

Form 17 and its uses (Lecture P1283 – 9.28 minutes)

Background

Some assets (e.g. an investment property) will be jointly held in the names of a married couple (or civil partners). The general rule is that the couple is treated for income tax purposes as beneficially entitled to the property income in equal shares (commonly referred to as the '50:50 rule') (ITA 2007, s 836(2)).

The 50:50 rule applies while the couple are living together. For these purposes, a married couple are treated as 'living together' broadly unless they are separated under a court order or by deed of separation, or they are in fact separated in circumstances where the separation is likely to be permanent (ITA 2007, s 1011).

Unequal interests

However, this 50:50 rule is subject to certain statutory exceptions. Those exceptions are listed as A to E in the legislation at ITA 2007, s 836(3).

Exception B applies where the couple have unequal beneficial interests, and they submit a declaration to HMRC for their income from the joint property to be taxed based on their actual interests in the property, instead of on a 50:50 basis.

The individuals may make a joint declaration (under ITA 2007, s 837) if either one of them is entitled to the income to the exclusion of the other, or if they are beneficially entitled to the income in unequal shares, and their beneficial interests in the income correspond to their beneficial interests in the property from which it arises.

Form 17

The declaration must state the beneficial interests of the individuals in the income to which the declaration relates, and in the property from which that income arises. The form lists the circumstances in which it cannot be used, such as for partnership income or income from shares in a close company.

A declaration is only effective if made in such a form and manner as HMRC prescribe. In practice, declarations of unequal beneficial interests are normally made on HMRC Form 17, which is generally completed online on the Gov.UK website ([tinyurl.com/HMRC-Online-Form17](https://www.gov.uk/declaration-unequal-beneficial-interests)).

The declaration on Form 17 is made by both individuals jointly. Furthermore, individuals who are not spouses or civil partners (such as parent and adult child, or siblings) cannot make a Form 17 declaration.

The declaration must be submitted to HMRC within 60 days from the date of signature of the last spouse to sign; otherwise, it is invalid. HMRC generally enforces the 60-day time limit strictly and has no power to extend it. Late declarations are invalid and have no effect.

However, that does not mean that another declaration cannot subsequently be made. The couple can make another declaration and submit it to HMRC within the 60-day time limit if they wish, although only income arising after the date of the declaration is covered by it (ITA 2007, s 837(4)).

HMRC treats a valid declaration on Form 17 as continuing to apply in later tax years. Hence for a married couple, it continues until one spouse dies, or if the couple separate permanently or divorce, or until the beneficial interest of a spouse in the property or income changes (see TSEM9864).

Practical issues

It is important that spouses or civil partners check that they jointly own the property as beneficial 'tenants in common'. Property may be owned in an individual's sole name (i.e. husband, wife or civil partner), or as 'joint tenants', or as 'tenants in common' (although different rules apply in Scotland).

On the death of a 'joint tenant', the survivor takes the entire interest absolutely by operation of property law. By contrast, ownership as beneficial 'tenants in common' gives each spouse or civil partner a separate (typically equal) share of the property, which can be left by will or disposed of during lifetime.

A Form 17 declaration cannot be made if the couple own the property as 'joint tenants' (i.e. the property income cannot be split other than in equal shares). HMRC requires evidence that the couple's beneficial interests are unequal, such as a written declaration of trust. The declaration is only available if the individuals are beneficially entitled to the income in unequal shares, such as 80:20, or even 100:0 (ITA 2007, s 837(1)(a)); see TSEM9848).

Planning points

It is not possible for the couple to simply choose to end the split of income resulting from the declaration. However, it may be possible to stop the declaration on Form 17 having effect by making a small change of beneficial interest in the income or property, such as by one spouse transferring part of their beneficial interest to the other (ITA 2007, s 837(5)). HMRC accepts that even the smallest change of interest stops the declaration from running (TSEM9864). The 50:50 rule would then apply once again unless another declaration is made.

It may also be helpful to note that a Form 17 declaration applies on an asset-by-asset basis. The couple may choose to be taxed on their actual entitlement for some of their jointly-owned assets, but on the standard 50:50 basis for others. There is no limit on the number of declarations that can be made, provided that the relevant conditions are satisfied.

Contributed by Mark McLaughlin