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Jointly-owned property – who pays the tax?

Introduction

Where property is jointly owned, the way in which the rental income can be split between the joint owners for tax purposes depends on whether the joint owners are married or in a civil partnership or not.

Married couples and civil partners

Where a property is jointly owned by a married couple or civil partners, the basic rule is that the rental income is split equally, regardless of the actual underlying ownership.

Example

Tom and Richard are married. They jointly own a flat in which Tom has a 70% stake and Richard has a 30% stake. The flat is let out. The rental profit is £8,000 a year.

Despite owning the property in unequal shares, Tom and Richard are both taxed on 50% of the rental income (£4,000).

However, where the beneficial ownership is unequal, the couple can elect (on Form 17) for the income to be assessed for tax purposes in accordance with their actual beneficial shares. In the above example, were Tom and Richard to make a Form 17 election, Tom would be taxed on rental profits of £5,600 (70%) and Richard would be taxed on £2,400 (30%).

For married couples and civil partners, the only permissible allocations are 50:50 (the default position) and, on the making of a Form 17 election, in accordance with actual ownership where the property is owned in unequal shares.

Joint owners who are not married or in a civil partnership

Where a property is owned jointly by individuals who are not married or in a civil partnership, it is usual for the rental income to be allocated in accordance with the ownership share. However, the joint owners can agree to a different division of profits and losses – the allocation for tax purposes does not have to mirror the actual ownership of the property. However, where a different allocation is agreed, the split for tax purposes must match the actual allocation of rental profits.

Example

Jake and his girlfriend Jade jointly own a flat which they let out. Jake owns 20% of the property and Jade owns 80% of the property. The rental profit is £10,000 a year.

Jade has £3,000 of her basic rate band available, whereas Jake has £9,000 of his basic rate band available. Therefore, to minimise the tax payable on the rental income, they agree that it will be shared so that Jade receives 30% (£3,000) and Jake receives 70% (£7,000).

Where joint owners are not married or in a civil partnership it is possible to agree an actual allocation that minimises tax. However, depending on the relationship between the owners, the tax considerations may be secondary as each owner may be keen to receive a share of rental profits proportionate to their actual stake in the property.

Recommendation

Carefully review all property ownerships and establish the actual and intended position. Married couples or in a civil partnership, if they want to reflect the actual ownership (i.e. if it is not 50:50), they will need to make the appropriate election. This will avoid unintended consequences later for tax purposes.

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