

# Form 17 **fact sheet**

Joint owners of rental properties who are married or in civil partnership believe that provided they declare the rental income on one of their individual tax returns, then that is their legal liability done from tax perspective. This is often not necessarily correct, particularly if there is an uneven split of income and therefore the taxpayers may be required to complete a Form 17.

This factsheet covers the essential requirements of form 17 and considers the choices it provides for efficient tax planning.

## Default tax position

For spouses/civil partners purchasing properties jointly, HMRC's default position is that the income will be split 50%-50%, irrespective of whether it's bought under tenants in common or joint tenancy.

## Splitting income unequally – Form 17

In order for the income to be split in a different ratio, you will need to demonstrate that the beneficial ownership of the property is split in the ratio in which the income is being split.

For example: if you wish to give 1% to yourself and 99% to your spouse, you should be able to demonstrate that the property ownership is split in 1:99 or else there is a significant risk that HMRC will continue to tax it equally and charge you interest and penalties for .

This can be achieved by completing a Form-17 to HMRC accompanied by a deed of trust or other supporting evidence to show that the property is held in unequal shares.

The form must be submitted to HMRC within 60 days of the date of the declaration, the deadline being strictly enforced with no power of extension.

## Case study

Ricky and Emily are married and living together. Ricky and Emily have always been basic rate (20%) taxpayers. Recently, Emily left contracting and has now moved to a permanent role with a salary that would fall in her additional rate tax bracket (45%). They jointly own an investment property and the beneficial interest in the property is Ricky 50% and Emily 50%. The rental income from the property is £20,000. If they continue to split the income 50-50, Ricky and Emily will each receive an income of £10,000 and will end up with tax liabilities of £2,000 and £4,500 respectively, the overall tax liability being £6,500.

## Splitting rental income differently

Following our advice, Ricky and Emily changed the beneficial interest in the property by creating a declaration of trust and now own the property as tenants in common in the ratio 99% - 1% respectively. They further made a declaration to HMRC of their unequal beneficial interests, using 'form 17'. This allowed the couple to split the income in the ratio the property is held i.e. £19,800 to Ricky and £200 to Emily and are taxed on their actual entitlement to income from the jointly held property.

Thus, following a valid form 17 declaration, Ricky now pays tax (at 20%) on rental income of £19,800, and Emily pays tax (at 45%) on £200 and their net tax liability from rental property is £3,960 and £90 respectively, total tax being £4,050. We were able to save them circa £2,500 in tax every year!

### Key considerations:

- Form 17 is only used if the beneficial interests are unequal.
- Form 17 can be used on any type of property provided it is held in joint names (excluding beneficial joint tenants).
- Form 17 cannot be used to change the income split back to 50/50.
- The evidence of the unequal split e.g. declaration of trust can be years old, but the split will only apply from the date you complete the Form 17 declaration.
- You can do a deed of trust more than once.
- The change in beneficial interests will usually not trigger capital gains tax liability for married couples and civil partners.
- Stamp Duty Taxes may arise if the beneficial interest is changed and the transaction involves 'chargeable consideration' in the form of say a cash payment or transfer of debt (example: outstanding mortgage).

### Form 17 should not be used if:

- Income is from commercial letting of furnished holiday accommodation.
- Income is from a partnership.
- Income is from shares in a company.

### How DNS can help?

We are property tax experts and have worked with thousands of clients to structure their property portfolio in the most tax efficient way.

To distribute the rental profits unequally, we can assist with all the compliance required including:

- Preparing and submitting the severance notice to Land Registry
- Creating the deed of trust or declaration of trust
- Completing and filing Form 17 with HMRC
- Advising on Capital Gains Tax (if any)
- Advising on Stamp Duty Taxes
- Liaising with HMRC
- Dealing with HMRC enquiries

## Get in touch

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