

# Taxes Consolidation Act, 1997

## CHAPTER 2

### Capital gains tax

Married persons. **1028.**—(1) Subject to this section, the amount of capital gains tax on chargeable gains accruing to a married woman in a year of assessment or part of a year of assessment during which she is a married woman living with her husband shall be assessed and charged on the husband and not otherwise; but this subsection shall not affect the amount of capital gains tax chargeable on the husband apart from this subsection or result in the additional amount of capital gains tax charged on the husband by virtue of this subsection being different from the amount which would otherwise have remained chargeable on the married woman.

[CGTA75  
s13; FA80  
s61(b);  
FA92 s59]

- (2) (a) Subject to *paragraph (b)*, *subsection (1)* shall not apply in relation to a husband and wife in any year of assessment where, before the 6th day of July in the year following that year of assessment, an application is made by either the husband or wife that *subsection (1)* shall not apply, and such an application duly made shall have effect not only as respects the year of assessment for which it is made but also for any subsequent year of assessment.
- (b) Where the applicant gives, for any subsequent year of assessment, a notice withdrawing an application under *paragraph (a)*, that application shall not have effect with respect to the year for which the notice is given or any subsequent year; but such notice of withdrawal shall not be valid unless it is given before the 6th day of July in the year following the year of assessment for which the notice is given.

(3) In the case of a woman who during a year of assessment or part of a year of assessment is a married woman living with her husband, any allowable loss which under *section 31* would be deductible from the chargeable gains accruing in that year of assessment to the one spouse but for an insufficiency of chargeable gains shall for the purposes of that section be deductible from chargeable gains accruing in that year of assessment to the other spouse; but this subsection shall

not apply in relation to losses accruing in a year of assessment to either spouse where an application that this subsection shall not apply is made by the husband or the wife before the 6th day of July in the year following that year of assessment.

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(4) Where apart from *subsection (1)* the amount on which an individual is chargeable to capital gains tax under *section 31* for a year of assessment (in this subsection referred to as “the first-mentioned amount”) is less than £1,000 and the spouse of the individual (being, at any time during that year of assessment, a married woman living with her husband, or that husband) is apart from *subsection (1)* chargeable to capital gains tax on any amount for that year, *section 601 (1)* shall apply in relation to the spouse as if the sum of £1,000 mentioned in that section were increased by an amount equal to the difference between the first-mentioned amount and £1,000.

(5) Where in any year of assessment in which or in part of which the married woman is a married woman living with her husband, the husband disposes of an asset to the wife, or the wife disposes of an asset to the husband, both shall be treated as if the asset was acquired from the spouse 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 spouse making the disposal; but this subsection shall not apply if until the disposal the asset formed part of trading stock of a trade carried on by the spouse making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the spouse acquiring the asset.

(6) *Subsection (5)* shall apply notwithstanding *section 596* or any other provision of the Capital Gains Tax Acts fixing the amount of the consideration deemed to be given on a disposal or acquisition.

(7) Where *subsection (5)* is applied in relation to a disposal of an asset by a husband to his wife, or by his wife to him, then, in relation to a subsequent disposal of the asset (not within that subsection), the spouse making the disposal shall be treated for the purposes of the Capital Gains Tax Acts as if the other spouse's acquisition or provision of the asset had been his or her acquisition or provision of the asset.

(8) An application or notice of withdrawal under this section shall be in such form and made in such manner as may be prescribed.