



# **Levelling the Tax Playing Field for Landlords**

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**CTA**

# SEAN HUGHES

- Chartered Tax Advisor
- 10 years experience
- Mazars & Baker Tilly (Top 10 firms)
- Advising Owner Managed Businesses
- Specialise in advising landlords
- Works with accountants



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- Section 24 & Incorporation
- Holding Company
- Inheritance Tax planning options
  - Gifts
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# Pre-Section 24

	<u>2016/17</u>
Rent	100,000
Interest	(40,000)
Other expenses	<u>(25,000)</u>
Profit	<u>35,000</u>
Tax @20%	7,000
<b>Tax liability</b>	<b>7,000</b>



# Section 24

	<u>2016/17</u>	<u>2020/21</u>
Rent	100,000	100,000
Interest	(40,000)	NIL
Other expenses	<u>(25,000)</u>	<u>(25,000)</u>
Profit	<u>35,000</u>	<u>75,000</u>
Tax @20%	7,000	7,000
Tax @ 40%	Nil	16,000
Interest 20% credit	Nil	(8,000)
<b>Tax liability</b>	<b>7,000</b>	<b>15,000</b>

# Section 24

- Will push some into higher rate tax
- Effect on higher rate taxpayers:

*Mortgage interest payments @ 20% = Tax Increase*

- **Limited Companies not affected**



# Corporation Tax reduced to 19%

Higher rates of income tax: 40%/45%

Logic = Trade through limited company



# INCORPORATION

## High Street Accountant

Problems with incorporation:

- Capital Gains Tax (28%)
- SDLT (inc 3% Surcharge)





# CAPITAL GAINS TAX

## INCORPORATION RELIEF

*S162 Taxation of Chargeable Gains Act 1992*

Transfers of a **BUSINESS**



# KEY QUESTION

Is the landlord a:

**“BUSINESS”**

Or

“Passive Investor”?



# BUSINESS v PASSIVE INVESTMENT

## *4 Key Indicators*

Indicator	Business	Passive investment
Low Turnover	>£20k	<£20k
No. Properties	>4	<4
Time spent	>10 hours	<10 hours
Property type	Houses	Flats in managed block

**Judged on facts as a whole**



# INCORPORATION RELIEF: HOW IT WORKS

## Without IR:

Proceeds (MV)	£800k
Cost	<u>(£650k)</u>
Gain	£150k
IR	<u>NIL</u>
Chargeable Gain	£150k
Tax rate	<u>@28%</u>
Tax Due	<u>£42k</u>



# INCORPORATION RELIEF: HOW IT WORKS

	Without IR:	With IR:
Proceeds (MV)	£800k	£800k
Cost	<u>(£650k)</u>	<u>(£650k)</u>
Gain	£150k	£150k
IR	<u>NIL</u>	<u>(£150k)</u>
Chargeable Gain	£150k	NIL
Tax rate	<u>@28%</u>	-
Tax Due	<u>£42k</u>	NIL



# INCORPORATION RELIEF: HOW IT WORKS

## Base Cost of Shares:

*Assume no borrowings on properties*

### Without IR:

MV of props            **£800k**

IR                            **NIL**

Base cost                **£800k**



# INCORPORATION RELIEF: HOW IT WORKS

## Base Cost of Shares:

*Assume no borrowings on properties*

	Without IR:	With IR:
MV of props	£800k	£800k
IR	<u>NIL</u>	<u>(£150K)</u>
Base cost	<u>£800k</u>	<u>£650k</u>



# INCORPORATION RELIEF: HOW IT WORKS

What this means

The £150k gain on property at  
incorporation is  
“Washed out”

It will only bite if shares in company are disposed





# INCORPORATION RELIEF: HOW IT WORKS

Property disposed of immediately after incorporation

Proceeds £800k

Cost (MV @ incorporation) (£800k)

Gain NIL

Proceeds can be reinvested in through company  
or  
extracted tax-efficiently



# CGT BENEFITS OF INCORPORATION

NO CGT ON TRANSFER

GAINS TO DATE OF INCORPORATION  
“WASHED OUT”

NO TAX DUE ON DISPOSALS  
IMMEDIATELY AFTER INCORPORATION



# STAMP DUTY LAND TAX (LTT)



# SDLT

Property transfer:

Individual to Company = SDLT on MV

Partnership to Company = No SDLT

*Why??*



**Finance Act 2003 /  
Land Transaction Tax & Anti-Avoidance of  
Devolved Tax (Wales) Act 2017**

*Schedule 7 Part 5*

Wording of legislation favourable to  
partnerships

HMRC acknowledge the legislation &  
have not challenged it

Recognised in HMRC manuals  
*(SDLTM33700)*



# Partnership: Definition

Partnership Act 1890:

*“The relationship that subsists between*

*two or more people*

*carrying on a business*

*with a view of profit*



# Partnership Tax Return UTR

Not the be all and end all

The reality is more important than a tax  
return

*HMRC Partnership Manual 10200*



# Refinancing on Incorporation

Not always necessary

Transfer Beneficial interest of properties

Mortgage attaches to Legal ownership

T&C's of mortgages must be reviewed



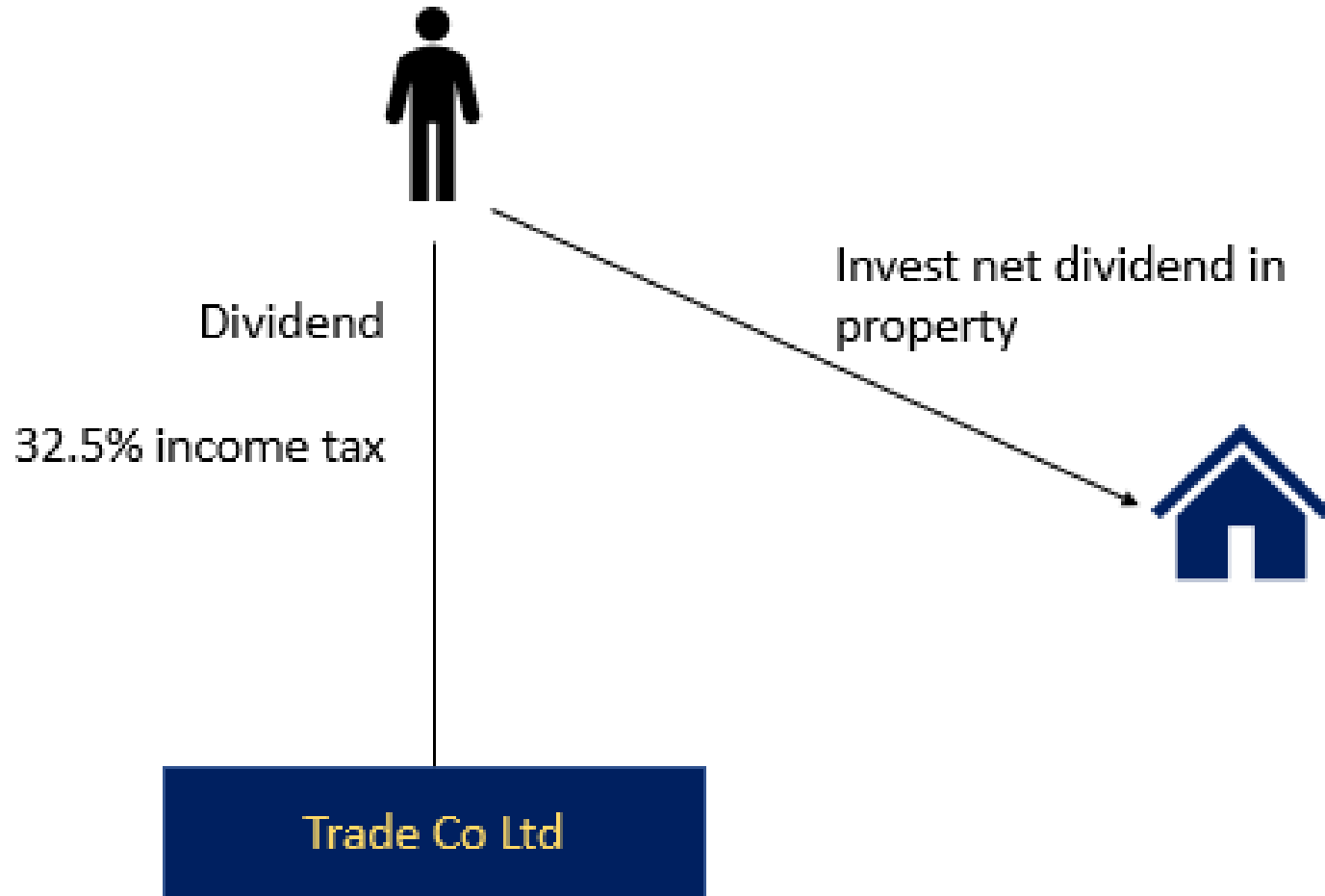


# Incorporation Complete: Benefits

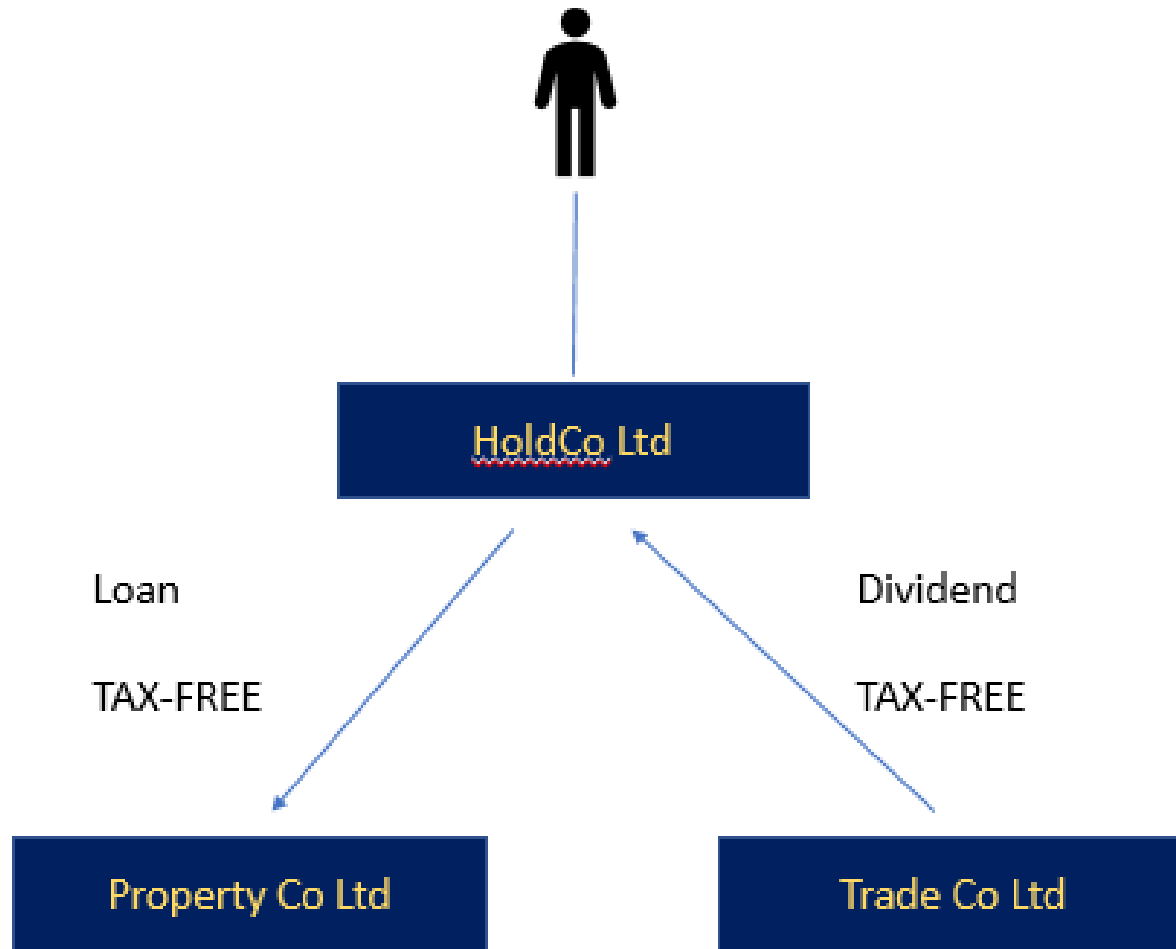
1. No CGT or SDLT on transfer
2. Gains to date of incorporation “washed out”
3. Properties value rebased in company
4. Lower gains on future property disposals
5. Lower rates of Corporation Tax
6. Full mortgage interest relief
7. No need to refinance



# Holding Company



# Holding Company



# Inheritance Tax Planning (IHT)

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"I'm taxes."



# Inheritance Tax

- Die with estate worth >£325k
- 40% IHT due on excess
- Assuming:
  - Not survived by spouse
  - Don't gift estate to charity
- *Residential Nil Rate Band*



# Options

1. Gift during lifetime
2. Put asset in Discretionary Trust
3. Use Section 86 Trust – (a special type of discretionary trust)



	Gift	Disc. Trust	s86 Trust
No restriction on asset transfer value	✓	✗	✓
Retain control?	✗	✓	✓
CGT-Free transfer?	✗	✓	✓
No IHT on asset if donor dies within 7yrs	✗	✗	✓
No on-going IHT charges	✓	✗	✓



# SDLT exemption on purchase

1. Acquire from personal representatives of deceased person,
2. Deceased persons main residence for 2 year before death,
3. Investor intends to flip property,
4. Refurbishment to cost between £10k and £20k, &
5. Acquired via corporate entity



Questions?

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