



MARITAL STATUS: *Marriage vs Cohabitation*

When it comes to tax time, it's best to be informed so you make the best of your lot. Over all, marital status works as follows:

- Single, widowed and divorced taxpayers submit an individual return;
- Married couples can elect to file a joint or a separate declaration.
- Separated couples who are not divorced may file separately. This is usually advisable since both spouses are responsible for meeting all fiscal obligations under a joint return.
- Unmarried couples living together for more than two years, whether of different or the same sex, may also file a joint return if they share the same address.

LEGAL FRAMEWORK

UK: *Common Law Marriage*

People often refer to couples who live together as "*common law*" husbands and wives. There is, in fact, no such legal status in the UK although it does exist in 10 States in the US as well as provinces of Canada and Australia. UK law formally describes such domestic partnerships as "*cohabitation*".

PT: “*União de Facto*”

Cohabitation is legal status that recognises the union of two people without the need of a civil marriage. (*Lei 7/2001, de 11/05; Lei 23/2010 de 30/08*)

PT Tax Implications - Under the “*IRS*” tax code, cohabiting couples have equal treatment to married couples.



SEPARATION

UK: A cohabiting couple can separate informally without court intervention, whereas a married couple needs to go to court to end the marriage formally. In both cases, the court has power to make orders relating to the care of the children.

PT: Cohabiting couples separate informally under their own volition. Married couples can divorce by mutual consent declared before a Notary.

PT Tax Implications: “IRS”: loss of eligibility to the “*marriage coefficient*” and possible loss of other tax credits.

DIVISION OF ASSETS

UK: If no agreement exists, an ex can walk away with the savings and possessions that he/she built up out of his/her own money. Where bought together but each contributed different amounts, ownership is proportional.

PT: For cohabiting couples in Portugal, no formal rights exist to divide the assets either after a split or upon death of one of the partners. Where bought together, ownership is proportional.

PT Tax Implications - Gratuitous transfers (gifts) assessed Stamp Duty of 10% when not next-of-kin.

HOUSING

UK: *Tenancy Rights* - The cohabiting partner of a tenant does not have the right to stay in the accommodation if the tenant asks him/her to leave. In a marriage, both partners have the right to live in the matrimonial home. The situation is identical for a rented home.

PT: A survivor has the right to stay in the home for 5 years or a period equal to the duration of the union following the death of the partner; In a sale, the survivor has the right of *first refusal*; In case of separation, rental contracts can be transferred to the former partner.

PT Tax Implications - Tax credit for rent or mortgage on principal residence with an upper limit of €591.



QUESTIONS & ANSWERS

The following questions and answers should point you in the right direction.

I got married in October. Should my wife and I file separate income tax declarations for the period of the year that we were still single?

No. You may only file a joint return because it is your status at the end of the tax year that counts. This, in fact, should work out to be in your favour since a couple normally pays tax less tax than two individuals.

My boyfriend and I have been living together for several years. Should we file separate returns or can we file jointly?

While either is possible, unmarried couples may file a joint return and both must sign the return. To qualify for this status, you must have been living together and registered with Finanças at the same address for at least two years. This status applies to both heterosexual and homosexual couples. It's a good idea to run a simulation before finalizing your return to be sure which status is most advantageous.

Attention: *While unmarried couples are treated the same as married couples for IRS income tax purposes, there is no carryover of this equality to other forms of taxation. This is specially important in planning for Inheritance Tax. Unmarried couples normally have no succession rights, with marital and/or blood relations taking precedence. While Estate Planning is advisable for everyone, it is imperative in the case of unmarried couples.*



My wife and I broke up last year but we are not yet divorced. Do we still have to file a joint return or can we now file separately?

Both ways are accepted although your circumstances may make separate returns more practical. If filing individually, remember that both cannot claim the same dependents or deductions.

My spouse passed away last year in May. How should I declare?

The death of a spouse must be reported in the tax return. The survivor submits a tax return, ticking the widow/widower box for marital status and reports the fiscal number of the deceased. Both incomes, as well as deductions and credits, need to be reported on the appropriate annexes.

In some instances, the estate may generate income prior to final resolution that will need to be reported as well. If there are complications or delays in the settlement of the estate, it is strongly advisable to seek professional advice.

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29 March 2018

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