] QB 503 was followed.

[29] For a discussion of the origin and nature of cohabitation with habit and repute in Scots law see Clive, *Husband and Wife* (2nd edn 1981) pp 59-76. The most recent reported example of this type of marriage is believed to be *Donnelly v Donnelly's Exr* 1992 SLT 13, but it is understood that a few cases are heard in the lower courts each year, normally concerning maintenance applications.

[30] *Inland Revenue Statistics*, Table T1.5, for 2002-03 based on accounts submitted to the Capital Taxes Office.

> "**settlement**" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets, and
> "**settlor**", in relation to a settlement, means any person by whom the settlement was made.[31]

The income tax legislation on settlements comprises Part XV of ICTA 1988 (sections 660A to 694). It is currently proving highly controversial because of the following extension:

> "…a settlor shall be regarded as having an interest in property if that property or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor ***or his spouse*** in any circumstances whatsoever."[32]

Based on this extension, the Inland Revenue is seeking to apply the settlements' provisions to a number of common situations in which husband and wife both hold shares in a family trading company and dividends are paid to the wife.[33] The correct application of the tax concept of settlement is highly difficult, at the best of times; there is continuing technical doubt as to whether certain Court Orders commonly made on divorce in respect of the matrimonial home are settlements for tax purposes or not.[34]

In modern times it might be considered questionable why an individual's spouse – including a separated spouse - should be particularly singled out for prejudicial treatment under anti-avoidance legislation. The tax concept of "connected person" is already very broad and could if necessary be extended to include unmarried partners LTAHAW as well as spouses and blood relations. Given the Inland Revenue's pursuit of married couples at the present time, if the definition of spouse here were extended to include partners in a civil partnership, many same sex couples in business together might be well advised to consider whether entering into a civil partnership might not be severely prejudicial to their joint tax position.

4.5. National Insurance contributions and benefits

Although the subject matter of this note is direct taxation, since National Insurance contributions are now administered by the Inland Revenue and often referred to as if they were a tax on earnings, they are mentioned here for the sake of completeness.

The principal effect of marriage on National Insurance contributions is now of historic interest only. Prior to April 1977, a married woman or widow could pay a reduced rate of primary Class 1 contributions and no Class 2 contributions, and that right

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[31] ICTA 1988, section 660G(1).
[32] ICTA 1988, section 660A(2); emphasis added.
[33] Inland Revenue *Tax Bulletin* No 64, April 2003; analysed in, for example, *Taxation*, pp. 422-444 (17 July) and 477-479 (31 July).
[34] *Mesher* and *Martin* or "deferred charge" orders, for example, excluding one spouse for a period from the matrimonial home which will later be sold for the benefit of that or both spouses; the uncertainty arises because the judge, not the excluded spouse, is making the disposition. For a useful introduction, see the discussion by Professor J E Adams, *Marriage Breakdown*, chapter 40 in *Tolley's Tax Planning*, 2002-03.

continued provided the relevant election was made as at that date, when the old provisions were repealed.

Of course there are many ways in which the social security system applies differently to women than to men – eligibility for maternity allowance being an obvious example – but in future such circumstances will no longer be dependent on marital status. Since April 2001, Bereavement Allowance has replaced Widow's Pension and Widowed Parents' Allowance has replaced Widowed Mother's Allowance, for example.

5. Civil partnerships

It was noted in section 2 above that the scheme of registration envisaged in the consultation document is in most respects analogous to that of marriage between couples of opposite sex.

If it is intended in due course to extend all those aspects of the tax system that treat married couples differently to unmarried individuals, then there are two sets of such provisions to be dealt with, one of which is straightforward and the other is not.

The straightforward provisions are those which refer to "spouse", as meaning a person who is legally married. It would not appear difficult to extend this definition in the statute to include a person who is a registered partner under the Civil Partnership Registration Act; to extend the definition of "divorced" to mean a person who was formerly a registered partner but whose partnership has been dissolved; and "widow or widower" to mean a formerly registered partner whose partner is deceased. Indeed, this approach of extending the statutory definition of "spouse" beyond traditional marriage has already been adopted in different ways in a number of Commonwealth countries, including Canada and Australia.

The more difficult provisions are those which refer separately to husband and wife (or to widow and widower) where the treatment of the two differs according to gender. One clear example of this is the married couples allowance, (section 4.1.2 above) which is given to the husband unless an election is made to the contrary.

Such machinery cannot obviously be carried across to same-sex couples unless some arbitrary but objective distinction is made between them to establish which is to be treated in the same way as the husband in a married couple (e.g. the older of the two).

A much better approach, more consistent with that of the Human Rights Convention Article 14[35], would appear to be to recast those parts of the Taxes Acts that still refer to husband and wife or man and woman (whether or not they also mandate differential treatment according to gender) by a neutral approach. So, for example, statutory

[35] "*PROHIBITION OF DISCRIMINATION:* The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status", as introduced directly into domestic law by the Human Rights Act 1998. This was the principle applied in *Mendoza v Ghaidan*.

references to “married woman living with her husband” would be replaced by “one of two spouses living together”.

Where the administrative machinery still makes a distinction according to gender, it could be changed. So, for example, instead of the married couples allowance being allocated entirely to the husband unless an election to the contrary is made, it could be shared equally between the two spouses unless they jointly elect for an alternative allocation. But, conversely, it might be felt that the current arrangement distinguishing husband and wife appears to work well enough in practice, and in the absence of popular pressure for change, it should therefore be left alone rather than introducing further complexity.

5.1. Income tax

There are now few provisions in the income tax that materially affect individuals according as to whether they are married or not (although there are several references on points of detail that would need to be considered – see Appendix B).

For the sake of principle, it would be possible to extend the definitions of “spouse”, “husband” and “wife” to include in each case “partner in a civil partnership”. But because, for historical reasons prior to the change to independent taxation in 1990, “husband” and “wife” are not always treated symmetrically, a literal extension would have some difficulties.

The case of the married couples allowance was cited as the most obvious example. Unless an arbitrary distinction was drawn between the two partners in a civil partnership so as to associate one with the husband and the other with the wife in the statute, the current arrangements could not be simply carried over.

There are then three possibilities: to amend the current procedures for the allocation of married couples allowance so as to make them symmetrical; to introduce a new symmetrical procedure just for civil partners; or to ignore the husband and wife provision and continue to treat civil partners as if they were individuals unconnected to each other (the simplest option). Since the married couples allowance is being phased out, by application only to individuals born before April 1935, this problem will eventually disappear in any event.

For the purposes of tax credits and any other provisions that refer to unmarried couples LTAHAW, however, the court has determined that ECHR already requires that members of same sex couples living in a relationship analogous to opposite sex couples LTAHAW – “living together as if they were his or her wife or husband” - receive the same treatment. For the sake of abbreviation we could call this LTACP if a civil partnership scheme is in fact introduced. The introduction of a civil partnership scheme recognised for tax purposes as being fully on a par with marriage would neatly complete the square.

5.2. Capital gains tax

The capital gains tax legislation refers to husband and wife in a convoluted way and, for many married couples, delivers a highly unsatisfactory outcome. Given a choice of opting out of the current regime for married couples – especially given the restriction to only one principal private residence per couple and the way that the regime operates for separated married couples – we assume that most civil partners would wish to continue to be treated as individuals for the purposes of capital gains tax.

This suggests that the current treatment of married couples, which has arisen largely as a by-product of independent income taxation, is unsatisfactory and should be reconsidered carefully.

5.3. Inheritance tax

The "surviving spouse" exemption could straightforwardly be extended by introducing the deeming provision that

> "**spouse** includes a partner in a registered civil partnership".

In order to estimate the cost of extending this relief to registered civil partners, one can note that according to the latest edition of *Social Trends*[36], in 2000/01 there were approximately 24 million married people in the UK. Population numbers are expected to continue to rise in the consultative document, which considers a steady-state range of anywhere between 85,000 and 851,000 people in registered civil partnerships, in a population of 51 million aged over 16, by 2050.

Although for various reasons (not least the fact that fewer of them will have children) the distribution of assets will be different for individuals in civil partnerships than in marriages, the order of magnitude of the loss of tax revenue under today's tax system would appear to be £30 million[37] on a central estimate of take-up: or 1.25 per cent. of the annual inheritance tax yield of £2.4 billion.[38]

5.4. Settlements

The prospect that, if they are in business together as shareholders in a private company and they choose to register as civil partners, then they will be treated in the same way as married couples are at present (potentially within the settlements legislation in respect of dividends paid to wives), will undoubtedly act as a deterring factor to same sex couples who are well advised on tax law.

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[36] No. 33, 2003 edition, HMSO; combining data in tables 1.2 and 2.8.
[37] Calculated from the estimated cost of the surviving spouse exemption of £1.4bn in Table 1.5 of *Inland Revenue National Statistics*, assuming roughly 500,000 people in civil partnerships as compared to 25 million in marriage (http://www.inlandrevenue.gov.uk/stats/tax_expenditures/g_t05_1.htm)
[38] Table 1.2 of *Inland Revenue National Statistics* (http://www.inlandrevenue.gov.uk/stats/tax_receipts/g_t02_1.pdf)

Rather than automatically extending the definition of "spouse" as used in the settlements legislation to civil partners, the current agglomeration of two spouses property in this part of tax law seems anachronistic against the background of independent taxation since 1990. The relationship between an individual and his or her spouse is not uniquely distinguishable, for tax purposes, from all other personal and business relationships in the same way as it was when a married woman's property was regarded as that of her husband.

These provisions are outmoded and should be carefully reviewed. There is certainly no good case for applying them to civil partners, as they stand.

6. Conclusion

It appears from this analysis that the existing "traditional" tax approach to marriage can be carried over to civil partnerships without great difficulty. In particular, it would not be difficult to extend the definition of "spouse" and "married couple" so as to make it clear that they extended to partners in a civil partnership.

The current tax treatment of married couples as compared to unmarried couples living together as husband and wife (LTAHAW) contains an odd mixture of potential incentives and disincentives to marriage. To some extent that need not be surprising, because as the rest of the consultative document (and case law) makes clear, marriage is a complex bundle of rights and obligations between the two parties, any children or other dependents of either or both those parties, and the state. But before proceeding to carry over all the provisions relating to married couples to civil partners, it would seem wise to consider the following points.

(1) The disincentives to marriage should be looked at, to see whether they are working clearly and effectively and continue to be justified; in respect of the settlements legislation, there are evidently difficulties.

(2) The incentives to marriage should be considered to see whether they continue to be justified; for example, is the unlimited surviving spouse exemption from inheritance tax too generous in relation to its policy rationale?

(3) Where genders are distinguished without good cause in the tax legislation, the opportunity might be taken to replace the relevant provisions with so called "gender neutral" language, in the spirit of the tax law rewrite project. So spouses could be referred to in those parts of the statute that currently refer to husband and wife, and this would in turn make the statutory extension to civil partners easier. Some administrative machinery would, however, need to change in consequence - in particular, the method of granting the married couples allowance – which, to extent that it seems to work well enough in practice at present, while being phased out with age, it might alternatively be felt should be left alone.

(4) The new tax credits legislation has followed social security law and treats couples LTAHAW the same as married couples. Because of the Human Rights Act, there already needs to be an equivalent same sex concept, that could by analogy be

called “living together as civil partners” if the proposals proceed but would otherwise need, if the appproach of the court in *Mendoza* v *Ghaidan* is followed, to be more cumbersomely referred to as “living together as if they were his or her wife or husband”.

(5) It might seem questionable to some whether the tax credits approach, requiring couples LTAHAW to be treated as if they were married, is compatible and consistent with the traditional tax system’s approach to marriage, distinguishing as it does fundamentally between married and unmarried couples (e.g. for inheritance tax).

(6) If the traditional tax distinction is to remain, the treatment of separated married couples (and by extension, separated civil partners) is vague and inconsistent as between the different taxes and should be reviewed and clarified.

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30 September 2003

Appendix A

THE TAX LAW REVIEW COMMITTEE
(as at 30 September 2003)

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Chairman	John Avery Jones CBE

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Appendix B

Illustrations of the use in the taxing Acts of "spouse"

Act	*Section*	*Subject*
Inheritance Tax		
IHTA 1984	17	Election by surviving spouse under s.47A AEA 1925
	18	Transfers between spouses
	23	Exclusion of charitable gift relief
	30	Qualifications for conditionally exempt transfers
	48	Whether a reversionary interest is excluded property
	53	Exceptions from charge on lifetime termination of an interest in possession in settled property
	54	Exceptions from charge on termination of an interest in possession in settled property on a person's death
	80	Initial interest of settlor or spouse in settled property
	108	Successions (to business property)
	109	Successive transfers (of business property)
	112	Exclusion of value of excepted assets (business property relief)
	120	Successions (to agricultural property)
	121	Successive transfers (of agricultural property)
	126	Charge to tax on disposal of trees or underwood
	131-137	Relief for transfers within seven years of death
	145	Redemption of surviving spouse's life interest
	147	Scotland: legitim
	161	Related property
	191	Relief on sale of land from deceased's estate
	203	Liability of spouse
	Sch 4	Maintenance funds for historic buildings (paras 10, 15A)
	Sch 6	Transition from estate duty (para 2)
FA 1986	102 & Sch 20	Gifts with reservation of benefit
	102A	Gifts with reservation: interests in land
Income Tax & NICs		
ICTA 1988	80	Travel expenses connected with foreign trades
	220	Purchase of own shares: period of ownership
	266 & Sch 14	Life assurance premiums
	266A	Life assurance premiums paid by employer
	418	Distribution to include certain expenses of close company
	467	Exemption for trade unions and employers' associations
	574, 576	Losses on shares in qualifying trading company
	580A	Relief from tax on annual payments under certain insurance policies
	590	Conditions for approval of retirement benefit schemes

	599	Commutation of entire pension in special circumstances
	632A	Eligibility to make contributions
	636	Annuity after death of member
	645	Earnings from pensionable employment
	659D	Interpretation of provisions about pension sharing
	660A	Income arising under settlement where settlor retains an interest
	702	Administration of deceased estates: application to Scotland
	Sch 15B	Venture Capital Trusts (para 3)
	Sch 28AA	Transfer Pricing (para 4)
SSAA 1992	109B	Power to require information
EA 2002	11	Power to require information
TCA 2002	43	Polygamous marriages
ITEPA 2003	68	Meaning of "material interest" in a company
	174	Employment-related loans
	240	Incidental overnight expenses and benefits
	371	Travel costs and expenses where duties performed abroad: visiting souse's or child's travel
	374	Non-domiciled employee's spouse's or child's travel costs and expenses where duties performed in UK
	386	Charge on payments to non-approved retirement benefits schemes
	396, 400	Certain lump sums not taxed by virtue of s.394
	401	Payments and benefits on termination of employment
	583, 586, 588	Pension income: unauthorised payments, "retirement benefits scheme", meaning of ex-spouse
	721	Members of a person's family
	Sch 2	Approved share incentive plans (para 22: "associate")
	Sch 3	Approved SAYE schemes (para 14: "associate")
	Sch 4	Approved CSOP schemes (para 12: "associate")
	Sch 5	Enterprise management incentives (para 31: "associate")

Capital Gains Tax

TCGA 1992	77	Charge on settlor with interest in settlement
	150	Business expansion schemes
	168	Emigration of donee
	210	Life insurance and deferred annuities
	222	Principal private residence relief
	230	Dwelling-houses: special provision
	SchA1	Application of taper relief (para 15)
	Sch 4A	Disposal of interest in settled property: deemed disposal on underlying assets (para 7)
	Sch 5	Attribution of gains to settlers with interest in non-resident or dual resident settlement (paras 2, 9)
	Sch 6	Retirement relief etc (para 16)
	Sch 7C	Relief for transfers to approved share plans (para 6)

Illustrations of the use in the taxing Acts of "husband" and/or "wife"

Act	*Section*	*Subject*
Inheritance tax		
IHTA 1984	11	Disposition for maintenance of family
	22	Gifts in consideration of marriage
Income tax & NICs		
ICTA 1988	13A	Close investment-holding companies
	227	Purchase of own shares: associated persons
	257A	Married couple's allowance
	257BA	Elections as to transfer of relief under section 257A
	257BB	Transfer of relief under section 257A where relief exceeds income
	265	Blind person's allowance
	278	Personal allowances for non-residents
	282	Construction of references to husband and wife living together
	282A	Jointly held property
	282B	Jointly held property: declarations
	304	Husband and wife (Enterprise Investment Scheme)
	344	Company reconstructions: meaning of "relative"
	360	Loan to buy interest in close company
	373	Loans in excess of the qualifying minimum, and joint borrowers
	376	Qualifying borrowers and qualifying lenders
	397	Restriction of relief in case of farming or market gardening
	417	Meaning of "relative"
	621	Other approved contracts (retirement annuities)
	677	Sums paid to settlor otherwise than as income
	682	Ascertainment of undistributed income (settlements)
	742	Transfer of assets abroad: interpretation
	783	Leased assets: supplemental
	839	Connected persons
	Sch13B	Children's tax credit
	Sch 15B	Venture capital trusts (para 3)
FA 2000	Sch 15	Corporate venturing scheme (paras 8, 18 & 99)
	Sch 22	Tonnage tax (para 144: "relative")
FA 2002	Sch 16	Community investment tax relief (para 50: "associate")
	Sch 29	Intellectual property (para 101: "connected persons")
TCA 2002	3	Claims: "unmarried couple"
	55	Continuing entitlement after death of child
ITEPA 2003	52	Conditions of liability where intermediary is a partnership
	61	Interpretation: "living together"
	400	Interpretation: "relative"

Capital Gains Tax

TCGA 1992	3A	Reporting limits
	58	Husband and wife transfers
	150A	Enterprise investment schemes
	162A	Election for roll-over relief on transfer of business not to apply
	222	Principal private residence relief
	226	Private residence occupied by dependent relative before 6th April 1988
	286	Connected persons: interpretation
	288	Interpretation of married woman living with her husband
	Sch2	Assets held on 6th April 1965 (para 4)

Illustrations of the use in the taxing Acts of "widow", "widower" and/or "widowed"

Act	***Section***	***Subject***

Inheritance Tax

IHTA 1984	12	Dispositions allowable for income tax or conferring retirement benefits
	53	Exceptions from charge on lifetime termination of an interest in possession in settled property
	54	Exceptions from charge on termination of an interest in possession in settled property on a person's death
	71	Accumulation and maintenance trusts
	80	Initial interest of settlor or spouse in settled property
	152	Cash options
	Sch 4	Maintenance funds for historic buildings (paras 10, 15A)

Income Tax & NICs

ICTA 1988	266	Life assurance premiums
	266A	Life assurance premiums paid by employer
	273	Payments securing annuities
	278	Personal allowances for non-residents
	590	Conditions for approval of retirement benefit schemes
	591	Discretionary approval
	620	Qualifying premiums
	622	Substituted retirement annuity contracts
	628	Partnership retirement annuities
	660A	Income arising under settlement where settlor retains an interest
SSCBA 1992	20	Descriptions of contributory benefits
	21	Contribution conditions
	118	Married women and widows

PSA 1993	8	Meaning of "contracted-out employment", "guaranteed minimum pension" and "minimum payment"
	43	Payment of minimum contributions to personal pension schemes
SPCA 2002	17	Other interpretation provisions
ITEPA 2003	386	Charge on payments to non-approved retirement benefits schemes
	400	Interpretation
	551	Qualifying disposals for purposes of employee benefit trust
	574	Pension: interpretation
	577	UK social security pensions
	615	Certain overseas government pensions paid in the UK
	629	Pre-1973 pensions paid under the Overseas Pensions Act 1973
	630	Interpretation
	633	Voluntary annual payments
	643	Malawi, Trinidad and Tobago and Zambia government pensions
	646	Former miners etc: coal and allowances in lieu of coal
	Sch6	Consequential amendments

Capital Gains Tax

TCGA 1992	77	Charge on settlor with interest in settlement
	226	Private residence occupied by dependent relative before 6th April 1988

Illustrations of the use in the taxing Acts of "married" and/or "marriage"

Act	***Section***	***Subject***

Inheritance Tax

IHTA 1984	11	Dispositions for maintenance of family
	22	Gifts in consideration of marriage
	57	Application of certain exemptions
	86	Trusts for benefit of employees

Income Tax & NICs

ICTA 1988	257A	Married couples allowance
	265	Blind person's allowance
	304	Enterprise investment scheme
	347B	Qualifying maintenance payments
	381	Further relief for individuals for losses in early years of trade
	659D	Interpretation of provisions about pension sharing
	660A	Income arising under settlement where settlor retains an interest
	Sch13B	Children's tax credit
	Sch 14	Life assurance premiums ancillary provisions (para 2)
	Sch 15B	Venture Capital Trusts (para 3)

SSCBA 1992	118	Married women and widows
	121	Treatment of certain marriages
	137	Interpretation of Part VII and supplementary provisions
SSAA 1992	124	Provisions relating to age, death and marriage
PSA 1993	167	Application of general provisions relating to administration of social security
FA 1996	Sch 15	Qualifying indexed securities (para 27)
FA 2001	Sch 11	Children living with married or unmarried couple
TCA 2002	3	Claims
	43	Polygamous marriages
ITEPA 2003	400	Interpretation (ex-spouse)
	588	Meaning of "employee" and "ex-spouse"
	665	Exempt unless payable to member of couple involved in trade dispute
	669	Interpretation
	673	Taxable minimum: income-based jobseeker's allowance
	674	Taxable minimum: contribution-based jobseeker's allowance
	675	Interpretation

Capital Gains Tax

TCGA 1992	58	Transfers between husband and wife
	77	Charge on settlor with interest in settlement
	210	Life insurance and deferred annuities
	226	Private residence occupied by dependent relaive before 6th April 1988
	288	Construction of references to husband and wife living together
	Sch 4A	Disposal of interest in settled property: deemed disposal on underlying assets (para 7)
	Sch 5	Attribution of gains to settlers with interest in non-resident or dual resident settlements (paras 2 and 4)
	Sch 5B	Enterprise investment scheme: reinvestment (paras 4, 5, 8, 12, 16, 19)
	Sch 5C	Venture capital trusts: deferred charge on reinvestment (paras 3, 5, 6)

Illustrations of the use in the taxing Acts of "separation" or "divorce"

Act	***Section***	***Subject***

Income Tax & NICs

FA 1985	83	Transfers in connection with divorce, etc

ICTA 1988	282	Construction of references to husband and wife living together
	379	Interpretation of sections 369 to 378
	660A	Income arising under settlement where settlor retains an interest
	Sch13B	Children's tax credit (para 8)
	Sch 14	Life assurance premiums ancillary provisions (para 1)
FA 1999	79	Sharing of pension on divorce, etc
	Sch3	New schedule 13B to ICTA 1988
	Sch10	Sharing of pension on divorce, etc
SSCBA 1992	121	Treatment of certain marriages
TCA 2002	3	Claims
	55	Continuing entitlement after death of child

Capital Gains Tax

TCGA 1992	77	Charge on settlor with interest in settlement