



## SWAP SHOP – EXCHANGING INTERESTS IN LAND

For the purposes of capital gains tax, if you make a gift of an asset, or if you sell it at less than its market value, you are taxed as if you had received the market value for it. This does not apply to gifts between spouses or civil partners, but it does apply in nearly all other cases.

It is not unusual for land to have more than one owner, and it is also not unusual for those joint owners to have different ideas on what to do with the land concerned.

Imagine that you and your sister have been left 10 acres of land. You may be perfectly happy to carry on as joint owners, perhaps sharing the income from renting it out to a local farmer, or you may have different plans and want to use your share of the land for a different purpose.

If you agree to swap ownership so that you become sole owner of 5 acres and your sister becomes sole owner of the other five, you might think that each of you would be charged to CGT as if you had sold half of your share in the land at market value – after all, you got half of her share in exchange, so value changed hands.

Fortunately, sections 248A to 248E TCGA 1992 come to the rescue here. Provided that no money changes hands, you and your sister will be treated as if you had sold your share for its market value and then “reinvested” the proceeds in acquiring the other’s half share in what is now your land.

The effect will be that no CGT is payable, and on a future sale the “cost” of the land is half the original “cost” of the whole plot which was originally owned jointly.

Normally, this “reinvestment” relief from CT only applies to assets used for a business, but section 248A to E extends the relief to a situation where joint owners of land want to become sole owners of part of it.

In some cases, the land that is the subject of the exchange may not be of equal value, or one of the joint owners may pay extra to get more than his share of the land. In such a case, where “equality money” is paid by one joint owner to the other, the one receiving the payment will make a capital gain equivalent to the amount paid, but the remainder of the gain on the land will benefit from the relief.

There is one exception to this relief. If the land includes a property that is or has been the “only or main residence” of one of the owners, or becomes their main residence within six years, then the owner of the main residence cannot benefit from the relief – or if he has already done so, it will be clawed back at the time (within six years) when the property becomes his main residence.

In a case where jointly owned properties are also the main residences of all the joint owners, however, the relief is available. For example, if you and your sister jointly own two cottages and each of you lives in one of them as his or her main residence, then you can exchange interests so that you become the sole owner of your main residence, and she becomes the sole owner of hers. Section 248E allows the relief from CGT to apply in this situation.

In other words, for the relief to apply, the land concerned must not include the main residence of any of the joint owners, or alternatively, it must include the main residences of all of the joint owners.

This article by James Bailey first appeared in Tax Insider magazine ([www.taxinsider.co.uk](http://www.taxinsider.co.uk))