13TACD2021

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Background

1. The Appellant, REDACTED, married prior to the years the subject matter of this appeal. In 2007, the Appellant commenced residing in a separate property to the matrimonial home. The core issue for determination in this appeal is whether the Appellant is entitled to be jointly assessed with his wife for the years under appeal and, consequently, entitled to the higher level of basic personal tax credit afforded by the legislation to married persons and civil partners together with the tax rate bands applicable to married persons and civil partners.

B. Matter under appeal

2. This is an appeal against amended assessments, under Chapter 5 of Part 41A Taxes Consolidation Act 1997, as amended ('TCA 1997'), to income tax for the tax years 2012 to 2016. The total tax arising on foot of these amended assessments is €19,257

(excluding interest and penalties). If you include interest and penalties the revised liability is €21,872.

3. The Appellant had been granted married couples tax credits and tax bands for the relevant tax years on the basis that he had been jointly assessed with his wife of over 33 years. The Appellant was divorced in Month 2017 and subsequent to informing the Respondent of his divorce, the Respondent amended the Appellant's income tax assessments for the relevant tax years and denied him the tax credits and standard rate tax bands available under joint assessment on the basis that the Appellant was separated during these tax years and the separation was likely to be permanent.

4. The Appellant disputes this and contends that his separation was not permanent until he was divorced in Month 2017, or in the alternative at the time he applied for a divorce in October 2016, and that he should qualify for joint assessment as provided for by S.1017 TCA 1997 and pursuant to the interpretation set out in S.1015 (2) (b) TCA 1997, for the relevant tax years.

5. This Appeal was heard by remote hearing held at the offices of the Tax Appeals Commission ('TAC') on REDACTED.

C. Hearing and evidence

6. At the hearing of the appeal, I heard oral evidence from the Appellant and reviewed documentation relevant to the appeal which was submitted on behalf of both parties.

   Based on these I have established the following material facts:

7. The Appellant was jointly assessed with his spouse since his marriage over 33 years ago.

8. On 25 October 2016 the Appellant applied for a divorce and on Month 2017, the Appellant obtained a Decree of Divorce from his spouse.

9. On Month 2017, the Appellant contacted the Respondent by telephone and informed them of his change in circumstances and his legal separation. On foot of this, the Respondent issued a letter to the Appellant seeking clarification regarding a number of issues, including the date the Appellant was separated from his spouse.

10. On Month plus 1 2017, the Appellant submitted Form 12 - Income Tax Returns for the tax years 2012, 2013, 2014, 2015 and 2016 to the Respondent. In all of these Form 12 Returns, the Appellant clearly indicated that in regard to his civil status, he was "*Married but living apart*", whilst "*wholly or mainly maintaining your spouse*".

11. In response to the question "*If married or in a civil partnership, insert X in the box to indicate basis of assessment applicable*", the Appellant clearly indicated that "*Joint Assessment*" was applicable for all of the tax years.

12. The Respondent processed these Returns on Month plus 2 2017 and on Month plus 2 2017 issued a letter to the Appellant stating "*As discussed your claim on your returns of income for the years 2012-2016 for 'married but living apart and wholly or mainly maintaining your spouse' is not allowable as you do not satisfy the criteria for Voluntary Maintenance Payment.* ." (this is a reference to the Appellant's entitlement to a married person's tax credit allowed under section 461(a)(ii)TCA 1997) *I have processed your returns of income allowing your single person's tax credit and single person's rate band"*

13. The Appellant submitted correspondence to the Respondent on Month plus 3 2017, stating that he wished to appeal the assessments, on the grounds that he believes "*that we are entitled to married allowance and rate bands as a couple living apart … and that it would be discriminatory and grossly unfair not to allow these reliefs.*

14. On Month plus 4 the Respondent advised the Appellant that he should send his appeal directly to the TAC. The Appellant duly appealed the relevant assessments to the TAC on Month plus 4 2017 on the grounds that the Revenue have "*mistakenly treated us as being legally separated when we were not",* during the years in question.

15. The Appellant made a number of subsequent submissions to the TAC citing the basis under which he had claimed both married tax credit and married rate bands for the years under appeal.

16. The Appellant submitted that he qualifies for joint assessment treatment in accordance with S.1017 TCA 1997 pursuant to the interpretation set out in S.1015 (2)(b) TCA 1997. The Appellant submitted that he is entitled to be taxed under joint assessment as no election had been made by either himself or his former spouse to be treated otherwise. The Appellant submits that, pursuant to S.1018 (4)(a), a husband and wife, where the wife is living with the husband and in the absence of an election to be treated as otherwise, shall be deemed to have elected to be assessed in accordance with S.1017 TCA 1997. The Appellant submitted that the aforementioned interpretation section, 1015(2) (b) deems that they shall be treated as a husband and wife that are living together, and therefore S.1017 TCA 1997 should apply.

17. In witness testimony, under oath at the hearing, the Appellant said that his wife lived in the LOCATION A house, while he lived in the LOCATION B apartment, which the Appellant said was an investment property owned in his own name since 2007. He said he worked in LOCATION B during the week and returned to LOCATION A at weekends. The Appellant said that his was a normal family, he went shopping with his wife most weekends. His wife visited their son in REDACTED sometimes. Family holidays were taken abroad, the last one being prior to the divorce was 6 days in REDACTED at end of 2015 with their adult son. They both have family connections in REDACTED. He and his wife visited family and friends together. The LOCATION A property was in both names.

18. During the Respondent's cross-examination of the Appellant under oath, the Appellant asserted:

    - that divorce legislation was not relevant to tax law and that tax law states that a couple must be living apart permanently. This was in response to the Respondent's assertion that under divorce legislation you must be living apart for 4 years prior to the divorce.

- the divorce was uncontested so he did not recall making any sworn statement that he was living apart for 4 years. He reiterated that he was not living apart 'permanently' until October 2016 at the earliest, when he sought a divorce. The Appellant confirmed that he was legally represented when he made the divorce application and that the conditions for divorce were explained to him at the time.

- the property in LOCATION B was bought in 2007. The Respondent asked the Appellant whether this apartment was his Principal Private Residence (PPR). The Appellant said that it wasn't and that it was an investment property. The Respondent asked the Appellant whether he had claimed mortgage tax relief at source (TRS) on the property and noted that TRS applied to PPRs only and not investment properties. The Appellant stated that he claimed TRS from 2013/2014 as he spent most of the week in the LOCATION B apartment. The Respondent asked the Appellant whether he would be surprised to find out that he actually claimed TRS from 2009. The Appellant stated that he would not be surprised as he was unsure of the dates/timeline. The Appellant stated that irrespective of the definitions required for TRS or PPR, the LOCATION A property was his 'home'.

- The Respondent asked the Appellant whether he paid Non Principal Private Residence Tax (NPPR) on the LOCATION B apartment. NPPR was a tax due to the local authority from 2009 to 2013, in respect of residential property that was not the owner's main residence. The Appellant said he was not sure. The Respondent stated that the Revenue records show that he did not pay NPPR on either the LOCATION A or LOCATION B properties.

- The Appellant confirmed that the property in LOCATION A was in joint names up until his divorce and the apartment was in the Appellant's name only.

- The Respondent stated that the LPT (Local Property Tax) declarations made by the Appellant on 7 May 2013 state that the LOCATION B property was his main residence. The Appellant again stated that the LOCATION A property was his "home". The family was not separated. They lived life as a family and were not living apart permanently.

- The Respondent stated that the Appellant imported a vehicle from REDACTED and when making the VRT declaration he registered the vehicle to the apartment

in LOCATION B. The Appellant said that he does not find this unusual as he was living mid-week in LOCATION B.

- The Respondent stated that the Appellant's spouse at the time was in receipt of a Republic of Ireland State non-contributory pension from 2013/2014. This was a non-contributory means tested pension of €89 per week. This infers that she had means of approx. €150 per week .The Respondent stated that APPELLANT'S SPOUSE application form at the time stated that she was separated when applying for her pension in 2013. The Appellant said that he could not reconcile why his wife made such a representation.

- The Appeal Commissioner asked the Appellant to explain the distinction he is making between 'living apart' and 'living apart permanently'. The Appellant stated that he wasn't living apart. He and his wife were co-habiting and going on holidays together. When asked to clarify this he stated that he was living in LOCATION A at weekends and they were 'functioning as a family'.

Relevant Legislation

19. The relevant legislation is reproduced in Appendix 1

Appellant's Submissions

20. The Appellant made various written submissions prior to the hearing. The following are the most pertinent to the core issue:

"An outline of the relevant facts:

My former wife, REDACTED and I, were jointly assessed for all years up to 2016. On Month 2017, we became legally separated by Deed of Separation, which I notified to REDACTED Tax Office. I notified the REDACTED Tax Office of this event Month 2017. On Month plus 2 2017, I received a Notification of Revenue Aspect Query from Revenue, advising me that I was not entitled to married allowance or rate bands as I was living apart from my wife and that I would be treated as a single person instead. I appeal this decision …"

"I can now see that Revenue have been making mistaken assumptions about my marital status up to Month 2017 and have incorrectly issued revised assessments and liabilities. I was married to, living with and supporting my wife, REDACTED for over 33 years…"

"I obtained a Decree of Divorce from my spouse REDACTED on Month 2017,

*Six days later, I notified my separation in person to REDACTED at the REDACTED Tax Office, REDACTED on Month 2017. Following this I received a letter, dated Month 2017, from REDACTED asking amongst other things the date I **first** separated from my spouse. To this I replied, Month plus 2 2007 and as a result, Revenue have incorrectly assumed that I was permanently separated since 2007.*

In my handwritten response to this letter, I omitted to add that this separation period was only for a short period. We got back together again and lived together regularly as a normal married couple until 2016. It was only on 25 October 2016 that formal separation proceedings were filed by my solicitor. Up until then I fully supported her and paid the mortgage and household bills…"

"As well as the fact that we were cohabiting and legally married until late 2016, I will also rely on Section 1015(2) of Chapter 1 of part 44 of the TCA 1997 to support my position as it clearly states: -

Section 1015 TCA:

> *(2) A wife shall be treated for income tax purposes as living with her husband unless either*
>
> *(a) they are separated under an order of court…. or by deed of separation, or*
>
> *(b) they are in fact separated in such circumstances that the separation is likely to be permanent.*

We did not have any court order or deed of separation until 2017.

The fact that we continued to live together for 33 years, except for a temporary informal separation in 2007, would clearly indicate that nobody could determine that our separation was likely to be permanent. Surely, the opposite must be assumed if we were cohabiting for 33 years in total.

On another point, I would further state that in my particular case, Revenue seem to be acting in a vexatious manner in so far as I understand that it is not custom and practice or legal for Revenue to back-date a Court Deed of Separation/Divorce by 5 years and to apply single status automatically to the parties involved. Their own guidance and legislation in these matters treat a divorced couple as married up to and including the date of divorce and that single treatment only applies during the year after which a divorce is granted.

As we were still legally married until Month 2017, and cohabitating until October 2016. We were automatically entitled to Joint Assessment, unless we elected otherwise.

Chapter 1, Part 44 TCA 1997, Section 1018(4) (a): -

"…. a husband and his wife…… shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 for that year unless before the end of that year either of them gives notice in writing that he or she wishes to be assessed ... as a single person……".

Neither myself or my wife ever claimed for separate treatment or to be treated as a single person, as alleged in the submission from Revenue.

Also, at some stage early in my marriage I would have opted for Joint Assessment anyway by ticking the Married box in my first tax return submitted as a married person. Therefore I contend that the revised Assessments raised by Revenue deny us the correct treatment for the taxation of married couples who had never opted for single treatment."

21. The Appellant referenced P29/30 of Revenue booklet (section 7.2). The Appellant in his testimony stated that what he meant by '*married but living apart*' was that he was "*living midweek in LOCATION B and weekends in LOCATION A".* He was '*living apart*' in a '*non-legal sense*'. In a legal sense he was married and not '*living apart*'.

22. The Appellant argued that in the Revenue web page the word "permanently" is left out as required by legislation. The term (with a box requiring a tick) "*Living apart*" is ambiguous, see for example "*a sailor, a pilot, a truck driver, etc.".*

23. The Appellant argued that his signed statement of Month plus 2 2017, stating that **"***We separated amicably in 2007. We chose to be jointly assessed until our divorce as per S.1026 TCA97"***,** does not prove anything.

24. Referencing TCA 1015(2) (b) TCA 1997, the Appellant argued that neither he nor his wife could say during the period (2007 to 2016) that their separation was "*likely to be permanent*". He apologised for errors, innocently made on his returns, and submitted that Revenue are obliged to allow the correction of the returns based on the clarification and correction of the errors made by the Appellant.

25. In subsequent submissions made to the TAC the Appellant contended that he had, due to innocent error and due to the ambiguousness of the term, incorrectly ticked the "Married but living apart" box, and was not aware that this would be judged by the Respondent to mean that he was living apart permanently and therefore be judged that he should not qualify for joint assessment under S.1017 TCA 1997. The Appellant submits that had the Form 12 included the more extensive term, "Married but living apart permanently", then he would not have ticked this box, but would have ticked the correct "Married" box.

26. In correspondence, the Appellant's former spouse enclosed a signed note, stating that "*I willingly allowed my husband to continue using my tax credits throughout the period of our separation up until the date of our divorce".*

27. The Appellant contended that his statement to the respondent in Month 2017 that "*we separated amicably in April 2007*", should not be understood as meaning that the separation was permanent and such an understanding would be contrary to his circumstances.

The Respondent's Evidence and Submissions

In opposing the appeal, the Revenue Commissioners made various written submissions prior to the hearing. The following are the most pertinent to the core issue:

"The Appellant and his former spouse have both written and confirmed that they are divorced. The date of divorce has been declared as Month 2017. In

his reply to a letter from REDACTED, the Appellant states clearly that he separated amicably from his former spouse in Month plus 2 2007. He also states in that letter that his divorce was made official on Month 2017.

Included in the return of incomes completed by the taxpayer, the former spouse of the Appellant states that she willingly allows her husband to continue to use her tax credits throughout the period of separation until the date of their divorce.

As set out in Section 1015 2(b) Taxes Consolidated Act 1997

> *"A wife shall be treated for income tax purposes as living with her husband unless either...*
>
> *(b) they are in fact separated in such circumstances that the separation is likely to be permanent."*

The Appellant replied to a letter from REDACTED of this office ... This reply consisted of handwritten replies to the questions asked and two additional notes, one from himself and one from his former spouse.

The Appellant was asked on the date of separation from his spouse, his handwritten reply states April 2007 and this is further reinforced in the first line of his typed statement received along with this letter:

> "We separated amicably in April 2007""

"*In his reply to REDACTED letter of Month 2017 ... in response to the question:*

> *"Whether you are making/receiving any maintenance payments to/from your spouse under a legally enforced maintenance agreement if so, please forward a copy of this agreement"*
> *The Appellant has handwritten;*
> *"No"*

...the Appellant goes on to state

> *"I have paid the mortgage for our family home, health insurance for my wife til end of 2015. I have paid the home's phone bill and*

electricity bill for most of the period, and Sky TV for all of the period" (sic)

The Appellant has stated that he separated from his spouse amicably in April 2007. The Appellant contends that he should only be treated as separated since his divorce in 2017. However Section 1015(2)(b) TCA 1997 sets out that a wife shall be treated for income tax purposes as living with her husband unless they are in fact separated in such circumstances that the separation is permanent. This separation culminated in divorce in 2017, therefore the separation of 2007 was likely to be permanent.

Furthermore Section 5 of the Family Law (Divorce) Act, 1996 sets out that in order to obtain a divorce, the spouses must have lived apart for a period of four of the previous five years at the date of initiation of proceedings. Therefore even without this declaration, it must be concluded that the spouses had been separated from 2012.

Analysis and findings

28. The primary issue for determination is whether the Appellant is entitled to be jointly assessed for the relevant tax years. The Appellant submits that this question turns on whether his spouse "shall" be treated for income tax purposes as living with her husband in accordance with S.1015(2) (b). What does need to be established and determined, based on the facts, is whether S.1015 (2) (b) has effect and the question of whether or not the Appellant and his spouse were, during the years 2012 to 2016 inclusive, separated in such circumstances that the separation was likely to be permanent.

29. It is common case between the parties that the Appellant and his spouse were not separated by Court Order or Deed of separation during the years under appeal and therefore S.1015 (2) (a) is not a determining factor in this appeal.

30. In order to determine this appeal, it is necessary to determine the date or time period when the Appellant's wife ceased to be treated as living with the Appellant for

income tax purposes, namely the date on which the Appellant and his wife were *"in fact separated in such circumstances that the separation is likely to be permanent."* I believe that the wording of section 1015(2) (b) requires a two-stage analysis; firstly, is there a factual separation of the spouses? And, secondly, establishing the timing of the circumstances such that the separation is likely to be permanent?

31. There does not appear to have been any judicial consideration or interpretation of section 1015(2) (b). While a number of Irish and UK decisions are cited by commentators (see, for example, Maguire, *Irish Income Tax: 2016*, at para. 3.501, citing *Ua Clothasaigh v McCartan* II ITR 75, *Ward-Stemp –v- Griffin* [1988] STC 47, *Holmes –v- Mitchell* [1991] STC 25 and *McA (M) –v- X McA* [2000] 1 I.R. 457, those decisions turn on their particular facts and are not of material assistance in determining the appeal before me.

32. However, the following comment made by the Judge in the *Ua Clothasaigh v McCartan* case in 1947 , referencing a previous UK precedent, is useful when considering how the word 'separation' should be understood. Judge Maguire J said:

> *In the recent case of Nugent-Head v Jacob 30 TC 83,-[1947] 1 KB 17, Lord Justice Bucknill at page 22 says:*
>
> > *"Wives living with their husbands" have been held to include all wives having a common matrimonial home with their husbands. The home need not be a house or even a room, and need not be at any fixed geographical point. Such wives include those whose husbands are absent from home, provided the absence is not due to a deliberate intention on the part of one or both spouses to break up the matrimonial home, or is not due to any decree or order of a competent court that the parties be no longer bound to cohabit with one another. In other words "wives living with their husbands" fall into two classes:*
> >
> > - *husbands and wives in fact living together, and*
> > - *husbands and wives who are for the time being living apart, not because they wish to do so, but by reason of the force of circumstances.*

33. Having heard and carefully considered the evidence and submissions offered on behalf of the parties, I am satisfied and find as a material fact that the Appellant and his wife were in fact separated from 2007.

34. In reaching this finding of fact, I have had careful regard to the following facts :

- that the Appellant purchased a property in his sole name in LOCATION B and commenced living there while also working in the same town;
- that the Appellant in correspondence with the respondent by his own admission stated "*We separated amicably in April 2007*".
- that the circumstances of the separation were not *by reason of force of circumstances.* (The car travel time between the matrimonial home in LOCATION A and the Appellant's work in LOCATION B of approx. 30 minutes, would not have been such as to make it reasonable to accept that the *de facto* 5 day week separation was by reason of force of circumstances and not because they wished to do so.)

35. Having found as a material fact that the Appellant and his wife were in fact separated from 2007 onwards, I must next determine when the circumstances of their separation became such that the separation was likely to be permanent.

36. No evidence was available to me in relation to the Appellant's intentions at the time of the amicable separation in 2007. The Appellant, in witness testimony, stated that up to the time of his divorce proceedings in October 2016, he used the apartment in LOCATION B during the week as it was convenient from a work perspective and that he returned to the family home in LOCATION A at weekends. He argued that he lived with his wife as a normal family at weekends in LOCATION A doing shopping, taking holidays together, visiting friends together. He continued to fund the mortgage on the LOCATION A property and settled some utility bills. The Appellant stated that the LOCATION A property was his "home". They were not separated. They lived life as a family and were not living apart permanently.

37. I asked the Appellant to explain the distinction he is making between 'living apart' and 'living apart permanently'. The Appellant stated that he wasn't living apart from his family. He was co-habiting and going on holidays together with his family. When

asked to clarify this he stated that he was living in LOCATION A at weekends and they were 'functioning as a family'.

38. I must have regard to a number of actions taken by the Appellant since 2007 in determining the timing of the circumstances where separation from his wife was likely to be permanent.

39. The Appellant did not dispute, under cross-examination, that he had claimed mortgage tax relief at source (TRS) on the property from 2009. TRS applied to Principal Private Residences (PPR's) only and not investment properties.

40. The Appellant did not dispute the Respondent's statement that the Revenue records show that he did not pay NPPR on either the LOCATION A or LOCATION B properties. NPPR was a tax due to the Local authority from 2009 to 2013, in respect of residential property that was not the owner's main residence.

41. I have also had regard to the Local Property Tax declarations made by the Appellant on 7 May 2013 stating that the LOCATION B property was his main residence.

42. The Appellant did not dispute the Respondent's statement that the Appellant imported a vehicle from REDACTED and when making the VRT declaration he registered the vehicle to the apartment in LOCATION B. The Appellant said that he did not find this unusual as he was living mid-week in LOCATION B.

43. The Respondent stated that the Appellant's spouse at the time was in receipt of a ROI State non-contributory pension from 2013/2014. This was a non-contributory means tested pension of €89 per week. This infers that she had means of approx. €150 per week. The Respondent stated that APPELLANT'S SPOUSE application form at the time stated that she was separated when applying for her pension in 2013. The Appellant said that he could not reconcile why his wife made such a representation.

44. Turning to the Appellant's own intentions in relation to his marriage, I accept as truthful and correct his evidence that he continued to make financial contributions towards the former family home after he had separated from his wife, and I find

that the fact of him having made such contributions is not inconsistent with him having permanently separated from his wife. He also made regular visits to the LOCATION A home. Again, I find that the fact of him having made such visits is not inconsistent with him having permanently separated from his wife.

45. I therefore find as a material fact that the Appellant was in fact separated from his wife in such circumstances that the separation was likely to be permanent from sometime after 2007 and prior to 2012.

46. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that he/she/it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.

47. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at para. 22, Charleton J. stated:

> *'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.'*

48. In my view the Appellant has not succeeded in this appeal in meeting the burden of proof test.

Determination

49. Having carefully considered all of the evidence before me and the submissions made by the parties, I have determined that APPELLANT is not to be treated as living with his wife for income tax purposes during the tax years 2012 onwards, and

consequently the Appellant ceased to be entitled to Joint Assessment pursuant to Section 1017 and ceased to be entitled to the higher basic personal tax credit pursuant to Section 461(a)(i) from 2012 onwards.

50. I will therefore disallow the Appellant's appeal in respect of the years 2012 to 2016.

PAUL CUMMINS

TAX APPEAL COMMISSIONER

Designated Public Official

8 DECEMBER 2020

Appendix 1

Relevant Legislation

Section 461 of the Taxes Consolidation Act, 1997, as amended, provides as follows: -

> *"In relation to any year of assessment, an individual shall be entitled to a tax credit (to be known as the "*basic personal tax credit*") of—*
>
> *(a) €3,300, in a case in which the claimant is a married person or a civil partner who—*
>
> *(i) is assessed to tax for the year of assessment in accordance with section 1017 or 1031C, as the case may be, or*
>
> *(ii) proves that his or her spouse or civil partner is not living with him or her but is wholly or mainly maintained by him or her for the year of assessment and that the claimant is not entitled, in computing his or her income for tax purposes for that year, to make any deduction in respect of the sums paid by him or her for the maintenance of his or her spouse or civil partner,*
>
> *(b) €3,300, in a case in which the claimant in the year of assessment is a widowed person or surviving civil partner, other than a person to whom paragraph (a) applies, whose spouse or civil partner has died in the year of assessment, and (c) €1,650, in the case of any other claimant."*

The relevant subsections of section 1017 provide that: -

"(1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –

(a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife's total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,…."

Section 1015(2) provides that: -

"(2) A wife shall be treated for income tax purposes as living with her husband unless either –

(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."

Section 1018(4) TCA 1997 provides that: -

4) "(a) A husband and his wife, where the wife is living with the husband and where an election under subsection (1) has not been made by them for a year of assessment or for any prior year of assessment shall be deemed to have duly elected to be assessed to tax in accordance with section 1017 for that year unless before the end of that year either of them gives notice in writing to the inspector that he or she wishes to be assessed to tax for that year as a single person in accordance with section 1016."

Section 1025 TCA 1997 – Maintenance in Case of Separated Spouses provides that: -

(1) In this section –

*"*maintenance arrangement*" means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of –*

(a)the dissolution or annulment of a marriage, or

(b)such separation of the parties to a marriage as is referred to in section 1015(2)*,*

and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

*"*payment*" means a payment or part of a payment, as the case may be;*

a reference to a child of a person includes a child in respect of whom the person was at any time before the making of the maintenance arrangement concerned entitled to [relief under section 465*]*

Section 1026 TCA 1997 - Separated and divorced persons: adaptation of provisions relating to married persons, is set out below: -

"(1) Where a payment to which section 1025 applies is made in a year of assessment by a party to a marriage being a marriage which has not been dissolved or annulled and both parties to the marriage are resident in the State for that year, section 1018 shall apply in relation to the parties to the marriage for that year of assessment as if –

(a) in subsection (1) of that section ", where the wife is living with the husband," were deleted, and

(b) subsection (4) of that section were deleted.

(2) Where by virtue of subsection (1) the parties to a marriage elect as provided for in section 1018(1), then, as respects any year of assessment for which the election has effect –

(a) subject to subsection (1) and paragraphs (b) and (c), the Income Tax Acts shall apply in the case of the parties to the marriage as they apply in the case of a husband and wife who have elected under section 1018(1) and whose election has effect for that year of assessment,

(b) the total income or incomes of the parties to the marriage shall be computed for the purposes of the Income Tax Acts as if any payments to which section 1025 applies made in that year of assessment by one party to the marriage for the benefit of the other party to the marriage had not been made, and

(c) income tax shall be assessed, charged and recovered on the total income or incomes of the parties to the marriage as if an application under section 1023 had been made by one of the parties and that application had effect for that year of assessment.

(3) Notwithstanding subsection (1), where a payment to which section 1025 applies is made in a year of assessment by a spouse who is a party to a marriage, that has been dissolved, for the benefit of the other spouse, and –

(a) the dissolution was under either –

(i) section 5 of the Family Law (Divorce) Act, 1996, or

(ii) the law of a country or jurisdiction other than the State, being a divorce that is entitled to be recognised as valid in the State,

(b) both spouses are resident in the State for tax purposes for that year of assessment, and

(c) neither spouse has entered into another marriage or a civil partnership,

then, subsections (1) and (2) shall, with any necessary modifications, apply in relation to the spouses for that year of assessment as if their marriage had not been dissolved."