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FORM 17 declaration - joint property and income

Many married owners of jointly owned rented properties assume that so long as they declare the profit on one of their individual tax returns then that is their legal liability done.

But, this is not necessarily correct, particularly if there is an uneven split of income and the taxpayers may need to complete a form 17. This factsheet covers the basic requirements of form 17 and considers the options it provides for efficient tax planning.

Types of ownership

There are two ways in which more than one person can own a property, either as:

1. **Joint tenants**

   Here, each is deemed to own an equal share in the property. So three joint tenants will be entitled to a third share of any income or capital gains arising from the one property. When one owner dies, the property is automatically transferred to the other joint tenants in equal shares and none can sell their share without the others' permission. The legal rights of the surviving parties to a joint tenancy override a will even if the will explicitly leaves the deceased's share to someone else. The legal presumption is that any proceeds of sale will be divided equally whatever the proportions in which the parties have actually contributed to the purchase price, and/or to the maintenance of the property or mortgage,. To place a house in joint names is to make a gift of any excess contribution to the other party.

2. **Tenants in common**

   Here, the share of each owner is separate, may be unequal and can be disposed of in lifetime or on death, as the respective owner wishes.

Two or more unmarried people may own property either as joint tenants or tenants in common, although it is more usual to be held as tenants in common. The default position of property ownership by spouses/civil partners is as joint tenants.

A joint tenancy ownership can be changed into a tenancy in common ownership at a later date, but a tenancy in common cannot be changed into a joint tenancy.

Tax position

Unmarried owners

With a property owned by unmarried parties, or held within a formal business partnership, the tax follows the beneficial ownership (which owner paid the greater deposit, took out the bigger loan for purchase etc) rather than legal ownership (the name on the legal documentation including the deeds).

This does not mean that the rental profit or loss must be allocated in the same proportion as the underlying beneficial ownership. Rather, the owners can agree a different split as they see fit, the proportion referring to profits and losses only and not necessarily to the capital received should the property be sold. Form 17 is irrelevant to unmarried owners of joint property however held.

Married owners – the point of form 17

By default, tax law **(s836 ITA 2007)** holds that rental profit from property jointly owned by spouses/civil partners is taxed 50:50 irrespective of the underlying respective proportion of actual ownership - although this does not apply to property held within a formal business partnership.

If it would be more efficient for income tax purposes to split the profit differently, then the profit may be divided according to that beneficial ownership. Such unequal ownership is achieved if the legal title is held as tenants in common and if a **form 17** is completed and submitted to HMRC.

Form 17 must be signed jointly - if one spouse/civil partner does not sign then both must accept the standard 50:50 default split.

The form must be submitted within 60 days of the date of the declaration and cannot be backdated, the time limit being strictly enforced with no power of extension.

Once HMRC has been notified the new proportions remain in force until the couple's beneficial interests in the property change, or one spouse/civil partner dies or they stop living together as a married couple/civil partners.

The importance of a declaration of trust

The specified share of a property held as tenants in common is not shown on the title deeds of the property, so how much each individual owns and under what terms is recorded in a formal document known as a “declaration of trust”. The declaration of trust is then signed by all parties and recorded on the property register at the Land Registry. A declaration of trust is the evidence which must also be sent to HMRC (along with the Form 17) showing that the property is being held jointly in unequal shares. A declaration of trust costs approximately £300 -£350 to obtain from a solicitor.

Practical Points

- The proportion as per the form 17 submission continues for all later years and there is no limit on the number of times a form can be submitted. But the revised proportions can only be changed specific to the events given above. The smallest change of interest cancels the declaration with the tax split automatically defaulting to the standard 50:50 unless a fresh declaration is made. Therefore, the change need only be 1% in ownership in order to arrange a different tax split, which may be necessary depending upon the respective tax rates of the owners.
- It is suggested that whenever a married couple purchase a property together, they do so as tenants in common and sign a declaration of trust. They can then submit a form 17 election even if it is wished for the 50:50 tax split to be used, the reason being that once the election is made it can be changed whenever required; without it, nothing can be done.
- Form 17 is not required where the property is a furnished holiday let.

Capital Gains position

Regardless of how the rental income is treated for income tax purposes, it is the underlying beneficial ownership that determines the capital gains tax treatment on sale. Therefore, from a tax planning point of view, any allocation at the time of sale should seek to ensure the full CGT allowance can be used by each owner. Thus, where a married couple has originally chosen, say a 90:10 split, the declaration may need to be revised, preferably a few months prior to the actual sale of the property, which should give HMRC enough time to record the required changes.

A transfer of beneficial interest from one spouse to another is a CGT disposal, albeit no CGT will arise as it is deemed to be a disposal at 'no gain/ no loss'.

A final sale of the property however could of course trigger capital gains tax if the gain for each party selling their share of the property exceeds the CGT annual exemption.

It is always worth asking us to produce draft CGT calculations before any actual sale so as to minimise CGT.

If you would like to discuss this factsheet in more detail, do contact us.

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