Marriage and other relationship breakdown: issues for the lower paid

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LITRG provides a brief overview of some of the things to consider when advising people on a low income whose relationships have broken down. We expect most advisers will be comfortable with the usual advice in relation to income tax, capital gains tax, inheritance tax and issues to do with the family home, but low-income people can have a host of other issues too. Below we examine some of the more common issues that affect this group particularly, but this is by no means a comprehensive list.

One of the sad things about the COVID-19 pandemic is that we cannot see many of our usual social circle. But, equally, we are having to spend much more time with our close family or partner. Naturally this can lead to discord and it seems to be anticipated that some relationships will simply not survive lockdown.

Remember that the parties may need to take legal and financial advice, in addition to your tax advice. Refer to the Professional Rules and Practice Guidelines (www.tax.org.uk/PRPG) for dealing with clients in these circumstances so you can avoid conflicts of interest and any other relevant issues.

Different taxes and benefits treat couples differently

LITRG's 2015 couples report (www.litrg.org.uk/couples-tax-and-related-welfare-systems-call-for-clarity) highlighted the different tests used to determine if two people were a couple. These differing rules can cause a great deal of confusion. It is best to be clear from the outset that different tests can apply for the various taxes and benefits – meaning that, oddly, the state might view people as a couple for one purpose but not another.

Generally speaking, taxes tend to follow a legal relationship such as marriage or a civil partnership, whereas the benefits system tends to be much more interested in

living arrangements and households.

Sometimes, it can also be difficult to determine when a relationship has ended. For example, financial constraints might mean that the individuals still need to live in the same property. In addition, one party may believe the relationship to be over, while the other does not. Again, we would urge you to refer to the Institute's ethical guidelines to ensure your actions are professional at all times.

Tax issues

Claims to marriage allowance and married couples allowance

The marriage allowance can continue to be available even while a couple is separated but ceases upon divorce or dissolution, or earlier if the election is withdrawn.

By contrast, entitlement to the married couple's allowance (now only relevant where at least one party was born before
6 April 1935) requires the couple to be living together. This is deemed to be so unless they are separated under a court order or by deed of separation, or they are separated in such circumstances that the separation is likely to be permanent. If the couple separates, the married couple's allowance is given in full in the year of separation but not for any subsequent tax year.

National Insurance contributions and credits

For couples who split up before reaching state pension age, it is advisable to look at their national insurance record and make sure they consider future entitlement to the state pension. It should be noted that claims to certain state benefits might mean the individual is automatically credited with NICs, but some credits (such as carer's credit) have to be claimed.

Claims for state benefits

Child benefit

Only one person can receive child benefit for a child and the separating parties will need to consider whether or not they need to change the person who claims it, depending on the arrangements they make.

The position as regards the High Income Child Benefit Charge also needs to be considered, if relevant, because of the level

of the parties' adjusted net income. For this charge, separation occurs (for married couples, civil partners and those who were living together as if they were married or civil partners) either on legal separation or in such circumstances as the separation is likely to be permanent.

Tax credits and universal credit

Existing claims will have been for a couple and any children as a family unit but on a relationship breakdown, the couple's joint claim will stop. Ceasing to be part of a couple is a change that must be reported to HMRC within one month, otherwise a penalty may be charged. It is also in the claimants' interest to report the change as soon as possible to minimise any overpayment.

The parties will have to consider whether they can make new claims for support as single people. In most cases, those new claims will have to be for universal credit as brand new claims to tax credits are only possible in very limited circumstances (as explained on the LITRG website at www.litrg.org.uk/who-can-claim-tax-credits.

Universal credit, whilst similar, is not a like for like replacement for tax credits. This could impact on people who have savings and were previously claiming tax credits; for example, because tax credits do not take into account capital, whereas capital does affect the level of a universal credit award. Indeed, there is no entitlement to universal credit where someone has capital over £16,000 (subject to various 'disregards' – for example, assets used wholly or mainly in the claimant's trade).

Maintenance for children or ex-partner

Normally maintenance payments are not taxable in the hands of the recipient, nor are they tax-deductible for the payer. However, very limited relief may be available for those where at least one spouse or civil partner was born before 6 April 1935.

Beware, though, of any interaction with means-tested benefits, especially as the rules can vary across different benefits. For example, as explained on LITRG's Revenue Benefits website aimed at advisers (see https://tinyurl.com/ya2uryvr), spousal maintenance is taken into account as unearned income for universal credit claimants.