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SPOTLIGHT ON:

Divorce and tax: What you need to consider

KNIGHT & COMPANY

WWW.KNIGHTANDCOMPANY.CO.UK
TRACYA@KNIGHTANDCOMPANY.CO.UK
01628 631 056

HOW DIVORCE CAN AFFECT PROPERTY, PENSIONS, INVESTMENTS AND FUTURE TAX BILLS

Divorce or the end of a civil partnership often involves difficult personal and financial decisions. Tax may not be the first point on the list, but it can change the real value of a settlement.

A proposed division of assets may look fair on paper. The after tax position may be different if one person receives an asset with a built in gain, moves out of the family home, takes over a property with a mortgage, receives a pension share or becomes responsible for Child Benefit.

This guide sets out the main UK tax points to consider. It does not replace legal advice, and each case depends on the facts, the timing and the wording of the financial agreement. The important point is to check the tax position before signing a settlement, rather than after the assets have moved.

The latest Office for National Statistics release reported 103,816 legal partnership dissolutions in England and Wales in 2023, made up of 102,678 divorces and 1,138 civil partnership dissolutions. Divorce rates in 2023 were 8.6 for men and 8.5 for women per 1,000 married individuals.

START WITH THE TIMING

Tax often depends on dates. The key dates may include:

- When you stopped living together
- Whether the separation was likely to be permanent
- When the conditional order or decree nisi was made
- When the final order or decree absolute was made
- When a financial agreement or consent order was approved
- When each asset was transferred
- When a property was sold
- When someone moved out of the family home

These dates can affect Capital Gains Tax, property tax, pension arrangements, Child Benefit, Marriage Allowance and Inheritance Tax planning.

For Capital Gains Tax, HMRC treats spouses and civil partners as living together unless they are separated under a court order, by a formal deed of separation, or in circumstances where the separation is likely to be permanent. If the marriage or civil partnership has not broken down, living in different houses does not automatically mean you are treated as separated for these rules.

CAPITAL GAINS TAX ON TRANSFERS BETWEEN SPOUSES AND CIVIL PARTNERS

Capital Gains Tax is one of the main tax issues in divorce.

While spouses or civil partners are living together, transfers of most assets between them usually take place on a “no gain/no loss” basis. This means the person transferring the asset does not trigger an immediate Capital Gains Tax charge. The person receiving the asset takes over the original base cost for future tax purposes.

The current separation rules first applied to disposals made on or after 6 April 2023. Since then, separating spouses and civil partners have had a longer window for no gain/no loss transfers.

If you and your spouse or civil partner were living together at some point in a tax year, you can transfer assets between you on a no gain/no loss basis up to the earlier of:

- The end of the third tax year after the tax year in which you stopped living together
- The date the court grants a divorce, annulment or dissolution

Transfers made under a formal divorce or separation agreement or court order can qualify for no gain/no loss treatment without any time limit.

This makes the legal documentation very important. A transfer that falls outside the automatic window may still be protected if it takes place under the right formal agreement or court order.

ASSETS THAT NEED A CAPITAL GAINS TAX REVIEW

The family home often receives most attention, but other assets may carry tax exposure. Examples include:

- Buy-to-let properties
- Second homes
- Shares and investment portfolios
- Cryptocurrency
- Business shares
- Commercial property
- Land
- Valuable personal possessions
- Overseas assets

The person receiving an asset may not pay tax at the point of transfer if no gain/no loss treatment applies. However, they may inherit the original tax base cost. If they sell the asset later, they may pay Capital Gains Tax on the full gain since the original purchase, not just the increase in value since the divorce settlement.

For 2026/27, the Capital Gains Tax annual exempt amount for individuals is £3,000. For gains made from 6 April 2026, basic rate taxpayers pay Capital Gains Tax at 18% on gains within the basic rate band and 24% on gains above it. Trustees and personal representatives pay Capital Gains Tax at 24% from 6 April 2026.

A settlement should therefore compare assets on an after tax basis. A £200,000 cash payment and a £200,000 investment portfolio may not be equivalent if the portfolio contains a large unrealised gain.

THE FAMILY HOME AND PRIVATE RESIDENCE RELIEF

The family home can be the largest asset in a divorce settlement. It can also be one of the most sensitive tax areas.

Private Residence Relief can reduce or remove Capital Gains Tax on the sale of a home that has been your only or main residence. For spouses and civil partners living together, there can only be one main residence between them for this relief. After separation, each person may have a different only or main residence.

If one person moves out of the family home and later sells or transfers their share, the tax treatment depends on the facts. HMRC guidance states that a person who stops living in the matrimonial or civil partnership home may be entitled to Private Residence Relief for the period before they moved out, plus the final nine months of ownership.

There are also special rules where one person keeps an interest in the former home and it is sold later under a formal divorce or separation agreement or court order. In some cases, the person who moved out can choose to treat the period after they left as if the property remained their only or main residence, provided conditions are met. This can help where the other spouse or civil partner continues to live in the home before a later sale.

This choice can affect relief on another home bought after moving out, so it should be reviewed before the property is sold.

STAMP DUTY LAND TAX AND PROPERTY TRANSFERS

Property transfers can also raise stamp tax issues. For properties in England and Northern Ireland, Stamp Duty Land Tax does not apply where an interest in land or property is transferred to a spouse or civil partner as part of an agreement or court order because the couple are divorcing, dissolving a civil partnership, annulling a marriage or legally separating. In those cases, there is no need to tell HMRC about the transfer, even if the value exceeds the SDLT threshold.

This is different from some other property transfers. For example, unmarried joint owners who transfer a larger share of a property between them may have an SDLT position if cash is paid or mortgage debt is taken over.

Wales and Scotland have separate property tax regimes. Wales uses Land Transaction Tax and Scotland uses Land and Buildings Transaction Tax. The tax treatment should be checked based on where the property is located.

MORTGAGES AND THE FAMILY HOME

A transfer of property is not only about legal ownership. The mortgage position also matters.

Where one person takes over a mortgage, the lender will usually need to agree. The tax position can also change where someone takes on debt as part of a transfer.

In a divorce or civil partnership dissolution, the special SDLT rule may prevent an SDLT charge where the transfer is made under the relevant agreement or court order. Outside those rules, taking over mortgage debt can count as chargeable consideration. HMRC gives examples where taking responsibility for part of an outstanding mortgage forms part of the SDLT calculation.

Before agreeing that one person will keep the home, it is sensible to check:

- Whether the lender will release the other person from the mortgage
- Whether the transfer qualifies for the divorce or separation SDLT rule
- Whether either person will keep an interest in the property
- Whether a later sale could trigger Capital Gains Tax
- Whether the person moving out plans to buy another property

PENSIONS IN A DIVORCE SETTLEMENT

Pensions can be one of the most valuable assets in a marriage or civil partnership. They can also be easy to undervalue because they are not always visible in day-to-day finances.

A pension sharing order can give one party a percentage of the value of the other party's pension rights. The amount awarded must be used to provide the recipient with their own pension benefits. HMRC refers to the reduction in the original member's pension rights as a pension debit, and the amount given to the former spouse or civil partner as a pension credit.

The recipient does not simply receive the pension as cash. The tax position depends on the type of pension and how benefits are later taken. HMRC guidance states that the former spouse or civil partner will be entitled to pension benefits in their own right, and those benefits will be taxable in their hands when taken, depending on the scheme and how the pension is accessed.

Pension settlements should be considered alongside tax, retirement plans, age, health, income needs and the type of scheme. Defined benefit pensions, public sector pensions and pensions already in payment may need specialist advice.

MAINTENANCE PAYMENTS

Maintenance payments need careful treatment in budgets.

Child maintenance payments are not taxable for the recipient. GOV.UK also states that child maintenance payments do not affect benefits, including Universal Credit.

Spousal maintenance is different from child maintenance, but most modern divorce maintenance arrangements do not create a straightforward tax deduction for the payer. A limited Maintenance Payments Relief still exists, but it applies only where specific conditions are met, including that either person was born before 6 April 1935.

For 2026/27, the relief is worth 10% of qualifying maintenance payments, up to a maximum tax reduction of £453.

Where maintenance forms part of a settlement, both the payer and the recipient should check how it fits within their wider tax and cash flow position.

CHILD BENEFIT AND THE HIGH INCOME CHILD BENEFIT CHARGE

If children are involved, Child Benefit should be reviewed as part of the separation.

For 2026/27, Child Benefit is £27.05 per week for the eldest or only child and £17.90 per week for each additional child.

The High Income Child Benefit Charge applies where the higher earner in a couple has adjusted net income above £60,000. It is based on the higher earner's individual income, rather than the couple's combined income. The charge gradually claws back Child Benefit between £60,000 and £80,000 and equals the full Child Benefit amount once adjusted net income exceeds £80,000. Following a permanent separation, the former partner's income is no longer taken into account, so the threshold applies to the parent receiving Child Benefit or their new partner, if applicable.

Separation can change who should claim and who may be liable for the charge. It can also affect National Insurance credits where the claimant is not working or has low earnings. The parent with day-to-day responsibility should review the claim, the payment position and any High Income Child Benefit Charge exposure.

MARRIAGE ALLOWANCE AND PERSONAL TAX CODES

Marriage Allowance allows eligible married couples and civil partners to transfer £1,260 of one person's Personal Allowance to the other. For 2026/27, the standard Personal Allowance is £12,570, and the transfer can reduce the receiving partner's tax bill by up to £252.

Marriage Allowance must be cancelled if the relationship ends because of divorce, dissolution of a civil partnership or legal separation. It should also be reviewed if income changes mean the couple no longer qualifies.

Tax codes may also need updating where someone changes name, address, employment benefits or taxable income. This is often missed during separation because practical issues take priority.

INHERITANCE TAX AND WILLS

Divorce can affect estate planning. Transfers between spouses and civil partners are generally exempt from Inheritance Tax while the marriage or civil partnership continues. That position changes after divorce or dissolution. A will should also be reviewed because divorce can affect how existing will provisions operate.

For 2026/27, the Inheritance Tax nil rate band is £325,000 and the residence nil rate band is £175,000. The residence nil rate band is available where a qualifying residence passes to direct descendants, subject to conditions. The taper starts where the net estate exceeds £2 million. HMRC states that qualifying estates can continue to pass on up to £500,000, and up to £1 million for a surviving spouse or civil partner where the relevant unused allowances are available.

After separation, it is sensible to review:

- The will
- Pension death benefit nominations
- Life insurance policies
- Jointly owned property
- Trust arrangements
- Guardianship wishes for children
- Powers of attorney

Tax planning and legal planning should work together here.

BUSINESS OWNERS AND FAMILY COMPANIES

Where one or both spouses own a business, divorce can affect the company as well as the individuals.

Points to review include:

- Whether shares are being transferred
- Whether the transfer qualifies for no gain/no loss Capital Gains Tax treatment
- Whether the company has distributable reserves
- Whether dividends will change
- Whether both parties are directors or employees
- Whether one person will exit the business
- Whether a valuation is needed
- Whether any shareholder agreement applies

Dividend tax rates changed for 2026/27. The dividend allowance remains £500. The dividend tax rate is 10.75% for basic rate taxpayers, 35.75% for higher rate taxpayers and 39.35% for additional rate taxpayers.

A settlement involving company shares should be reviewed before anything is signed. The legal value of the shares, the tax base cost, future dividend rights and control of the company may all point in different directions.

UNMARRIED COUPLES

This guide focuses mainly on divorce and civil partnership dissolution, but unmarried couples should take extra care.

Many of the special tax rules for spouses and civil partners do not apply to unmarried partners. This can affect Capital Gains Tax, SDLT, Inheritance Tax and pension arrangements.

For example, HMRC guidance notes that unmarried joint owners who transfer an interest in property from one owner to another may have an SDLT position if consideration is given, such as taking over mortgage debt.

Unmarried couples should not assume that living together creates the same tax treatment as marriage or civil partnership.

PRACTICAL CHECKLIST BEFORE AGREEING A SETTLEMENT

Before agreeing a divorce or dissolution settlement, it is worth checking the following:

- What assets each person owns legally and beneficially
- Whether any assets have built in gains
- Whether transfers qualify for no gain/no loss Capital Gains Tax treatment
- Whether the family home qualifies for full or partial Private Residence Relief
- Whether the person moving out will buy another home
- Whether a property transfer is covered by the divorce or separation SDLT rules
- Whether any mortgage debt is being taken over
- Whether pension sharing, offsetting or attachment is proposed
- Whether child maintenance and spousal maintenance have been modelled properly
- Who should claim Child Benefit
- Whether the High Income Child Benefit Charge applies
- Whether Marriage Allowance should stop
- Whether tax codes and HMRC details need updating
- Whether wills, pension nominations and life policies need changing
- Whether business shares or company income are part of the settlement

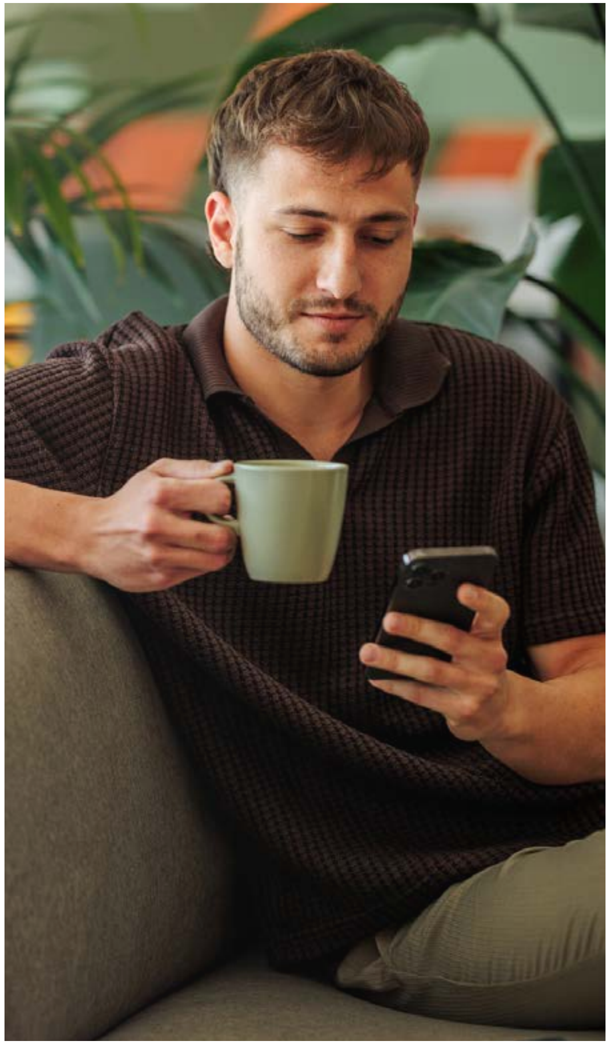
SUMMING UP

Divorce tax planning is not about reducing fairness. It is about understanding the real financial outcome before an agreement becomes binding.

The same settlement can produce different results depending on timing, asset type, ownership, residence history and future plans. Property, pensions, investments, businesses and Child Benefit all need attention.

The best time to review the tax position is before the financial order is finalised and before assets are transferred. That gives both parties a clearer view of the after tax position and reduces the risk of unexpected tax bills later.

Contact us to understand how property, pensions, investments or Child Benefit could affect your settlement.



KNIGHT & COMPANY

11 Castle Hill, Maidenhead, Berkshire, SL6 4AA