

Tax treatment of jointly owned assets (Lecture P1412 – 13.31 minutes)

Anticipating the abolition of the Office of Tax Simplification by what is now s.347 F(No2)A 2023, the Chancellor gave the following promise in a letter dated 20 March 2023 to the Chair of the Treasury Committee:

‘Officials in the Treasury and HMRC have been given a clear mandate to focus on simplicity in tax policy design. This work will be delivered through an existing strategic function working across the Treasury and HMRC, concentrating on looking at opportunities to simplify existing tax rules, as well as new policy and administrative changes.’

In line with this commitment, the Association of Taxation Technicians (ATT) produced a representation paper on 10 October 2023 in which they recommended that the Government should ‘align the income tax treatment of assets which are jointly owned by co-habiting spouses and civil partners with that applying to any other joint owners.’

The ATT consider that these rules, which are mainly relevant for land and buildings but which also apply to other assets such as bank accounts, are unnecessarily complex and poorly understood. They have therefore selected this topic as an initial test to see whether the Government are really prepared to honour their pledge of earlier this year.

The rest of this chapter refers to marriage and married couples, but the notes should be understood as applying equally to co-habiting civil partners.

Background to the problem

For many years, property has been able to be held by two parties as tenants in common in unequal shares, usually to reflect the capital contributed by each when acquiring the asset. For example, if Patrick and Carole buy a freehold house together which they intend to rent out, they might be considered to own it in the ratio 75 : 25 in line with their respective capital payments. In a situation such as this, it makes no difference whether the joint owners are married or unmarried.

Having gone to the trouble of documenting their unequal ownership split (typically via a Declaration of Trust), Patrick and Carole are likely to assume that any subsequent income generated by their property investment will be shared in the same unequal proportions. However, this is not the case for married joint owners. S.836 ITA 2007 deems such income to be subject to an automatic split on a 50 : 50 basis between the two parties, although there are specific exceptions for income from:

- furnished holiday accommodation;
- partnerships; and
- shares in close companies.

In contrast, income derived by unmarried joint owners is divided for income tax purposes by reference to each party’s actual beneficial ownership.

It is this inconsistency between married and unmarried joint owners which, in the opinion of the ATT, causes unnecessary tax complications.

There are some further implications which are considered below. For example, if unmarried joint owners such as Patrick and Carole subsequently marry and live together, any intended unequal division of their income is overridden. This is because of the 50 : 50 rule in s.836 ITA 2007. If, therefore, Patrick and Carole want their future income tax liabilities to reflect their unequal ownership shares, they must sign and submit Form 17 to HMRC within 60 days. This is the declaration required by s.837 ITA 2007. As a practical point, Form 17 must be filled in completely before it can be printed out.

The declaration cannot be backdated and so the couple need to sign the form as soon as they are married and return it to HMRC within 60 days of the date of signing in order to retain their current split of income.

Similarly, if a married couple buy property jointly in unequal shares, they need to submit a Form 17 in order to override the deemed 50 : 50 split of income in favour of taxation based on their beneficial ownership of the asset.

If a married couple subsequently modify their beneficial ownership shares, another Form 17 is required to be sent in so as to avoid a return of the deemed 50 : 50 split of income. No such requirement exists for unmarried joint owners, given that they simply have to report the appropriate amount of income which reflects their interest in the property after the change.

When a married couple, who have correctly disclosed their income from a jointly owned property on a 50 : 50 basis, come to sell the house or flat, they are likely to assume that the same 50 : 50 deeming provision will also apply for CGT purposes. However, this is not the case. On a sale, the share of any capital gain (or loss) arising will be determined in line with each party's beneficial interest in the property. In other words, the special 50 : 50 rule only applies for income tax, and not for CGT.

The ATT's recommendation

The ATT recommend that Ss836 and 837 ITA 2007 should be repealed so that a married couple who receives income from jointly owned property will be taxed in exactly the same way as unmarried joint owners of property, i.e. each owner's share of income should reflect their underlying beneficial ownership interest. As they put it:

‘We consider this will simplify the income tax treatment of jointly owned property, with no significant disadvantages or transitional costs.’

This seems like a sensible and practical proposal.

Contributed by Robert Jamieson