Jointly Owned Property and Tax

The renting out of property produces rental income which is subject to income tax on the part of the beneficial owner of the property (less relevant tax-deductible expenses, such as management fees, repairs and maintenance, mortgage interest, etc.).

There are two ways for more than one person to own a property; as “joint tenants” or as “tenants in common”.

Joint tenants are deemed to own equal shares of the property. For instance, four joint tenants would own a quarter each and would therefore be entitled to a one quarter share of any income or capital gains arising from owning the property.

The rules for rent are different for a married couple or civil partners. They are deemed to receive the rent in equal shares irrespective of the underlying ownership of the property.

In the case of a couple who own a property as tenants in common, it is possible for them to elect to be taxed based on their actual ownership. If, for example, the split in the tenancy in common is 1% to the husband and 99% to the wife, the couple can complete a declaration under “Form 17” and send this to HMRC electing to be taxed on the basis of the underlying ownership split as 1:99. The split on a Form 17 must be the same as the actual ownership and the rent will only be taxed in that way from the date the Form 17 is signed and then only if the form is sent to HMRC within 60 days of being signed with evidence of beneficial ownership. A declaration that is late is invalid and has no effect at all. A declaration applies only to the asset or assets shown on it and any other property, including any assets bought later, is not covered. Couples may make numerous declarations in a year if they are constantly buying or selling investments in their joint names and holding them in unequal shares. In practice, couples with a big turnover of assets may prefer to avoid joint holdings. However, the declarations must reflect the actual ownership position.

Unlike the position with respect to spouse jointly-owned property, there is no automatic 50:50 split of rental income for income tax purposes. The split depends upon the agreement between the parties and does not need to be in line with underlying ownership percentages of the property. Thus, for example, if one person owns 90% and the other person owns 10% of the property, any rental income may be split as agreed. This may be 80:20, 70:30; 90:10, or whatever else is agreed. Therefore, Form 17 is irrelevant for non-spouse ownership; all that is required is that the parties agree the relevant rental income split, preferably in writing.

Changing the Split of Ownership

In legal terms, it is quite simple for joint owners to convert their ownership into a tenancy in common and for tenants in common to change the proportions in which they own the property. A solicitor should advise on exactly how to do this, but there are two points to note:
• If there is a mortgage on the property, it will probably be necessary to obtain the consent of the lender. Again, a solicitor can advise on specific cases.

• A change in the split of ownership is a “part disposal” for the purposes of Capital Gains Tax (CGT). The owner whose share is reduced will be deemed to have sold that proportion of his interest in the property at market value and may therefore be liable CGT on the deemed disposal. This does not, however, apply to married couples, where changes in ownership are treated as creating neither a gain nor a loss for CGT.

In the case of married couples or civil partners, it may make sense to have uneven split of ownership; for example, where one of the couple pays income tax at the higher rate of 40% and the other has no taxable income or only pays tax at 20%.

On the other hand, when one spouse owns 100% of the property, but is exposed to a marginal rate of income tax at the higher rate of 50%, whereas the other spouse has no taxable income, if just 1% of the property is transferred to the other spouse, rental income is automatically split 50:50, thus producing an income tax saving. The main downside to bear in mind is that, should you split up, the split of ownership is likely to determine how much of the property you get in a divorce!

This does not apply to capital gains; these are taxed in the same way as for other joint (or tenancy in common) owners and follow the actual split of ownership.