# Buy-to-let property : Which structure?

If you own a single or a few buy to let property, in most cases the best option for tax used to be to own it personally. With the recent changes to the deductibility of mortgage interest and the changes to dividend taxation, it may be time to re-examine this, especially if you aim to keep any profit for re-investment

For example, an additional rate taxpayer with a property making £10,000 profit each year would be paying £4,500 in tax each year. In contrast the same property in a company would only see £2,000 paid in tax each year. The extra £2,500 retained will help build a pot of cash for further property investments more swiftly.

### Advantages of a company

In addition to the immediate tax implications for an individual, a company is a powerful way to bring in family members – either to provide an income, or as a structure to plan for inheritance tax. Some advantages of this are:

- You can use the company to minimise tax by using multiple personal allowances and basic rate bands.
- You can provide for personal expenditure in a tax efficient way – for example school or university fees for children or grandchildren can be funded through dividends from a shareholding.
- Family members can be encouraged to take an active part in the running of the company.
- Control can gradually be passed down to children or grandchildren.
- Genuine gifts of shares to family members will be Potentially Exempt Transfers and therefore could reduce your taxable estate for Inheritance tax, as long as you survive the gifts by more than 7 years.

Some family investment company structures can become complex, and special attention is required in order to draft the company's Articles and to fully document and register any changes in ownership.

### New business

If you have not yet started letting property, you could consider funding and using a company structure from the start. A significant advantage of doing this is that it will avoid a second stamp duty charge on a transfer later on. The initial Stamp Duty will still be payable of course – by the company in this case.

### Incorporating an existing business?

If you are an existing landlord, you may be wondering whether it will be worth transferring your existing let property to a company. As you build up your portfolio, a company is a very efficient way of retaining as much rental income as possible toward future purchases.

## ***Tax considerations on transfer***

When transferring an existing property to a company, you will need to consider the tax implications:

- A transfer will be chargeable to Capital Gains Tax.
- It will be deemed to take place at Market Value even if the company does not pay you anything.
- S162 hold over (incorporation relief) is available to hold over the gain for Capital Gain Tax – This has the effect of delaying capital gains tax.
- Stamp Duty will also be payable by the company. Note that the charge is calculated by reference to the Market Value, not the consideration (which might be £nil) where the transferor is connected to the company, or the consideration is wholly or partly for shares.

**The Key Points for each tax are listed below**

| Held Personally | Held though a company |
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| Income Tax<br><br>Taxed on profits at marginal tax rate (up to 45%), regardless of when the money is withdrawn from the business.<br><br>Recent changes to the definition of profits:<br><br>• Buy-to-let landlords are no longer able to receive higher rate relief on mortgage interest or other finance costs<br>• Rent-a-room relief was raised to £7,500 from 2016/17<br>• Withdrawal of the wear and tear allowance for furnished properties and introduction of a replacement of domestic items relief | Corporation Tax<br><br>Taxed at corporation tax rate (19%) as profits are realised.<br><br>Profit extraction<br><br>Potential double tax charge when profits extracted as dividends<br><br>From 2018/19 the tax on dividends will be:<br><br>• £2,000 tax free<br>• Three dividend tax bands: 7.5%, 32.5% and 38.1%<br>• Dividends received by pensions and ISAs will be unaffected |

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| Tax on disposal of the property<br><br>Subject to Capital Gains Tax at 18%/28%, after deducting any available annual exemption (2019-20 £12,000)<br><br>CGT hold-over relief may apply on disposal to the owner's company or disposal to a trust.<br><br>Private Residence Relief (PRR) available if property sold has ever been only or main residence. Letting relief also available up to March 2020 but being withdrawn from April 2020. | Tax on disposal of the property<br><br>The indexation allowance is available to companies, tax due is at corporation tax rates, currently 19%.<br><br>If proceeds are to be extracted there will be a further charge to tax for the individual shareholder. |
| Ownership<br><br>The maximum number of legal owners of land and property is restricted.<br><br>There will be CGT on disposal of part interest to others, regardless of whether any consideration received. May be delayed using holdover relief in some circumstances.<br><br>Owners need to decide whether to hold property as joint tenants, or tenants in common and also to consider the effect on joint tenants of changing beneficial interests in the property. | Ownership<br><br>A company may have multiple shareholders.<br><br>CGT issues should be potentially avoidable if new shares are subscribed for on incorporation.<br><br>Family shareholders should be aware of the Settlement Anti-avoidance provisions if different share classes are allocated to different family members. |
| Losses<br><br>Losses may only be offset against other property income. | Losses<br><br>Losses can be offset against total company profits of the current or future years, as long as the rental business continues<br><br>They cannot be offset against the individuals other income. |

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| Annual Tax on Enveloped Dwellings (ATED)<br><br>Not Applicable | Annual Tax on Enveloped Dwellings (ATED)<br><br>The ATED regime applies to high value residential properties held by non-natural persons (e.g. a company) however there is an exemption from the charge when the property is let on a commercial basis.<br><br>The ATED charge is payable if the letting business ceases, for example if the property is used by the company owners or their families.<br><br>From April 2016 properties with a value of £500,000 or more are affected. |
| Inheritance Tax<br><br>Beneficiaries of the estate will receive the property at market value so there would be no capital gains tax for them to pay on an immediate sale. | Inheritance Tax<br><br>If the beneficiaries wish to realise their investment immediately, the company will have a capital gains tax charge on the sale of the property and there will be a further charge for the individual shareholders when extracting the proceeds. The value of the shares is likely to be less than an equivalent share of the property because of the potential capital gains tax liability. |
| VAT<br><br>The letting property is exempt from VAT.<br><br>Commercial letting can be standard rated if the owner has opted to tax.<br><br>Furnished holiday lets are subject to VAT at the standard rate, the owner will have to charge VAT if they are registered | VAT<br><br>The letting property is exempt from VAT.<br><br>Commercial letting can be standard rated if the company has opted to tax.<br><br>Furnished holiday lets are subject to VAT at the standard rate, the company will have to charge VAT if they are registered |
| | Other considerations of running a company:<br><br>Some tax free benefits in capacity of employer.<br><br>Will need to consider payroll and auto-enrolment duties if there are employees. |