# Question of ownership


**From a tax point of view, is a commercial property best owned by a limited company or individuals? Gary Haselton advises**

One of the issues which comes up time and again is whether a business property – which could be anything from an office to a factory or a warehouse – should be owned by a limited company or its individual business owners.

There may well be some readers who buy, rather than rent, and who personally face this decision with regard to their own premises.

Certainly, for many commercial and business transfer agents, the issue is one that is high on your clients' agendas.

I've not met many businesses which like paying tax, and the business property ownership decision can have dramatic tax implications. Everybody's circumstances are inevitably a bit different and the degree of difference can influence the tax treatment of the property, so do seek professional advice.

But I do believe that anyone involved in commercial property acquisitions should have a broad understanding of the key options in this area.

## Scenario

Let's look at a typical scenario. ABC Wine Ltd has two sets of husband and wife shareholders, Mr and Mrs Red and Mr and Mrs White, who are on the hunt for retail premises costing about £1m.

The shareholders want to buy premises to give the business longer-term security, control their own destiny (ie eliminate having to deal with landlords) and give them capital growth potential.

## Making the company own the property

The first option open to them is for the premises to be owned by the company. If the property increases in value, then any gain made on its sale by ABC Wine Ltd would be taxable as normal.

The current rates are 21% or 28%, which means a £0.5m gain in the company's results would give it a corporation tax bill as high as £140k – unless there are suitable losses to set against the gain, or the gain is deferred if the company reinvests all the proceeds in suitable replacement asset(s) gaining rollover relief.

But then there are also additional tax and possibly National Insurance contribution (NIC) costs in extracting the proceeds from the company for the shareholders' personal benefit. Precise rates vary, but do be mindful of the current 50% income tax band and 12.8% employers' NIC rate.

Perhaps especially important in the current climate is that, if ABC Wine Ltd goes into administration or liquidation, the property would be one of the business assets which might need to be sold off to pay creditors (whether by the management or an insolvency practitioner).

In practice, if the property is to be owned within a corporate structure, then often it should be owned by a holding company which in turn also owns shares in the trading enterprise. In this way, even if that trading company gets into trouble, the property may be protected, as long as it is not exposed by bank or other such guarantees.

## Directors/shareholders owning the property

The second option is for one or more of the directors or shareholders to own the property and then permit it to be used and occupied by ABC Wine Ltd for trading purposes.

If the property was then sold, any gain would be subject to capital gains tax for the individual owners. This would be applied after deducting any relevant losses and annual exemptions (if not utilised elsewhere).

It's also important to note that the rate, which increased from 18% to 28% in this June's Budget, might be reduced to an effective 10%. This is if the disposal qualifies for entrepreneurs' relief, which it may do if the company is sold around the same time.

The Reds and the Whites can, of course, rent the premises to the company, perhaps to give them a useful additional income. This could service a bank loan taken out to buy the property in the first place. Rent should only be set within the range of 'market value' to avoid other tax complications.

There are a number of pros and cons relating to this. On the upside, the rental income would not be subject to NIC. Also, if the premises were owned personally by the shareholders and if ABC Wine Ltd got into trouble, the property should be protected from creditors.

On the downside, the renting option means that the disposal of the property by the individual owners can't qualify for entrepreneurs' relief. It is sometimes possible, though, for individual owners to 'roll over' the gain if there is a replacement, similar to that mentioned above.

## A third option

Some owner managers are attracted by the idea of owning their company's trading premises through the company pension scheme.

In theory, any capital gain made on the property's sale is not subject to tax, and on retirement 25% of the fund value can be taken tax free. There are, however, restrictions on the investments which pension funds can own (notably residential property).

There are also restrictions on when the scheme members can get their hands on 'their money', with benefits generally being subject to income tax when taken.

## Summary

Let's assume that over the years, the value of the property in the ABC Wine Ltd example increases by £500k.

If the company owned the premises, upon that property's sale the tax and NIC bill in getting the gain into the hands of the shareholders could be more than £280,000. This would leave less than £220,000 available to the business owners. In comparison, if the property was owned by individuals and if the disposal qualified for entrepreneurs' relief, the tax bill could be much less – around £50,000.

This would leave more than twice as much of the gain (in excess of £440,000) in the owners' hands.

I think this significant difference demonstrates how essential it is to consider these options properly. ■

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