

Tenants in common and joint tenants

Part 19-03-07

This document should be read in conjunction with sections 534, 547, 557 and 573 of the Taxes Consolidation Act 1997

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Does not reflect current Revenue position.

Introduction

This manual outlines the Capital Gains Tax (“CGT”) treatment of joint tenants and tenants in common.

7.1 Death and tenants in common

Where a property is held by persons as tenants in common, each is the absolute owner of a due proportion of the property. When such a person dies, his or her due proportion of the property is deemed for the purposes of **section 573 of the Taxes Consolidation Act 1997 (“TCA 1997”)** ([Tax and Duty Manual \(TDM\) Part 19-03-09](#)) to be disposed of to his or her personal representatives.

7.2 Joint tenants

Joint tenants are distinguished from tenants in common in that, on the death of a joint tenant, the right to the whole property passes to the survivors or survivor. Provided that the joint tenancy has not been severed, the last survivor of joint tenants becomes the absolute owner of the property.

There may be a joint tenancy in personalty, e.g., patents, as well as in land.

7.3 Disposal by joint tenants

Where property owned by joint tenants is disposed of, the consideration received for the disposal is taken by the joint tenants in equal shares, notwithstanding that they may have contributed (if at all) in different proportions to the cost of acquisition. The chargeable gain or allowable loss of each joint tenant should be computed accordingly. If, however, the joint tenants divide the proceeds of disposal among themselves in proportion to their original contributions, the computations may be made on that basis, provided that all the joint tenants agree in writing.

7.4 Death and joint tenants

Section 573(1) TCA 1997 includes among the assets of which a deceased person was competent to dispose, the share of the deceased in any asset subject to a joint tenancy. There is no chargeable gain or allowable loss on the death of the joint tenant because death is not a chargeable occasion. The surviving joint tenant is deemed to have acquired the deceased’s share in the asset at its market value at the date of death.

7.5 Transfer to joint tenants

Where the owner of property conveys it to joint tenants of whom he or she is one, there is a disposal of the whole property to the joint tenants collectively and, where appropriate, the general rule in **section 547 TCA 1997** that the asset is deemed to be disposed of and acquired at its market value ([TDM Part 19-02-06](#)) should be applied.

7.6 Partition of a joint tenancy or a tenancy in common

The partition – or division – of a joint tenancy or a tenancy in common is a disposal for Capital Gains Tax (“CGT”) purposes. Each party concerned in the partition is disposing of a lesser interest in a part of the property concerned and is acquiring a larger interest in a divided part. This constitutes a part disposal of an asset for CGT purposes. **Sections 534(b) and 557 TCA 1997** are relevant in this regard. **Section 534(b) TCA 1997** provides that there is a part disposal of an asset where, on a person making a disposal, some form of property derived from the asset remains undisposed of. **Section 557 TCA 1997** provides that where only part of an asset is disposed of, only a portion of the cost is deductible in computing a chargeable gain or an allowable loss on the part disposal.

Example 1

Sean and Julia, two siblings, acquired 38 acres of farmland for €300,000 in 2014 as joint tenants. In 2018, they decided to divide the land equally between them to pursue different farming interests which constituted a severance of the joint tenancy. The market value of the land in 2018 was €400,000. The CGT computations for each of them on the part disposal of the interest that they are disposing of is as follows:

Sean

Proceeds	€200,000
Less apportioned base cost:	
€300,000 x (€200,000/(€200,000 + €200,000))	(€150,000)
Chargeable gain	<u>€50,000</u>

Julia

Proceeds	€200,000
Less apportioned base cost:	
€300,000 x (€200,000/(€200,000 + €200,000))	(€150,000)
Chargeable gain	<u>€50,000</u>

7.7 Farming partnerships

See [TDM Part 19-06-03A](#) for details of relief available on the disposal of certain assets on the dissolution of farming partnerships.