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# SIMPLIFYING THE INCOME TAX TREATMENT OF JOINTLY OWNED ASSETS

**Representation by Association of Taxation Technicians in respect of the Autumn Statement 2023**

## 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) considers that the rules governing the taxation of jointly owned property are unnecessarily complex and poorly understood, particularly among unrepresented taxpayers. This increases the risk of accidental non-compliance, resulting in additional costs for HMRC, taxpayers and professional advisers alike in correcting unintentional compliance errors.
- 1.2 Following the abolition of the Office of Tax Simplification, the Chancellor confirmed that “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.”<sup>1</sup>
- 1.3 In line with this mandate, our recommendation is to 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 (ie those who are neither married nor civil partners).
- 1.4 For simplicity, in the remainder of this response we refer to marriage and married couples, and assume they are living together, but this should be read as applying equally to cohabiting civil partners.
- 1.5 This issue mainly affects land and buildings, but references to property should be read as applying equally to other assets such as bank accounts. This is subject to certain exclusions specified in current legislation<sup>2</sup> – such as income from Furnished Holiday Lets, formal partnerships and shares in close companies – which are not deemed to be split 50:50 between married couples.
- 1.6 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.

<sup>1</sup> [Letter from Chancellor of the Exchequer to Chair of the Treasury Committee of 20 March 2023.](#)

<sup>2</sup> [Income Tax Act 2007 s836\(3\)](#)

## 2 Our recommendation

- 2.1 Where property is jointly owned by a married couple who are living together, any income arising from that property is, by default, deemed for tax purposes to be split 50:50 between the owners – regardless of their actual, underlying beneficial entitlement.
- 2.2 By way of contrast, income arising to unmarried joint property owners is divided for income tax purposes based on each party's actual beneficial ownership.
- 2.3 The inconsistent treatment between married joint owners and unmarried joint owners complicates the tax treatment and is likely to be poorly understood.
- 2.4 Our recommendation is to remove the provisions giving rise to a deemed 50:50 split of income for married couples. This would result in spouses being liable to income tax based on their beneficial interest in the underlying asset, as is the case for unmarried joint owners.

## 3 Background to our recommendation

- 3.1 Property may be held as tenants in common in unequal shares to reflect the capital contributed by each party when acquiring that asset. For example, if A and B buy a property together, A could be considered to own 75% and B 25%. This type of ownership arrangement is used by both married and unmarried joint owners.
- 3.2 Having made efforts to document their unequal ownership shares, for instance via a Declaration of Trust, it follows that the owners are likely to view any subsequent income generated from the property as 'belonging' to them in the unequal split agreed. However, this is currently not the case for married joint owners.
- 3.3 If unmarried joint owners later marry and live together, any intended unequal split of income is overridden. On marriage, income arising from the property is deemed by Income Tax Act 2007 s.836 to arise to them equally (assuming they live together).
- 3.4 Married couples who earn income from jointly owned property and want their income tax liabilities to reflect their unequal ownership shares must submit a Form 17<sup>3</sup> to HMRC within 60 days of signing the Form. This is the declaration required by HMRC as laid out in Income Tax Act 2007 s.837.
- 3.5 The declaration cannot be backdated, so the newly married couple in 3.3 above would both need to sign the form as soon as they married, and return it to HMRC within 60 days of signature in order to retain their intended unequal split of income.
- 3.6 The same deeming provisions apply to couples who are already married when they buy property together in unequal shares. However, the deemed 50:50 split of income can be overridden in favour of taxation based on their beneficial ownership of the asset if the couple submit a Form 17. Again, it is important to complete this promptly and submit it to HMRC within 60 days of signature.
- 3.7 If a married couple subsequently change the beneficial ownership of their property, another Form 17 is required to avoid a return to the deemed 50/50 split of income. No such requirement exists for unmarried joint owners, who simply report the appropriate amount of income which reflects their interest in the property following the change.
- 3.8 If a married couple who have correctly reported income from their jointly owned property based on the deemed 50:50 split go on to sell that property, they might expect the same 50:50 deeming provisions to apply

<sup>3</sup> [Declaration of beneficial interests in joint property and income \(Form 17\)](#)

for capital gains tax. However, on sale their respective share of any capital gain or loss arising is determined in line with their beneficial interest in the property – ie the provisions deeming a 50:50 split apply for income tax but *not* for capital gains tax.

- 3.9 Our recommendation is for Income Tax Act 2007 s.836 and s.837 to be repealed. This would mean married couples who receive income from jointly owned property would be taxed in the same way as unmarried joint owners of property – ie the share of income on which each owner is liable to income tax would reflect their beneficial ownership, with no 50:50 deeming provisions to override this.
- 3.10 We consider this will simplify the income tax treatment of jointly owned property, with no significant disadvantages or transitional costs.
- 3.11 Individuals adversely affected should be limited to married couples who own property in unequal shares but benefit from being taxed based on the current deemed 50:50 split of income arising. For instance, a married couple owning property unequally, with 90% beneficially owned by one spouse who is a higher rate taxpayer and the other 10% beneficially owned by the other spouse, who has lower/no income. The deemed 50:50 split of income will result in a lower combined tax liability than if the couple were unmarried, or if the 50:50 deeming provision in s.836 did not exist.
- 3.12 We expect that couples in this position who are using the provision deeming a 50:50 split of income are likely to have professional advisors who have confirmed this is beneficial to them. They should therefore be kept informed of any changes made to the deeming provisions, and their advisors can ensure they plan accordingly. If they wish to retain a 50:50 split of income, they will need to amend their ownership position accordingly, which may incur some legal and advisory costs.

#### 4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this representation. Should you wish to discuss any aspect of this representation, please contact our relevant Technical Officer, David Wright on [atttechnical@att.org.uk](mailto:atttechnical@att.org.uk).

### The Association of Taxation Technicians

10 October 2023

#### 5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government, and academia.

The Association has more than 9,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.