

[19.3.7] Tenants in common and joint tenants

- 7.1** 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 due proportion of the property is deemed for the purposes of **Section 573 (Tax Instruction 19.3.9 Par.1 et. seq.)** to be disposed of to his personal representatives.
- 7.2** 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** 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** **Section 573(1)** 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 date of death.
- 7.5** Where the owner of property conveys it to joint tenants of whom he is one, there is a disposal of the whole property to the joint tenants collectively and, where appropriate, the general rule in **Section 547** that the asset is deemed to be disposed of and acquired at its market value (**Tax Instruction 19.2.6 Par. 3**) should be applied.
- 7.6** The partition of a joint tenancy or a tenancy in common is regarded as being a disposal for capital gains tax purposes. Each party concerned in the severance is disposing of a lesser interest in a part of the property concerned and is acquiring a larger interest in a divided part. **Section 534** deals with the disposal (including part disposal) of assets, the treatment of part disposals is prescribed in **Section 557**.
- 7.7** See **Tax Instruction 19.6.3A** for details of relief available on the disposal of certain assets on the dissolution of farming partnerships.