

Question Report	Question	Answer From	Answer
Question Details			
1	What information should be inserted into the Stock Transfer Form where one party is transferring business assets to the other? Should the value be nil to avoid stamp duty?	ST	Stock transfer forms are to record the consideration - stamp duty is charged on consideration only. If there is a transfer with no consideration then you would insert nil in the section 'Consideration'. See HMRC guidance here - https://www.gov.uk/guidance/stamp-duty-on-shares
2	In case this isn't to be covered, could you say something about the exchange of property opportunities for CGT and limitations (so for example where a residential property is exchanged for a rental property)	ST	Under the new rules from 6 April 23 onwards the transfer will attract no immediate CGT, each party will take over ownership of the asset at the original base cost. If one is main home and one is rental property one party will have an exempt asset (the main home), the other will have a chargeable asset (the investment property).
3	sorry to hog the questions but in the light of the changes to come in in April, is the only safe course to adjourn transfers where CGT would otherwise immediately arise, or will an order be effective if the transfer is to take place after 6.4.23	ST	If the couples are not yet divorced the effective date will be the date of Decree Absolute. If the Order is granted pre 6 April 23 and the DA is granted post 6 April 23, the transfer falls within the new rules. See date of disposal guidance here - https://www.gov.uk/HMRC-internal-manuals/capital-gains-manual/cg22423
4	Will the slides be sent out after the session?		Yes - they will be circulated afterwards.
5	In the case of an order requiring a transfer in say 3 months, is it the date of the Order or completion of the transfer which triggers the start of the 60 day period	ST	The date of decree absolute is typically the date that the Order becomes effective, therefore the 60 days will start there.
6	Is it definitely effective from 6th April 2023? I knew of the proposed change but was no sure that it was definite.	ST	Planned to get Royal Assent on 15 March 23
7	A lot of orders say transfer within say 28 days of order - will this fall foul of that provision?	ST	If the Decree Absolute is given after 6 April 23 then no. The DA will be the effective date. If the DA is given before 6 April 23 then the transfer will be treated under the current rules which would give rise to a CGT liability on transfer.
8	Does this mean it needs to be before the consent order has been approved by a judge? Because it says "before" a formal divorce agreement,	ST	Don't understand the Q
9	So would it be a good idea for the transfer to take place and be completed before a Decree Absolute?	ST	It depends what you are trying to achieve. To minimise the immediate CGT payable by either party the transfers should be treated under the new rules (from 6 April 23) therefore the decree absolute should be issued post 6 April 23. Some parties want to crystallise the gain and take over ownership of the new assets with no latent CGT, in which case they would want to have the final order/DA before 6 April 23.
10	How are the new rules on CGT being brought in? They don't seem to appear in the latest Finance Act just granted Royal Assent.	ST	
11	For married couples only?	ST	Yes.
12	what if it is pursuant to a consent order ?	ST	Don't understand the Q
13	Won't the transfers need to be completed before the final divorce order ie old style decree absolute ?	ST	No, the transfers can take place at any time - the CGT rules for transfers look at the date that the transfer becomes effective. In the case of divorce the date the transfer becomes effective is the date of the final order.
14	Decree absolute or nisi/Conditional or final order?	ST	My understanding is final order/ DA.
15	Is the sale of property (with proceeds split) after the tax year of separation also deemed a chargeable asset and likely to incur CGT?	ST	Yes, the changes in rules only apply to transfers. Any sale of an asset will still be chargeable to capital gains tax in the usual way.
16	It says on the slide 'before' the divorce agreement when you might actually be transferring on implementing?	ST	
17	can the parties elect to pay the cgt if they want?	ST	No, there is no option to crystallise the CGT under the new rules.
18	What if the transfer is from one spouse to two people- the other spouse and their adult child?	ST	The transfer will be looked at in 2 parts, the transfer to the spouse the CGT will pass to the new spouse, the transfer to the child will be a chargeable transfer. The spouse making the transfer will be charged to CGT.
19	(the CGT "formal divorce agreement")		

20	What if a judicial separation has been granted already? Can that couple still take advantage of these changes once they get divorced after April 2023?	ST	I think so, further information would be needed.
21	Why does it say 'if transfer is before a formal divorce agreement', a lot of transfers take place in accordance with the order but after it is approved by the Court.	ST	Sometimes couples do undertake transfers before the formal agreement (e.g. if they need to be off the main home for the reduced stamp duty land tax).
22	does this mean a couple who have obtained DA but not dealt with finances and made transfers cannot take advantage of the new rules?	ST	If they already have the DA and then they are dealing with the finances the date of the Order that deals with the finances will be the date of the transfer for CGT. If this order is post 6 April 23 the new rules will apply.
23	What is a separation order?	ST	This is the wording in the tax legislation that they use.
24	I note the 60 day rule, but I have had cases where one party has been paid an amount for their CGT liability, and I strongly suspect they do not then pay the tax. Do HMRC find out about these non-declarers/non-payers?	ST	Yes they do but it takes time. They look at things such as the change of names in the land registry and look for a corresponding tax return and if there is a gap this may trigger an enquiry.
25	What does it mean when says BEFORE formal agreement	ST	For both income tax and CGT, a married couple or civil partners are treated as living together unless: <ul style="list-style-type: none"> • they are separated under an order of a court of competent jurisdiction; • they are separated by deed of separation; or • they are, in fact, separated in circumstances in which the separation is likely to be permanent.
26	what date is deemed as 'separation'	ST	(See TCGA 1992, s 288(3); ITA 2007, s 1011).
27	It would be super to have the slides after the seminar.	ST	Slides will be sent
28	Will this be retrospective? Therefore, should we be advising couples to delay transfer?	ST	It is not retrospective in the sense that it will not apply to couples who have already divorced and completed transfers. For those in the process of divorce they may benefit from the new rules if the final order is issued post 6 April 23.
29	The transfer has to be "before" formal divorcee agreement? Does that mean if parties are separated for over 3 years, we should be dealing with the transfer before the decree absolute?	ST	Please see briefing note above.
30	Why in definition of formal divorce agreement is the transfer to be "before" this?	ST	Please see briefing note above.
31	Does that apply to the matrimonial home though?	ST	Unsure what part the question relates to
32	why does Mrs Smith not have PPR relief for her part?	ST	In this example it was a rental property so no PPR relief
33	What would happen in a situation whereby it has been longer than 3 years since separation and the parties deal with the finances including a transfer after pronouncement of the final decree? Would CGT be payable?	ST	Please see briefing note above.
34	Following on from Penny's question say there a consent order today with an order for a transfer within 28 days		Answered above
35	*relief		
36	can we delay post April? what if a party delays transfer till post 6th April to shift the CGT?		I don't see an issue with that. The parties are entitled to delay and to plan (for tax) accordingly.
37	Please does this mean that it really does not matter if the house is only the property they own please?	ST	If both parties owned and lived in the family home there would be no latent CGT that would transfer when the property is transferred.
38	Won't Mrs Smith qualify for PPR though so wouldn't have any CGT?	ST	In this example it was a rental property so no PPR relief
39	Does that apply to the matrimonial home though?	ST	In this example it was a rental property so no PPR relief

40	what if the property you are transferring is a rental property in sole name of H - transferring to W?	ST	W would take on all of the latent gain. She would have to pay CGT in the future when the property is sold.
41	Bearing in mind the transferor is making the disposal, I'm surprised the transferor doesn't need to report it. That is what Sofia said isn't it?	ST	Yes - agreed it is odd that there are no reporting requirements specified. Usually one only has to report something if there is a taxable element. For example if you sell a property that is your main home and there is no CGT to pay you don't have to report this. So I think it follows those principals.
42	Under the Mr & Smith example, what CGT would she be obliged to pay if the property remained her personal dwelling?	ST	She won't have CGT to pay on sale to a third party in future if she continues to occupy it as her private residence.
43	thanks	ST	
44	if transfer a family home and the transferors gain is transferred to the transferee, presumably the PPR relief will stop any CGT liability if transferee lives in the property so it's just in respect of investment properties that this is an issue for?		Correct
45	So if couples transfer within 3 years of separation and before final order in divorce then no CGT liability to pay by anyone? So the previous 2 yr rule becomes 3?	ST	Please see briefing note above.
46	Won't Mrs Smith qualify for PPR though so CGT won't apply for her in the future ?	ST	In this example it was a rental property so no PPR relief
47	Can you ask HMRC to calculate and be bound by a CGT liability in advance of an order	ST	HMRC wouldn't calculate the CGT in these types of cases. You could use the HMRC CGT Calculator which would give you an workable answer.
48	When/how do you make the election of the PPR?	ST	There is no prescribed election form. The individual writes a letter to HMRC with their name, address and quoting the legislation and stating they wish to elect for X property to be their main home under s.225b
49	In practical terms how is an election for PPR relief made, is it in a tax return?	ST	As above
50	What happens in a situation where there is already an Order in place (Mesher) retaining the property for period of time for example for the children's minority and that property is sold after April 2023? Is the key date when the agreement is reached/Order made or when it is trigged and the property sold?	ST	Too complex for short answer
51	If a party puts in writing a claim for full PPR relief on property with say 2 acres, how long do they need to wait for a response from HMRC before they can assume relief has been allowed? Client is reluctant to chase up claim for relief.	ST	HMRC have an initial 12m from the filing of the tax return to make a 'random' enquiry. If they believe there has been a careless error they have 4 years.
52	Will it make a CGT difference, and if so how, if a deferred order for sale follows an interim period between the Order depending on whether the home is kept in sole names or joint name?	ST	Too complex for short answer
53	Do you mean that if Final Order is granted before finances are settled this could mean losing out on potential tax relief?	ST	There are two ways couples may benefit from the new rules, one on divorce and one on separation, please see briefing note
54	Really useful webinar so far, will we will be provided with a copy of the recording? I would benefit from listening again on a day I'm not in the office to digest these points!		Hello Emily, thank you. The recording will be made available in the next few days.
55	Under current tax legislation if 2 spouses who are in negotiations have already moved out of the family home into rented accommodation - will they have a CGT liability or can then claim PPR ? they may not sell until after 6/4/23 as a sale fell through recently. They have not bought new properties.		PPR only for period of occupation and last 9 months of occupation. Thereafter, those periods don't qualify is my understanding. Agree (ST)

To get the PPR relief for non occupying spouse, if we have Decree Nisi only and not Decree Absolute nor final Order, am I right in thinking we should qualify for the full PPR relief if we delay Decree Absolute or Order until April?

Yes

When would the date of disposal be, in cases where post-DA the financial order is made and provides for the FMH to be valued and the occupant ex-spouse can then, within 28 days of the valuation, either elect to buy out the non-occupying ex-spouse or put the whole property up for sale?

ST

Interesting question, I think it would be when the transfer becomes unconditional so I assume it would be when the spouse elects to buy out.

The terminology has changed in a divorce application. The 'Decree Absolute' under No fault divorce system since April 2022 is now known as Final Order in the divorce proceedings

ST

Correct.

59 If you elect for S225b relief, will you have to pay the additional 3% SDLT

ST

CGT and SDLT are not very well aligned. I think this question is, if you elect to treat the former main home as your main home and then you buy a replacement home will the SDLT 3% apply. Yes it would but it would apply anyway as you would still own a second home at the time of purchase. So even without the s.225b claim if you own another property the additional 3% applies unless you are replacing your main home.

Finance Act 2023 was given Royal Assent on Tuesday this week - is that where new CGT provisions are?

ST

The FA 2023 deals with the lower thresholds for additional rate tax, freezing personal allowance. I don't believe it deals with the proposed changes for divorcing couples re: CGT.

61 can you claim the 3% retrospectively - or is this effective after new rules

ST

Individuals have 12m to claim the 3%

How does the additional SDLT apply when cohabiting couples have a home and rental and they transfer their shares so each take one property? Is there a way to avoid it?

ST

SDLT is charged on consideration (including the transfer of a mortgage). The SDLT exemption for transferring properties applies only to married/divorcing couples and not co-habitants.

What about transfers of investment properties between spouses pursuant to a divorce but before grant of DA. Will the new rules re CGT apply to these assets?

The CGT changes we are discussing relate to the FMH (main residence).

What about transfers of investment properties between spouses pursuant to a divorce but before grant of DA. Will the new rules re CGT apply to these assets?

There you have it - the answer from Sofia!

If the DA has been pronounced prior to this change but the Court Order provides for transfer/disposal after the date of the new rules, would the parties benefit from the new April 2022 rules or are they caught under the current rules? Thanks

ST

Likely to benefit from the new rules but the wording of the Order would need to be looked at.

65 Only thing in Finance Act 2023 re CGT are as follows:

ST

This is just a Bill on rates and thresholds. It does not include any provisions from L Day. The Bill that will include these provisions is expected to receive Royal Assent on 15 March 2023

8 Annual exempt amount

(1) Chapter 1 of Part 1 of the Taxation of Chargeable Gains Act 1992 (capital gains tax) is amended as follows.

(2) In section 1K (annual exempt amount), in subsection (2) (which specifies the amount of the annual exempt amount for a tax year), for “£12,300” substitute “£6,000”.

(3) The amendment made by subsection (2) has effect for the tax year 2023-24.

(4) In section 1K(2) (as amended by subsection (2)), for “£6,000” substitute “£3,000”.

(5) The amendment made by subsection (4) has effect for the tax year 2024-25 and subsequent tax years.

(6) Omit section 1L (increasing annual exempt amount to reflect increases in CPI).

(7) In section 8C of the Taxes Management Act 1970 (returns so far as relating to capital gains tax), in subsection (1)(b), for “four times that annual exempt amount” substitute “£50,000”.

(8) In consequence of the amendments made by this section—

(a) in section 287(4) of the Taxation of Chargeable Gains Act 1992 (orders and regulations to which no Parliamentary procedure apply

66 regulations to which no Parliamentary procedure apply ST Not looking at the right document

es), omit “1L(2) or”, and

(b) in section 40 of the Finance Act 2021 (which specifies the annual exempt amount in section 1L of the Taxation of Chargeable Gains Act 1992 as £12,300 for tax years up to 2025-26), for the words from “the tax years” to “2025-26” substitute “the tax years 2021-22 and 2022-23”.

(9) The amendments made by subsections (6) to (8) have effect for the tax year 2023-24 and subsequent tax years.

67 2023-24 and subsequent tax years. ST As above

can we get a copy of the slides please as we did not receive for the last

68 presentation attended - implications of decree absolutes/Wills ST You will all receive a copy of the slides!

Under the tax avoidance schemes when referring to tax discounts are you meaning discounts to the total demand or to the interest payable on the demand once

69 quantum is agreed? RI The total demand

If there is limited chance of settling at a discount, are you better to just agree the figure with HMRC than wait for them to chase you and agree a figure? Does the interest run from the date the demand is sent or earlier. Am assuming the interest runs from the date the demand is sent or earlier. Am assuming the interest

70 runs from the date the demand is sent or earlier. Am assuming the interest RI Most tax payers are agreeing figures with HMRC. I think interest runs from the date the tax was assessed to have become due but I defer to Jennifer on this

I think the exchange of property provisions have been in place for quite a long time, but that they have to be like for like, so one investment property gain to offset a gain on a similar property going the other way?

71 gain on a similar property going the other way? Where data has been entered incorrectly, we are always more than happy to correct for this and can re run the Mltpl report at no extra cost. However, if you are interested in understanding how the valuation would change with, say, a new set of financial statements at a different valuation date, then the user would need to run an additional report.

can we update the info after a valuation report has been produced and if so is there a further cost TR

<p>How would this programme deal with accounting years which have large net losses or profits during Covid years which are not at all representative of pre and post Covid years? These could completely distort the EBITDA leading to an under or over valuation of the company.</p>	TR	<p>Mltpl adopts a standard <i>pro forma</i> definition of Earnings before Interest, Tax, Depreciation, and Amortisation (“EBITDA”). Where it is known that the financial statements require adjustment to reflect one off, exceptional issues, then further analysis will be required to account for such effects (as would be the case in any valuation). In those circumstances, Mltpl makes it clear and easy for the valuation to be adjusted, based on alternative assumptions.</p>
74 Can these reports be used to challenge SJEs	TR	<p>Yes. Mltpl reports are already being used as efficient and cost effective cross checks to SJE valuations. See response to question 72.</p>
75 Can you update the Mltpl report and if so is there cost?	TR	<p>Yes, I am increasingly instructed as an SJE on the basis that I will rely on Mltpl to perform much of the analytical ‘heavy lifting’ when performing my valuation. This approach benefits from the efficiencies of Mltpl, but also allows for my expert view in respect of the assumptions and inputs that are adopted when running the Mltpl report. It also allows for me to respond to Part 25 clarifying questions, if they are raised. In these circumstances, my fees for producing an FPR 2010 Part 25 compliant report are significantly lower than were I not to use Mltpl.</p>
76 Do you as a team at MITPL offer SJE advice as a follow up from the `standard report?	TR	
77 Excellent. Thanks		
78 thanks all - very helpful		
