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TAXATION OF PROPERTY PARTNERSHIPS AND JOINT OWNERSHIP

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PROPERTY

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‘Taxation Of Property Partnerships And Joint Ownership’

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About Lee Sharpe

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He is also an experienced tax writer. As well as writing for taxationweb.co.uk and Bloomsbury Professional, Lee is a lead writer for Property Tax Insider (taxinsider.co.uk) and its sister publications. He has written a number of specialist property tax saving reports that are available through the Tax Insider website.

About this guide

This guide will focus on property businesses held by joint owners and partnerships. Generally speaking, for co-owned buy-to-let property businesses, all partnership property is held jointly by its partners, but not all jointly held property is in a property partnership. Simplistically, one could say that a partnership is a 'higher level' of joint ownership. We shall consider this fundamental point in further detail later in the report (see Partnerships and capital gains tax, and the Appendix). The report is intended for taxpayers and their advisers. To cover all of the idiosyncrasies of partnership tax law and practice would require a book instead of a mere report, but the report is intended to cover the key tax-centric issues that property business owners should be aware of and, perhaps most importantly, to have a sense of when it would be appropriate to take specialist advice. Please note at the time of writing, the respective tax rules for each part of the United Kingdom are inexorably diverging, like tectonic plates. Readers must take particular care when contemplating transactions that may rest on different property or tax laws, such as:

- in England and Wales, the law tends to look through the partnership as a transparent entity and hold the individual partners to account; under Scottish law, however, partnerships have their own distinct legal personality;
- the Scottish land and buildings transaction tax (LBTT), and the Welsh land transaction tax (LTT), are now distinct from stamp duty land tax (SDLT). The regimes are, of course, almost identical, having common ancestry in SDLT, but differences are beginning to emerge in the finer detail, which one would do well not to get the wrong side of. For example, while Scotland also has the relatively new 6% SDLT surcharge for additional residential property purchases, (the Scottish Additional Dwelling Supplement increased from 4% to 6%, effective 16 December 2022), it started with an earlier draft than that ultimately settled on by its counterparts, and is now being overhauled separately by the Scottish government; *and*
- the Scottish income tax regime has also moved a little away from the rest of the UK in terms of earnings and property income. So, for example, the Scottish higher rate starts for earnings over £43,662 in 2023/24 (and is chargeable at 42%), whereas it is £50,270 (and chargeable at 40%) elsewhere in the UK. We shall be using 'rest-of-UK rules, rates, and thresholds' in this report, as follows for 2023/24.

	Band	Ceiling	Tax Rate on Ordinary Income
Personal Allowance	£12,570	£12,570	0%
Basic Rate Band	£37,700	£50,270	20%
Higher Rate Band	£87,440*	£125,140	40%
Additional Rate Band		£125,141+	45%

*Strictly, it is not as simple as this. For example, once an individual's adjusted net income exceeds £100,000, they start to 'lose' their tax-free Personal Allowance at a taper rate of £1 of Allowance for every £2 of income exceeding £100,000. While things do "get back on an even keel" as incomes continue to rise, the *effective* tax rate on the first slice of income over £100,000 can reach as high as 60%! (Note also that the Additional Rate Threshold was formerly £150,000, up until the 2023/24 tax year, starting 6 April 2023). 'Ordinary' income means income from earnings such as self-employment or salary, income from letting property and – for the most part – income from savings such as bank interest. Different rates apply to dividend income. And the tax tribunals are alive to differences in Scottish law: for example, the taxpayer was lucky that he did not have to rely on his "joint beneficial interest" argument in the CGT / (Scottish) main residence case of *Crippin v HMRC* [2021] UKFTT 0351 (TC).

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Why bother with joint ownership?

Broadly speaking, a joint enterprise can involve numerous benefits, such as:

- Scalable investment or finance – the more investors who can join an enterprise, the larger or more valuable the property portfolio can be. Alternatively, having more investors means that each investor can reduce their personal investment exposure to an acceptable level of risk.
- Economies of scale – it should be possible to apply a cost-effective business model with decreasing marginal cost for additional properties; savings may also be made in the context of access to finance and to professional fees.
- Expertise – a business partner or joint investor with many years' experience in, say, student letting may significantly improve the business' performance in that sector, to the benefit of all joint investors.

Unsurprisingly, this report will focus on the tax implications of lightening the tax load:

- Reduction in tax cost – last but by no means least, is that better use may be made of people's tax allowances and lower tax rate bands if income is spread from one taxpayer to several. Of course, this is relevant mostly in the context of joint investment between close friends and family members, as per the following example:

Example 1: William and Kate

William and Kate, who are married to each other, each have their own (separate) profitable trading business and pay income tax at the higher rate of 40%. Kate is about to have their first baby and decides to put her business on hold for a year. William thinks they should invest in a buy-to-let property which will yield £10,000 a year in net income after letting expenses.

If he invests on his own, William will pay £4,000 in tax and receive net only £6,000.

William on his own:

$$£10,000 @ 40\% = £4,000 \text{ tax, i.e., } £6,000 \text{ net income}$$

If he and Kate buy the property together, then they will be taxed on £5,000 net rental profits each. William will again pay tax at 40%, so he will pay £2,000 in tax and receive £3,000 net of tax.

But assuming Kate has no other income while her business is on hold, her tax-free personal allowance (£12,570 in 2023/24) will more than cover her half-share of the rental profits, so she will pay no tax and gets to keep all of her rental profit.

This means that investing together will net them £2,000 in tax savings:

	William	Kate	Total
Income	£5,000	£5,000	£10,000
Rate	40%	0%	
Tax	£2,000	£0	£2,000
Net	£3,000	£5,000	£8,000

As a couple, they have £8,000 net or £2,000 more than if William were to invest on his own.

Clearly, where one spouse pays tax at a higher rate than the other, putting income into the hands of the lower-paying spouse will benefit the couple overall.

Of course, if Kate were to invest on her own, then she would receive the full £10,000 net rental profit and utilise most of her £12,570 personal allowance, leaving no taxable income at all:

Kate	£
Income	10,000
personal allowance	(10,000)*
Taxable	£0
Rate	20%
Tax	£0
Net income	£10,000

**Restricted to no more than chargeable income*

Although an equal joint investment is significantly better than William 'going it alone,' having Kate as sole investor reduces the tax bill to nil, saving a further £2,000 in tax.

So, deciding whoever, within a couple, owns the income-generating property, and therefore receives the income, has a potentially very significant effect on the tax that is due.

How net incomes may be distributed between spouses, etc., from one year to the next is also important: if, having enjoyed 100% of the income in Year 1, Kate returns to work in the following year as a solicitor earning £95,000 annually, then she would probably rather not risk losing her tax-free personal allowance (as an additional £10,000 rental income would take her over £100,000 of adjusted net income, such that her personal allowance would start to be tapered off at a rate of 50%, in accordance with ITA 2007 s 35 (2), and as noted at "About this Guide" above). As a couple, Kate and William would probably prefer then to reallocate the net rental income at least 50% in William's favour.

We consider some of the complications of spouses holding property in joint names below – see Chapter 5 and in particular Example 8.