

BARNES ROFFE LLP

TAX STRATEGIES FOR PROPERTY INVESTORS

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27th September 2018



Seminar Coverage

Residential	Commercial
Buying	Buying
Renting	Renting
Selling	Selling
Keeping	Keeping
Changing	Changing
Use of corporate vehicle? (NB seminar not covering offshore or private residence issues)	

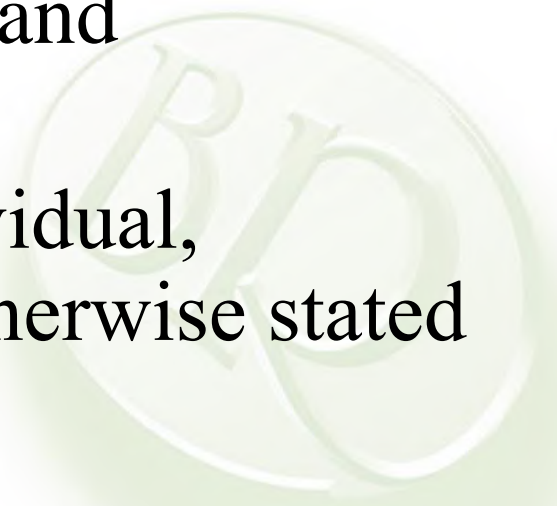
Seminar Coverage

Tax Focus	Area of Interest
SDLT / VAT	Buying
IT / CT / ATED / VAT	Renting
CGT / CT / VAT	Selling
IHT	Keeping
Restructuring / All	Changing

(NB LBTT (Land & Buildings Transaction Tax), not SDLT, applies in Scotland)

Residential Property

Buying

- Stamp Duty Land Tax
 - VAT issues? Possible option disapplication on change of use
 - Issues common to companies and partnerships
 - For “partnerships” read “individual, partnership or LLP” unless otherwise stated
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SDLT ~ Banded (Residential Freehold)

Band	1st	Other
0 - £40,000	0%	0% **
£40,001 - £125,000	0%	3%
£125,001 - £250,000	2%	5%
£250,001 - £925,000	5%	8%
£925,001 - £1,500,000	10%	13%
£1,500,001+	12%	15%

** ~ Lost if cost > £40,000

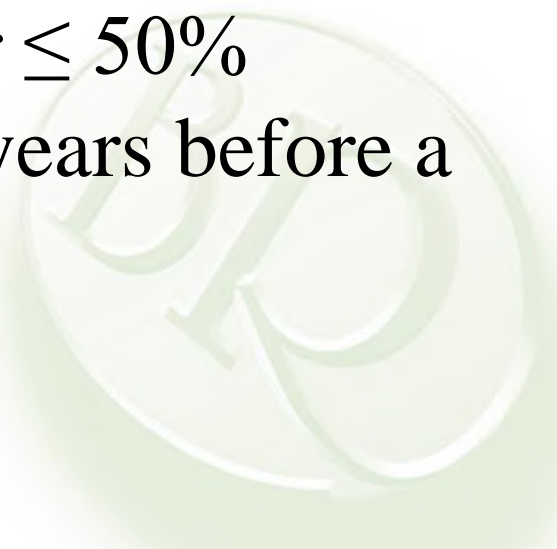
Residential ~ SDLT

Application of Additional 3%

- Applies if at the end of completion day you own a major interest in >1 residential property
- Major interest = lease >7 yrs or freehold
- N/A if replace main residence within 3 years, in which case apply for a refund (18m in Scotland)
- Don't pay in the first place if sell other residence within 30 days (the SDLT1 form filing limit)


Residential ~ SDLT

Application of Additional 3%

- Married couples / civil partnerships ~ interests of one are attributed to the other
 - Inherited properties count (but not from unadministered estates nor for $\leq 50\%$ interest inherited in the three years before a purchase)
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Residential ~ SDLT

Application of Additional 3%

- Not applicable for mixed transactions (part residential / part commercial)
 - Different in Scotland under LBTT where there is apportionment
 - Wales – new LTT (from 1.4.2018) behaves like SDLT on this issue
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Residential ~ SDLT

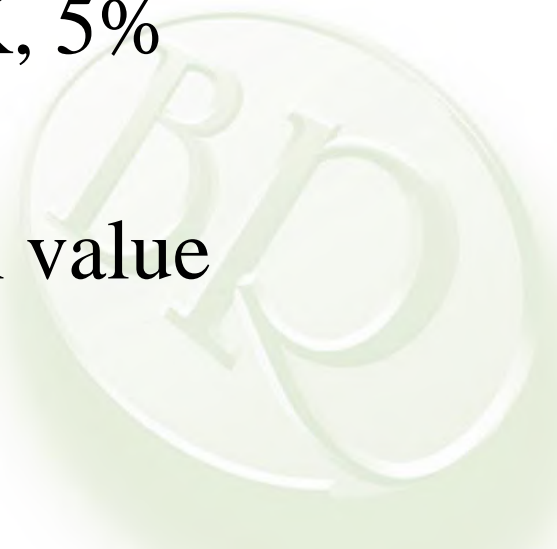
Multiple Dwellings Relief

- Take total consideration and divide by the number of residences
- Work out SDLT on one and multiply by the number of residences
- Minimum = 1% x whole consideration



Residential ~ SDLT

Multiple Dwellings Relief

- As an alternative to claiming the above, where there are 6 or more residences use commercial rates to the whole consideration (0% ~ £150K, 2% next £100K, 5% thereafter)
 - Suits bulk transactions in high value residences
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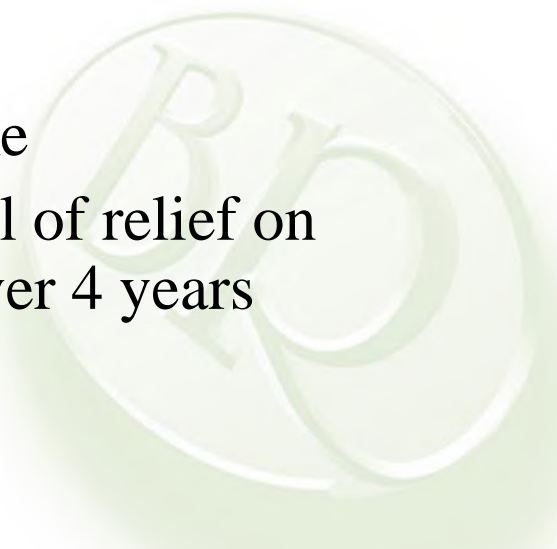
Residential ~ SDLT

Multiple Dwellings Relief ~ Example

- A block of 6 luxury flats costs £12m
- Normal bulk approach ~ take £2m and evaluate SDLT (£212,550) and multiply by 6 (£1,275,300)
- Under MDR (commercial rates) ~ £589,500
- In this case do not claim MDR, rather let legislation for >6 properties apply!!

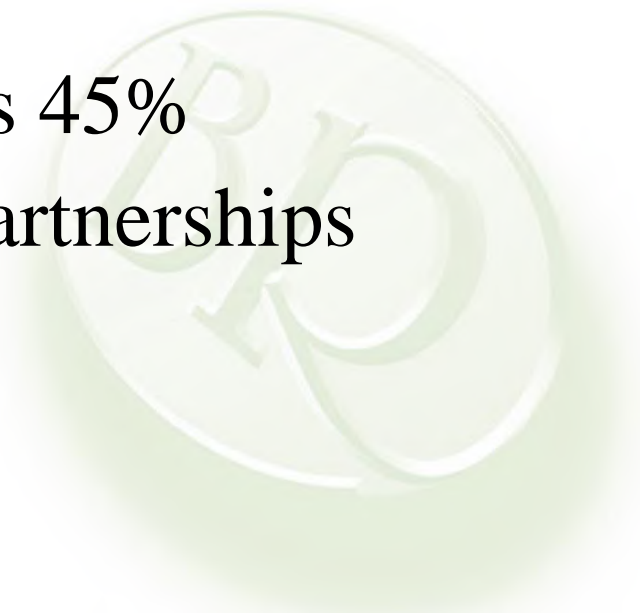
Residential Property

Running

- Company or partnership?
 - Corporation tax 19% (falling to 17%)
 - Dividend rates 7.5% in basic rate band, 32.5% in higher rate band, & 38.1% in additional rate band, with £2,000 tax free dividend
 - ATED compliance burden
 - Income tax on partnerships on all income
 - Non-corporate investors face withdrawal of relief on interest down to basic rate from 2017 over 4 years
 - W&T / MEES issues common to all
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Running ~ in the long run...

- Company corporation tax rate is 17%
- Highest income tax rate on dividends is 38.1%
- That gives a composite rate of tax of 48.623%
- Maximum personal tax rate is 45%
- So, for high income levels, partnerships better, right..?



Running ~ in the long run...

- ...hold on!!
- With a company:-
- £2,000 tax free dividend,
- Facility for a salary in personal allowance
- No restriction on interest relief
- Companies can decide not to distribute
- A detailed analysis is needed



Running ~ Example 1

- Additional rate taxpayer has rental income of £100,000, before interest deduction
- The portfolio is highly geared so that mortgage interest is £60,000 P.A.

	2016/17	2017/18	2018/19	2019/20	2020/21
Income	100,000	100,000	100,000	100,000	100,000
Interest	<u>(60,000)</u>	<u>(45,000)</u>	<u>(30,000)</u>	<u>(15,000)</u>	=
	<u>40,000</u>	<u>55,000</u>	<u>70,000</u>	<u>85,000</u>	<u>100,000</u>
Tax @ 45%	18,000	24,750	31,500	38,250	45,000
Less interest @ 20%	=	<u>(3,000)</u>	<u>(6,000)</u>	<u>(9,000)</u>	<u>(12,000)</u>
Tax due	<u>18,000</u>	<u>21,750</u>	<u>25,550</u>	<u>29,250</u>	<u>33,000</u>

Running ~ Example 2

Year	Scenario	Corporate investor		Private Investor	
		Tax	Cash	Tax	Cash
2016/17	Rent: £250K Yield: 8%	£55,056	£85,569	£49,850	£90,775
2020/21	Gearing: 70% Interest 5%	£53,537	£87,088	£76,725	£63,900
2016/17	Rent: £250K Yield: 8%	£94,213	£124,537	£84,538	£134,213
2020/21	Gearing: 20% Interest 5%	£90,588	£128,162	£92,350	£126,400

Running ~ Example 2 Cont...

Year	Scenario	Corporate investor		Private Investor	
		Tax	Cash	Tax	Cash
2016/17	Rent: £25K Yield: 8%	£109,988	£140,012	£96,600	£151,400
2020/21	Gearing: 0% Interest 5%	£105,786	£144,217	£96,600	£151,400




Minimum Energy Efficiency Standards (MEEES)

Energy Efficiency (Private rental Property) (England & Wales) Regulations 2015

- 1.4.16 ~ Tenants can ask landlords for consent to them making prescribed energy-efficiency improvements
- 1.4.18 ~ Landlords unable to **grant new** tenancy over property with energy performance below an “E” rating
- 1.4.20 ~ Landlords unable to **continue** tenancy over property with energy performance below an “E” rating (1.4.23 for commercial)

Minimum Energy Efficiency Standards (MEEES)

- If at purchase, or an improvement, capital (CAAs for FHLs possible for certain items)
 - Repairs (including modern equivalents) are revenue
 - Repairs of integral features costing $> 50\%$ of replacement cost are capital
 - In Scotland, a 3.5 year action plan allows repairs during use – revenue treatment far more likely
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Wear & Tear Costs

- From 2016/17 onwards only the renewals basis is available
- N/A for FHLs where CAAs apply
- Deductions for repairs to fabric of the property are still available



Annual Tax on Enveloped Dwellings (“ATED”)

- Most business purposes relieved from ATED
- Applies for single dwelling interests with a value on 1.4.2017 (for 2018/19) or acquisition, if later, of £500,000
- Even if no charge, reporting regime applies – penalties for non-compliance
- Report within 30 days of beginning of financial year (1st April) or of later purchase

ATED from 1st April 2018

Value	Annual Charge 2018/19
£500k - £1m	£3,600
£1m - £2m	£7,250
£2m - £5m	£24,250
£5m - £10m	£56,550
£10m - £20m	£113,400
> £20m	£226,950


Residential Property

Selling

- *Companies* ~ Corporation tax on gains subject to indexation allowance, frozen at December 2017
- Income tax on dividend distributions
- *Partnerships* ~ CGT at 28%
- FHLs get entrepreneurs relief and so pay CGT at either 10% or 28% (if ER used up by investor)

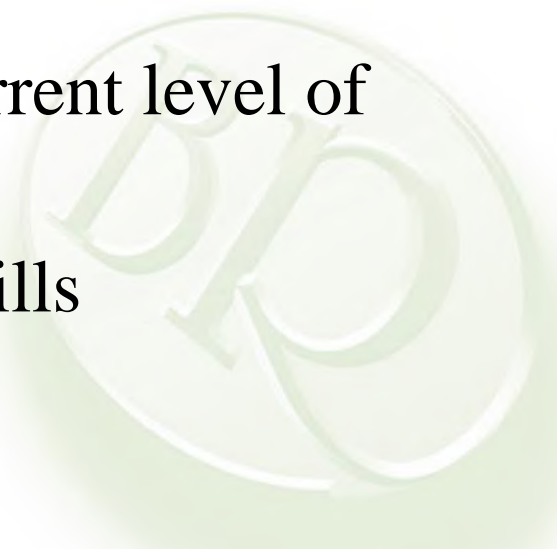
Residential Property

Keeping

- *Companies* ~ no easy inheritance tax relief, but possible mechanism under s28 IHTA
 - Possible shelter in large trading company
 - Gifts liable to trigger large CGT bills
 - No BPR for personal buy-to-let properties nor even for furnished holiday lets
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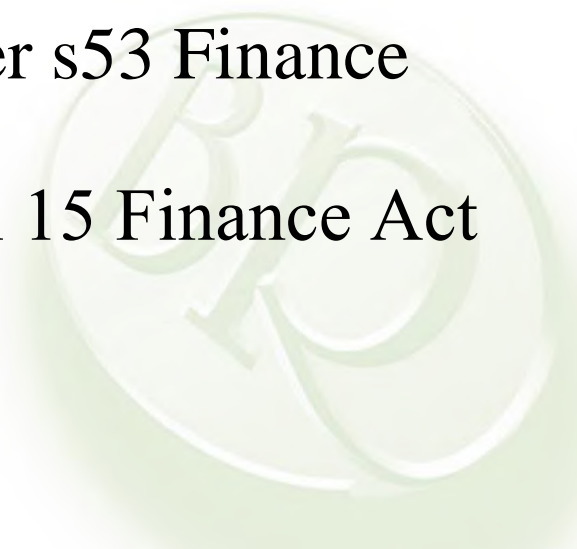
Residential Property

Keeping

- *Partnerships* ~ no easy inheritance tax relief (not even for FHLs), but possible mechanism under SPD12 and use of family LLP
 - Gains at “no gain / no loss”.
 - Use to freeze an estate value at current level of capital account
 - Gifts liable to trigger large CGT bills
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Residential Property

Changing

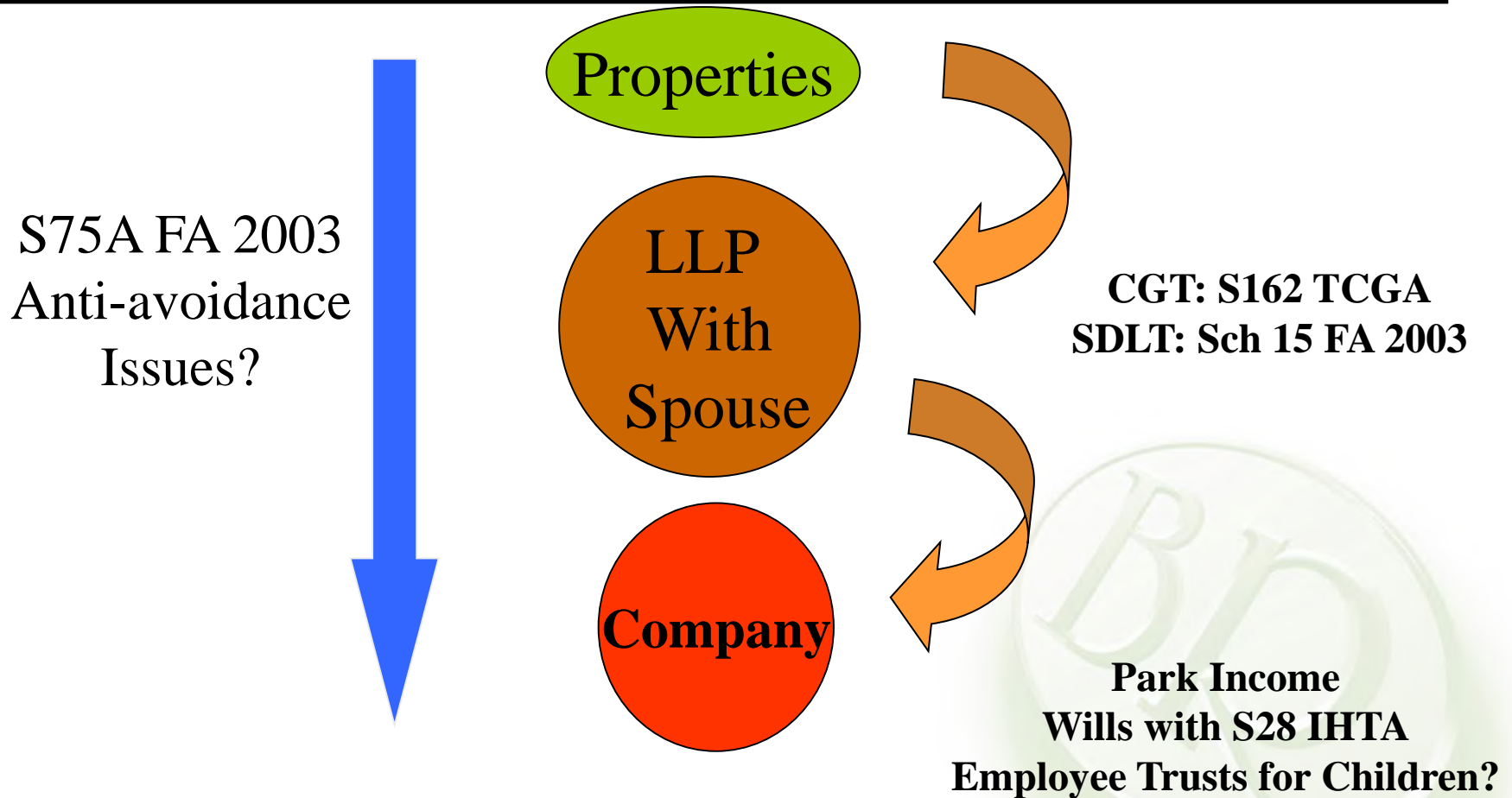
- Consider incorporating your property portfolio using s162 Taxation of Chargeable Gains Act 1992 (if a business)
 - Rebases properties with gains held-over into shares
 - SDLT issues ~ OMV charge under s53 Finance Act 2003
 - Partnerships “relieved” under Sch 15 Finance Act 2003
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Property Business

- Incorporation
- Is it a business?
- UKUT 0226 2013 Case Elizabeth Moyne Ramsay
- All assets



Incorporation Strategy?



SDLT Mitigation

- S75A FA 2003
- Omit artificially inserted land transactions
- Jenkins & Brown type solution?
- S75A can't change the composite transaction
- GAAR?
- Para 17A Sch 15 FA 2003 issues
- Para 14 Sch 15 FA 2003 issues



Commercial Property

Use of property

- For use in a trade
- As an investment



Buying a property for use in trade

Acquisition Taxes

- SDLT
- VAT



Buying a property for use in trade

SDLT Rates on Commercial Property

Up to £150,000	Nil
The next £100,000 (the portion from £150,001 to £250,000)	2%
The remaining amount (the portion above £250,000)	5%

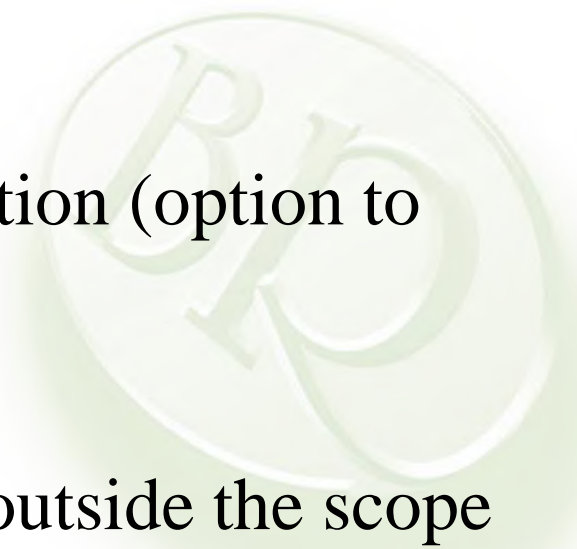
SDLT payable on VAT element



Buying a property for use in trade

VAT

Will VAT be charged on the acquisition cost

- Sale of land exempt unless
 - Election made to waive exemption (option to tax)
 - 20 Year rule
 - Transfer of a going concern – outside the scope
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Commercial Property

Who should own the property?

Individual

Partnership/LLP

Company – the trading company or another company

Trust

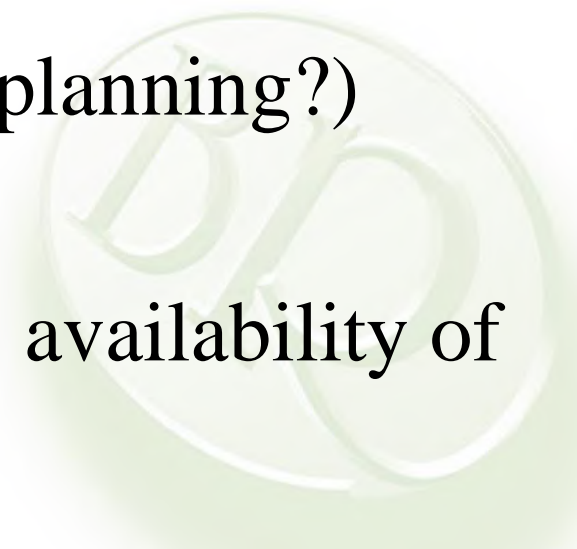
Pension Fund



Commercial Property

Who should own the property?

Key Factors

- Financing
 - Purpose (e.g. part of pension planning?)
 - Exit / Succession
 - Holding Cost (tax on income, availability of reliefs)
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Commercial Property

	Individual/Partnership	Company
Income tax / Corporation tax	0% to 45%	19% reducing to 17%
SDLT	No difference	No difference
Tax on gain/profit	10% or 20%	19% reducing to 17%
Tax on extracted gain	10% or 20%	49.861% reducing to 48.623%
Inheritance tax relief	50% or 100%	100%
Capital Allowances AIA	0% or 100%	100%

Commercial Property

- Example
- Buy property for £300,000
- Rent at 8% per annum
- Sell for £500,000 after 5 years



Commercial Property

Personal Cash Flow	Individual /Partnership	Company
Cost of property	(300,000)	(300,000)
SDLT	(4,500)	(4,500)
Net Rent for 5 Years after tax @ 40%	72,000	Nil
Sale Proceeds	500,000	500,000
Tax on Profit @ 20% (no ER) /17%	(39,100)	(33,235)
Further Tax on Extraction		(52,736)
Net Position after taxes	228,400	109,529
Net position after tax no rent	156,400	109,529

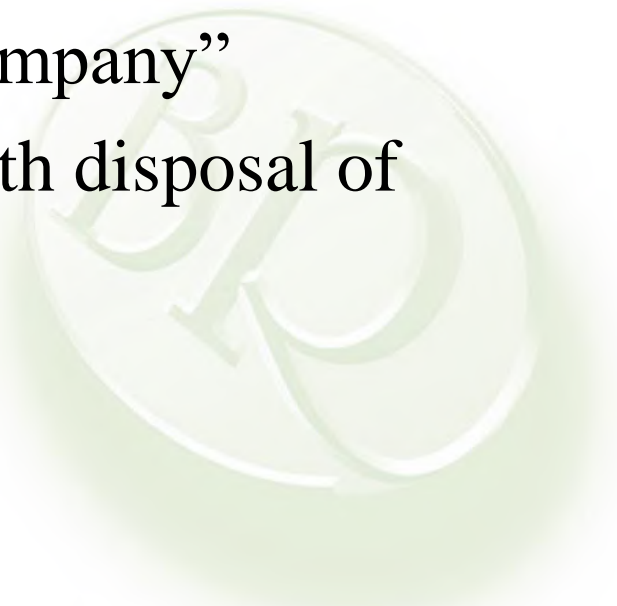
Commercial Property

Personal Cash Flow	Individual /Partnership	Company
Cost of property	(300,000)	(300,000)
SDLT	(4,500)	(4,500)
Net Rent for 5 Years after tax @ 40%	Nil	Nil
Sale Proceeds	500,000	500,000
Tax on Profit @ 10% (ER) /17%	(19,550)	(33,235)
Further Tax on Extraction		(52,736)
Net Position after taxes and ER	175,950	109,529

Commercial Property

ER or No ER

- Cannot charge rent and claim ER
 - Forfeit rent for 10% tax saving on capital gain
- Must be an associated disposal
 - Company must be “personal company”
 - Property disposal associated with disposal of shares in the company
 - 5% of company



Commercial Property

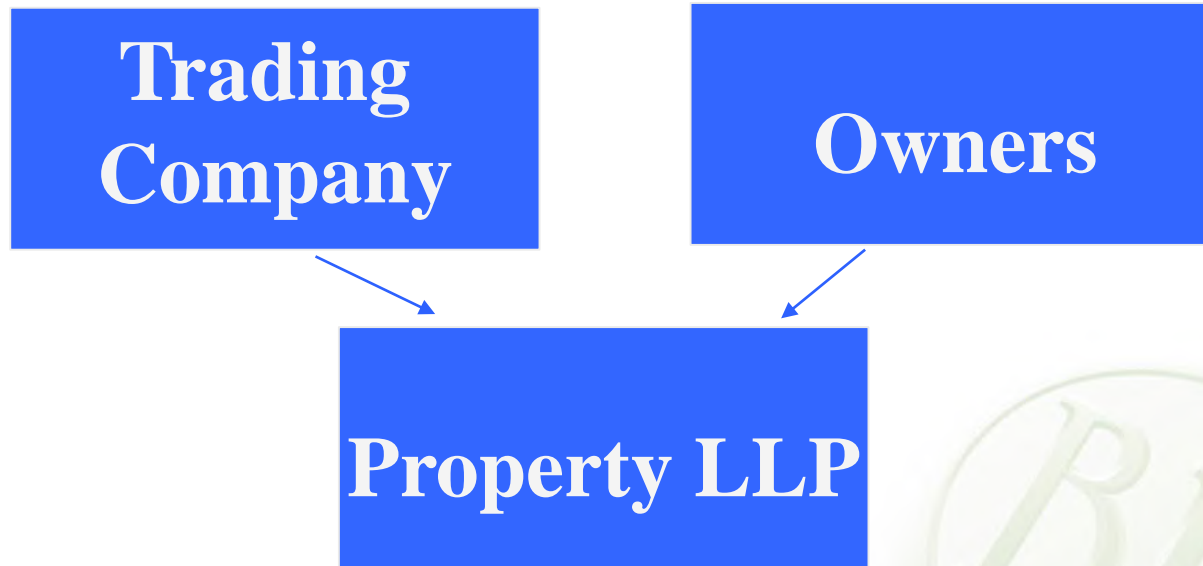
- Death within 5 years – IHT Reliefs

	Individual /partnership Relief	Shares in Trade Co Relief
One owner - individual	0%, 50% or 100%	100%
Partnership – controlling interest	50% or 100%	100%
Partnership no control	0% or 100%	100%

Commercial Property

- **Company has finance – wish to own property personally**
 - Distribution
 - Not tax efficient
 - Loan from Company @32.5%
 - Company pays S455 tax
 - BIK unless interest paid on loan
 - Property LLP
 - No tax on set up
 - Hybrid of Company and individuals

Property LLP



Demerging a property business



Selling your Property to a company

S165 transfer of business relief

- Sell your business property to the company at CGT base cost
- Claim S165 relief
- No immediate CGT
- Base cost to company reduced by held over gain



Pension Fund to acquire property

Small Self administered Scheme (SSAS)

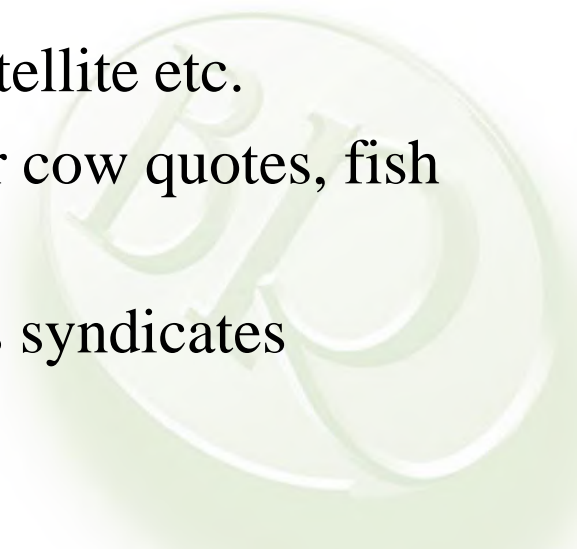
- Commercial property only
- Watch Lifetime allowance as property value rises
- Annual allowance £40,000 if not tapered to £10,000
- But Defined Benefit Scheme may allow greater contributions
- Loan from scheme to company to acquire property ~ Max loan?

Replacement of Business Assets

- Roll-over relief
- Re-investment of consideration
- Assets (old and new) used in trade
- Relevant classes of Assets
- Groups of Companies



Replacement of Business Assets

- Relevant classes of Assets
 - Building used for the purposes of the trade
 - Land used for the purposes of the trade
 - Fixed plant and machinery
 - Ships, aircraft, hovercraft, satellite etc.
 - Milk quotes, ewe and suckler cow quotes, fish quotes.
 - Farmers entitlements; Lloyds syndicates
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Group of Companies

- Creation of Lending Company
 - Trading ? – BRP
 - Other IHT planning

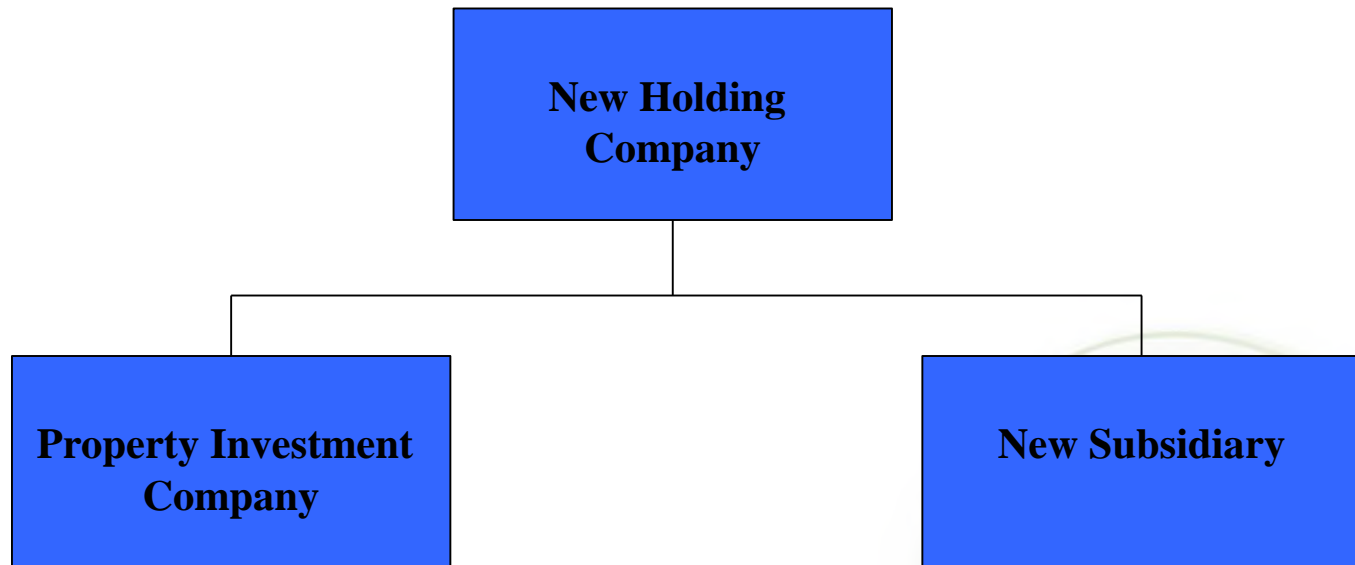


Example – Stage 1

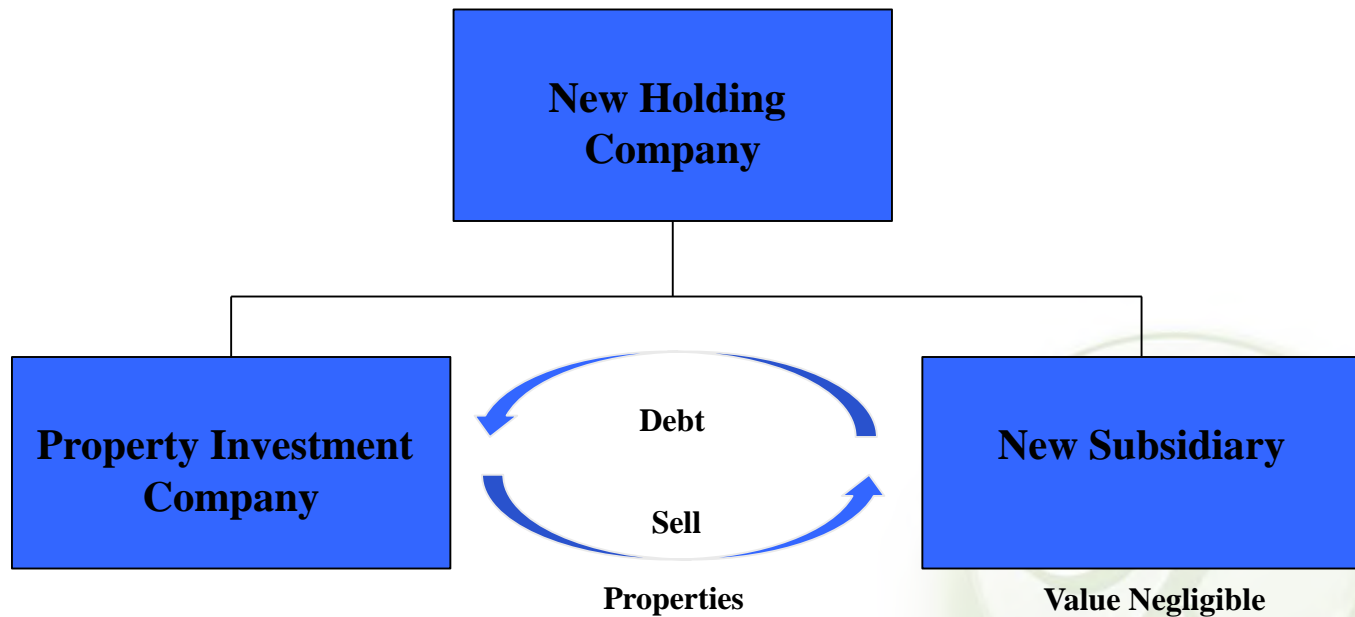
**Property Investment
Company**



Example – Stage 2



Example – Stage 3



Example – Stage 4

