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Property Business Incorporation

Incorporating property portfolios is suitable for people who own property portfolios either in their own name or in conjunction with other family members.

It enables you to transfer the property portfolio to a limited company in a tax efficient manner.

It utilises statutory tax reliefs that enable individuals to transfer businesses to a limited company without triggering a capital gains tax charge subject to various conditions.

Please note that incorporation is not suitable for all property portfolios and for all individuals. We would need to consider your specific circumstances in detail. In addition you should be aware that there are some downsides that you should consider before taking a final decision, for example companies are subject to additional compliance obligations which will mean higher annual compliance costs.

Practical Steps

- You would establish a limited company.
- You would be appointed as shareholder and director of the company.
- The properties would be transferred to the company.
- The company will issue shares to you.
- The properties are re-registered in the name of the company.

Tax Implications – a summary

Capital Gains Tax

- In most cases no capital gains tax should arise on the transfer to the company
- Furthermore the company will acquire the properties at market value. Any subsequent property disposals will only be subject to tax on future increases in value

Tax on Income

- From the date of incorporation the rental income will be taxed at corporate rates of tax rather than personal rates of taxes, 40/45%
- The restrictions on tax relief for mortgage interest for higher rate taxpayers will not affect property held in a company

Frequently Asked Questions

Who is incorporation suitable for?

The incorporation of property businesses is suitable for anyone who owns investment property.

What is the minimum value of assets that property incorporation is suitable for?

It will depend on the particular circumstances but typically incorporating a property business is not suitable for property portfolios worth less than £1m.

Can the family home be transferred to the property company?

Potentially yes but in most cases it would not be advisable.

What are the capital gains tax implications of transferring properties to the company?

The transfer of properties to a limited company is a disposal for CGT purposes. However where the property portfolio constitutes an actively managed property business then a statutory relief should apply such that the gains are rolled over into the base cost of the shares issued.

Is the capital gain always held over in full?

Generally yes but the hold over can be restricted where the debt secured on the properties exceeds the base cost for tax purposes.

Does the legislation define what an actively managed property business is?

No, but there is a substantial amount of case law which has looked at the definition of a business. It is important that the portfolio is run along business lines rather than simply held as an investment. We can review the portfolio and advise whether the portfolio is likely to qualify.

What if the company disposes of one or more of the properties in the future?

Any such disposals are subject to corporation tax. However the gain would be calculated using the market value at the date of transfer as the base cost. In other words the company would only pay corporation tax on future (post incorporation) increases in value.

Will the properties need to be valued?

Yes, the value of the properties as at the date of incorporation will need to be established by a chartered surveyor.

How is the rental income taxed in the future?

All rental income received by the company would be subject to corporation tax.

Are companies subject to the new interest relief restrictions that came into force in April 2017?

No, a company will get full relief for any interest costs it incurs as opposed to individuals who are higher rate payers who will effectively only be able to deduct half of their interest costs.

What if the properties are subject to mortgages or if any charges are secured against them?

Where there are mortgages then the lenders approval would be needed before the properties can be transferred. Alternatively you could refinance the properties with another lender.

What are the stamp duty land tax implications of transferring properties to the company?

The transfer of property to the property investment company is likely to trigger Stamp Duty Land Tax charges depending on the value of the properties and how the properties are currently owned.

Is there an SDLT charge on transferring properties from a partnership to a company?

In broad terms no SDLT charge should arise although every situation should be considered based on its specific circumstances.

What if I don't currently operate as a partnership?

In which case an SDLT charge is likely to arise on the transfer of the properties however this charge may be reduced for residential properties if Multiple Dwellings Relief applies.

Can I just transfer some of my properties to the company?

No, it is a condition of the legislation that the entire property portfolio must be transferred as a going concern to the company for the various tax reliefs to apply.

Can I use an existing company?

Yes, although in some circumstances it may be preferable to incorporate a new limited company.

What are the tax implications if the rental income is extracted from the company?

Any rental income extracted from the company, either as salary or as a dividend, would generally be subject to income tax in the normal manner.

What are the inheritance tax implications of transferring properties to the company?

Broadly there are no IHT implications, the value of your shares will remain in your estate for IHT purposes.

Can a loan account be created as part of the incorporation process?

Generally no as the creation of a loan account would breach one of the conditions of incorporation relief.

What are the inheritance tax implications for the shares in the company?

The shares would be subject to IHT in the event of your death, depending on how your Will has been drafted. The shares will not qualify for Business Property Relief or any other reliefs from inheritance tax.

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Can the shares be gifted to the next generation post incorporation?

Yes, but that would be a disposal for capital gains tax purposes.

Next Steps

If you would like more information or have any questions, please contact us and a member of our team will be more than happy to help. Call us on **01753 888211** or email **info@nhllp.com**