Solicitor Guide

When Property Portfolio Incorporation Work Becomes Tax Advice

Recognising when legal implementation depends on section 162, SDLT, LTT or LBTT and structuring analysis, and bringing in a specialist tax adviser before the route is fixed.

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Why should you read this guide?

Every commercial solicitor advising on a property portfolio incorporation eventually faces the same practical question:

"Are we implementing a settled tax plan - or are the legal documents being asked to carry an untested tax assumption?"

The instruction may appear familiar: review the partnership, incorporate a company, prepare business and property transfers, obtain lender consent, issue shares and complete the registrations. Each step can define the transaction on which section 162 Incorporation Relief, Capital Gains Tax and SDLT, LTT or LBTT depend.

The challenge is not that commercial solicitors should become specialist tax advisers. It is recognising when legal implementation has moved beyond giving effect to an agreed structure and into deciding whether the tax structure works.

Early specialist input helps you:

- Separate the legal retainer from the specialist tax opinion and record who is responsible for each conclusion.
- Test business, partnership, CGT and SDLT, LTT or LBTT assumptions before transaction documents are drafted around them.
- Identify lender, ownership, consideration, share-issue and timing issues before the completion route is fixed.
- Give the client, legal team and accountant one written route, with consistent assumptions and responsibilities.
- Plan existing companies, any group structure and family ownership before the business is transferred.
- Reduce fee-earner time spent researching complex, fact-dependent tax law outside the team's normal scope.

PURPOSE OF THIS GUIDE

This guide does not suggest that commercial teams should refer every company or property matter. It identifies the features that make a portfolio incorporation dependent on specialist tax analysis. You remain the trusted adviser and lead the legal implementation; Bell Howley Perrotton provides the defined tax and structuring input.

Your team remains in control of the client relationship and legal documents. We provide the written tax conclusions and practical implementation points that your team can use.

Incorporation work and tax - why the overlap matters

Section 162 Incorporation Relief can defer gains where a person transfers a business as a going concern, with the whole of its assets other than cash, to a company wholly or partly in exchange for shares. The legal documents determine what is transferred, by whom, when, for what consideration and what shares are issued. Those are not merely drafting details.

Three practical points

• Eligibility is factual. A partnership deed, property count or elapsed period does not by itself establish the required business or partnership position. Legal and beneficial ownership, activities and profit sharing must align.

• CGT and land transaction tax are separate. Section 162 does not decide the transaction-tax position, and the SDLT Schedule 15 partnership rules can turn on ownership history, profit shares, connections and earlier steps. The Welsh Act Schedule 7 and the Scottish Act Schedule 17 must be applied to LTT and LBTT respectively.

• Reporting affects the completion file. Incorporation Relief remains automatic where section 162 conditions are met; no claim is required. The Self Assessment computation and any election out must still agree with the legal, tax, accounting and company records.

WHAT THE TAX ADVISER MAY NEED FROM THE LEGAL TEAM

- A property schedule, title information, declarations of trust and ownership history.
- Partnership agreements, contributions, changes in profit shares and the legal basis on which assets are held.
- Draft transfer agreements, proposed consideration, liabilities, share terms and the intended transfer date.
- Mortgage conditions, lender consents, refinancing proposals, guarantees, restrictions and early repayment charges.
- Details of existing companies, proposed group or Family Investment Company arrangements and shareholder objectives.
- The planned sequence for beneficial ownership, legal title, share issue, completion, registration, claims and returns.

A CLEAR DIVISION OF WORK

Your commercial, corporate or property team leads legal due diligence, lender and title work, company documents, completion and registration within its retainer. A specialist tax adviser gives the written section 162, CGT and transaction-tax opinion. The accountant supplies historic data and deals with agreed returns and claims. Responsibilities and dependencies should be recorded before drafting and completion.

The conversations that should make you pause

"The client has already been told the reliefs apply; we only need to transfer the titles."	Ask for the written tax opinion. The assets, parties, consideration, transfer date and share issue recorded in the documents may determine whether the assumptions are met.
"There is a partnership agreement, so the business and SDLT, LTT or LBTT partnership conditions are covered."	A deed is evidence of an agreement, not a substitute for the facts. Conduct, ownership, contributions, profit sharing, withdrawals and the history of the partnership must be consistent.
"The portfolio is large and actively managed, so section 162 is straightforward."	There is no fixed property-count test. The nature and degree of the activities, who performs them and the contemporaneous evidence all matter.
"We can transfer beneficial ownership now and obtain lender consent or move legal title later."	The route may have lender, property-law, tax and accounting consequences. It needs to be effective, documented, lender-compatible and consistent with the position reported.
"The NewCo and share classes have already been set up."	The destination structure can affect the consideration, share issue, group position, future exits and family planning. It should be reviewed before the business transfer is committed.
"The accountant can claim Incorporation Relief after completion."	Relief is automatic if section 162 conditions are met; no claim is required. The computation, reporting and any election out must still be correct and consistent with the transfer documents and share issue.
"Property 118 won the DOTAS case, so the incorporation route is approved."	DOTAS asks whether arrangements are notifiable. The decision is not HMRC clearance and does not determine each user's CGT, SDLT, LTT or LBTT, accounting, finance or legal outcome.

REFERRAL TRIGGER

If the tax conclusion could alter the assets, parties, consideration, share issue, transfer date, lender route, documents or filings, obtain specialist tax advice before the transaction documents and completion timetable are fixed.

When specialist tax advice adds value

Not every matter requires a full report. The following features are strong indicators that a short scoping conversation would be worthwhile:

Area	Examples that should trigger a pause
Business and partnership	Historic or recent partnership; inconsistent legal and beneficial ownership; outsourced management; unequal contributions or profit shares; a corporate or LLP member; weak activity records.
Section 162 and CGT	Uncertain business status; assets to be left outside; cash, debt or loan consideration; negative equity; large latent gains; multiple transferors; goodwill or valuation issues.
SDLT, LTT or LBTT	The SDLT Schedule 15 partnership treatment; connected company; changes in partnership shares or withdrawals; staged or linked transfers; property in Wales or Scotland governed by Welsh Act Schedule 7 or Scottish Act Schedule 17.
Finance and legal route	Lender consent or refinancing; early repayment charges; beneficial and legal title separating; restrictions, charges, guarantees, indemnities or phased completion.
Company and family planning	Existing SPVs; proposed holding company or group; Family Investment Company; different risk pools; future acquisitions or disposals; succession, control or a planned sale.

Three current points in practice

HMRC confirmation from 6 April 2026: Incorporation Relief remains automatic where the section 162 conditions are met, and HMRC HS276 says no claim is required. The transfer, computation, deferred gain and share base cost must still be reported correctly; any election for section 162 not to apply has its own statutory deadline.

Budget 2025 rate changes: Dividend ordinary and upper rates increased to 10.75% and 35.75% from 6 April 2026; the additional rate remains 39.35%. Separate property-income rates of 22%, 42% and 47% are scheduled from 6 April 2027 for England, Wales and Northern Ireland, subject to the devolved framework. Advice should compare retained profit and extraction, not just current headline rates.

Property 118 DOTAS decision: On 31 July 2026 the First-tier Tribunal allowed the Property 118 and Cotswold Barristers appeals and cancelled the scheme reference numbers. The issue was whether the arrangements were notifiable under DOTAS. The judgment states that those proceedings were separate from users' personal tax positions, so the decision is not a general approval of each user's tax or legal outcome.

THE PRACTICAL QUESTION

Do the legal documents implement the same transaction that the tax advice analyses, with a clear evidence trail and an identified person responsible for every claim, return and filing?

The advice your legal team can use

The right output depends on the question. We agree the scope at the outset so the legal team receives the conclusions, assumptions and implementation points that the matter actually needs.

Pre-implementation scoping

An initial review can identify the unresolved tax questions, evidence and advisers; test whether a focused written note or a full report is proportionate; and flag any issue that should be resolved before the company, share rights, lender application or transaction documents are committed.

Specialist Portfolio Incorporation Tax Advice and Implementation Schedule

For a defined portfolio and proposed route, our written advice may include:

- An executive conclusion, viable alternatives and the assumptions on which the legal team may proceed.
- Findings on the business, partnership, ownership and activity evidence relevant to section 162.
- The CGT computation, consideration, share base cost and responsibility for the section 162 claim and reporting.
- Separate SDLT, LTT or LBTT analysis, including analysis under Finance Act 2003 Schedule 15, the 2017 Welsh Act Schedule 7 or the 2013 Scottish Act Schedule 17 provisions and agreed factual assumptions.
- The destination company, share rights and any reorganisation, holding-company, group or family structure.
- Drafting points on parties, assets, liabilities, consideration, transfer date, share issue and beneficial and legal title.
- Lender, valuation and evidence dependencies, together with the proposed implementation sequence.
- A responsibility schedule identifying advisers, documents, decisions, claims, returns, filings and deadlines.

THE OUTCOME

The legal team receives a reasoned written conclusion and coordinated implementation route. It records the facts, assumptions, alternatives, evidence gaps and responsibilities behind the position, so the documents can be prepared against an identified tax analysis.

GROUP STRUCTURES AND FAMILY INVESTMENT COMPANIES

Where the client already owns companies, a pre-incorporation reorganisation or holding-company structure may help separate activities and risk, support future acquisitions or disposals and align governance. A Family Investment Company can provide a framework for family ownership, control and succession, but it is not an automatic tax or Inheritance Tax solution. Share rights, funding, extraction, associated-company consequences, Business Relief, CGT, SDLT, LTT or LBTT and finance should be reviewed before the business is transferred and shares are issued. Once the design is settled, your team can implement the corporate and property documents against clear tax assumptions.

Working with Bell Howley Perrotton

Our role is not to replace your relationship with the client. It is to support it. We work alongside commercial, corporate and property solicitors within a clearly agreed scope and provide the written tax conclusions needed for legal implementation.

How instruction works

Step	Stage	What happens
1	Scope the questions	Send us a short summary of the client, portfolio, ownership, partnership history, finance, existing companies, legal work requested and the tax assumptions that need to be confirmed.
2	Confirm the engagements	We complete conflicts and onboarding, identify the underlying client and advisers, agree the tax scope, fee, anticipated timetable, reliance and communication route.
3	Gather the evidence	We identify, returns, activity records, titles, finance, valuations, draft documents, company information and family objectives needed for the agreed analysis.
4	Analyse and report	We test the reliefs, compare routes, identify evidence gaps and issue the written conclusions, assumptions, drafting points and implementation sequence.
5	Coordinate implementation	We work with the legal, accounting and finance teams to allocate documents, claims, filings and dates, and answer implementation questions within the agreed scope.

Why commercial departments involve us

- You remain the trusted adviser and retain control of the client relationship and legal implementation.
- A separate specialist tax opinion is delivered under the tax adviser's own engagement and professional standards.
- Fee earners do not need to adopt or research untested tax assumptions outside the agreed legal scope.
- The legal, tax, accounting, valuation and finance teams work from the same facts and implementation route.
- The file records scope, reliance, assumptions, evidence gaps, professional responsibilities and reporting deadlines.
- The department has a consistent escalation route for complex incorporations, partner review and junior fee earners.

START WITH ONE MATTER

Before the next complex settlement is agreed, send us a short outline of the assets, the proposed terms and the questions you need answered. We will confirm the appropriate scope, fixed fee and timetable before any work begins.

Who we are

Amanda Perrotton - Partner

Amanda is a solicitor with almost 30 years' experience, a full member of STEP (TEP) and a member of the Stamp Taxes Practitioners Group. She regularly advises clients and professional advisers where tax, property, trusts, family wealth and professional risk intersect, and is known for making difficult technical issues practical and understandable.

Simon Howley - Managing Partner and Chartered Tax Adviser

Simon is a Chartered Tax Adviser specialising in property and private-client tax matters.

His work includes SDLT, LTT and LBTT, company and partnership structures, incorporations, reliefs, exemptions and HMRC enquiries. His approach is direct, forensic and focused on giving clients and professional advisers a route they can use.

Speak to us about a portfolio incorporation

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OUR APPROACH

You remain the trusted adviser. We define and own the specialist tax question, test the facts and evidence, explain the conclusion in plain English and provide the practical drafting and implementation points your team can use.

Section 162 remains automatic

For a qualifying transfer, Incorporation Relief remains automatic under Taxation of Chargeable Gains Act 1992 section 162. HMRC HS276 (2025 to 2026), updated 6 April 2026, states that no claim is required. A transferor may elect for section 162 not to apply within the statutory time limit. The Self Assessment computation, disposals, deferred gain, share base cost and any election must still be complete and consistent with the legal documents.

The conditions remain exacting: a business must be transferred as a going concern with all its assets other than cash, wholly or partly for shares in the transferee company. Cash, debt, a director's loan account or other non-share consideration can restrict the deferral. Liabilities and ESC D32 require careful computation; relief defers a gain into the shares and does not eliminate it.

Business and partnership evidence

Ramsay v HMRC [2013] UKUT 226 (TCC) confirms that the nature and degree of activity are factual. HMRC CG65715 says that 20 or more personal hours a week on business-type activities will be accepted as sufficient, but other cases require careful review. There is no fixed property count, universal waiting period or deed-based safe harbour.

The existence, membership and shares of a partnership must be established from conduct, accounts, returns, bank records, contributions, profit sharing, beneficial ownership and the Partnership Act 1890 or relevant LLP law. A partnership document created shortly before transfer cannot retrospectively change the facts.

Which land tax applies

- **England and Northern Ireland:** SDLT under Finance Act 2003. Partnership transfers are governed by Schedule 15 and HMRC SDLTM33110 onwards. Connected-company market-value rules, section 75A and the Schedule 4A 17% higher-threshold rate may need review.

- **Wales:** LTT under the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017. Partnership transactions are governed by Schedule 7 and WRA partnership guidance. Finance Act 2003 Schedule 15 and the SDLT 17% single rate do not apply.

- **Scotland:** LBTT under the Land and Buildings Transaction Tax (Scotland) Act 2013. Partnership transactions are governed by Schedule 17 and Revenue Scotland LBTT7001 onwards. Residential company acquisitions may engage the 8% Additional Dwelling Supplement; the SDLT 17% single rate does not apply.

The three partnership schedules use related concepts but must be calculated independently. Ownership history, connected persons, partnership shares, transfers into and out of the partnership, earlier arrangements, leases and linked or staged steps can change the chargeable consideration. Section 162 relief does not confer transaction-tax relief.

Current cases and anti-avoidance

Property 118 Limited & Cotswold Barristers Limited v HMRC [2026] UKFTT 1111 (TC), TC09971, decided 31 July 2026, concerned whether arrangements were notifiable under DOTAS. Cancellation of the scheme reference numbers was not clearance of each user's section 162, partnership, SDLT, LTT, LBTT, accounting, lender or legal position.

The Tower One St George Wharf Ltd v HMRC [2025] EWCA Civ 1588 confirms the breadth of Finance Act 2003 section 75A and the importance of analysing the whole series of SDLT scheme transactions. It is relevant to complex connected-company routes but is an SDLT authority, not a substitute for the Welsh or Scottish anti-avoidance codes.

Other tax and legal workstreams

• Model corporation tax, interest deductibility, losses, capital allowances, retained profit, dividend or salary extraction, section 455 loans, future sale and liquidation. From 6 April 2026 dividend ordinary and upper rates are 10.75% and 35.75%; the additional rate remains 39.35%. Separate property-income rates of 22%, 42% and 47% are scheduled from 6 April 2027 for England, Wales and Northern Ireland, subject to the enacted devolved framework.

• Check VAT, option-to-tax and transfer-of-a-going-concern conditions for commercial or mixed portfolios; Annual Tax on Enveloped Dwellings and relief declarations for high-value company-owned dwellings; and Non-resident Landlord Scheme, CIS or employment issues where relevant.

• Business Relief for Inheritance Tax is not automatic for an investment business: Inheritance Tax Act 1984 sections 104 to 114 and HMRC IHTM25261/IHTM25266 require separate analysis. A Family Investment Company is a governance structure, not a guaranteed IHT result.

• Obtain lender consent and address refinancing, guarantees, restrictions, title, beneficial ownership, conveyancing, Companies Act approvals, share rights, distributions, minority interests, insolvency, accounts, land registration and professional-responsibility allocation.

HMRC mandatory tax adviser registration is being introduced by tranches, not through one universal May 2026 deadline: see MTAR10800, updated 18 August 2026. Registration is an administrative requirement and not technical clearance or proof of competence.

Technical sources and important note

- Taxation of Chargeable Gains Act 1992 section 162; HMRC HS276 (2025 to 2026); HMRC CG65700, CG65710, CG65715, CG65720, CG65740 and CG65745.
- Ramsay v HMRC [2013] UKUT 226 (TCC); Property 118 Limited & Cotswold Barristers Limited v HMRC [2026] UKFTT 1111 (TC), TC09971.
- Finance Act 2003 Schedule 15 and section 75A; HMRC SDLTM33110 onwards and SDLTM33310 onwards; The Tower One St George Wharf Ltd v HMRC [2025] EWCA Civ 1588.
- Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Act 2017 Schedule 7; WRA Partnerships and Land Transaction Tax technical guidance.
- Land and Buildings Transaction Tax (Scotland) Act 2013 Schedule 17; Revenue Scotland LBTT7001–LBTT7008.
- Finance Act 2003 Schedule 4A; LBTT(S)A 2013 Schedule 2A; HMRC corporate-body guidance, WRA higher-rates guidance and Revenue Scotland ADS guidance.
- HMRC Budget 2025 property and dividend rates technical note; HMRC MTAR10800; Finance Act 2013 Part 3 (ATED); HMRC VAT Notice 700/9.
- Inheritance Tax Act 1984 sections 104–114; HMRC IHTM25261 and IHTM25266; CIOT Professional Conduct in Relation to Tax; SRA Code of Conduct.

This guide provides general information only and is not legal or tax advice. It reflects law, published guidance and reported decisions checked on 18 August 2026. Every incorporation depends on its facts, documents, territory, finance and implementation; SDLT rules and cases do not automatically determine LTT or LBTT.