



**The 5 Dangerous Myths
about Incorporating Your
Property Portfolio if you
want to Save Tax, Avoid
Fines, Protect Profits and
Escape Penalties.**

Landlord's Guide

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Thanks for downloading...

Welcome to the latest edition of our downloadable guides where we share technical and informative advice related to tax and legal services.

Why Should You Read This?

I have written this report for you if:

- You are a Portfolio Landlord, Property Developer, Private Landlord, or interested in setting up a property portfolio.
- You are concerned that the income from your portfolio is being outweighed by the tax you are paying.
- You are considering incorporating your property portfolio to save tax.

By reading this report you will discover:

- The five myths you need to consider before making any decisions.
- The Biggest Mistake to avoid when Incorporating Your Property Portfolio.
- Why you and your family will benefit from receiving tax advice from a suitably qualified and regulated professional firm.
- How to get the right advice to save tax, avoid penalties and sleep soundly.

Once you have read my report, if you would like to find out more please email us at info@bhptax.law to get reassurance that this is the right decision for you and your business. We can arrange a Teams or Zoom call to discuss next steps.



Myth #1

“You Must Wait 3 Years Before You Can Incorporate a Partnership to Benefit from the Tax Saving”

Many clients we talk to, believe that when a Partnership is put in place, it either needs to have been in existence or must run for a minimum period of 3 years from inception.

This presents a huge problem and hardship to a portfolio landlord suffering due to the huge interest rate rises for mortgages over the last 12 months and cannot offset those interest payments against their profits. **Many landlords we are speaking to are making annual loses. Their portfolios are stagnating or losing capital value.**

The impact of being told that you must wait a further three years before you can relieve this financial pressure is hard to hear. So where has this time frame come from? This is a complex area of tax law and special rules apply to partnerships that enable a portfolio to be transferred without SDLT charges arising.

A formal Partnership Agreement must be in place and this general partnership must be registered with HMRC for self-assessment. Without proper advice it is easy for SDLT charges to be triggered under anti avoidance rules.

There is no defined ‘safe’ period during which an incorporation can be undertaken. HMRC are entitled to raise an enquiry, and Landlords must be prepared deal with enquiries that are raised.

At Bell Howley Perrotton, Simon Howley is an expert in SDLT and has written articles that set out the position on this point. Your solution to sleepless nights regarding your mortgage interest payments and the likely increase in the coming months and years is to instruct us to assist you with the tax and legal issues surrounding the incorporation. We can remove this fear and worry, allowing you to concentrate on keeping your properties let and maximising the time you can spend on your property business.

The Legal Bit

The anti-avoidance rules are contained within Finance Act 2003 Schedule 15 para 17A which leads to the confusion associated with the 3-year rule.

The suggestion that you must wait 3 years from the date of the Partnership stems from a misunderstanding of the legislation and the impact of para 17A where we consider that the rule will not apply on an incorporation.

Myth #2

“You Don’t Need to Tell Your Lender or Refinance Your Portfolio When You Incorporate”

The problem with incorporating your portfolio is that you will have many properties, all of which will have different mortgages, with different lenders on different deals. It is a considerable undertaking with broad financial implications to look to refinance the entire property business at the same time.

It is not surprising that many Landlords shy away from the task and seek out the opinion that this is surely not necessary. We have seen many examples on various platforms that set out how a property portfolio can be incorporated without the need to either notify a lender or refinance the portfolio into the NewCo’s name. Now for Landlords this can seem a very attractive proposition.

It takes time, money, and effort from several advisers to move a portfolio from a Partnership into a Limited Company, because there are several moving parts. To suggest this can be done with simple documents and a need-to-know basis is simply wrong. And there is a broader issue. By accepting the mortgage offer, you agreed to abide by your lender’s terms and conditions. If you breach those, your lender is entitled to recall their loan or ‘red flag’ your account. This can leave you with either having to refinance a property with an alternative lender, take out an expensive bridging loan and or sell the property.

Do not fall under the misapprehension that the lenders are not alert to this and they are checking their T’s and C’s. On the next page, we have set out an ‘Events of Default’ Clause taken from a current lender’s terms.

A recent client for whom we undertook an incorporation had added two ensuite bathrooms to a three-bedroom property. The Lender on general enquiry noted that there was only one bathroom when the original loan was taken out and further noted that no consent had been obtained for what the client considered an enhancement to the property and a minor alteration.

The lender disagreed and red flagged the account. This caused the delay of the incorporation and inevitably financial hardship whilst additional valuations were undertaken so the lender could provide retrospective consent, before releasing the account.

Mistake #2 (Cont.)

“You Don’t Need to Tell Your Lender or Refinance Your Portfolio When You Incorporate”

Events of Default 17.1 We may demand that you immediately repay the Outstanding Balance, at any time, if any of the following events happen:

- c. You are in material breach of any of the terms of the Mortgage Contract not relating to payment of money.
- d. You create rights or grant an interest in the Property that affect our ability to enforce the Mortgage satisfactorily.

Lender conditions make it very clear that to ‘transfer’ your portfolio of properties to a separate legal body, being the NewCo, without notifying your lender can provide them with the right to demand the ‘immediate repayment of the outstanding balance’.

The Property 22.1 You must do the following:

- I. Not transfer or dispose of your interest in the Property without our prior written consent. You agree that you and we shall apply to the Land Registry for the entry of a restriction of any dealing in the Property restricted by this condition.

So don’t make the mistake of thinking that a proper review of your business from every angle is not required. With over 25 years of experience as a Property solicitor and having reviewed numerous terms and conditions and mortgage offers, I believe you need to be fully informed BEFORE you tick a box and think a generic document will alleviate your legal obligations to your lenders.

We will review your mortgages and terms and conditions and advise you how to navigate the complicated process of properly and legally transferring your portfolio from your partnership to your company.

Myth #3

“You Don’t Need to Transfer the Properties to the Company Straight Away”

One of the primary reasons for considering this path is to move your portfolio from your personal names via a Partnership into a company to enable you to offset your mortgage interest payments. It is also the first step towards family wealth planning which is addressed in a separate guide. **If you don’t properly transfer the properties, then the relief will be lost leaving you exposed to a potentially very large capital gains tax bill, interest and penalties.** The effect of which could mean that you must sell one or more of your properties to pay the tax and break up your portfolio.

Incorporation relief can only be successfully claimed if the entire portfolio of properties transfers to the NewCo at the same time. That means, that the whole of the portfolio may need to be refinanced at the same time.

It is a mistake to think that you can leave ANY property outside of the company whilst waiting for the fixed rate period to expire. You MUST move everything.

A proper calculation must be undertaken to establish the best time to incorporate. This may mean that some of the properties will fall onto the SVR (Standard Variable Rate) for a period whilst you wait for some of the other fixed rates to expire. Early Rayment Charges (ERCs) are a consideration. By redeeming a mortgage during a fixed rate period, it is likely to attract a higher ERC the earlier the refinance is undertaken. It is important to look at all the lending, all the ERCs and those that may fall onto the SVR and by making a calculated assessment of the costs to you of refinancing the portfolio you will be able to establish the best time to do this.

Without Incorporation Relief you will immediately trigger a Capital Gains Tax charge and if the properties have been held for several years, this can be considerable.



Myth #3 (Cont.)

“You Don’t Need to Transfer the Properties to the Company Straight Away”

Suppose you elect to keep your properties outside the company on incorporation to benefit from the fixed rate deals you secured whilst the property was in your name. In that case, you will be adjudged to benefit from a financial advantage as the fixed rates for individuals are traditionally lower than commercial rates for companies. **Having taken advice from our regulatory body they have confirmed that this financial advantage would be considered fraud and therefore proceeds of crime.**

As professionals, we will always provide an honest opinion of the likely success of qualifying for incorporation relief.

We had a free initial consultation with a prospective client with whom we discussed the many issues surrounding their portfolio. They went away shopped around and found a company that would agree to what they wanted to do, rather than advising on what was possible.

Following an incorporation with another company, HMRC raised an enquiry and advised them that unless they could demonstrate otherwise, Capital Gains Tax was payable in respect of the transfer as incorporation relief could not be claimed. They have come back to us to ask us to assist with their defence of a £2 million tax bill.

We consider that these are issues that Landlords can sleepwalk into, without being fully informed and professionally advised. **By coming to Bell Howley Perrotton and discussing the matter in detail, you will fully understand and appreciate why technical and expert advice is required.**



Myth #4

“You Should Set up an LLP to Limit Liability Whilst Waiting to Incorporate”

It seems very common for portfolio landlords to consider that one of the first steps in the incorporation process is to set up an LLP (Limited Liability Partnership). The terminology may have been picked up through internet research or listening to event speakers without fully understanding the implications.

An LLP has Members, rather than Partners. A crucial similarity with a company is that an LLP owns the business's assets and is liable for its debts, whilst the LLP is deemed tax transparent meaning that its members are broadly subject to the same tax treatment as a general partnership.

So, what is the problem and why does this matter? **The important thing to note about the above is that when you incorporate your property portfolio, the company into which the properties are transferred will, in exchange, issue shares in the company.** If the properties are being transferred from an LLP, then the LLP will own the properties and therefore own the shares that are issued following the transfer.

An LLP is a registered corporate body. It is registered with a Partnership No. at Companies House; accounts are legally required to be filed. LLPs combine the flexible structure of a partnership with the benefits for its members of limited liability.

The issue is therefore how do you release the shares that are owned by the LLP to the Members without triggering tax charges, the very element you are trying to navigate through?

If the shares on transfer are issued to the Partners of a simple general partnership rather than to a separate legal body, then the partnership will close on incorporation and all that will be left is the company with you as Directors and Shareholders.

We will put in place for you a partnership agreement that will take you all the way to incorporation and ensure there are no loose ends.

Myth #5

“You Should Set Up a New Company Prior to Incorporation to put Your Property Into”

HMRC are constantly on the lookout for ‘schemes or arrangements’ that are contrived solely for the purpose of limiting tax liability rather than for purely commercial considerations.

Whilst no one would ever consider that artificial steps would equate to tax evasion, and tax avoidance is not unlawful, HMRC consider that artificial steps “involve bending the rules of the tax system to try to gain a tax advantage that was never intended.”

If HMRC consider that artificial steps have been placed in a transaction purely to produce that advantage then they are likely to raise an enquiry, ask for the ‘full’ amount of tax to be paid which may include SDLT as well as CGT and possibly impose penalties when they consider the facts.

Tell-tale signs that artificial steps have been included, is that the benefits sound too good to be true. If this is the case, then they usually are. Whether it be the inclusion of artificial steps or turning a blind eye to your mortgage conditions these are indicators that what you intend to undertake is likely to be open to question.

We will not leave you wondering. We will clearly set out the requirements for incorporation relief to apply and whether you qualify.



The Biggest Mistake?

“Not taking professional advice from a regulated individual!”

Regulatory Bodies impose industry standards that its members are expected to adhere to and will impose sanctions and penalties if an individual or business falls short of that expectation.

Furthermore, they are required to have in place Professional Indemnity Insurance to cover the eventuality of a mistake or if an individual is negligent to protect the end client.

Our business is regulated by The Chartered Institute of Taxation, we are registered with the Solicitors Regulatory Authority and all our advisers are affiliated to their Regulatory Bodies.

We carry £5million of Professional Indemnity Insurance per claim.



Our Solution

How Can You Avoid Making The Biggest Mistake?

Firstly, let's start a conversation. We are keen to work with you. By building trust we are seeking to have a long-term professional relationship with you, and we are aware that trust has to be built and not assumed. **We would like to get to know you and you to get to know us.**

We offer a free 30 minute meeting to discuss your personal situation in detail.

Secondly we will look at your personal circumstances and tailor our advice to you. Ensuring you have received proper tax advice in an arena that requires specialist advice denotes the complex nature of the transaction.

As a firm, we specialise in providing complex tax advice. Our professionals are properly regulated, we carry £5 million Professional Indemnity Insurance per claim, and we are in the unique position of being able to understand the position of understanding clients' needs and providing the tax advice that is required.

Have you thought about the impact of the following on your incorporation?

- Your Lender demanding repayment on your mortgages due to a breach of their terms and conditions leading to possible bridging loan solutions or the sale of some of your properties?
- HMRC enquiring into whether you are running a business or passively holding investments. If all of the activities of the business are outsourced to third parties, then maybe you are at risk of being liable to CGT on the transfer from your individual names into the company.
- Inserting artificial steps simply to gain the tax advantage when the portfolio is incorporated, leading to HMRC denying you any tax relief and instead charging CGT on the increased value of your portfolio, interest, and possible penalties.
- Time and worry to be spent dealing with an HMRC enquiry without expert technical support.
- Having the shares issued from the NewCo sitting in an LLP and the tax implications of transferring them to your personal names.

How Can We Help?

What Can Bell Howley Perrotton Do to Assist You?

- We engage directly with you so you can fully understand whether you qualify for CGT and SDLT relief.
- We are here to apply the right reliefs in the right circumstances, to ensure the calculation is accurate the first time around, thereby supporting you if you have a future HMRC enquiry.
- It is important to choose someone you can work well with and has the experience and knowledge to understand both the legal nature of the transaction and the way the tax will be applied. At Bell Howley Perrotton LLP we can do both.
- We will provide a fixed fee quote prior to instruction.
- We will work directly with conveyancing solicitors on our panel who are familiar with Incorporation Transactions and understand the nuances of getting things right first time.
- We will advise on the SDLT point as well as the CGT question. We ARE regulated and insured to give Tax Advice.

Proceeds of crime and money laundering are rightly taken very seriously by government departments and regulators alike. Therefore, compliance is a high priority as part of any advice you receive.

What's Next?

Now you have downloaded this guide you will feel better informed about the risks and therefore the benefits of getting in touch with us.

If you would like to arrange a free 30-minute meeting with us, we will discuss your portfolio, identify problems and issues, and help you understand the right next steps for you. Please contact either Becky Sanders at becky@bhptax.law or Freya at freya@bhptax.law and they will help you with your enquiry.

The Author: Amanda Perotton

I am a solicitor of 25 years and have owned both my own High Street practice and been a former Managing Partner of a three-partner firm. I have knowledge and experience of not only Residential and Commercial Property transactions but also the regulatory and compliance aspects of running a Law practice. I am a Trust and Estate Practitioner and a Trustee of an Ecclesiastical Trust.

After many years working as a solicitor in private practice, I understand the reticence to engage with other professionals, but I also understand that the landscape and life of a busy Solicitor is under constant scrutiny.

I want to show Landlords and Property professionals that there is a way to incorporate a property portfolio within the legislation, whilst at the same time utilising the reliefs that are available for SDLT and CGT. This will provide you with time and opportunity to continue with the work you are more passionate about, enabling your business to grow.



Tax Advisor: Simon Howley

Simon is a Chartered Tax Adviser, the gold standard for tax practitioners, and a recognised expert in advising on property tax matters, with a particular interest in Stamp Duty Land Tax (SDLT).

He is a member of the Stamp Taxes Practitioners Group, the leading professional group for stamp tax practitioners, with less than 200 members in the UK taken from the tax, legal and accountancy industry.

He sits on the Property Taxes Sub Committee of the Chartered Institute of Taxation, Technical Policy and Oversight Committee.

He is also the sole author of the Stamp Duty Land Tax section of the isurv website of The Royal Institution of Chartered Surveyors. isurv has been developed to provide practical information and guidance for professionals and students in the industry.



Testimonials

Instructing Bell Howley Perrotton has been one of the best decisions I could have made. Simon, Amanda and the rest of the team are an absolute pleasure to work with. The advice that they give, the speed at which they work and the professionalism they have displayed is second to none. I cannot recommend them highly enough.

Adam Vickers
VX Property Holdings Limited

We were recommended to BHP, as we had a complex development deal, where the stamp duty liability was very unclear. BHP offered us a comprehensive summary of this liability in a matter of a few days, which offered our client the comfort to purchase the development. The service was very professional, quick and excellent value. I would highly recommend the, to anyone who needs clarity on their tax liabilities, when purchasing a property.

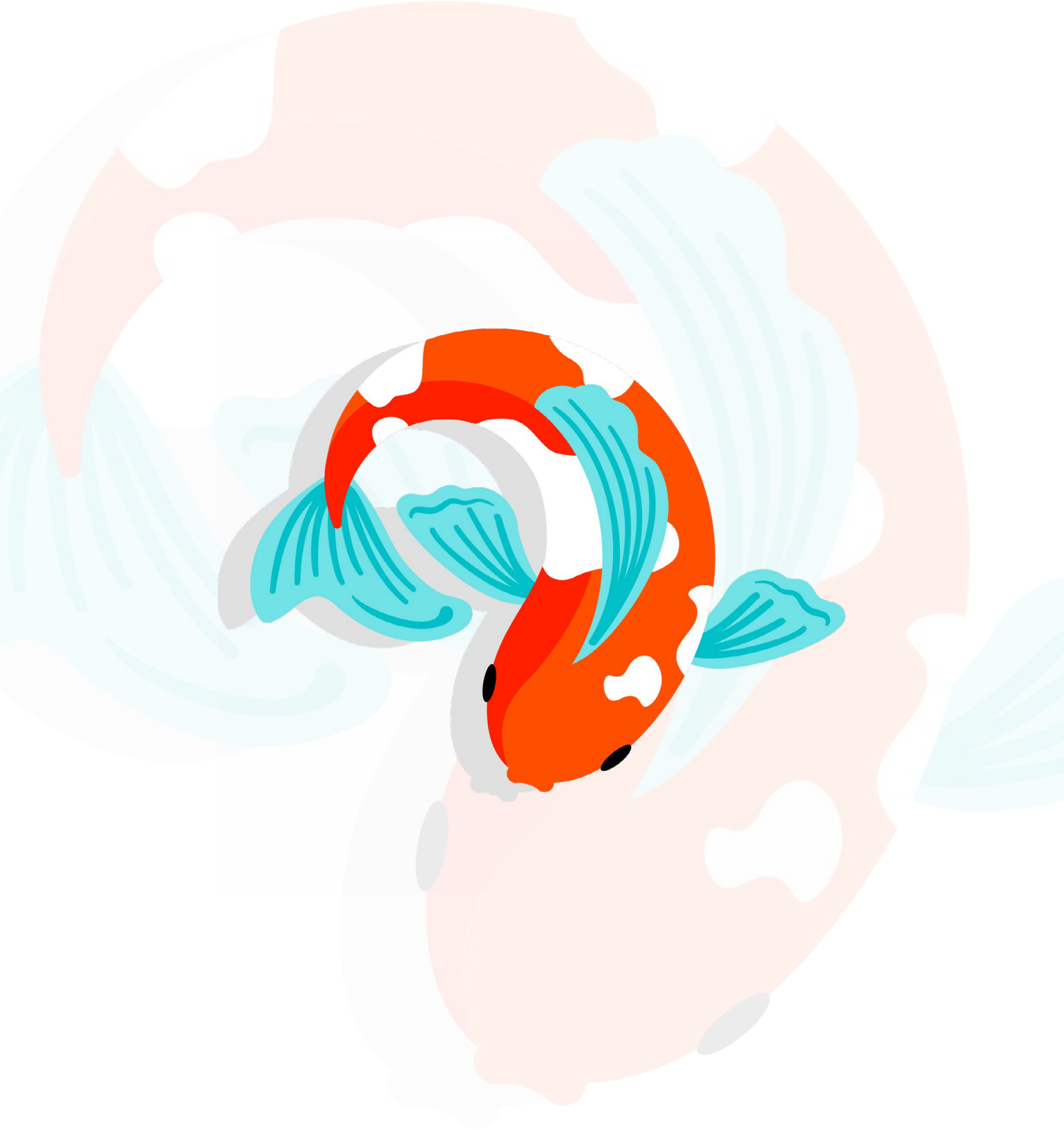
Nick Goble
MD Winkworth Battersea-Clapham, Kennington Lettings and Pimlico/Westminster

Thank you. Those two small words just don't seem to say enough. On behalf of me and Paula, I want to say the biggest thank you Amanda, for pushing through to the very last minute today to get our incorporation over the line. You have all helped us from the very initial conversations about incorporation right the way through to the final phone call this afternoon to day it had happened. We both appreciate all the support and guidance you gave us. Thank you once again.

Sue and Paula Sims
Sims and Daughters Ltd

Simon has been invaluable in my business from restructuring assets and companies to providing tax advice on complex capital allowances to SDLT. Highly recommend his services.

Rod Turner
Founder at ITP Group and host of The Rodcast.



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This guide is accurate as at August 2023