



Personal Use of Company Money

Brendan Walsh - Accounts Manager

For many directors it can be difficult to separate the concept of company money and personal money. Dipping into the company pot for additional funds for personal use may appear to be an easy option or considered a right, however, with the Office of the Director of Corporate Enforcement (ODCE) pursuing an increased number of convictions each year for the breach of the Companies Act in this regard it is time for all directors to take note of their rights to accessing company money and assets.

Under the Companies Acts 1963 to 2009 a company is a separate legal entity and therefore all assets must be treated as being owned by the company and not its directors or shareholders. Section 31 of Companies Acts, 1990 prohibits companies from entering into certain types of transactions, which would otherwise be lawful, for the benefit of a director or a party connected with a director. The legislation was introduced to prevent the controllers of companies abusing their positions of power by diverting company assets to themselves, whether directly or indirectly, and diminishing funds available for the payment of creditors. A company may not:

- Make a loan, quasi loan, or guarantee to a director of the company or of its holding company or to a person connected with such a director;
- Enter into a credit transaction as creditor for such a director or a person so connected;
- Enter into a guarantee or grant security in connection with a loan, quasi-loan or credit transaction to any other person for such a director or a person so connected.

Section 32 of the Companies Act 1990 sets out provisions governing the use of company assets by persons other than the company, with the following exemptions:

- arrangements not exceeding 10% of relevant assets;
- arrangements approved by special resolution and accompanied by a statutory declaration describing the circumstances;
- arrangements between group companies;
- directors' expenses properly incurred in developing the business;
- transactions made in the ordinary course of business, e.g. by banks.

All transactions, whether prohibited or not, must be disclosed in the company's financial statements. It is important to note that some of the above permitted transactions may result in a tax liability for the company and/or individual.

The company auditor is required by law to report non-compliance to the ODCE. The ODCE considers if the circumstances of the offence warrant legal action against the directors and other relevant persons. In some, but not all, cases the ODCE will be satisfied by evidence that the directors have voluntarily corrected the default, within a strict time frame. Section 40 of the Companies Act 1990 provides that every officer of the company is potentially guilty of an offence if the company enters into a transaction or arrangement that contravenes section 31 of the Companies Act 1990.



The principal legal options open to the ODCE include prosecution of the directors and other relevant persons or High Court proceedings to remedy the default. A decision to pursue legal action is likely to be made where the available evidence suggests, among other things, that the directors knowingly breached the law in undertaking any transaction, the aggregate amount of the transactions was large, there was persistent default and/or satisfactory evidence of rectification has not been forthcoming. If an insolvent company ceases to trade and a transaction remains outstanding, the directors may also face High Court restriction or disqualification proceedings by the company's creditors, its liquidator or the ODCE.

Now is the time to review any balance owing to your company or transactions entered into which are in breach of the above and to implement policies to ensure these forms of transactions are monitored and regularly reviewed.

Contact Details

Joyce House
22/23 Holles Street
Dublin 2

Clonhaston
Enniscorthy
Co. Wexford

T: +353 1 669 9999 / +353 53 92 33333
F: +353 1 669 9777 / +353 53 92 34403
E: info@hughesblake.ie

www.hughesblake.ie

www.examinership.ie

Quarterly Newsletter



HUGHES BLAKE

CHARTERED ACCOUNTANTS



Merry Christmas and best wishes for the New Year, from all at Hughes Blake



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Anthuan Xavier joins Hughes Blake as Chairman

Hughes Blake Chartered Accountants recently announced that it has appointed Anthuan Xavier, one of Ireland's most experienced and successful practice accountants and accomplished business leaders, as Chairman of the firm.

Commenting on the appointment Neil Hughes, Managing Partner of Hughes Blake said: "Our track record in delivering for our clients has enabled us to grow rapidly over the past five years with the firm trebling in size over that period. We have ambitions to build further on this growth by investing in particular areas of expertise over the months and years ahead."

Speaking about his new role, Anthuan Xavier said: "I am delighted to have the opportunity to join Hughes Blake in the role of Chairman. The entrepreneurial approach that the management team brings to the firm is extremely refreshing and differentiates it from others in the profession in Ireland at this time. The ability and willingness to be flexible to meet a client's needs and adapt to the changes in the business environment are critical skills that will help to drive growth."

'I look forward to working closely with the Partners and team at Hughes Blake as we work to support the firm's clients through these unpredictable times.'



A Fellow of the Institute of Chartered Accountants, Anthuan has over 30 years' experience with specific focus on corporate finance and corporate restructuring. He has a considerable reputation within the Irish business community, built through a highly impressive track record of being a Director of companies in fund management, fund administration and insurance brokerages, supplemented by being Chairman of a cross section of highly successful businesses ranging from €6m to €100m turnover in manufacturing, retail, property, construction, asset management and IT Services.

Anthuan's experience in building the most successful indigenous accountancy firm in Ireland from start-up to 500 people will be invaluable to us as we plan for our future. Despite the ongoing challenging outlook there are significant opportunities in Ireland for firms that focus on the delivery of high quality advice and service. We are delighted that Anthuan has recognised that Hughes Blake brings something unique to the Irish market and we look forward to working with him to maximise the opportunities in the years ahead," he concluded.

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Civil Partnerships

Edel O'Keeffe - Tax Consultant

Introduction

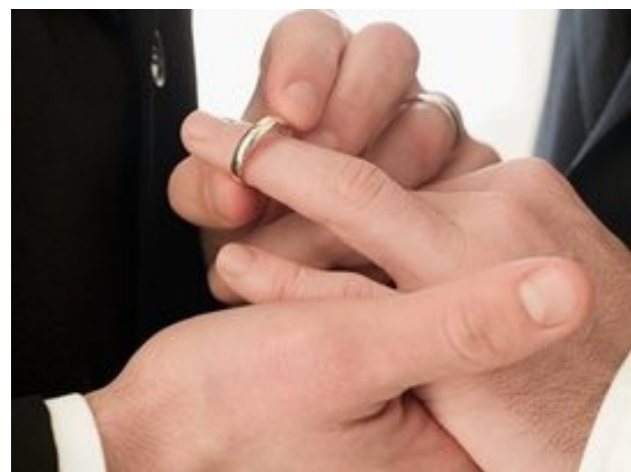
The Civil Partnership and Certain Rights and Obligations of Cohabitants Act was passed on 19th July 2010. This Act allows same sex couples to register their civil partnership, which in turn entitles them to the majority of the rights and responsibilities of a married couple. The Act also established a redress scheme in respect of cohabitants (outside of married couples or civil partnerships). In summary, the redress scheme allows one cohabitant to make a financial claim against the other cohabitant at the end of their relationship. The end can be defined as the breakdown of the relationship or death. The Finance Act 2011 implements the necessary amendments in the tax legislation relevant to the rights conferred on civil partners and cohabitants in the 2010 Act.

This article will focus primarily on the tax changes and implications that have been introduced by the Finance Act 2011 and the related impacts on both civil partners and qualifying cohabitants.

Civil Partnerships

Some civil partnerships will, inevitably break down. When a civil partnership dissolves the courts must ensure that proper financial guidelines exist or is put in place for the civil partners. The 2010 Act provides the court with a system so that this objective can be achieved.

In order to apply for the dissolution of a civil partnership, the civil partners must have lived apart from one another for a period of two years out of the previous three. In comparison to divorce which requires a married couple to



be living apart for four years out of the previous five. During the period between the breakdown of the relationship and the dissolution of the civil partnership there is no provision for legal separation, although short term applications for maintenance can be made.

Qualifying Cohabitants

For the purposes of the 2010 Act, a qualifying cohabitant means an adult who is living with another adult as a couple in an intimate and committed relationship for a period of:

- Two years if they are parents of one or more dependent children and
- Five years or more in any other case.

The 2010 Act establishes a redress scheme for qualifying cohabitants.

Cohabitant Contract

Under the 2010 Act, a cohabiting couple can choose to enter into an official cohabitant contract. By doing this, they can opt out of the redress scheme if they so wish. However, certain conditions apply to the same. The contract, which can document the principles and parameters of the relationship must be in writing and signed by both cohabitants. From a legal perspective, both cohabitants must receive independent legal advice or else receive legal advice together and have waived (in writing) their right to receive independent legal advice. Courts have the power to change or set aside such a contract where it is deemed to cause an injustice to either cohabitant if enforced.

Conclusion

The changes to legislation via the 2010 Act and the Finance Act 2011 have in general terms been widely welcomed. The redress scheme needs to be carefully reviewed by cohabiting couples, as although the five year period refers to circumstances pre 1 January 2011 determining qualification, the provisions themselves only apply from 1 January 2011. This Act should focus couples on their longer term intentions before entering a cohabiting relationship. However, if they pro-actively decide that they do not wish to avail of the provisions under the redress scheme, they can legally agree a cohabitant contract and therefore opt out of them.

	TAX IMPACT	BREAKDOWN OF CIVIL PARTNERSHIP
INCOME TAX	<p>Civil partners can choose 1 of 3 ways to be assessed:</p> <ol style="list-style-type: none"> 1. Separate treatment – assessed as if he/she were a single person 2. Joint assessment – either civil partner may be taxed on the joint income of both civil partners 3. Separate assessment – each civil partner is assessed independently of the other. However at the end of the year, a civil partner can claim any unused tax credits or unused standard rate bands from the other civil partner resulting in a reduction of the overall tax liability. <p>The civil partners have a choice as to how they would like to be assessed. If civil partners don't choose as to how they would like to be assessed for income tax purposes, then they will be jointly assessed and will continue to be jointly assessed unless they notify the Revenue Commissioners in writing confirming that they no longer wish to be jointly assessed.</p> <p>If civil partners elect to be joint or separate assessed it could possibly give rise to a tax saving where the income of one of the civil partners was not sufficient to use up fully all the tax credits and standard rate band available to him/her. He/she can now transfer the additional credits/band to the other civil partner and therefore, reduce their total tax liability.</p> <p>If the income tax payable under joint assessment was less than the income tax payable if they were treated as 2 single individuals in the year of registration, the civil partners can claim a refund from Revenue. This is identical to marriage relief for a couple in the year of marriage.</p> <p>If one of the civil partners dies, the surviving civil partner becomes entitled to additional tax credits in the year of death and in subsequent years. A greater standard rate band can also be availed of by the surviving civil partner in subsequent years if there are dependent children.</p>	<p>If a civil partner makes (legally enforceable) maintenance payments to the other civil partner, this payment is liable to income tax for the receiving partner. Also, the civil partner making the maintenance payment can claim an income tax deduction for the same.</p> <p>If the civil partners elect to continue to be jointly assessed, then the above income tax implications can be ignored.</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>
CGT	<p>Transfer of assets between civil partners carry the same capital gains tax provisions as those applying to married couples. Such transfers between civil partners that live together are treated as no loss/no gain for capital gains tax purposes and therefore give rise to no tax liability. Further to this, the receiving civil partner is deemed to have acquired the asset in question at the original purchase date and for the original cost.</p>	<p>If a court orders the dissolution of a civil partnership, any assets that are transferred as a result of this, are not subject to capital gains tax.</p>
CAT	<p>Gifts or inheritance transacted between civil partners are now exempt from capital acquisition tax and will not be taken into account for aggregation purposes. Also under this 2011 Finance Act Revenue has announced that a child of a civil partner now comes under the Group A threshold in respect of gifts and inheritances the child receives from the civil partner - his/her mother or father.</p>	<p>If a court orders the dissolution of a civil partnership, any assets that are transferred as a result of this, are not subject to capital acquisitions tax.</p>
STAMP DUTY	<p>Transfers between civil partners are exempt from stamp duty under the Finance Act 2011.</p>	<p>If a court orders the dissolution of a civil partnership, any assets that are transferred as a result of this, are not subject to stamp duty.</p>