CHAPTER 11

INTER-SPOUSE TRANSFERS

11.1 The "no gain no loss" rule

When an asset is transferred between husband and wife or civil partners, there is a disposal by the donor for CGT purposes. However, **this disposal is deemed to take place at "no gain no loss"** – i.e. neither a gain nor a loss arises to the donor as a result of the disposal. TCGA 1992, s. 58

This "no gain no loss rule", **only applies to disposals between spouses**. From 6 December 2005, **the term "spouse" includes a civil partner** under the Civil Partnerships Act 2004. The rule does not apply to transfers of assets between parents and children, brothers and sisters, or partners who are not married.

When an asset is transferred between spouses, the donee spouse – i.e. the person receiving the asset – is deemed to have bought that asset from his or her spouse.

Illustration 1

In March 2011, Mary transferred a piece of land to her husband Jeffrey. Mary had bought the land for £20,000 in September 2001. This is a disposal by Mary for CGT purposes, so we need to put together Mary's CGT computation:

	£
Deemed proceeds	20,000
Less: cost	(20,000)
Gain	Nil

Because this is a disposal between spouses, it takes place at "no gain no loss". Mary's capital gain will therefore be zero. Jeffrey is deemed to have paid Mary such an amount so as to produce a gain of nil. We therefore assume that Jeffrey has paid Mary £20,000 for the asset. This figure is exactly equal to Mary's cost.

We are pretending that Jeffrey bought the asset for £20,000 in March 2011. When Jeffrey comes to sell the asset, this will be his base cost for CGT purposes.

11.2 Separating spouses

TCGA 1992, s. 58(1)

This "no gain no loss" treatment **applies until the end of the tax year in which the couple separate.** For example, if a couple separate part way through the tax year 2010/11, any transfers between them up until 5 April 2011 will take place at no gain no loss. "No gain no loss" treatment does not apply after 6 April 2011 because the couple are separated. The fact that the couple may be legally married (or civil partners) until the date of divorce or dissolution is irrelevant.

Transfers between individuals who are not living together as husband and wife (or as civil partners) take place with proceeds being deemed to be equal to the market value of the asset.

11.3 Indexation allowance and inter-spouse transfers

If the "no gain no loss" transfer occurred prior to 6 April 2008 there may be indexation allowance consequences to consider. In an examination, **you would not be required to calculate an amount of indexation allowance** but you may see it referred to in a question. The following explanation has been included to help you understand where a figure for indexation allowance comes from and how to treat it.

Indexation rules

Prior to the CGT changes in Finance Act 2008 another deduction, the indexation allowance, was given in calculating certain capital gains. This idea of indexation was to give relief for the effects of inflation and the allowance was calculated by reference to increases in the **Retail Prices Index** (RPI). TCGA 1992, s. 54

The RPI is the Government's way of tracking inflation on a monthly basis.

For disposals made by individuals prior to 6 April 2008 an indexation factor was calculated as follows: TCGA 1992, s. 54(1A)

$$\text{Indexation factor} = \frac{\text{RPI at disposal/April 1998 - RPI at acquisition}}{\text{RPI at acquisition}}$$

This factor was rounded to 3 decimal places and the acquisition cost of the asset was multiplied by the factor in order to arrive at the amount of indexation allowance which was then deducted in arriving at the gain.

Indexation allowance for individuals was frozen at April 1998 so the RPI figure for the month of disposal could not be any later than April 1998. If the asset was acquired on/after 6 April 1998, no indexation allowance was available.

For disposals made on/after 6 April 2008 indexation allowance is not available, even where an asset was acquired before 6 April 1998.

Illustration 2

In May 1992, Dave buys a vase at a cost of £20,000. In September 2007, he sells the vase, realising net proceeds of sale of £75,000.

As the acquisition took place before 6 April 1998, Dave will get some indexation allowance to reduce the cash gain. The first thing we do is calculate the indexation factor. The indexation factor runs from the date of acquisition May 1992 to April 1998:

$$\text{Indexation factor} = \frac{162.6 - 139.3}{139.3} = 0.167 \text{ (rounded to 3dp)}$$

The indexation allowance is calculated by taking the indexation factor and multiplying it by acquisition cost.

Indexation allowance = Indexation factor x acquisition cost
= 0.167 x £20,000
= £3,340

The indexation allowance is deducted from the cash gain to give the chargeable gain. The whole computation is therefore as follows:

		£
Proceeds		75,000
Less: cost		(20,000)
Cash gain		55,000
Less: indexation allowance		
$\frac{162.6 - 139.3}{139.3}$	(0.167) x 20,000	(3,340)
Indexed gain		£51,660

Indexation allowance and inter-spouse transfers

Let us consider the CGT computation on the transfer of an asset between two spouses prior to 6 April 2008. The donor spouse is deemed to have received proceeds from the donee spouse. From these deemed proceeds, we can deduct the donor's cost and indexation allowance.

As this is a transfer between spouses, we know that it will be "no gain no loss". So proceeds less cost less indexation allowance gives zero. For the numbers to produce a zero result, the **deemed proceeds in the computation for the donor spouse must be exactly equal to the cost plus the indexation allowance.**

Deemed proceeds received by donor	P
Less: cost	(C)
Less: accrued indexation	(IA)
No gain no loss	NIL

We need to prepare this computation in order to arrive at the CGT base cost for the donee spouse. The donee spouse is **deemed to have paid the donor an amount equal to the donor's cost plus accrued indexation allowance,** and this will be his or her base cost to carry forward for CGT purposes.

Illustration 3

Richard buys a shop in May 1993 for £100,000. In July 2002, he gave the shop to his wife Judy. She sold the shop in October 2010 for £195,000.

In order to calculate Judy's capital gain, we must first calculate Judy's base cost for CGT purposes. Judy is deemed to have paid Richard an amount equal to his cost plus accrued indexation:

	£
Cost (May 1993)	100,000
Add: indexation (May 1993 – April 1998)	
$\frac{162.6-141.1}{141.1}$ (0.152) x 100,000	15,200
Judy's base cost in July 2002	£115,200

On the disposal by Judy the capital gain is calculated as:

	£
Proceeds	195,000
Less: cost (July 2002)	(115,200)
Gain	£79,800

As a result of the inter-spouse transfer, prior to 6 April 2008, Judy has obtained the benefit of indexation allowance, even though the sale took place after 6 April 2008.

Note that if Richard had transferred the shop to Judy in July 2002, Judy's base cost would have been £100,000 and the gain in October 2010 would have been £95,000.

11.4 *CGT* planning

In order to reduce the CGT liability for the family, it is good tax planning to try to ensure that both spouses use their annual exemptions each tax year. Therefore if one spouse owns no chargeable assets, and does not make use of his or her CGT exemption, a "no gain no loss" transfer, followed by a sale of the asset, can ensure that the exemption is utilised and will bring down the overall tax bill.

'No gain no loss' transfers can also be utilised to enable brought forward losses to be offset efficiently.

Finally, if one spouse has unused basic rate band and the other is a higher rate taxpayer, no gain no loss transfers can be used to ensure gains are realised by the spouse who will be charged to tax on the gains at the lowest rate.

Illustration 4

A taxpayer owns 1,000 shares in a company. The shares are currently worth £30,000. The taxpayer wishes to sell them, and if he does, he will make a capital gain of £18,000. This is above the annual exemption, so the taxpayer will pay CGT on the disposal. Before the sale takes place, the taxpayer gives half of the shares to his wife. This is a "no gain no loss" transfer, so no tax will arise.

Both spouses now have 500 shares. The husband sells his shares, and realises a gain of £9,000. His wife then sells her shares, and her gain will be the same – i.e. £9,000. Both gains are covered by each taxpayer's annual exemption. This is a very common way of reducing the overall CGT liability.

11.5 Gifts to charity

Where an asset is transferred from an individual to a charity, the same no gain no loss rules, which apply for transfers between spouses, also apply. TCGA 1992, s. 257

So effectively the charity is deemed to have acquired the asset at the same time and for the same price as the donor.

Example 1

Humphrey gave an antique chamber pot to his wife Cynthia in May 2002. Humphrey had bought it in July 2001 for £4,000.

Cynthia sold the chamber pot in August 2010 for gross proceeds of £7,200. She incurred a valuation fee of £200 on the sale.

Calculate Cynthia's chargeable gain.

Answer 1

Transfer by Humphrey (May 2002):	£
Deemed proceeds	4,000
Less: cost	(4,000)
No gain no loss	Nil

Disposal by Cynthia (August 2010):	£
Gross proceeds	7,200
Less: expenses	(200)
Net proceeds	7,000
Less: cost (above)	(4,000)
Gain	£3,000

Restrict to:

$\frac{5}{3}$ × (7,200 – 6,000) £2,000