Tax DOs and DON'Ts for Property Companies

By

Lee Sharpe

Publisher Details

This guide is published by Tax Portal Ltd. 3 Sanderson Close, Great Sankey, Warrington, Cheshire, WA5 3LN.

'Tax DOs and DON'Ts for Property Companies – First published in May 2008, Second Edition May 2009. Third Edition August 2010. Fourth Edition May 2011. Fifth Edition April 2012. Sixth Edition May 2013. Seventh Edition April 2014. Eighth Edition April 2015. Ninth Edition April 2016. Tenth Edition April 2017 Eleventh Edition April 2018. Twelfth Edition March 2019. Thirteenth Edition May 2020. Fourteenth Edition April 2021. Fifteenth Edition April 2022. Sixteenth Edition April 2023. Seventeenth Edition June 2024.

Copyright

The right of Lee Sharpe and Tax Portal Ltd to be identified as the authors of this guide has been asserted in accordance with the Copyright, Designs and Patents Act 1988, England.

© 2009-2024 Lee Sharpe and Tax Portal Ltd.

A CIP Copy of this book is available from the British Library.

978-1-7394153-7-2

All rights reserved

All rights reserved. No part of this guide may be reproduced or transmitted in any form or by any means, electronically or mechanically, including photocopying, recording or any information storage or retrieval system, without prior permission in writing from the publisher.

Permission is granted to print a single hardcopy version of this guide for your personal use only.

Trademarks

Property Tax Portal, Tax Portal Ltd and other Tax Portal Ltd services/products referenced in this guide are registered trademarks or trademarks of Tax Portal Ltd in the UK and/or other countries.

Disclaimer

- a) This guide is produced for General guidance only, and professional advice should be sought before any decision is made. Individual circumstances can vary and therefore no responsibility can be accepted by the author, Lee Sharpe, or the publisher Tax Portal Ltd, for any action taken, or any decision made to refrain from action, by any readers of this guide.
- b) Tax rules and legislation are constantly changing and therefore the information printed in this guide is correct at the time of printing June 2024.
- c) Neither the author nor Tax Portal Ltd offer financial, legal or investment advice. If you require such advice, then we urge you to seek the opinion of an appropriate professional in the relevant field. We care about your success and therefore encourage you to take appropriate advice before you put any of your financial or other resources at risk. Don't forget, investment values can decrease as well as increase.
- d) To the fullest extent permitted by law, Lee Sharpe and Tax Portal Ltd do not accept liability for any direct, indirect, special, consequential or other losses or damages of whatsoever kind arising from using this guide.

The guide itself is provided 'as is' without express or implied warranty.

e) Lee Sharpe and Tax Portal Ltd reserve the right to alter any part of this guide at any time without notice.

Contents

Al	About Lee Sharpe9		
1.	Abo	ut This Guide	10
	1.1.	Background and Rough Chronology	10
	1.2.	Tax Rates and Devolved Taxes	14
	1.3.	Stamp Taxes	14
2.	Cho	osing the Right Structure	18
	2.1.	The Basics: Sole Trader – "One Man Band"	18
	2.2.	The Basics: Partnership	18
	2.3.	The Basics: Limited Company	19
	2.4. 2.4.1 2.4.2		20
3.	Gett	ing to Grips with Limited Companies	22
	3.1.	The Different Types of Limited Company	22
	3.2.	The Basic Rules for a Company	22
4.	Und	erstanding Corporation Tax	25
	4.1.	The Rates of Corporation Tax	25
	4.2.	Associated Companies – Anti-Fragmenting Regime	25
	4.3.	Key Dates for the Company	27
	4.4.	Benefiting from the Favourable Company Taxes	28
	4.5. 4.5.1 4.5.2 4.5.3 4.5.4	. Paying Dividends Instead Paying Dividends and a Salary	.29 .31 .34
	4.6.	Beyond the Basics	38
5.	Buil	ding Up a Property Portfolio Using a Company	40
	5.1.	Using a Company to Grow Your Property Portfolio	40
6.	Disa	Illowance of Mortgage Interest on Residential Properties	42
7.	Eve	rything You Need to Know About Dividend Payments	44
	7.1.	Working with "Distributable Profits"	44
	7.2.	Who Gets the Dividends?	45
	7.3. 7.3.1	The Two Types of Dividend . A "Final" Dividend	

	7.3.2	An "Interim" Dividend	46
	7.4. 7.4.1	Getting the Paperwork Right	
	7.4.2	Sample – Dividend Confirmation	49
	7.5.	Two Pitfalls to Avoid when Making Dividend Payments	50
	7.5.1	. "Illegal" Dividends	50
	7.5.2	Timing of Dividends	50
	7.6.	Using Dividend Waivers – An Effective Tax Planning Tool	50
	7.7.	Watch out for the "Settlements" Legislation	51
8.	The	Property Development Company	53
	8.1.	The Property Developer	53
	8.2.	Companies and Property Developers	53
	8.3.	The Construction Industry Scheme ("CIS")	56
	8.4.	Other Considerations for Property Developers – and Occasional Developers.	57
9.	Inco	prporation Relief(s)	60
	9.1.	Transferring Assets into Your Company	60
	9.1.1		
	9.1.2		
	9.2.	Watch Out for Some Pitfalls	6.3
	9.2.1		63
	9.2.2		
	9.2.3		
	9.2.4 9.2.5	0)	
	9.3.	Comparing Incorporation and Gift Relief – Key Points	
	9.4.	Incorporating an Existing Property Investment Portfolio	66
	9.5.	Disincorporation – an Overview of the Tax Aspects	
10). Ent	repreneurs' Relief ("ER") from CGT – Now "Business Asset Disposal Rel	lief" –
		Investors' Relief	
11	I. Rei	nvestment Relief	71
	11.1.	Property Investors and Reinvestment Relief	71
	11.1	1. Business Assets	71
	11.1	, 5	
	11.1	3. Reinvestment Relief - Example	72
	11.2.	Deferring Capital Gains by Reinvesting	
	11.2		
12	2. Son	ne Property Tax Pitfalls	76
	12.1.	Partnerships?	
	12.1	•	
	12.2.	SDLT Implications of Transfers Involving A Mortgage	
	12.3.	SDLT, Partnerships And Incorporation	
	12.4.	Increased SDLT Risk For Companies – Indecision Costs Money!	80

	12.5.	Annual Tax On "Enveloped Dwellings" (ATED)	. 81
	12.6. 12.6. 12.6.	,	82
	12.7.	International Tax Co-Operation	84
	12.8.	Using Companies for Specific Development Opportunities: Profits from Dealing In or Developing UK Land ("Transactions in Land")	85
	12.9.	How Limited is Your Limited Liability?	. 89
13	. Clos	se Companies	92
	13.1.	What is a Close Company?	92
	13.2.	Special Rules for Close Companies	93
	13.3.	The Meaning of a "Distribution" From a Close Company	. 93
	13.4.	Loan To Participator – "s455 Tax"	. 93
	13.5.	Beware Close Investment Holding Companies & "Properties Let Commercially".	. 96
14	. The	Directors' Tax Liabilities	. 98
	14.1.	Tax on Non-Cash Benefits	. 98
	14.2.	Expenses	98
	14.2.		
	14.2. 14.2.		
	14.2.		
	14.2.	5. Three Important Differences to Remember	. 99
	14.3.	Other Expenses	100
	14.4.	Shares as Rewards	101
	14.5.	FIVE Tax Free Benefits	102
15	. Con	npanies and Tax Investigations	105
	15.1.	"Aspect" Enquiries	105
	15.2.	"Compliance" Enquiries	105
	15.3.	Full Enquiry	106
	15.4.	"Grossing up"	106
	15.5.	Company Investigation Settlements	108
	15.6.	Be Careful what the Inspector "Presumes"	110
	15.7.	Watch Out for the Contractual Disclosure Facility (CDF) and COP 9	111
	15.8.	Four Golden Rules of Tax Investigations	111
16	. Get	ting Your Exit Strategy Right	112
	16.1.	Everybody Has an Exit Strategy	112
	16.2.	The THREE Most Common Exit Strategies	112
	16.3.	Selling the Business	
	16.3		
	16.3. 16.3	Drawbacks of Buying the Shares in the Company Benefits of Selling the Shares in the Company	

	16.3	.4. Benefits of Selling the Company's Assets and then Liquidating	114
	16.4.	Selling the Company's Shares	114
	16.4		
	16.4		
	16.4 16.4		
	16.4		
	16.4		
	16.4		117
	16.4		
	16.4 16.4	<u> </u>	
	16.4		
	16.4		
	16.5.	Sales of Assets and Liquidation of Company	119
	16.6.	How to Liquidate a Company	
	16.6		
	16.6	.2. An Informal Liquidation	120
	16.6	.3. But Beware "Phoenix Arrangements"	120
	16.7.	Dying in Harness and/or Living Off the Profits	122
17	7. Inh	eritance Tax and Companies	124
	17.1.	IHT – the Basics	124
	17.2.	Nil Rate Band (NRB)	
	17.3.	Residence Nil Rate Band (RNRB)	
	17.4.	PETs	
	17. 4 . 17.5.	Gift with Reservation of Benefit	
	17.6.	Spouse Exemption	
	17.7.	Business Property Relief	
	17.8.	Close Companies and IHT	
		,	
18	ያ. Fin	ding an Accountant	132
	18.1.	Accountancy Qualifications	132
	18.2.	General Advisor or Tax Specialist?	133
	18.3.	How to Choose Your Adviser	133
	18.3		
	18.3		
	18.3 18.3	,	
	18.3		
	18.3		
	18.3		
	18.3	.8. Keep up to Date with Tax Legislation Changes	135
	18.3	0 ,	
	18.3	U	
19	. The	Importance of Tax Planning	137
	19.1.	Knowing When to Consider Planning	
	19.1	.1. Buying	137

19.1.3	S. Selling	138
19.1.4	Life changes	139
19.1.5		
19.1.6	End and Start of Tax Year	139
19.2.	The Real Benefits of Tax Planning	140
19.2.1		
19.2.2		
19.2.3		
19.2.4		
19.2.5	Avoiding Common Tax Traps	141
19.3.	The Golden Tax Rules	141
19.3.1		141
19.3.2	Prevention is Better Than Cure	141
20. Appe	andix A. Tomplete Decuments	4.42
20. Appe	endix A – Template Documents	143
21. Appe	endix B – Tables	146
21.1. (Comparing Individual Property Investor with a Company (2023/24 v 2024/25).	147
	Comparing Individual Property Investor with a Company (2024/25; differing nterest costs)	150
	Comparing Individual Property Investor with a Company (2015/16 v 2024/25 'No Interest")	152
	Comparing Net Property Developer (Trading) Income: Personal v Through a Company (2023/24 v 2024/25)	154
	Comparing Net Property Developer (Trading) Income: Personal v Through a Company (2015/16 v 2024/25)	157