Two individuals – or a couple?

General Features | Personal tax

01 July 2015

LITRG report on the current couples taxation guidance

Key Points

- There is no single definition of a couple for taxation and state benefit purposes, leading to confusion
- Published guidance is not as helpful as it might be
- The individuals may not agree themselves as to whether they are a couple; even if they do agree, the state may take a different view

The Low Incomes Tax Reform Group (LITRG) has published a report, *Couples in the tax and related welfare systems – a call for greater clarity*, highlighting areas of concern and calling for better guidance.

Throughout this article we will refer to marriage, married couples and to spouses. Such terms should be read to include gay marriage, civil partnerships and civil partners as appropriate.

Recognising a couple

The report acknowledges that part of the reason why it is difficult to define a couple is due to changes in society, meaning that more people live together rather than opting for more traditional marriage – and still others in equally committed relationships, perhaps even married couples, who choose to live separately, perhaps because of family or work commitments.

Even deciding whether a marriage or unmarried relationship is still recognised by the state can prove difficult when separation takes place, due to questions such as establishing the date of separation and how long certain tax advantages are

enjoyed, or state benefits restricted, after the couple parts.

The research highlights that the taxation system broadly recognises marriage and ‘rewards’ it with various reliefs. Similarly, the state benefits system gives special recognition to marriage when considering eligibility for the state pension and bereavement benefits. Unmarried couples, though, are recognised more in the state benefits system, often with the result of curtailing benefits for a couple as compared with the benefits due to two single people. More recently, the high income child benefit charge has imposed an income tax charge on anyone who receives, or whose partner receives, child benefit if certain conditions are satisfied.

The report concludes that unmarried couples tend not to be recognised in the tax and welfare systems if an advantage might be obtained, whereas they tend to be recognised if a benefit might be restricted or a tax charge imposed.

Scope of the report

The report concentrates only on those areas expected to affect the low income taxpayer, in particular:

- How the law and practical rules relating to key income tax charges, allowances and state benefits (in which term we include tax credits) apply to couples – focusing primarily on how couples are defined for each purpose.
- Identification of some obvious areas of unfairness, inconsistency and uncertainty.
- How the rules are explained and enforced by the government departments that administer them, picking up on areas of particular compliance activity.

Recommendations

- Upgrade the guidance on GOV.UK to, as a minimum, the standard of guidance that used to exist on the HMRC website, particularly in relation to claims for tax credits.
- Provide an online tool to enable individuals and couples to establish their status for various taxes and benefits.
- Provide guidance on the type of evidence used by government departments to determine ‘couple status’.

- Consider the introduction of a formal ‘registration’ process by which a couple might declare their status to be used for all government purposes. Similarly an ‘abandoned’ partner ought to be able to declare what has happened and so end the registration.
- Ensure bereavement benefits are available not only to bereaved spouses but also to those who lose de facto spouses.
- Consider introduction of a standard definition of when separation takes place.
- Consider whether allowances transferable between spouses might be made transferable between non-married couples also.

Illustration of some of the issues

The report looks at seven ‘couples’ in common scenarios who may have difficulty in establishing their status. Making the wrong decision can have devastating consequences, particularly in relation to tax credits. Claimants now have little guidance on GOV.UK as to what constitutes a couple for different purposes and also have no way, in some cases, of knowing the criteria used by government departments to determine their status.

Debbie and Daniel are married with a son, David. Debbie has recently moved out of the jointly-owned family home, taking David with her. She believes the marriage is over and they are permanently separated, whereas Daniel does not: he thinks the separation may be only temporary.

Regardless of whether the separation is temporary or permanent, any claim to the new marriage allowance would still be allowed, until divorce. Similarly, assets transferred between them could still continue with no IHT implications. However, if Daniel decided to transfer some of his share portfolio to Debbie, the question as to whether their separation was temporary or permanent would be relevant. He could only transfer shares without CGT charge in the period up to the end of the tax year when they became permanently separated.

Further, because Debbie and Daniel jointly own their family home, the date of separation will start the clock for calculating the previous 18 months of ownership and thus the ability to sell the property without Debbie becoming potentially liable to CGT.

Debbie and Daniel may well have been making a joint claim for tax credits. If so, Daniel would be inclined to continue with this because he considers the separation to be temporary; meanwhile Debbie might try to make a new claim as a single person because she considers the separation to be permanent.

If Debbie later did make an attempt at reconciliation, this could further complicate matters, perhaps leading HMRC to believe they had never been separated and her claim to tax credits was fraudulent. This issue could be exacerbated if Debbie had not changed her address for various purposes and their mortgage remained in joint names.

An alternative scenario might be that both believed the separation to be permanent but, while Debbie was seeking alternative accommodation, she did not change her address on bank accounts and occasionally stayed at the property, sleeping on the settee, when Daniel was seeing their son. In this case the couple are certain about their status, but the state might take a different view.

In cases where disagreements or uncertainties arise on ‘couple’ status, there can be substantial stress placed on the family as well as considerable financial penalties for getting the status wrong. It is surely time to simplify the legislation and provide adequate guidance to the public to minimise costs for everyone.