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INVESTING IN PROPERTY – PERSONAL OR COMPANY OWNERSHIP

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PROPERTY

Contents

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About Jennifer Adams

Jennifer Adams FCG TEP ATT (Fellow) has been a professional business author for over 15 years, specialising in corporate governance and taxation. She is the senior partner of a family accountancy firm that has been in existence for over 40 years and is also the landlord of a portfolio of properties. As such, she is well placed to advise on any tax problems landlords may face.

Jennifer is a regular contributor to Tax Insider, author of the book published by Tax Insider titled '101 Property Tax Secrets' and of the following Tax Insider guides:

- Tax Tips For Company Directors
- How To Use Trusts To Reduce Property Taxes
- Dividend Tax Savings Strategies Explained
- How To Maximise Landlord Expenses

About this guide

Anyone considering becoming a landlord will already be aware that their money will be tied up for the long term. Many landlords consider investing in rental properties as part of their retirement income planning, either for the monthly rental yields or by selling the property in later years. With extra red tape increasingly being imposed on landlords by the government, rising mortgage rates and pressure on tenants' incomes from the cost-of-living crisis, some may be wary of getting involved in what is potentially an investment for many years. However, with careful thought and research, the UK property market remains a suitable alternative for many investors compared with other investment products.

Whether you decide to invest in property as an individual or via another medium, be that a limited company, partnership or limited liability partnership, or whether the property is commercial or residential, there are tax issues to consider. This guide sets out the tax implications for each method of ownership, highlighting any tax traps in property investment.

The guide has been updated to include the measures announced in the November 2022 Autumn Statement.

1 Property investment options

Direct investment in property can be undertaken within various structures, the more common being as an individual (or partnership) or as an investment company limited by shares. Other options include using a limited liability partnership (LLP), a trading company or a pension scheme.

Although recent years have seen several changes to the taxation of property, those changes have been in respect of residential property rather than commercial, the exception being the extension of the capital gains tax regime (CGT) to include non-resident landlords owning UK commercial property.

The following section compares the differences between investing as an individual purchaser or partnership (including LLPs) with investing as a shareholder in a company that buys the property (an investment company).

1.1 Differences between individual and company ownership

- **Taxation**

In recent years, there has been a substantial move towards buying investment property through companies. There are several reasons why a property investor might use a limited company rather than purchase property in their name (or in partnership). One of the many reasons quoted relates to the differences in taxation rates (see table under section 1.3). Another important difference is in the treatment of mortgage or loan interest (See section 3). The method of calculation for VAT or stamp duty land tax (SDLT) is the same whether it is an individual (or partnership including an LLP) or a company making the purchase. Otherwise, the main difference is evident when the time comes to withdraw monies from the business (See sections 5 and 13).

- **Legal identity**

A company has its own legal identity such that third parties contract with the company, not the individual directors or shareholders. A separate identity enables a company to survive the owner's death and there is also the added flexibility for directors or shareholders to change. A company will only cease when formally dissolved.

Another reason for using a company is that companies have limited liability for the debts of the business, the extent of the liability being the amount paid for the shares plus the unpaid amount on any nil or partly paid shares (if any). In practice, the liability is usually restricted to the amount paid for the shares unless any personal guarantees have been given. However, in certain circumstances, a company director can be held personally responsible for the company's debts where the company continues trading whilst insolvent. This limitation on the shareholders' liability contrasts with sole traders or partnerships where there is the potential for unlimited personal liability (e.g., the individual's private residence is at risk of being repossessed).

Practical tip

The protection of limited liability is less beneficial a reason for incorporation than might be first thought, as banks usually require personal guarantees for loans taken out by owner-managed businesses.

1.2 Partnerships

The rental profit or loss incurred on a property held jointly (or within a partnership proper) need not be allocated in the same proportion as the underlying ownership. Where a genuine partnership exists, the profits and losses from that business can be allocated between the partners in any ratio that the partners agree. That ratio may be varied from year to year. Usually, joint property ownership between spouses is allocated 50:50 unless the underlying ownership of the property is different.

Being a partner or owning assets used in a partnership business generally means that such individuals may be able to take advantage of more exemptions or deferment claims on the disposal of assets or of part or all of the partnership share (provided all the other conditions associated with the particular relief apply) than are available to companies.

The liability of an individual or partnership can be unlimited.

Limited liability partnerships (LLPs)

Partnerships can be created which allow for a partnership structure but where each partner's liabilities are limited to the amount they invested into the business.

LLPs are a popular vehicle for holding a property portfolio. They are not partnerships, as such, but corporate entities sharing most features in common with companies (i.e., separate legal personality, limited liability protection, etc.), except that the individual owners are taxed on their share of the LLP's income or gains. The tax rates applied are at each partner's marginal rate of tax, which could be as high as 45%, plus there will be National Insurance implications irrespective of whether those profits are extracted by the partners or retained and reinvested in the business. The planning comes with allocating the profit to the partner or partners with the lowest marginal tax rate. Unlike a traditional partnership, an LLP can hold property in its own right and properties transferred to the LLP are held on trust.

1.3 Table of differences

The table below shows the differences between each vehicle of property ownership with reference to tax only, followed by explanations under each heading:

	Individual or partnership owner	Company owner
Tax rates (See section 2) (note 2)	Profits taxed at owner's marginal rate (20%, 40% or 45%).	Profits taxed at corporation tax rate – 19% (increasing to 25% from April 2023 for companies with profits in excess of £50,000; marginal (tapered) relief to apply to annual profits between £50,000 and £250,000).
	Property allowance available (See section 2.1).	
Payment date of tax	Payments on account due 31 January in tax year and 31 July following end of tax year. Any balance payable is due by 31 January after tax year.	Nine months and one day after the accounting year end.
Loan interest (See section 3)	Relief given as basic rate reduction – fully allowable if furnished holiday let (FHL) (see note 1).	Amount paid restricted to 30% of profit subject to a 'de minimis' threshold of £2m, otherwise allowable in full.
Losses (See section 4)	No sideways loss relief against other income or gains – can only be offset against other rental income or carried forward unless FHL. There may be restrictions if the property is not let on a commercial basis. Loss 'cap' for using current year trading losses and property losses (relating to capital allowances) = the greater of £50,000 and 25% of total income.	Offset against total profits of current year and then carried forward. Total profits include chargeable gains. Loss 'cap' for using carried forward losses = £5m plus 50% of profits above £5m.

Extraction of funds (See section 5)	Profits available after income tax or capital gains tax have been levied.	Different methods of withdrawal. Individual must be either a director or a shareholder, or both. May be tax-deductible for company, depending on method. Tax liability for individual will depend on method and available personal allowances.
Capital gains tax (See section 6) (note 2)	Annual exempt amount of £12,300 (reduced to £6,000 as from 6 April 2023) for both individuals and estates. Balance taxed at 18% (basic-rate taxpayer) or 28% (higher/additional-rate taxpayer) for residential property gains and at 10% (basic-rate taxpayer) or 20% (higher/additional-rate taxpayer) for gains on commercial property. Business asset disposal relief may be available. Incorporation is capital disposal for CGT purposes. Incorporation relief, gift relief or holdover relief and rollover relief may be available.	No annual exempt amount – taxed at 19% corporation tax rate (increasing to 25% from 6 April 2023 for companies whose profits exceed £50,000; marginal (tapered) relief applying to annual profits between £50,000 and £250,000). Indexation allowance available, albeit frozen at December 2017. Rollover relief may be available.
Additional taxes (See section 6.3)	VAT – none on residential property.	Annual tax on enveloped dwellings (ATED) – applies to high value residential properties, held within a company, that are not let on a commercial basis. VAT – none on residential property.

Inheritance tax (See section 8)	Properties form part of an individual's estate. Business property relief (BPR) does not apply.	Company itself not liable. Shares form part of the individual shareholder's estate – due on value of shareholding. BPR may be claimable.
Stamp Duty Land Tax (Land & Buildings Transaction Tax – Scotland; Land Transaction Tax – Wales (see section 9)	No difference – Purchase of additional dwellings charged an additional 3% on top of the standard rates whether the purchased by an individual or a company.	No difference – Purchase of additional dwellings charged an additional 3% on top of the standard rates whether the purchase is by an individual or a company.

Note 1: Furnished holiday lets

One of the main benefits of a property being a furnished holiday let (FHL) is that such properties are treated as if they are a trade for income tax purposes and, therefore, the restriction of loan interest on residential property does not apply (See section 3). In order to qualify as an FHL, the property must be furnished, commercially let and pass the three 'occupancy' conditions – these conditions determine how many days the property must be available to let and how many days it is let.

There are no special provisions applicable to IHT for FHLs and owners have, in the past, not been able to persuade HMRC that business asset property relief (BAPR) applies on either property owned by an individual or on a share of a company that owns such a property (for further detail(See section 11.2).

Note 2: Different rates apply for Scotland and Wales.

2 Tax rates

Calculation of profit or losses

The calculation starts by allocating the profit or loss of each individual property into a 'pool'. Separate pools are used for similar types of properties; each kept separate from other types of UK lettings. Separate property business pools are also required should the owners themselves be different (e.g., a residential buy-to-let will need to be kept in a separate pool if another buy-to-let property is owned jointly with a spouse). Losses on FHLs are also kept separate and cannot be offset against other UK rental profits or profits made on foreign properties. This method of calculation is so that losses cannot be offset one pool against the other (See section 4).