

## FACT SHEET

# The land sale rules and changes to co-ownership

### IS 22/03 FS

This fact sheet accompanies interpretation statement **IS 22/03**. IS 22/03 considers whether the land sale rules in the Income Tax Act 2007 (the ITA) apply to changes to co-ownership of land and changes of trustees. This fact sheet summarises the conclusions in IS 22/03 in relation to changes to co-ownership.

## Introduction

1. Disposals of land may be taxed under the ITA. For example, the bright-line test may apply if you sell residential land within a certain period (ie, 5 years or 10 years), and you may be taxed if you sell land that you bought with the intention of selling it (the 'intention test').<sup>1</sup>
2. We've been asked whether there's a "disposal" of land when it's co-owned and there's a change to the co-ownership. If there's a disposal, there could potentially be tax implications (even if there's no money paid by the parties).

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<sup>1</sup> All the land sale rules are in ss CB 6A to CB 15, and CZ 39.

### *Some terms used in this fact sheet*

A **tenancy in common** is where each party owns a distinct share – ie, a 50% share or  $\frac{1}{3}$  share.

A **joint tenancy** is where the land is owned by the parties together, with no distinct shares. While there aren't distinct shares in a joint tenancy, each person has a 'notional' proportional share. So for example, if there are two joint tenants, each has a notional 50% share they can separate and take in their lifetime, if there are five joint tenants, each has a notional 20% share, and so on.

3. This Factsheet covers the following situations:

- **A change to the type of co-ownership (ie, from a tenancy in common to a joint tenancy, or vice versa)**

For example, they go from owning it as 50:50 tenants in common to owning it as joint tenants

- **A change to the shares each of the co-owners has**

For example, they go from owning it 50:50 to one party owning a  $\frac{1}{3}$  share and the other a  $\frac{2}{3}$  share

- **Adding a co-owner**

For example, Jane and Terry own some land, and add their brother Mike to the title

- **Removing a co-owner**

For example, Rachel, Ceit and Lily own some land, and Lily sells her share to Rachel and Ceit

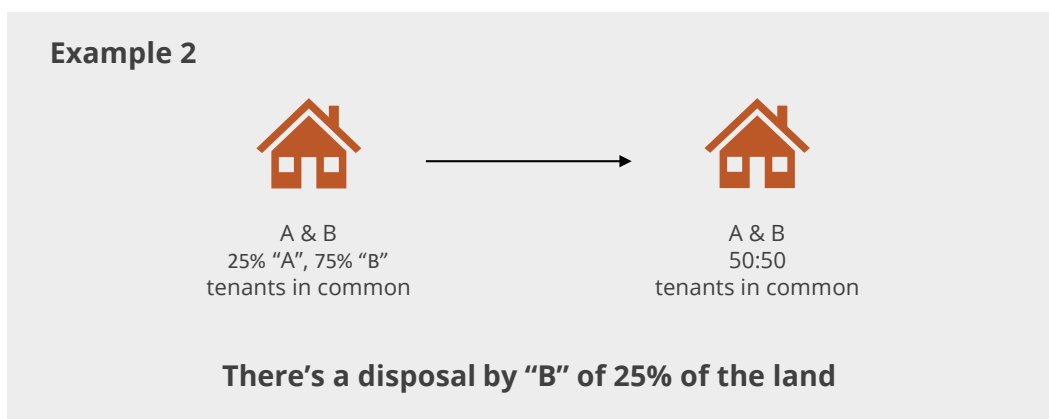
## A change to the type of co-ownership

4. There are two main types of co-ownership of land – tenancies in common, and joint tenancies. With a **tenancy in common**, each part owns a distinct share (eg, a 50% share, a  $\frac{1}{3}$  share etc). With **joint tenancy**, the land is owned by the parties together, with no distinct shares, but with each person having a 'notional' proportional share.
5. If there's a change to the type of co-ownership, and the proportional or notional shares don't change, **there isn't a "disposal"** under the land sale rules. This means there won't be any tax under the bright-line test or other land sale rules.



## A change to the shares each of the co-owners has

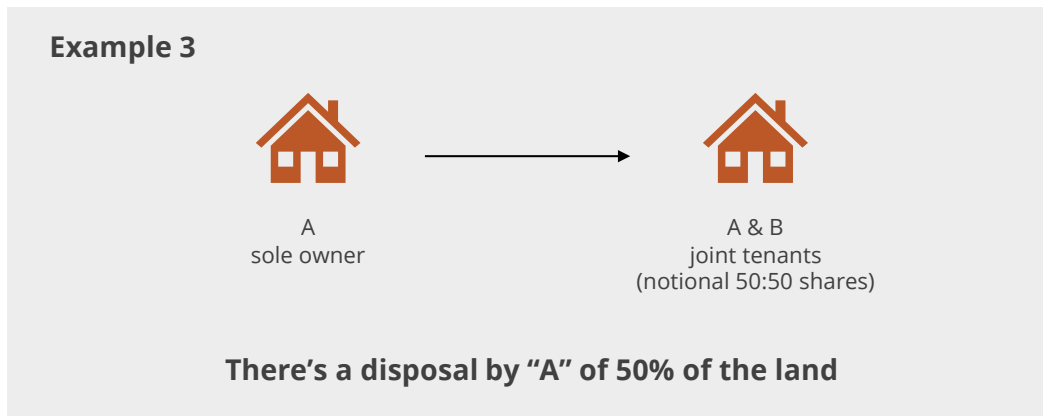
6. Co-owners can change the shares (or notional shares) they each have in land. When there's a change to the shares or notional shares of the parties there may also be a change to the type of co-ownership (eg, from joint tenants to tenants in common), but there doesn't have to be.
7. If there's a change to the shares or notional shares the co-owners have, **there's a "disposal"** under the land sale rules. The disposal is made by the party whose share is reduced, and it's a disposal to the extent their share is reduced. This means there may be tax implications under the bright-line test or other land sale rules (eg, if the transfer is within the bright-line period).



## Adding a co-owner

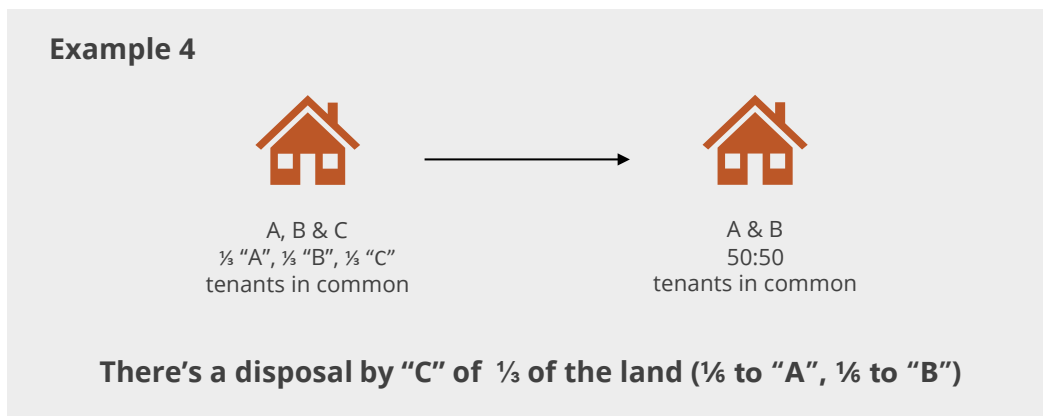
8. An owner (or owners) of land can add another person as a co-owner. Where this happens, **there's a disposal** under the land sale rules. The disposal is made by any party whose share is reduced, and it's a disposal to the extent their share is reduced.

This means there may be tax implications under the bright-line test or other land sale rules (eg, if the transfer is within the bright-line period).



## Removing a co-owner

9. If land is co-owned, one or more of the co-owners may sell or otherwise get rid of their share in the land. Where this happens, **there's a disposal** under the land sale rules by the departing co-owner. This means there may be tax implications under the bright-line test or other land sale rules (eg, if the transfer is within the bright-line period).



## About this document

Some of our longer or more complex items are accompanied by fact sheets, which summarise and explain the main points.