

PROPERTY INVESTMENT V PROPERTY TRADING

2019/20

Lee Sharpe

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PROPERTY

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About Lee Sharpe

Lee is a creative Chartered Tax Adviser with 20 years' experience of advising property investors and family businesses on tax matters.

He is also an experienced tax writer: As well as writing for taxationweb.co.uk, Lee is a lead writer for Property Tax Insider (taxinsider.co.uk) and its sister publications and has written a number of specialist property tax saving reports that are available through the Tax Insider website.

Introduction

This report will consider the main differences between property investment and property trading activities, and their implications from a UK tax perspective. We shall look at some of the opportunities and pitfalls of both activities, and we shall evaluate different vehicles to undertake the respective activities.

This report uses the 2018/19 tax year rates and allowances, unless otherwise indicated.

1

Assumptions

There are some common assumptions unless otherwise indicated in the text:

- the activity is being contemplated by a UK-resident (and domiciled) person;
- all property activity will be undertaken in the UK;
- activity is to be undertaken on a commercial basis – with a view to making a profit; and
- property investment is generally taken to mean letting property on a long-term basis, as well as the holding of property with the intention or hope of achieving a capital gain on sale.

By default, we shall focus on standard residential properties. Where there are different treatments depending on the nature of the property held, they shall be identified.

2

Overseas Business

Trading in land/property and income from investing in property in the UK are, usually, activities that are taxable in the UK, even if undertaken from overseas ownership, but special rules can apply in the latter case. Budget 2016 introduced a new regime that attempts to ensure that all non-resident structures developing UK land/property will be taxed in the UK, regardless of whether or not the business has a 'Permanent Establishment' in the UK. (See the new sections BIM60515 to BIM60900 in the Business Income Manual of the HMRC (Gov.UK) website).

Non-residents have also been subject to Capital Gains Tax (CGT) on the disposal of UK residential property (as defined) since 6 April 2015 (to the extent/proportion of the gain that is deemed to have arisen post-April 2015). From 6 April 2019, the infamous NRCGT regime is being extended to cover disposals of commercial properties and, in some cases, disposals of shares in a company that is 'land rich' – i.e., has substantial or valuable UK land or property interests.

Often, non-residents can be taxed both in the UK and where they are tax-resident, when letting out UK property – although UK tax law usually provides relief from excessive or 'double' taxation in the absence of specific provision through a Double Tax Treaty. This report will not dwell further on property-related activity undertaken by non-residents, as it can be complex and generally requires tailored advice that accommodates the UK regime and whichever regime(s) in which the taxpayer also resides.

3

Furnished Holiday Lettings (FHLs)

FHLs are non-standard, short-term residential lettings and, as such, hold an unusual status so as to be eligible for some of the advantages associated with trading activities, such as: