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Recognised Business Structures for Portfolio Landlords

What S24 alone costs you …

Here are three example scenarios	Basic Rate Tax Payer becomes Higher Tax Payer	Higher Rate Tax Payer loses their personal allowance	Higher Rate Tax Payer becomes Advanced Rate
Rental Income	£80,000	£160,000	£250,000
Allowable Expenses	£20,000	£30,000	£50,000
Mortgage Interest	£40,000	£70,000	£120,000
PAYE Salary	£20,000	NIL	NIL
The impact of S24 if NOTHING is done:			
Pre S24 – 2016-17	£5,800	£13,200	£21,200
This Year – 2019-20	£9,500	£24,500	£43,500
Post S24 – 2020-21	**£11,500**	**£30,500**	**£51,000**

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Standalone Limited Company Ownership

The Practical Costs

Whilst not in themselves direct costs, being a commercial borrower impacts you in the following ways: -

- incorporation is an all or nothing option, and a virtual one-way street!
- significantly reduced choice of lenders and usually higher interest rates
- full personal joint & several guarantees from all the directors and shareholders (if the company goes bust you remain responsible for the debt); and none are keen on BICTs as they fundamentally weaken the lender's ability to pursue the debt
- lenders will often take a debenture (legal charge) over the company's balance sheet, which restricts your ability to use your director's loan account if at all
- you're most likely tied in to the first lender and their appetite for further lending, if any, meaning that each new acquisition or remortgage may need a new lender and a new company with all the associated costs
- if property prices fall, thereby increasing the loan to value beyond the point to which the lender originally agreed, you may have to find the cash difference
- restrictions on what you can borrow for, i.e. remortgage to fund lifestyle.

Standalone Limited Company Ownership

The Transactional Costs

Moving ownership and mortgages from your name to a limited company means a change of legal title and thus a likely remortgage/new lender, with associated costs such as: -

- the value of your time (even if you don't measure it, your time has a monetary value to your business)
- CGT and SDLT if you don't qualify for S162 Incorporation Relief (HMRC no longer give pre-clearance meaning that you won't know now until it's too late, which can be two years off)
- losses cannot be carried forward
- early redemption charges
- brokers fees, lenders fees, legal fees etc
- likely breach of mortgage terms and conditions if using BICTs
- no realistic/economic way back without re-incurring the above plus no relief from CGT and SDLT.

Standalone Limited Company Ownership

The Tax Costs

Limited Companies and the individuals within them are taxed up to seven different ways: -

- Corporation Tax (19% falling to 17%, but could be uplifted for ‘property/investment’ companies, as was CGT for individuals – the George Osborne incorporation bear trap)
- Capital Gains Tax on personal withdraws of capital resulting from selling assets (up to 28%)
- Directors Loan Account Tax (32.5%) *
- Dividend Tax (7.5%, 32.5%, and 38.1%)
- Income Tax (20%, 40%, 45%, and 60% on the slice between £100,000 and £125,000)
- Employees and Employers NIC (12% and 13.8% respectively)
- Inheritance Tax (40% - ‘investment’ companies, i.e. those that hold residential property for 12-months or more for the sole purpose of collecting rents are fully subject to IHT)
- So called ‘Freezer Shares’ are a one-generation fix and do nothing to solve the current IHT bill.

* FYI, very short duration bridging loans where the money never leaves the conveyancer’s client account(s) and has no obvious commercial purpose *is* tax avoidance!

Limited Liability Partnership Ownership

- A Limited Liability Partnership (LLP) is a hybrid in its own right, and have been available in the UK since 6th April 2001.
- Member (Partners) have limited liabilities similar to those of the shareholders in a Limited Company.
- LLPs enjoy the flexibility of a traditional partnership in terms of internal management structure, taxation, profit distribution and the rights and duties of partners.
- LLPs don’t pay corporation tax, capital gains tax, or income tax. Instead, LLP income and/or gains are distributed gross to the Members (Partners) as self-employed persons and taxed at their rates.
- Properties owned by a LLP are subject to inheritance tax in the Members (Partners) estates.
- **No tax on the withdrawal of capital.**

Mixed Partnership (Hybrid) Ownership

Properly arranged and managed, a Mixed Partnership (natural and artificial persons as Members) allows you to legitimately maximise the commercial benefits of building, running, and growing a professional property business, meaning: -

- No need to remortgage or change title, thus no CGT or Stamp Duty
- Carried forward losses remain available
- Tax from your property income at basic rate
- Seamless succession planning and Inheritance Tax typically mitigated within two years
- Significantly reduced CGT when selling properties
- Two layers of commercial limited liability and protection against family/marital break up
- Maximum commercial flexibility
- Fully accepted lender friendly solution and no breaches of your mortgage terms & conditions
- Quick, easy, and cheap to unwind if the rules change
- **More money in your pocket – it won't in itself make you happy, but it's better to be miserable and rich than being miserable and poor ☺!**

Mixed Partnerships (Hybrids) – the legal facts

"Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow tax-payers may be of his ingenuity, he cannot be compelled to pay an increased tax."
Lord Justice Tomlin - IRC v Duke of Westminster (1936)

- Mixed Partnerships have NOT been outlawed by HMRC
- Mixed Partnerships are legitimate business structures and NOT tax avoidance schemes
  (we have submitted over 500 Hybrids tax returns to HMRC and they have agreed them all)
- Mixed Partnerships do NOT require HMRC clearance
- Mixed Partnerships do NOT fall under the Declaration of Tax Avoidance Schemes (DOTAS) provisions
- Mixed Partnerships do NOT fall foul of the General Anti-Abuse Rule (GAAR)
- Mixed Partnerships ARE allowed under the Generally Accepted Accounting Principles (GAAP)
- Mixed Partnership income IS treated as trading income

	Retain Property in Personal Names	Transfer to Limited Company (via S162)	Mixed Partnership Hybrid Business Model
Full Relief for Finance Costs	✗	✓	✓
CGT Mitigated on Entry	✗	✓	✓
No change in property legal ownership	✓	✗	✓
Re-mortgage NOT Required	✓	✗	✓
Inheritance Tax Mitigated on Existing Estate Value	✗	✗	✓
Inheritance Tax Mitigated on Future Value	✗	Possible for next generation only	All future Generations
Likely Maximum Tax Rate	45% & 60%*	50%** & 60%*	20%

* Loss of personal allowance between £100,000-£125,000
**Corporation tax at 19% followed by dividend tax at 38.1%

Next steps

If you'd like to find out how you can stop being an 'accidental' landlord and instead maximise the commercial benefits of building, running, and growing a professional property business, then take our free Assessment for Portfolio Landlords.

Lt4l.uk/s24