LEGAL . TAX . ACCOUNTANCY

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What next for landlords?

2020: a potential crossroads for landlords of private residential property.

The year has already seen significant tax reform impacting the rental sector. Covid-19 only increases market turbulence. This Briefing explains what is changing and sets out options to help you plan for the future.

Capital gains tax: 30-day payment and reporting

There is change to the capital gains tax (CGT) deadline for reporting the sale of residential property in the UK, and paying any CGT liability. This will affect property you let out: though if you have at any time occupied such property as your main private residence, different rules may come into play. Please do contact us if this is the case.

From 6 April 2020, sales must be reported to HMRC, and any CGT paid, within 30 calendar days of completion. Interest and penalties apply if this is not done within the time limit. The rules were eased in with a temporary exception to late filing penalties, though this is about to expire. For UK residents, the late filing easement covers transactions completed between 6 April 2020 and 30 June 2020, and reported up to 31 July 2020. Transactions completed from 1 July 2020, however, will incur a late filing penalty if not reported within 30 calendar days. Interest accrues if tax is unpaid after 30 days.

In the past, payment and reporting were made via the self assessment tax return. A disposal in the tax year ending 5 April 2020, for example, would be reported on the tax return for 2019/20, due for submission by 31 January 2021. Accelerating the payment window obviously has considerable consequences for cash flow, with the need for funds to be in place to settle any liability. It also means the immediate need for a CGT calculation, even if the detail is subsequently refined in the self assessment return. Please do contact us in advance if you are planning to dispose of any part of your property portfolio.

Other CGT changes

If you have used a property as your main private residence, as well as letting it out, the impact of other CGT changes may need to be factored in. These relate to letting relief and the final period exemption for principal private residence relief. From 6 April 2020, final period exemption is, in most cases, cut from 18 months to 9 months, and letting relief will apply only where an owner is in shared occupancy with a tenant. We can advise further if this is relevant to you.

Income tax relief for finance costs

Adjustment to the way income tax relief is given on property finance costs, restricting the amount of tax relief to a basic rate tax credit, has been phased in since 6 April 2017. From 6 April 2020, the restriction is fully in place and no finance costs are allowed as a deduction.

This changes the way the profit (or loss) figure is calculated. You no longer deduct finance costs from property income before calculating property profits. Instead there is a basic rate reduction in income tax liability. This reduction is calculated by multiplying the finance costs by the basic rate of tax of 20%, subject to some restrictions.

Scope

The change affects:

- UK resident individuals letting residential properties in the UK or overseas
- non-UK resident individuals letting residential properties in the UK
- individuals letting such properties in partnership
- trustees or beneficiaries of trusts liable for income tax on the property profits.

Significantly, it does not apply to UK resident companies and landlords of Furnished Holiday Lettings (FHLs). We review options around incorporation and FHLs below.

Implications

This change could mean significant diminution in profitability. The loss of tax relief at higher rates is one issue. If you have income close to the £100,000 threshold, abatement of the personal allowance is another. In an additional complication, lower rate taxpayers can be nudged by the change into higher tax bands: and in Scotland, with different income tax bands pertaining, such change comes into play at lower levels of income. If you, or your spouse or partner claim Child Benefit, the change could mean you pass the threshold for High Income Child Benefit Charge (£50,000).

Landlords and Covid-19

Covid-19 brings considerations of its own. If you have not already considered these, the following tips may help with cash flow:

- deferring the second income tax payment on account, due 31 July 2020. You do not need to apply to defer. Payment should be made by 31 January 2021 **https://bit.ly/2YUZ2tq**
- negotiating Time To Pay tax with HMRC **https://bit.ly/3fQrovQ**
- changing to cash basis accounting: many unincorporated landlords with gross rental income of £150,000 or less will use the cash basis of accounting by default. This means you don't pay tax on profits before monies are actually received, which will be beneficial where Covid-19 delays receipt of rental income from tenants. If you have elected to use the traditional accruals basis, income not received may still fall to be treated as taxable. If you anticipate significant disruption to rents, please contact us to discuss changing to cash basis.
- tenant protection and mortgage repayments: there is currently increased tenant protection against eviction and the expectation that landlords will be flexible in responding to tenant needs. In recognition of this, landlords can apply for a payment holiday until 31 October 2020 on buy to let mortgages where tenants have lost income because of Covid-19.

Property purchases

The Stamp Duty Land Tax (SDLT) cut to rates applying for residential properties purchased from 8 July 2020 until 31 March 2021, inclusive, is also relevant here. SDLT will only be due on any amount paid for the property above £500,000. Other existing rules relating to SDLT remain unchanged, including the 3% higher rate for purchases of additional dwellings, applicable on top of the revised standard rates for the same period. Companies buying residential property worth less than £500,000 will also benefit from these changes. SDLT applies in England and Northern Ireland. In Scotland, a temporary change to the starting threshold for Land and Buildings Transaction Tax for residential property takes effect from 15 July 2020. This will raise the threshold from £145,000 to £250,000 until 31 March 2021. The Welsh government has also raised the threshold at which Land Transaction Tax is paid from £180,000 to £250,000, effective from 27 July 2020 until 31 March 2021. However the tax reduction in Wales will not apply to purchases on additional properties including buy to let and second homes.

Options for the future

Taking these tax changes alongside the economic uncertainty of Covid-19, you may want to take a fresh look at your property strategy for the future.

Sharing rental income and assets

If spouses or civil partners have significantly different tax bands, one paying basic rate tax and the other higher rates, transferring rental income and assets between you may be an attractive option.

There is a deemed 50:50 income split where spouses jointly own property. But if you want to allocate a greater share of your rental income to a spouse with little other income, there are ways that this can be done. For property in England, Wales and Northern Ireland, for example, this could be achieved by changing ownership of the property from a 'joint tenancy' to ownership as 'tenants in common': in Scotland, the analogous step is to become 'common owners.' Such ownership can be split unequally. The couple can then make a joint declaration to HMRC, using Form 17, to allow income to be taxed according to their respective beneficial interests in the property. Ownership for capital gains tax (CGT) will also be changed to reflect the respective beneficial interests. This will represent a part disposal of the property: significantly, however, capital assets can usually be transferred between spouses/civil partners on a no gain, no loss basis for CGT purposes. This means there is no immediate CGT bill. Different factors come into play with furnished property lettings and property businesses run by spouses in partnership, and different profit allocations may be possible here. Do please contact us to discuss this.

Incorporation

The potential tax advantage of operating via a limited company is often highlighted. Corporation tax on rental income, for example, is 19%: this is generally lower than the income tax rates for an individual. This route, then, can give greater liquidity and perhaps the potential to invest in further properties.

There are two possible approaches: transferring an existing property portfolio into a company, and making future property acquisitions through a company. Each route has associated entry and exit costs. CGT and property taxes can attach a considerable price tag to the transfer of existing rental property. In short, planning around incorporation will need careful calculations: we are happy to advise on implications in your individual circumstances.

Furnished holiday lettings

With Covid-19 restrictions on movement globally, pent-up holiday demand is likely to boost UK staycations after lockdown. If your property has visitor potential, diversification into the short holiday letting market could be well worth considering. Note that FHL rules apply to qualifying property anywhere in the European Economic Area.

The way that FHLs are treated for tax is different from the tax treatment for residential lettings in some significant ways. For example:

- FHLs are outside the scope of the income tax restriction on finance costs
- FHLs can claim capital allowances on furniture and white goods in the property, unlike residential letting businesses
- FHL profits count as relevant UK earnings when it comes to pensions tax relief, bringing potential for enhanced pension planning
- FHLs are treated as a trade for CGT purposes. This means on eventual disposal, the gain may be covered by Business Asset Disposal Relief (the new name for Entrepreneurs' Relief). This could give access to a 10% rate of CGT. Other CGT reliefs may also be available over the lifetime of the business.

But there are strict criteria determining what constitutes a FHL, relating to availability, letting and the pattern of occupation. It is essential that a letting meets these.

Amongst other detailed requirements, a property must:

- be available for letting for at least 210 days in each tax year (availability condition)
- actually be let for 105 days (letting condition)
- not be used for longer term lets (periods of more than 31 continuous days) for more than 155 days in the tax year (pattern of occupation condition).

Where the letting condition is not met, it may be possible to make an election so that the property continues to qualify for a 'period of grace' of up to two years. This election is usually in point where unforeseen circumstances, like extreme weather, prompt cancellations. In the absence of specific Covid-19 guidance on FHLs from HMRC, it's an election that many owners of FHLs will now need to consider. Note however, conditions on pattern of occupation and availability still need to be met.

Taking the right road

At this time of unprecedented economic change, you need to be confident that you are taking the right decisions for your property business. Please do get in touch to discuss the options that will work best for you.