

HM

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KEY GUIDE

Taxation of property

Introduction

PROPERTY OUTLOOK

Government turmoil in the autumn of 2022 and the resulting market reactions to economic instability has made investment in property a less attractive, or affordable, proposition. Many buy-to-let mortgage deals have been withdrawn, and interest rates have soared for those deals still available. The outlook is more uncertain than ever, with some property experts forecasting a 10% fall in values over the next two years. In comparison, a fixed rate of nearly 5% is currently available on a three-year savings account; with none of the hassle that comes with property ownership.

The temporary rent freeze and moratorium on evictions introduced by the Scottish government will also be of concern for potential landlords.

Existing landlords looking at increased mortgage costs face the stark choice of either raising rents or exiting the market. Landlords who have recently bought property or have taken out the maximum loan amount are the most at risk.

Please note that all examples included in this guide are fictitious.

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BUYING A PROPERTY

The tax implications of buying a property, as an individual or a company



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How to make the most of available tax reductions and reliefs for landlords



OTHER WAYS TO LET YOUR PROPERTY

Taking in a lodger, short-term lettings, holiday rentals and commercial properties



Becoming a landlord

Given the current state of the property market, anyone thinking of becoming a landlord should be in a fairly strong position if they are either a cash buyer or are able to put down a substantial deposit. With many five-year buy-to-let mortgages now coming with a fixed rate of over 6%, there is, in any case, a lot of risk involved in taking out the maximum loan amount. In contrast, the rental market remains buoyant, with some 4.5 million tenants renting from private landlords. There are large regional differences in property price growth, so buying the right property in the right place can make all the difference. Many tenants will now be looking for a property where they can easily work from home, and a garden or outdoor space may also add a premium to the rent that can be charged.

One particularly difficult decision is whether to opt for a fixed rate or a variable rate mortgage, and, if fixed, for how many years. It all depends on your view of where interest rates are going to go. A variable deal will mean an immediate saving if interest rates fall, but a longer fixed rate deal provides certainty; and a saving if interest rates continue to increase and then remain high for a few years.

EXAMPLE

Finance costs restriction

For 2022/23, Alice, a higher rate taxpayer living in Suffolk, has buy-to-let rental income of £20,000, allowable deductions of £2,000 and finance costs of £8,000.

None of Alice's finance costs are deductible, so her property income for 2022/23 is £18,000 (£20,000 – £2,000), on which she will pay higher rate tax of £7,200. She can then deduct tax relief at the basic rate for the finance costs (£8,000 at 20% = £1,600), resulting in a tax liability on her property income of £5,600 (£7,200 – £1,600).

FINANCE COSTS

For those looking to invest in property, an individual's finance costs, such as interest on mortgages and loans to furnish a property, are not tax deductible. A basic rate relief tax reduction is given instead.

One way to avoid the finance costs restriction is to use a limited company structure to purchase property. In Alice's case, a company would have paid tax of just £1,900 ((£18,000 – £8,000) at 19%) with 100% of the finance costs being deductible. However, as explained below, Alice would then face more tax when extracting the property income from the company.

JOINT OWNERSHIP

Income from a rental property owned jointly with a spouse or civil partner is normally shared equally for income tax purposes, even if the actual ownership is different. This can be quite advantageous if your spouse or civil partner pays tax at a lower rate than you. They can be given, say, a 10% share of the rental property, but 50% of the property income will be taxed at the lower rate.

If you wish to be taxed on your actual share of ownership rather than the deemed 50:50 split, this can be achieved by making a declaration of beneficial interests to HMRC.

For capital gains tax (CGT) and inheritance tax (IHT) purposes, the actual share of ownership is always used.

The question of joint tenancy or tenancy in common also needs to be considered. On death, a share of a property owned under joint tenancy automatically passes to the surviving joint tenant. With tenancy in common, the deceased's share of the property is distributed in accordance with their will or the rules of intestacy.

RENTING OUT A PROPERTY

Using a letting agent

A good agent will be invaluable when it comes to finding tenants (and filtering out bad ones) and ensuring that tenancy agreements are watertight. They will be up to date with property legislation, such as the new smoke and carbon monoxide regulations which apply from 1 October 2022. They can take much of the stress out of maintenance and provide an impartial buffer should the tenancy go sour. However, lettings agents are not cheap, so one popular option is to use an agent just to find and vet tenants, and to set up the tenancy

Basis of taxation

The basis for taxing property is not quite as simple as you might think. For individuals, property income is calculated on a tax year basis, with accounts being prepared to 5 April (31 March is permitted). Income and expenses for all your buy-to-let properties are pooled together, with figures normally calculated on a cash basis. Rent and expenses are therefore included when received or paid. For companies, property income is calculated according to the company's accounting period and must be done on an accruals basis.

Allowable deductions and reliefs

Allowable expenses must be incurred wholly and exclusively for your buy-to-let business, and could include:

- letting agent's fees;
- cost of maintenance, repairs and gardening;
- council tax, water rates, gas and electricity;
- property insurance;
- advertising; and
- business mileage calculated using HMRC's mileage rates (45p per mile up to 10,000 miles, and 25p thereafter) or based on the actual cost.

You can also deduct any amounts spent on replacing furniture and furnishings, including beds, televisions, fridges and freezers, carpets and floor coverings, curtains, and crockery and cutlery. However, there is no relief for the initial cost of furniture and furnishings. The amount of relief is reduced by any proceeds from selling the old asset which has been replaced. Also, relief is not given for any cost which represents an improvement, for example, if a washing machine is replaced with a washer-dryer, only the cost of an equivalent washing machine qualifies for relief. However, this rule is relaxed if the improvement element is incidental, such as replacing single-glazed windows with the modern equivalent of double-glazed windows.

Planning point

Unless you are using a letting agent, make sure that you check the right to rent of all new tenants aged 18 or over, even if they are not named on the tenancy agreement. You will need to ask for, and keep copies of, original documents proving that tenants are permitted to live in the UK.

Property allowance

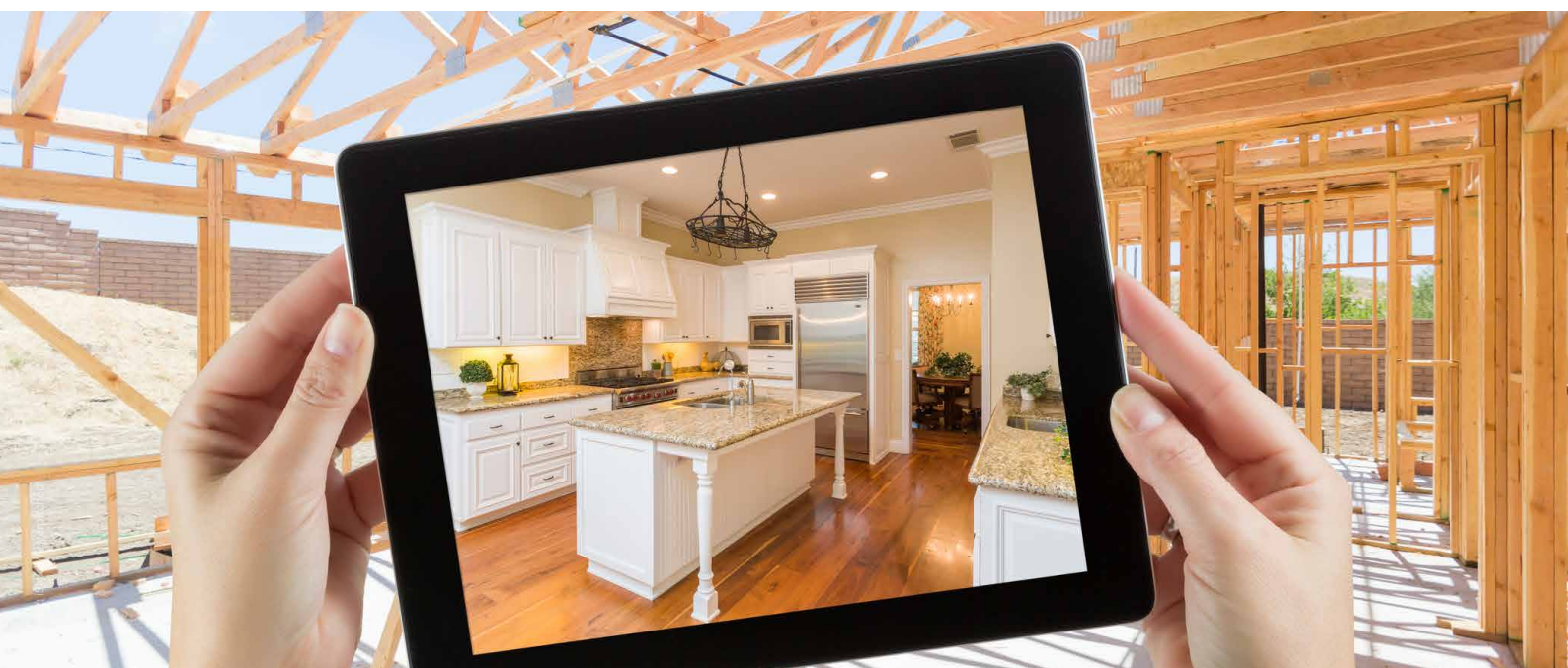
An annual property allowance of £1,000 can be claimed as a deduction by individuals if this is more than your actual allowable deductions and reliefs.

Multiple occupancy

You need to be aware of the additional requirements if you rent out your property as a house with multiple occupancy (an HMO). This is a complex area, but essentially multiple occupancy means at least three tenants, forming more than one household, but who share facilities like a bathroom. Student lets are normally classed as HMOs.

Future changes

It is not just the current rules and regulations that you need to be aware of, but also possible future changes. Some are more definite than others, and include:



- The making tax digital tax (MTD) reporting system will be extended to landlords from April 2024. This will mean keeping digital records of income and expenditure and using third-party software to submit figures to HMRC quarterly.
- The proposed Renters Reform Bill will mean that landlords will no longer be able to evict tenants without giving a specific reason. You might then want to consider asking for several months' rent paid upfront or for a guarantor to be provided. The Bill will also include measures such as making it illegal for landlords to have blanket bans on renting to families with children or those in receipt of benefits.

Planning point

It can make sense to retain existing tenants by foregoing rent increases. Apart from having an unlet period and the costs associated with finding a new tenant, there is generally no discount from council tax for empty properties.

TAX IMPLICATIONS OF BUYING A PROPERTY

While finding the right property in the right area at the right price will be at the forefront of your mind when looking to buy, you should not forget the tax implications.

Stamp duties

Although you will incur various lending, legal and survey costs, stamp duty land tax (SDLT) is usually the biggest expense when purchasing a property in England or Northern Ireland. SDLT rates are increased by 3% when it comes to buy-to-lets, regardless of whether you buy the property personally or through a limited company.

If you are purchasing a buy-to-let in Scotland, you will pay land and buildings transaction tax (LBTT) instead of SDLT. For buy-to-let purchases in Wales, land transaction tax (LTT) applies. In both cases, the buy-to-let surcharge is 4% (although there is an anomaly for Wales in that the surcharge is effectively 7.5% from £180,001 to £225,000, and only 3% from £225,001 to £400,000).

In each case, tax is paid on the slice of the purchase price falling within each tax band.

The 3% and 4% surcharge rates are not charged on a property costing £40,000 or less, meaning no SDLT, LBTT or LTT will be charged for such a purchase.

As a general rule, living in a property before letting it out will not get around the surcharge. The only situation where the surcharge will not apply is when your buy-to-let purchase is your only property, such as where you are personally living in rented accommodation.

EXAMPLE SDLT calculation

Emma, who already owns a main residence, purchases a buy-to-let property in England for £380,000. The amount of SDLT payable is £17,900, calculated as:

First £250,000 at 3%	£ 7,500
Remaining £130,000 (£250,001 to £380,000) at 8%	<u>£10,400</u>
	<u>£17,900</u>

Planning point

SDLT, LBTT and LTT are not payable on any part of the purchase price that is attributable to such things as carpets, curtains and any other moveable furniture and domestic appliances that the vendor leaves in the property, so a modest reduction in the amount of tax payable may be possible.

Personal or corporate purchase?

An important decision that you will have to make at the outset is whether to purchase your buy-to-let property personally or through a limited company. The restriction to the tax deductibility of finance costs (explained above) has made the company route more attractive. The relatively low 19% rate of corporation tax also means that this option makes sense if

Stamp duties on second residential properties

England and NI - Stamp Duty Land Tax (from 23 September 2022)	Rates	Scotland - Land and Building Transaction Tax	Rates	Wales - Land Transaction Tax	Rates
£0 to £250,000	3%	£0 to £145,000	4%	£0 to £180,000	4%
£250,001 to £925,000	8%	£145,001 to £250,000	6%	£180,001 to £250,000	7.5%
£925,001 to £1,500,000	13%	£250,001 to £325,000	9%	£250,001 to £400,000	9%
Above £1,500,000	15%	£325,001 to £750,000	14%	£400,001 to £750,000	11.5%
		Above £750,000	16%	£750,001 to £1,500,000	14%
				Above £1,500,000	16%

you are aiming to retain profits for reinvestment in additional property or to repay some of your financing. However, from 1 April 2023, higher rates of corporation tax will apply if a company's profits exceed £50,000.

A company structure makes it relatively easy to include family members in your property business, and control can gradually be passed to children or grandchildren which makes for good IHT planning.

The overall tax charge might well be higher if profits are withdrawn from a company. If taken as remuneration, national insurance contributions could be payable. If extracted as dividends, there could be a double charge to tax if the dividends are over the £2,000 tax-free dividend allowance. Additionally, there is an extra 1.25 percentage point tax cost for dividends from 6 April 2022. Capital gains may also suffer a double tax charge.

EXAMPLE Tax charge on company dividends

Winston, a higher rate taxpayer, has £20,000 of property income within his property company, which he wishes to withdraw as a dividend during 2022/23.

If Winston had received £20,000 of property income as an individual, then he would have paid income tax of £8,000 (£20,000 at 40%), leaving him with £12,000.

The company will pay corporation tax of £3,800 (£20,000 at 19%), leaving £16,200 to pay out as a dividend. If the dividend allowance is not available, Winston will pay income tax of £5,468 (£16,200 at 33.75%) on the dividend, leaving him with net income of £10,732.

TAX IMPLICATIONS OF SALE OR DISPOSAL

Your buy-to-let property portfolio may increase in both size and value, and at some point you may want to cash in some properties, possibly to pay down the finance on those to be retained. Another option as you get older might be to gift some properties to your children or grandchildren. CGT will come into play whether you sell or gift property, although this tax can currently be avoided by simply retaining property until your death. Your children or grandchildren can then inherit properties with an uplifted base cost for CGT purposes, although IHT then becomes an issue.

Planning point

Although ground rents are now (from 1 July 2022) effectively set at zero for new leases, check for excessive ground rent if buying a second-hand leasehold property. The elimination of ground rents for new leases could create a two-tier market, making older leasehold property less attractive and more difficult to sell.



Credit: iStock/ampson33

- **CGT** The gain will be based on what you sell a property for, or its market value if gifted. You can deduct the original purchase cost, incidental costs of purchase and sale (such as legal fees and stamp duties) and any expenditure which has enhanced the value of the property (and will therefore not have been deducted as repair expenditure when calculating property income). If a property has not been occupied as a main residence, the only exemption, if available, will be the annual exempt amount (£12,300 for 2022/23). Gains will then sit on top of your income for the tax year of sale or disposal. Any part of the gain that falls within your basic rate band will be taxed at 18%, with the remainder taxed at 28% (plans to align the rates of CGT with income tax rates have been put on hold for now). A payment on account of the CGT due is required 60 days after completion.
- **IHT** Outright gifts of property have IHT implications if you die within seven years of making the gift. If your property portfolio is retained until death, it will be included as part of your estate at its value at the time of death. Basically, IHT is payable at 40% once a nil rate band of £325,000 (up to £650,000 if you benefit from the nil rate band of a deceased spouse or civil partner) is exceeded.

Property retained after moving homes

Many landlords have built up property portfolios by retaining property when they move homes, with the retained properties then rented out. One attraction of this approach is that rental properties, having previously been occupied as a main residence, can often be sold in the future at little or no CGT cost.

A proportion of the gain arising on sale is exempt, based on the period of occupation. In addition to actual periods of occupation, the final period of ownership is also exempt. However, this final period exemption is now only nine months.

Corporate disposals

If you have used a company structure for your buy-to-lets, then any gains will be made within the company and taxed at the 19% company tax rate. But note that companies do not benefit from the annual exempt amount.

The base cost of any property disposal is uplifted by an indexation allowance, which allows for the impact of inflation, as measured by the retail prices index (RPI). However, indexation has been frozen at December 2017, so no relief is given for inflationary gains from January 2018 onwards.

Properties acquired on or after 1 January 2018 do not benefit from indexation.

Should you wish to extract the proceeds of a company property disposal, you will face a potential double tax charge – the corporation tax payable on the gain, then personal tax on the withdrawn proceeds – which is inefficient compared to the tax cost of disposing of a personally owned property.

For gifts during lifetime or on death, the relevant asset will be the company's shares rather than the underlying property assets. The value of the company's shares will be included in your estate on death, with no uplift to the base cost of the property held within the company. IHT business relief does not generally apply to property company shares.

OTHER TYPES OF PROPERTY LETTING

The introduction of the finance costs restriction for buy-to-lets has spurred interest in other types of property letting which do not suffer the same restriction.

Furnished holiday letting

Furnished holiday lettings are treated as a trade and therefore qualify for various tax advantages, although they will obviously require considerably more work given the short-term nature of the lettings. Apart from not suffering from the finance costs restriction when calculating property income, any gain on the disposal of a furnished holiday letting can benefit from a 10% capital gains tax rate.

The qualifying conditions can, however, be hard to meet. Essentially, a property must be available for letting at least 210 days a year and let for at least 105 days.

One further advantage is that a furnished holiday letting in England can normally be registered for business rates rather than council tax, with nothing then payable if small business rates relief is available. Although the business rates qualifying conditions will change from April 2023, they will generally still be less onerous than the furnished holiday letting conditions. Scottish and Welsh rules are broadly similar.

Commercial property

You might not like the idea of commercial property, but semi-commercial property, such as where there is a flat above a shop, might be an attractive proposition, being halfway between commercial and residential investment. The purchase of such a mixed-use property will not suffer the relevant stamp duty surcharge, and the finance costs restriction will not apply to those finance costs associated with the purchase of the commercial element of the property. There is an annual 3% write-off if you buy commercial property where the construction contract was signed on or after 29 October 2018. The cost of converting or renovating an existing property also attracts the 3% relief, but the value of land and any dwelling element are excluded.

The rental yield from mixed-use commercial property is often significantly higher than that from a traditional buy-to-let.

Renting a room

Do not overlook the tax advantage of renting out a furnished room or rooms in your own home, especially to a long-term lodger. Rents of up to £7,500 each tax year are exempt from tax, which will be quite beneficial for a higher rate taxpayer. The relief does not apply, however, if you have converted part of your home into a separate flat.

You can either rent to a long-term lodger or make use of an online site such as Airbnb to offer holiday lets. Don't forget to inform your mortgage lender, review insurance cover and check whether there are any local authority restrictions. Leaseholders may find, however, that short-term renting is not permitted under the terms of their lease.



HOW WE CAN HELP

We can help you to understand the tax implications prior to you purchasing a property, and the effects of using corporate structures.

We can help you understand what a sale will cost in tax terms. We can also discuss estate planning options that can help keep IHT liabilities to a minimum.

There are several important recent changes to the way in which property income is taxed. We can advise on the impact of these changes and keep you up to date with any further changes.



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