



Leaflet X04: Guidelines for Ministers holding a property which is rented on a shorthold tenancy

This note is to offer guidance to ministers who have a property which they let out explaining the potential steps which can be taken to improve the tax position.

It has become more common for a minister to own property. This may be a property owned prior to becoming a minister, acquired while in ministry or inherited. Maintaining a position in the property market can be a wise step to provide ministers with a place to live in retirement.

Tax and joint ownership

In many cases the property will be held in joint names of the minister and spouse and there is a specific tax rule for the allocation of the income in such circumstances between the two of them. For tax purposes the income is automatically treated as belonging to them in equal shares. There are some exceptional circumstances where this rule does not apply, one being where the income is from furnished holiday lettings, but in the ordinary case of joint property lettings on shorthold tenancies, the income must be declared by them in equal shares on their tax returns.

Example 1

Reverend Green inherits £200,000 on the death of one of her parents and she decides to use the money to buy a property. This will be let on a shorthold tenancy to give him some supplementary income and ultimately, she and her husband hope to be able to go to live in the property in retirement.

The sum inherited would only be sufficient to buy a flat, so she decides to take on a buy to let mortgage so as to acquire a more substantial property. She manages to secure a mortgage of £300,000 to buy a property for £500,000. This will be held in the joint names of herself and her husband so that the net income will be declared in equal shares on their respective tax returns.

Improving the tax position

Splitting the net income equally will not necessarily be tax efficient. One of the couple may have unused tax allowances after taking into account the half share of the net income, whereas the other may already be a basic rate taxpayer due to the stipend from ministerial appointment. In such cases what can be done is to alter the beneficial ownership of the property so that it is then permissible for the income to be divided between them according to their revised shares in the ownership of the property.

However, this is not automatically applied for tax purposes. Once the ownership of the property has been changed, notice on HMRC form 17 must be given to HMRC within 60 days to declare what their revised shares in the property. This notice then allows the income to be divided according to those shares for tax purposes going forward. The form can be accessed [here](#)

Use of a Declaration of Trust

It might be thought that it will be expensive and complicated to change the beneficial ownership of the property. In fact, the beneficial shares in the property can be changed by means of a Declaration of Trust along the lines of the precedent which is set out in the Appendix to this guideline leaflet. Whilst the precedent is in terms commonly used throughout the legal profession, it is stressed that it is purely for guidance and ministers should seek advice as to whether it is appropriate in the specific circumstances of their case. It should however be acceptable in the ordinary case of a property jointly owned freehold by husband and wife without any mortgage. The Deed must be signed by both parties and the signatures witnessed by (ideally) an unrelated person who must also sign beneath the words 'in the presence of'.

A Deed of this type can equally be drawn up to give differing shares in the property, such 75% to one and 25% to the other. However rather than attempting to reword the draft themselves, it is recommended that legal assistance is obtained by ministers to do this.

Any capital gains tax main residence exemption for the property will not be lost by the transfer but will pass from one to the other under the gift.

Other issues

There are some other important points to be borne in mind.

1 Stamp Duty Land Tax

The first is that there is no exemption from stamp duty land tax (SDLT) for sales of a property between husband and wife, save in relation to the 3% additional charge which relates to second properties. Under the basic stamp duty land tax provisions, the sale of a property between husband and wife incurs SDLT liability. It might be thought that there will be no problem if the property is simply transferred by way of gift from one to the other, and this is correct for un-mortgaged properties. But if there is a mortgage on the property, this is treated as owed by the joint owners according to their shares in the property. This means that if the interests in the property altered, one is treated as paying consideration to the other party by reason of the additional mortgage liability taken on, as in Example 2.

Example 2

After acquiring the property, Reverend Green (see Example 1) learns that her tax position will be improved if the beneficial ownership of it is put wholly into her husband's name as he has no other income. Accordingly, she uses the precedent in Appendix 1 to transfer the ownership to her husband. The two of them then notify HMRC on Form 17 within 60 days.

The transfer means that Mr Green is treated as paying £150,000 for the half share transferred to her due to the mortgage on the property. As a result of the transfer, she is treated as taking on the liability for all the £300,000 mortgage debt, instead of one half of it (£150,000) as before. Taking on the additional debt is treated as payment for the transfer of £150,000 so that SDLT of £500 is due¹. This must be declared and paid within 14 days of the date of the Declaration of Trust.

2 Other Consequences of a transfer of ownership

The second important point is that the transfer means that ownership of the property is changed. This may seem obvious but there is no such thing as changing ownership for tax purposes only. The change of ownership means that all the title to the property will belong to the recipient and on death it will pass under the terms of his or her will.

A further Declaration of Trust may of course be entered into at a future time to change the beneficial ownership, if the current owner, or owners, agrees to do this.

3 Capital Gains Tax

So long as there is an intention to occupy the property as the main home after the minister leaves church employment, the property should qualify as the exempt main residence so that no capital gains tax will be due when it is sold. This is due to a specific relief for those who occupy employer owned premises where it is customary for this provision to be made, i.e., occupation of a church manse by the minister or pastor. This relief also applies in cases of joint ownership between the minister and his or her spouse.

¹ This amount is correct at the time of writing, but you should check the current stamp duty due using [the governments Stamp Duty Land Tax Calculator](#)

If at any time an intention to move into the property is abandoned, then the capital gains tax exemption will apply only up to that time and the eventual gain for the period after the change of intention will be chargeable. The rules state that the total gain on sale must be time apportioned, so if the change of intention was halfway through the total period of ownership, half the gain will be chargeable, although the final 9 months also counts as exempt.

Taxing on the basis of a person's intentions is of course highly subjective. On any such sale ministers will need to explain to HMRC what their plans were in relation to the property, backed up by any available evidence. It will also be necessary to explain the background to the sale because in itself it could suggest that at some stage any intention to use the property personally in due course was abandoned. An explanation should be given in the box for notes on the tax return or on an attachment to it. In the final analysis HMRC will gather the facts as best as it can and make their own decision. This can be appealed against if the minister does not agree with it.

Appendix Example Deed of Gift

The following pages contain an example of a deed of gift that may be appropriate. Please note that this is an important legal document and any party to such a document is advised to obtain professional advice so that they fully understand the consequences of signing the document.

THIS DEED OF GIFT AND DECLARATION OF TRUST is made

the _____ day of _____ 2022

between **REVEREND ALBERTA GREEN** ("Alberta") of 1 Cleudo Street, Workingtown WW1 1ZZ

of the one part and

MR ALBERT GREEN ("Albert") husband of Alberta of the second part.

WHEREAS

- A. The parties to this Deed are the legal owners of the property specified in the Schedule "the Property") and hold the beneficial interest therein as joint tenants.
- B. Alberta wishes to sever the joint tenancy and give her one half share in the in the Property to Albert to the intent that henceforth Albert shall have all the beneficial ownership of it.

NOW THIS DEED WITNESSETH as follows:

- (1) Alberta **HEREBY ASSIGNS** to Albert all his interest in the Property so that the entire beneficial interest therein shall henceforth be held by Alberta.
- (2) In pursuance of that assignment Alberta and Albert **HEREBY DECLARE** that henceforth they hold the legal title to the Property **UPON TRUST** for Albert absolutely and Alberta hereby undertakes to exercise all rights of and incidental to her continued joint legal ownership of the Property only and in such a manner as Albert shall lawfully direct.
- (3) This Deed shall be governed by and construed in accordance with the Law of England and Wales.

IN WITNESS whereof the Parties hereto have executed this as a Declaration of Trust as a Deed on the date above written,

THE SCHEDULE

ALL that property known as 7 Heavenly Avenue, Workingtown WW1 1YY and registered at the Land Registry as Title Number WO123456

SIGNED as a **DEED**

by the said **ALBERT GREEN**

in the presence of:-

SIGNED as a **DEED**

by the said **ALBERTA GREEN**

in the presence of:-

This is one of a series of Guidelines that are offered as a resource for Baptist ministers and churches. They have been prepared by the Baptist Union of Great Britain and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

The staff at the Baptist Union of Great Britain at Baptist House will be very pleased to answer your queries and help in any way possible.

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