

Taxation of property

INTRODUCTION

Bricks and mortar

Becoming a landlord has been an attractive proposition for anyone who could raise a deposit, thanks to a prolonged period of low borrowing costs and generally rising property values.

However, the outlook is currently uncertain, even though the housing market has now opened up again after the Covid-19 shutdown. Initial forecasts were for price falls of anything up to 13%, although the situation so far has not been as bad as feared. There is also the small matter of the UK leaving the EU at the end of the transition period in December. From April 2020, finance costs generally no longer qualify for relief at higher tax rates, with various adverse capital gains tax (CGT) changes having come in at the same time.

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BECOMING A LANDLORD

Anyone currently thinking of becoming a landlord should be in a fairly strong position when it comes to negotiating property prices, especially cash buyers. Following the Covid-19 lockdown, homes with gardens are likely to see less price discounting, and correspondingly will be more attractive to tenants. Mortgage deals are available again, and the current bank base rate of 0.1% is the lowest it has ever been. The outlook for prospective landlords is therefore vastly improved from recent months, and with some 4.5 million tenants renting from private landlords there is considerable opportunity for new landlords.

FINANCE COSTS

For those still looking to invest in property, an individual's finance costs, such as interest on mortgages and loans to furnish a property, are not tax deductible. A basic rate relief tax reduction is given instead.

Example – Finance costs restriction

For 2020/21, Alice, a higher rate taxpayer living in Suffolk, has buy-to-let rental income of £20,000, allowable deductions of £2,000 and finance costs of £8,000.

None of Alice's finance costs are deductible, so her property income for 2020/21 is £18,000 (£20,000 – £2,000), on which she will pay higher rate tax of £7,200. She can then deduct tax relief at the basic rate for the finance costs (£8,000 at 20% = £1,600), resulting in a tax liability on her property income of £5,600 (£7,200 – £1,600).

One way to avoid the finance costs restriction is to use a limited company structure to purchase property. In Alice's case, a company would have paid tax of just £1,900 ((£18,000 - £8,000) at 19%) with 100% of the finance costs being deductible. However, as explained below, Alice would then face more tax when extracting the property income from the company.

CGT CHANGES FROM APRIL 2020

Many landlords have built up property portfolios by retaining property when they move homes, with the retained properties then rented out. One attraction of this approach is that rental properties, having previously been occupied as a main residence, can often be sold in the future at little or no CGT cost.

A proportion of the gain arising on sale is exempt, based on the period of occupation. In addition to actual periods of occupation, the final period of ownership is also exempt. However, from 6 April 2020 this final period exemption has been cut from 18 to nine months.

Letting relief then provides a further exemption of up to £40,000 of the gain (£80,000 for jointly owned property). However, from 6 April 2020, letting relief is almost certainly no longer available to most landlords because a shared occupancy test has been introduced.

As if to add insult to injury, along with the higher CGT bill, the CGT due date is now much earlier, with a payment on account being required just 30 days after completion.

RENTING OUT A PROPERTY

Agents and fees

A good agent will be invaluable when it comes to finding tenants (and filtering out bad ones) and ensuring that tenancy agreements are watertight. They will be up to date with property legislation, such as Covid-19 emergency legislation preventing evictions for at least a five-month period. They can take much of the stress out of maintenance and provide an impartial buffer should the tenancy go sour. However, lettings agents are not cheap, so one popular option is to use an agent just to find and vet tenants, and to set up the tenancy.

Since 1 June 2019:

- It is no longer permissible to charge tenants letting fees, and you cannot get around this by asking for a higher rent at the start of a tenancy. As a result, agents are charging landlords higher set up fees and have increased their management fees.
- For properties rented at an annual rent below £50,000, deposits are now capped at five weeks' rent.

The Tenant Fees Act only applies in England, although letting fees were already banned in Scotland.

Basis of taxation

The basis for taxing property is not quite as simple as you might think.

For individuals, property income is calculated on a tax year basis, with accounts being prepared to 5 April (31 March is permitted). Income and expenses for all your buy-to-let properties are pooled together, with figures normally calculated on a cash basis. Rent and expenses are therefore included when received or paid. For companies, property income is calculated according to the company's accounting period and must be done on an accruals basis.

Allowable deductions and reliefs

Allowable expenses must be incurred wholly and exclusively for your buy-to-let business, and could include:

- letting agent's fees;
- cost of maintenance, repairs and gardening;
- council tax, water rates, gas and electricity;
- property insurance;
- advertising; and
- business mileage calculated using HMRC's mileage rates (45p per mile up to 10,000 miles, and 25p thereafter) or based on the actual cost.

You can also deduct any amounts spent on replacing furniture and furnishings, including beds, televisions, fridges and freezers, carpets and floor coverings, curtains, and crockery and cutlery. However, there is no relief for the initial cost of furniture and furnishings. The amount of relief is reduced by any proceeds from selling the old asset which has been replaced. Also, relief is not given for any cost which represents an improvement, for example, if a washing machine is replaced with a washer-dryer, only the cost of an equivalent washing machine qualifies for relief. However, this rule is relaxed if the improvement element is incidental, such as replacing single-glazed windows with the modern equivalent of double-glazed windows.

Planning point

Unless you are using a letting agent, make sure that you check the right to rent of all new tenants aged 18 or over, even if they are not named on the tenancy agreement. You will need to ask for, and keep copies of, original documents proving that tenants are permitted to live in the UK.

Property allowance

An annual property allowance of £1,000 can be claimed as a deduction by individuals if this is more than your actual allowable deductions and reliefs.

Multiple occupancy

You need to be aware of the additional requirements if you rent out your property as a house with multiple occupancy (an HMO). This is a complex area, but essentially multiple occupancy means at least three tenants, forming more than one household, but who share facilities like a bathroom. Student lets are normally classed as HMOs.

Planning point

During the Covid-19 crisis, with many tenants either furloughed on reduced pay or losing much of their income, you need to plan for a period of reduced rental income, possibly by taking a mortgage payment holiday. It makes sense, however, to try and retain existing tenants, so consider the impact of any rent increase when things return to normal to try and avoid leaving a tenant with the burden of a large rental debt.

TAX IMPLICATIONS OF BUYING A PROPERTY

While finding the right property in the right area at the right price will be at the forefront of your mind when looking to buy, you should not forget the tax implications.

Stamp duties

Although you will incur various lending, legal and survey costs, stamp duty land tax (SDLT) is usually the biggest expense when purchasing a property in England or Northern Ireland. SDLT rates are increased by 3% when it comes to buy-to-lets, regardless of whether you buy the property personally or through a limited company.

If you are purchasing a buy-to-let in Scotland, you will pay land and buildings transaction tax (LBTT) instead of SDLT, with a 4% surcharge. For buy-to-let purchases in Wales, land transaction tax (LTT) applies but with a 3% surcharge.

In each case, tax is paid on the slice of the purchase price falling within each tax band.

Stamp duties on second residential properties					
England and NI – Stamp Duty Land Tax	Rates	Scotland – Land and Building Transaction Tax	Rates	Wales – Land Transaction Tax	Rates
£0 to £500,000	3%	£0 to £250,000	4%	£0 to £180,000	3%
£500,001 to £925,000	8%	£250,001 to £325,000	9%	£180,001 to £250,000	6.5%
£925,001 to £1,500,000	13%	£325,001 to £750,000	14%	£250,001 to £400,000	8%
Above £1,500,000	15%	Above £750,000	16%	£400,001 to £750,000	10.5%
				£750,001 to £1,500,000	13%
				Above £1,500,000	15%

For property purchases in England or Northern Ireland, the 0% threshold has been increased from £125,000 to £500,000 for transactions between 8 July 2020 and 31 March 2021 as part of the government’s measures to stimulate the economy as the country emerges from the Covid-19 lockdown. Similarly, the Scottish LBTT 0% threshold has been increased from £145,000 to £250,000 for transactions between 15 July 2020 and 31 March 2020. However, the 3% and 4% surcharge rates still apply.

Although the Welsh LTT 0% threshold has also been raised to £250,000, the increase does not apply to buy-to-let properties.

The surcharge is not charged on a property costing £40,000 or less, meaning no SDLT, LBTT or LTT will be charged for such a purchase.

As a general rule, living in a property before letting it out will not get around the surcharge. The only situation where the surcharge will not apply is when your buy-to-let purchase is your only property, such as where you are personally living in rented accommodation.

Example – SDLT calculation

Emma, who already owns a main residence, purchases a buy-to-let property in England for £680,000. The amount of SDLT payable is £29,400, calculated as:

First £500,000 at 3%	£15,000
Final £180,000 (£500,000 to £680,000) at 8%	£14,400
	£29,400

Planning point

SDLT, LBTT and LTT are not payable on any part of the purchase price that is attributable to such things as carpets, curtains and any other moveable furniture and domestic appliances that the vendor leaves in the property, so a modest reduction in the amount of tax payable may be possible.

Personal or corporate purchase?

An important decision that you will have to make at the outset is whether to purchase your buy-to-let property personally or through a limited company. The restriction to the tax deductibility of finance costs (explained above) has made the company route more attractive. The relatively low 19% rate of corporation tax also means that this option makes sense if you are aiming to retain profits for reinvestment in additional property or to repay some of your financing.

A company structure makes it relatively easy to include family members in your property business, and control can gradually be passed to children or grandchildren which makes for good inheritance tax (IHT) planning.

However, the overall tax charge might well be higher if profits are withdrawn from a company. If taken as remuneration, national insurance contributions could be payable. If extracted as dividends, there could be a double charge to tax if the dividends are over the £2,000 tax-free dividend allowance. Capital gains may also suffer a double tax charge.

Example – Tax charge on company dividends

Winston, a higher rate taxpayer, has £20,000 of property income within his property company, which he wishes to withdraw as a dividend during 2020/21.

If Winston had received £20,000 of property income as an individual, then he would have paid income tax of £8,000 (£20,000 at 40%), leaving him with £12,000.

The company will pay corporation tax of £3,800 (£20,000 at 19%), leaving £16,200 to pay out as a dividend. If the dividend allowance is not available, Winston will pay income tax of £5,265 (£16,200 at 32.5%) on the dividend, leaving him with net income of £10,935.

Planning point

If buying a leasehold property, check that the ground rent is not excessive. The recent use of high, escalating ground rents can seriously impact on the future value of the property and, in some cases, make it unsaleable. (although many leaseholders now have the option of having ground rent increases linked to RPI if the rent would otherwise double more frequently than every 20 years).

TAX IMPLICATIONS OF SALE OR DISPOSAL

Your buy-to-let property portfolio may increase in both size and value, and at some point you may want to cash in some properties, possibly to pay down the finance on those to be retained. Another option as you get older might be to gift some properties to your children or grandchildren. Capital gains tax (CGT) will come into play whether you sell or gift property, although this tax can be avoided by simply retaining property until your death.

Your children or grandchildren can then inherit properties with an uplifted base cost for CGT purposes, although IHT then becomes an issue.

- **CGT** The gain will be based on what you sell a property for, or its market value if gifted. You can deduct the original purchase cost, incidental costs of purchase and sale (such as legal fees and stamp duties) and any expenditure which has enhanced the value of the property (and will therefore not have been deducted as repair expenditure when calculating property income). If a property has not been occupied as a main residence, the only exemption, if available, will be the annual exempt amount (£12,300 for 2020/21). Gains will then sit on top of your income for the tax year of sale or disposal. Any part of the gain that falls within your basic rate band will be taxed at 18%, with the remainder taxed at 28%.
- **IHT** Outright gifts of property have IHT implications if you die within seven years of making the gift. If your property portfolio is retained until death, it will be included as part of your estate at its value at the time of death. Basically, IHT is payable at 40% once a nil rate band of £325,000 (up to £650,000 if you benefit from the nil rate band of a deceased spouse or civil partner) is exceeded.

Corporate disposals

If you have used a company structure for your buy-to-lets, then any gains will be made within the company and taxed at the 19% company tax rate. But note that companies do not benefit from the annual exempt amount.

The base cost of any property disposal is uplifted by an indexation allowance, which allows for the impact of inflation, as measured by the retail prices index (RPI). However, indexation has been frozen at December 2017, so no relief is given for inflationary gains from January 2018 onwards. Properties acquired on or after 1 January 2018 do not benefit from indexation.

Should you wish to extract the proceeds of a company property disposal, you will face a potential double tax charge – the corporation tax payable on the gain, then personal tax on the withdrawn proceeds – which is inefficient compared to the tax cost of disposing of a personally owned property.

For gifts during lifetime or on death, the relevant asset will be the company's shares rather than the underlying property assets. The value of the company's shares will be included in your estate on death, with no uplift to the base cost of the property held within the company. IHT business relief does not generally apply to property company shares.

OTHER TYPES OF PROPERTY LETTING

The introduction of the finance costs restriction for buy-to-lets has spurred interest in other types of property letting which do not suffer the same restriction.

Furnished holiday letting

Furnished holiday lettings are treated as a trade and therefore qualify for various tax advantages, although they will obviously require considerably more work given the short-term nature of the lettings. Apart from not suffering from the finance costs restriction when calculating property income, any gain on the disposal of a furnished holiday letting can benefit from a 10% capital gains tax rate.

The qualifying conditions can, however, be hard to meet. Essentially, a property must be available for letting at least 210 days a year and let for at least 105 days.

Planning point

For 2020/21, it may be particularly difficult to meet the 105 day letting condition given the Covid-19 lockdown. One option is to apply an average over two or more holiday lets. The second option is to make a period of grace election if your property has reached the occupancy threshold in previous years.

Commercial property

You might not like the idea of commercial property, but semi-commercial property, such as where there is a flat above a shop, might be an attractive proposition, being halfway between commercial and residential investment. The purchase of such a mixed-use property will not suffer the relevant stamp duty surcharge, and the finance costs restriction will not apply to those finance costs associated with the purchase of the commercial element of the property. A new relief provides for an annual 3% write-off if you buy commercial property where the construction contract was signed on or after 29 October 2018. The cost of converting or renovating an existing property also attracts the 3% relief, but the value of land and any dwelling element are excluded.

The rental yield from mixed-use commercial property is often significantly higher than that from a traditional buy-to-let.

Example – SDLT on mixed-use commercial property

If Emma – who purchased a buy-to-let property for £680,000, paying SDLT of £29,400 – had instead purchased a mixed-use commercial property, the SDLT payable would have been just £9,000 based on the non-residential rates – a saving of £20,400.

Renting a room

Do not overlook the tax advantage of renting out a furnished room or rooms in your own home, especially to a long-term lodger. Rents of up to £7,500 each tax year are exempt from tax, which will be quite beneficial for a higher rate taxpayer. The relief does not apply, however, if you have converted part of your home into a separate flat.

You can either rent to a long-term lodger or (now the Covid-19 lock-down has been eased) make use of an online site such as Airbnb to offer holiday lets. Don't forget to inform your mortgage lender, review insurance cover and check whether there are any local authority restrictions.

Planning point

Consider renting out a furnished room (or rooms) in your own home. Rents of up to £7,500 each tax year are exempt from tax.

HOW WE CAN HELP

We can help you to understand the tax implications prior to you purchasing a property, and the effects of using corporate structures.

We can help you understand what a sale will cost in tax terms. We can also discuss estate planning options that can help keep IHT liabilities to a minimum.

There are several important recent changes to the way in which property income is taxed. We can advise on the impact of these changes, keep you up to date with any further changes, and make sure you are fully briefed on the latest Covid-19 crisis developments.

This publication is for general information and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking any action on the basis of the contents of this publication. This publication represents our understanding of law and HM Revenue & Customs practice as at 14 July 2020.

Thank you for your interest in this Essential Guide. For further information or if you would like to discuss any aspect of the guide, please contact us.

Carson & Trotter Chartered Accountants
123 Irish Street
Dumfries
DG1 2PE

Tel: 01387 269595

Fax: 01387 250017

Email: info@carsontrotter.co.uk