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INVESTING IN PROPERTY – PERSONAL OR COMPANY OWNERSHIP

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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 49 years and is also the landlord of a portfolio of properties. As such, she is well placed to advise on any tax problems that landlords may encounter.

Jennifer is a regular contributor to Tax Insider, Property Tax Insider, author of the book published by Tax Insider titled '101 Property Tax Tips' 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

About this guide

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 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 option for many investors.

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 tax traps from the initial investment, through the letting period to eventual disposal.

Due to the restrictive number of pages, this guide can only show some areas where tax planning is possible. More 'tax tips' can be found in the monthly newsletters of Tax Insider and Property Tax Insider as well as on the Tax Insider website.

It must be stressed that professional advice should always be sought when undertaking any form of tax planning.

The text includes measures announced in the 2024 Autumn Budget which may be amended as the Bill goes through the Houses of Parliament.

1 Property investment options

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

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

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

1.1 Differences between individual and company ownership

- **Legal identity**

A company has its own legal identity, so 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 different directors or shareholders. A company will only cease when formally dissolved.

Another reason for using a company is that, unlike individuals, a company has limited liability for the debts of the business, the extent of which being the amount paid for the shares plus any unpaid amount on 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 could be at risk of being repossessed).

Practical point

The principle of limited liability in a company structure offers protection for personal assets, yet directors are often required to provide personal guarantees when securing loans. Buy-to-let mortgages designed for limited companies come with their own set of lending criteria and the rates for limited companies are usually 0.5% to 1% higher than for personal ownership.

- **Taxation**

Holding a property within a limited company has become popular in recent years partly due to the restriction for interest and finance costs that applies to residential property held by an unincorporated property business. The restriction does not apply where property (whether residential or commercial) is held within a limited company as any associated interest and finance costs can be deducted in full when computing the taxable profit.

The rate at which a company pays corporation tax on its profits depends on the level of those profits. Where those profits are less than the lower profits limit of £50,000 for a company with no associates, the small profits rate of 19% applies. Where a company has profits above the upper limit (set at £250,000 for a company with no associates), corporation tax is charged at the main rate of 25%. Profits falling between these two limits are taxed at the main rate of 25%, as reduced by marginal relief.

Where ownership of an investment property is by an individual or partnership, the rental profit is taxed at the individual's marginal tax rate as investment income.

Non-tax considerations:
Other reasons for incorporation include the following:

- Liabilities are limited to the value of the company.
- Ability to raise funding by adding new shareholders.
- Ability to make pension contributions.
- Project planning (see section 13).
- The maximum number of legal land and property owners is restricted to four, whereas a company can have multiple shareholders (s 34 Trustee Act 1925 and s 34 Law of Property Act 2025).

1.2 Family investment companies (FIC)

The use of such companies is particularly attractive to director-owners of family businesses who have children, as an FIC enables wealth to be passed to the next generation without inheritance tax being charged (although the seven-year survivorship rule may apply where the shares are gifted). With an FIC, the company shares are passed to successive generations rather than fractional shares in properties. The parents can be directors of the company and, assuming they hold all of the voting rights, will have control over the property held by the FIC.

The shareholders are family members only and the arrangement takes advantage of alphabet shares. Alphabet shares are different classes of shares that offer flexibility in distributing dividends and allocating voting rights.

Once an FIC has been created, funds are introduced into the company in the form of cash or loan from a main trading company or transfer of property where no chargeable gain has yet to accrue. Any rental profits made by the FIC will be liable to corporation tax.

Practical point

Where the cash has been lent to the FIC by a director, that director will be able to withdraw those funds tax-free up to the amount lent. If funded by a loan from a main trading company, the amount invested needs to be manageable so as not to affect the lending company's trading status.

1.3 Partnerships

Where a genuine partnership exists, the profits and losses from that business can be allocated between the partners in any ratio the partners agree on, which may vary from year to year. This can be advantageous where property is owned jointly as it provides greater flexibility for allocating profits and losses than where the jointly owned property is held outside a partnership, particularly if the joint owners are spouses or civil partners.

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

Stamp duty land tax (SDLT) may be due when forming a property investment partnership and possibly where the profit share changes (regardless of whether formed or changed as a precursor to incorporation).

Where an asset owned personally but made available for use in an otherwise qualifying partnership qualifies for business property relief, the inheritance tax relief is reduced to 50%. In contrast, direct ownership by the partnership itself could qualify for 100% relief (see section 8.1).

Limited liability partnerships (LLPs)

LLPs are popular vehicles for holding a property portfolio. Their main value is that each partner's liabilities are limited to the amount they each invested in the business.

LLPs 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 profits and liable to capital gains tax on their share of any gains on disposal. However, unlike a traditional partnership, an LLP can hold property in its own right and properties transferred to the LLP are held in trust.

The income tax rates applied are at each partner's marginal rate of tax, which could be as high as 45%. There may also be National Insurance implications irrespective of whether those profits are extracted by the