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The ‘New’ Tax Loophole That’s 61 Years Old

Business incorporation, recycled promises and the price of getting it wrong

Incorporation relief dates from 1965. Yet each new tax pressure seems to produce another ‘discovery’, another confident social media post and another bill for the business owner.

With higher property-income tax rates due from April 2027, incorporation will be back on the agenda. But a company, an indemnity or another deed is not a solution simply because someone calls it one.

This article puts the whole transaction back in view: the history, the borrowing, the tax reliefs and the proposed exits from failed planning. BHP explains what can work, what the documents cannot repair and when further expense is unlikely to help.

Before paying for the next answer, understand the whole question.

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Incorporating a business has been an ordinary part of British commercial life for generations. Farmers, shopkeepers, and professional practices moved into companies long before landlords had a social media feed. The capital gains tax relief that helps make that possible dates back to 1965. Conventional incorporation remains the normal route for owners who decide that a company suits their business. [1]

This article responds to the piecemeal commentary on social media. Public posts have warned about refinancing and full relief, made sweeping claims about legal title and share consideration, and debated a supposed 20-hour rule. Some raise valid questions. The problem is that when a narrow point is presented as the answer to the whole transaction, readers are left with fragments, often accompanied by a reason to worry and an invitation to seek advice. [88]

The current debate centres on property arrangements promoted by Property118 and Less Tax 4 Landlords. This explains this article's focus on landlords; incorporation itself concerns businesses across the economy. Some readers are considering it for the first time, while others need to resolve arrangements already challenged by HM Revenue & Customs (HMRC). Both need the whole picture.

HMRC is familiar with conventional incorporation and company refinancing. The practical questions are whether the business, ownership, purchase price and borrowing meet the relief criteria, and whether the transaction is commercially sensible. Where earlier planning has failed, we first establish what took effect. Another document is useful only if it solves the actual problem.

This article brings those issues together and sets out BHP's view on the routes currently under discussion. It explains the history, the current choices and the proposed remedies in one place, with sources at the end for readers who want to explore particular points further.

How incorporation became part of business life

Incorporation means transferring a business to a company, a legal person separate from its owners. Forming the company is the easy part. Moving the business into it requires decisions about ownership, payment and responsibility for debts. The owners may end up controlling the same enterprise, but the company's assets and obligations are its own.

For tax purposes, transferring an appreciated asset to your own company can trigger a disposal at market value, even if no cash changes hands. Incorporation relief can defer the resulting capital gains tax (CGT) charge where a qualifying business is transferred for shares. Broadly, the deferred gain reduces the tax cost of those shares and can reappear when they are sold. The relief enables a change of business structure without necessarily requiring an immediate CGT payment. [2, 24]

Parliament introduced the relief in paragraph 8 of Schedule 7 to the Finance Act 1965, which received Royal Assent on 5 August 1965. After revisions in 1969 and consolidation in 1979, it became section 162 of the Taxation of Chargeable Gains Act 1992. That Act received Royal Assent on 6 March 1992. The familiar section number is therefore younger than the relief itself. [1, 2, 3]

Borrowing was part of the problem from the outset. If a company took over both debts and assets, relieving the owner of those debts could count as payment for the business and restrict the deferred gain. After a 1969 rewrite removed the legislation's express reference to business liabilities, the Inland Revenue issued Statement of Practice D22 on 10 September 1971. It allowed qualifying business liabilities taken over by the company to be disregarded in that part of the calculation. [6, 7]

The banking practices of that period help explain the wording. The Chartered Institute of Taxation (CIOT) has observed that novation may have been common practice in 1971: a proprietor and the local bank manager could agree to substitute the company as the borrower. Novation means replacing an existing obligation with a new one by agreement, thereby releasing the original borrower, as the parties agree. The company could take over the borrowing with the bank's participation. [6, 7]

Think of Captain Mainwaring, the manager of the Walmington-on-Sea bank, whenever the Home Guard could spare him. Dad's Army was set earlier, but it offers a useful picture of the local manager with authority to make lending decisions. The crucial detail is that the manager was part of the conversation. Even Mainwaring would have expected to be asked.

That helps explain why the old wording speaks of liabilities being taken over. Today's formal underwriting generally requires a new loan to the company, used to redeem the proprietor's borrowing. The commercial objective remains the same, even though the banking machinery has changed. Historical discretion lay with the lender; it never entitled a borrower to substitute a company or transfer the mortgaged property without the bank's required consent. [6, 7]

The CIOT's account of discussions with HMRC records that Extra-Statutory Concession D32, usually called ESC D32, superseded the 1971 statement in 1988, as announced in a press release. The wording was republished in 1995. A concession is an administrative practice through which HMRC grants specified favourable treatment. D32 concerns the CGT calculation on the transfer of business liabilities. It has never been a lender's agreement to change its borrower. [7, 35]

Businesses outside property letting have tested these rules in court. In Gordon v IRC, a Scottish farming business was transferred to a company in 1983, even though farming on the estate was expected to end a few months later. The question was whether an operating business had been transferred as a going concern. In 1991, the Court of Session ruled in favour of the taxpayer because the farm was still operating when the company took over. The decision illustrates why the facts at the date of transfer matter. [4, 5]

How tax policy changed the calculation

Once incorporation relief was established, business owners could consider changing their structure without necessarily incurring an immediate CGT bill. Subsequent tax changes then influenced when they acted. The prospect of a higher bill, or the loss of a relief, has repeatedly prompted owners to reconsider how they hold their businesses.

I remember the rush to secure the effective 10% CGT rate before business asset taper relief ended on 5 April 2008. Entrepreneurs' Relief followed and was later renamed Business Asset Disposal Relief. The prospect of losing a favourable rate brought transactions forward, as owners sought to protect a tax outcome they valued. [8, 9, 10]

Until restrictions introduced on 3 December 2014, companies could obtain corporation tax deductions for writing off qualifying goodwill acquired from their owners. Goodwill is the value attached to an established business beyond its identifiable assets, such as customer relationships and reputation. That tax treatment gave some owners another financial incentive to incorporate. [11]

The appeal of incorporation increased sharply after the restriction commonly known as "section 24". Its full legislative reference is section 24 of the Finance (No. 2) Act 2015. It changed the treatment of residential finance costs for individual landlords, with the restriction phased in from April 2017 to April 2020. [12, 13]

Before the change, qualifying mortgage interest was generally deducted when calculating rental profits. Under the restriction, affected interest instead produces a basic-rate income tax reduction, subject to limits. The operative rules are set out in sections 272A–272B and 274A–274C of the Income Tax (Trading and Other Income) Act 2005. A higher-rate taxpayer can consequently pay much more tax, even though the rent and mortgage payments have barely changed. [12, 13]

Companies are subject to different interest rules. This made incorporation attractive to some landlords, particularly those retaining profits to expand their portfolios. The stated government rationale concerned fairness between people buying homes to live in and those buying homes to let. For a landlord with substantial borrowing, changing structure could improve the amount left after tax. The policy therefore altered the financial incentive to incorporate. [14]

The next push: property income tax from 2027

The April 2027 changes give landlords another reason to revisit the calculation. Section 7 of the Finance Act 2026 set separate property-income rates of 22%, 42% and 47%. The October 2026 Budget then proposed raising them to 24%, 44% and 49% from 6 April 2027, through the Finance Bill 2026–27. HMRC describes those proposed rates as applying in England, Wales and Northern Ireland, with devolved rate-setting powers requiring separate attention for Scottish and Welsh taxpayers. The further increase remains a proposal as at the date of this article. It may prompt an owner who previously rejected incorporation to reconsider. [89]

For a mortgaged business, a principal attraction remains the company's ability to deduct qualifying interest and finance costs when calculating taxable profits, subject to the corporation tax rules. That is relief on finance costs; repayment of the loan principal is not a deductible expense. The individual landlord's residential finance-cost relief also changes from April 2027, with the property taxed at the basic rate, subject to its existing limits. A fair comparison must include that relief rather than simply comparing headline tax rates. [55, 90]

The company side has changed too. The main corporation tax rate rose from 19% to 25% on 1 April 2023. The small profits rate remains at 19%, generally for qualifying companies with profits of £50,000 or less, with marginal relief between £50,000 and £250,000. Those limits are reduced for associated companies and short accounting periods, and eligibility matters. A small company does not necessarily pay the small profits rate. Nor is corporation tax necessarily the final charge: taking profits out as dividends can create another layer of personal tax. [33, 91]

BHP's view is that a tax rise is a reason to review the numbers, not an instruction to incorporate. We would compare the cash left personally over the intended ownership period, after finance costs, corporation tax, extraction tax, transfer taxes and professional costs. Retaining profits to reinvest may favour a company; needing most of the rent to live on may change the outcome. Refinancing terms, early repayment charges and the eventual sale or succession plan belong in the same assessment. The structure has to make sense overall, on a case-by-case basis.

Other incentives are changing too. The government has proposed a separate 10% Founders' Relief, intended to apply from 6 April 2027 to qualifying share disposals by founders and significant early investors in innovative, high-growth UK companies. The details are still under consultation. Nostradamus could safely take the afternoon off. Someone will already be examining the conditions of that 10% rate. [15]

Choosing an available relief, or bringing a transaction forward before a rate changes, is an ordinary response to tax policy. The difficulty arises when the advertised saving depends on a legal position that the documents fail to establish, or leaves a necessary commercial agreement unresolved. Mortgage costs have sharpened that problem. A landlord might see a tax advantage in company ownership while facing expensive or unavailable company finance. An arrangement that promised both the tax advantage and the existing mortgage terms had an obvious market.

This demand for advice can also attract promoters whose promised savings hinge on adventurous interpretations. Property has seen this before. During the 2000s, schemes sought to reduce Stamp Duty Land Tax (SDLT) by combining transactions. Parliament responded in 2007 with section 75A of the Finance Act 2003, so that, where its conditions are met, a sequence of steps can be taxed as a single notional acquisition under the statutory rules. Another example involved capital allowance claims for equipment in shared areas of houses in multiple occupation (HMOs). HMRC revised its guidance. In *Tevfik v HMRC* (2019), the tribunal rejected claims for equipment in HMOs because the relevant areas formed part of dwelling-houses, to which the restriction on allowances applied. The response came through different routes, but in each instance the promised saving eventually met scrutiny. [16, 17, 68]

These recurring patterns informed my earlier articles, 'The perfect storm' and 'Will history repeat itself?', published in Tax Adviser in 2021. The lesson is to examine how a proposed saving is achieved. A long-established relief can be used in a new arrangement whose tax outcome hinges on a disputed interpretation. Its commercial appeal and its legal effectiveness each require separate explanation. [18, 19]

What incorporation means for a landlord today

By the time the finance-cost restriction took full effect in 2020, incorporation had become a much more pressing question for landlords with mortgages. However, a favourable comparison of future tax bills is only part of the decision. The cost and tax consequences of moving the business into the company must also be assessed.

That starts with the conditions for incorporation relief. Section 162 requires a business to pass as a going concern, with all its assets, apart from any cash retained, wholly or partly in exchange for shares issued to the transferor. A letting activity can constitute a business for this purpose without being a trade. [2]

Two Ramsays, two different questions

Elisabeth Moyne Ramsay's incorporation case did not begin with a victory. She lost before the First-tier Tribunal in 2012, which held that her letting activities were not a business for section 162. In 2013, the Upper Tribunal allowed her appeal, set aside that decision, and found that they were. The first tribunal had applied the wrong legal approach, including treating tests from other tax contexts as relevant. The Upper Tribunal considered the degree of activity as a whole under the provision actually in issue. [22]

Mrs Ramsay and her husband spent about 20 hours a week managing and maintaining the property. That was a fact in their case, not a statutory threshold. HMRC's guidance now recognises qualifying personal activity of 20 hours or more a week and requires cases below that level to be considered on their facts. A timesheet can help prove what someone does; it is not the legislation. [22, 23]

The Ramsay principle is distinct. It takes its name from *W T Ramsay Ltd v IRC*, decided by the House of Lords in 1981. It concerns the interpretation and application of tax legislation: read the provision in light of its purpose, then apply it to the transaction, viewed realistically, including linked steps where appropriate. It is not a free-standing power to tax anything HMRC dislikes, and it is separate from the statutory GAAR discussed later. Mrs Ramsay's case concerns whether the letting activity was a business. The principle concerns how the legislation applies to the arrangements. [87]

A client recently confused the two. A statement that "Ramsay was not applicable" in a CGT discussion was read as meaning that the property-business decision was irrelevant. The reference was to the interpretative principle. Same surname; different question. An adviser referring to Ramsay should identify the case and explain what it establishes.

Even when the business qualifies, the amount of relief requires calculation. Cash or a debt owed to the seller may form part of the price and can limit the amount of gain deferred. Section 162(4) also limits relief by reference to the cost of the shares received. Heavy borrowing leaves less net value represented by those shares, so a portfolio with a large gain and substantial debt may leave some gain immediately taxable. [2, 24, 25, 26]

Incorporation relief addresses CGT, while SDLT requires its own analysis for property in England and Northern Ireland. A transfer to a connected company may be chargeable at market value, and Schedule 15 to the Finance Act 2003 contains special rules for partnership property. Simply owning properties jointly does not establish a partnership. Welsh property is subject to Land Transaction Tax, and Scottish property to Land and Buildings Transaction Tax. A CGT conclusion cannot answer any of those separate questions. [30, 31]

Nor does incorporation automatically improve inheritance tax treatment. A business that mainly holds investments generally falls outside business relief. A company holding higher-value UK residential property may also have Annual Tax on Enveloped Dwellings filing obligations, even if commercial letting relief removes the charge. These are ordinary considerations when assessing whether incorporation suits a particular family. [32, 34]

For transfers from 6 April 2026, section 39 of the Finance Act 2026 introduced a requirement to claim incorporation relief. Previously, it applied automatically where the conditions were met. The claim will normally be made with the tax return for the year of transfer. The CIOT had advocated a claim requirement so that transactions could be

examined through the normal enquiry process. Providing HMRC with the information needed to test a relief is a sensible part of administering it. [27, 28, 29]

Why the old concession needs modern clarification

For a mortgaged-property business, the traditional route typically involves financing in the company's own name, with the personal mortgages redeemed under agreed completion arrangements. HMRC is well acquainted with this route and scrutinises incorporations carried out in this way. Modern underwriting has largely replaced the local manager's discretion to substitute borrowers. That change calls for a clear application of the old D32 wording to modern transactions; it does not make ordinary incorporation dependent on discovering a new interpretation of the concession. [6, 36]

The question put to HMRC concerns how business liabilities are treated as "taken over" when an old loan is repaid and a new company loan replaces it. The wording can affect the relief calculation for a particular completion arrangement. HMRC's manual also recognises an indemnity under which a company undertakes to meet specified liabilities of the former owner. That passage does not establish the tax effectiveness of an indemnity added years later to remedy an earlier arrangement. The mortgage contract continues to determine what the bank can require. [6, 35, 36]

The CIOT has asked HMRC for clearer guidance on these circumstances. I sit on its Property Taxes Sub-Committee, and discussions about wording and practical application are a continuous part of our work. The aim is clearer administration of an established relief. It provides no endorsement of either promoter's interpretation, nor does it suggest that the traditional incorporation route is generally unavailable. HMRC also expressly reserves the right to withhold D32 where someone attempts to use it for tax avoidance. [35, 36]

There is a familiar example of clarification through legislation. The old residence concession ESC A11 allowed split-year income tax treatment for qualifying arrivals in or departures from the UK. Someone moving abroad permanently during a tax year could, for example, be taxed as a UK resident only for the UK portion when calculating the relevant liability. Section 218 and Schedule 45 to the Finance Act 2013 introduced the statutory residence test from 6 April 2013, with defined split-year cases in Part 3. This gave taxpayers a statutory framework for a situation previously covered by concession. Work on D32 similarly seeks to clarify the application of existing rules. [37, 38]

The lender has to be part of the transaction

The lender's own decision therefore warrants attention before any proposed transfer. A few specialist lenders have facilitated incorporation. Paragon published a case study showing that 15 personal mortgage accounts moved to a company on the same rates and terms. The practical significance is that Paragon agreed to the change. A lender offering such a facility can decide who will borrow and on what security. [39]

The controversial arrangements sought to retain personal mortgages while changing who enjoyed the property. To understand this, a landlord needs to distinguish between legal and beneficial ownership. In England and Wales, the registered legal owner can hold a property as trustee for someone else. The beneficiary has the underlying economic entitlement, such as rent and sale proceeds. A declaration of trust can therefore transfer that entitlement while the landlord's name remains on the register and on the loan agreement. [41, 42]

That separation is precisely why the mortgage conditions matter. Many require prior written consent to any transfer of an interest in the property, and some expressly address trusts. Investec's published conditions, for example, identify granting a trust without consent as an event that allows it to require repayment. Continuing the monthly payments does not remove such a condition. Where consent is required, only the lender can give it. No finding by a tax tribunal and no agreement with HMRC can alter that contractual requirement. [40]

The distinction also explains why a trust can have real consequences even when the bank was never told. An effective declaration may transfer beneficial ownership and, at the same time, put the borrower in breach of the mortgage. Discovering the breach does not, by itself, restore beneficial ownership to its original position. There is also a separate CGT question: has the company received the whole business and its assets, as section 162 requires? The validity of a trust and entitlement to incorporation relief are distinct questions. That distinction becomes critical when assessing the indemnity route below. [2, 40, 41, 79]

How the promoted arrangements worked

The cost and difficulty of replacing personal mortgages helped create demand for arrangements that promised company tax treatment while leaving those mortgages in place. Property118's incorporation arrangements and the hybrid partnership arrangements promoted by Less Tax 4 Landlords (LT4L) both appealed to that demand. Their legal structures differed, and that difference becomes crucial when considering how to unwind them. [41, 42]

Under the Property118 structure considered here, the company was intended to acquire beneficial ownership of the property business. The landlords retained legal title and remained the mortgage borrowers. Agreements between the landlords and the company were used to arrange the purchase and the company's funding of mortgage payments. [41, 77]

In one set of papers I reviewed, the sale agreement describes an issue of shares as the consideration. An accompanying purchase document describes shares plus a debt owed to the sellers equal to the mortgages and bridging finance. The trust delegates mortgage payments to the company and gives the trustees an indemnity for specified liabilities. Under a separate agency agreement, the individuals make payments on the company's behalf. To determine how much the company owed the sellers, those terms must be read together and checked against the completion figures. The bank retains its claim against the borrowers under its loan agreement. [77]

The LT4L hybrid structure comprised a limited liability partnership (LLP) with both individual members and a company as a member. An LLP is a separate legal entity. In the arrangements reviewed, individuals declared that they held beneficial interests in their properties for the LLP. Rental profits were then allocated between the individual and company members, with part intended to fall within corporation tax. [42, 45, 78]

HMRC challenged the profit allocation in Spotlight 63, published on 4 October 2023. A Spotlight is HMRC's published explanation of an arrangement it considers ineffective. Here, the central objection concerns the mixed-membership rules, including section 850C of the Income Tax (Trading and Other Income) Act 2005. Broadly, those rules can reallocate excess profits from a company member to individuals who can benefit from them. The result can

be additional personal tax for years in which returns allocated the profits to the company. [43, 44]

In one LT4L file, the signed trust letter named the LLP as the beneficiary. The LLP agreement also undertook to indemnify members for costs incurred in their ordinary duties. An indemnity is a promise to meet specified liabilities or losses. In that document, the LLP made the promise. It did not make the company member itself responsible for all the individual members' mortgages. The wording matters because a proposed exit may depend on identifying an obligation that the company supposedly already owes. [78]

The same template does not mean the same case

Although both sets of arrangements used standard documents, the clients are far from being in the same boat. Some clients signed all the documents; others signed nothing. These are materially different starting points for the tax and legal arguments.

Where the full agreements were executed and took effect, the analysis begins with the ownership, purchase price and the obligations they created. A company may have acquired a beneficial interest and incurred a documented debt. Unwinding that position requires addressing those existing rights.

Where the client signed nothing, the first question is whether any effective transfer occurred at all. The proposed transfer cannot be assumed to have taken place merely because it appeared in the accounts or tax returns. For land in England and Wales, section 53 of the Law of Property Act 1925 addresses the written evidence of an express trust, while section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 governs the form of land-sale contracts. The applicable formalities and any alternative legal basis for a transfer require examination. That is a fundamentally different enquiry from establishing the consequences of agreements that were signed and took effect. [47, 48]

The tax consequences follow from what actually happened. If the intended disposal never occurred, any reported incorporation gain or relief may need correction, and the question of who should have declared the rents needs revisiting. If beneficial ownership did move, changing the income tax reporting does nothing by itself to reverse it. The accounts are evidence of the intended treatment, but recording property at market value cannot complete a missing legal transaction or automatically reset its CGT cost.

This is why a proposed settlement, tax argument or exit cannot safely be applied to every client merely because they used the same promoter. The review must establish what each client signed, what took effect and how the resulting transaction was reported.

We explored indemnities, revocation and incorporation with refinancing in 2025. We paid for our own opinions from King's Counsel (KC) before fully engaging with the affected clients. That work helped us assess what could be recommended given the documents and facts. A technically interesting argument still needs to offer the landlord a worthwhile outcome.

The limits of a new mortgage indemnity

We are aware of groups exploring an indemnity route out of hybrid arrangements. Broadly, the company would retire from the LLP, acquire the business and promise to meet specified mortgage liabilities, while the landlords would remain the borrowers. The intended

outcome is an interest deduction for the company and payments without a distribution charge for the landlords. Avoiding refinancing costs is an understandable objective. Discussion of that proposal needs to distinguish three factual situations, each requiring its own answer.

The company has already paid for the property in shares

Here, the acquisition is complete and the agreed price has been discharged. If the company had no obligation to service the landlord's mortgage, signing an indemnity now cannot establish that it owed that obligation from the outset. A new deed can create a new liability, but its present commercial purpose and tax consequences require separate explanation. It cannot convert already issued shares into an outstanding purchase debt.

In the files I have seen, the original documents show no unpaid purchase price, and the accounts record the transferred value as capital. Those records must be reconciled with the actual agreement and performance; the accounting label alone is not decisive. Where the proposed repair depends on asserting a historic obligation that neither the agreement nor the evidence supports, we do not regard it as a credible basis for repairing the transaction. Landlords should not have to fund prolonged arguments about a bargain they never made. [77, 78]

The company genuinely owes an existing purchase debt

This is different. If any part of the agreed purchase price remains payable, the company can discharge that debt by paying the seller's bank at the seller's direction. The payment reduces both the mortgage and the company's debt to the seller. Repayment of the principal of a genuine purchase debt is ordinarily a capital payment to a creditor, rather than a reward for being a shareholder. That conclusion depends on the debt actually existing and the payment discharging it. [49, 51]

The acquisition's tax calculation must consistently reflect the bargain. An unpaid price that constitutes consideration other than shares can restrict section 162 relief. Business liabilities assumed on incorporation require separate treatment under D32. HMRC expressly recognises incorporation indemnities in its guidance, but that guidance concerns the CGT treatment of liabilities as consideration; it does not grant a blanket exemption for every subsequent payment. [2, 26, 35]

The LLP owns the property and the company proposes to buy it now

The company's retirement from an LLP does not, in itself, transfer the LLP's property to it. A genuine acquisition now could create fresh purchase obligations, including an obligation to service specified borrowing. That is the strongest case for a prospective indemnity. It cannot be dismissed merely because a completed transaction cannot be rewritten. The company would be acquiring assets in return for a newly agreed price, rather than claiming an unpaid price for assets already acquired.

The documents must nevertheless identify the seller, creditor and consideration. Where the LLP sells the property, a promise to pay an individual member's mortgage is not, by itself, repayment of a purchase debt owed to that individual. The arrangement must explain how the promise forms part of the acquisition and which rights it satisfies. The new transfer then requires its own CGT, SDLT and lending analysis. It does not settle the earlier scheme's tax liabilities.

Dan Neidle, founder of Tax Policy Associates, examined indemnities and mortgage payments in 2023. In Spotlight 63a, published in April 2026, HMRC challenged a different use of an indemnity: a company remaining in an LLP treated its promise to meet mortgage payments as a capital contribution, supporting profit allocations to it. That challenge does not, in itself, determine whether there is a genuine new acquisition. It does show why the promise, its value and the rights created need examination rather than acceptance at face value. [42, 49, 50]

The tax treatment follows the obligation actually created

For corporation tax, the fact that the bank lent to the landlord is not the end of the analysis. Section 302 of the Corporation Tax Act 2009 defines a loan relationship by reference to a money debt arising from lending. Section 330A can bring relevant amounts into a company's loan relationship computation even where the company is not the original borrower. HMRC's Corporate Finance Manual gives an example of debt servicing taken over without novation. Under condition B, the substantive question is whether economic risk or reward has transferred, and whether the relevant amounts are properly recognised in profit or loss under generally accepted accounting practice. [55, 58]

A genuine new purchase or an existing, evidenced obligation can therefore support an argument for deductions. The original borrower's continuing liability does not automatically defeat that argument. Conversely, an indemnity's title or an accounting entry cannot prove the required transfer of economic exposure. For a newly created obligation following an acquisition already paid for, its treatment must be assessed in relation to that new transaction; section 330A cannot make unsupported historic deductions correct. [55, 58]

Even if section 330A applies, section 330B restricts double deductions, and sections 441–442 and 455B–455C contain purpose and anti-avoidance rules. If the claim rests on an ordinary property business expense, sections 53, 54 and 210 require examination of capital expenditure and the wholly and exclusively test. Acquisition consideration may be capital. Calling a payment "interest" because it matches a bank charge does not determine which regime applies. [55, 56, 57, 59]

The recipient's position is separate. A company paying a director's personal liability arising from the office can give rise to earnings under section 62 of the Income Tax (Earnings and Pensions) Act 2003; other employment benefits can fall within sections 201 and 203. For a close company, section 1064 of the Corporation Tax Act 2010 can treat expenditure on benefits for a participator, commonly a shareholder, as a distribution, subject to the relevant exceptions, including section 1065. A contractual promise does not, in itself, exclude these charges. Equally, repayment of a genuine creditor's principal is not automatically an employment benefit merely because that creditor is also a director. [51, 52, 53]

Neidle also identified possible annual-payment or miscellaneous-income charges under sections 683 and 687 of the Income Tax (Trading and Other Income) Act 2005. These depend on the character of the receipt, including whether it is income. Neither the company's deduction nor the existence of an indemnity establishes that the receipt is tax-free. The payment's legal and commercial explanation must be consistent on both sides. [41, 54]

BHP would not recommend spending more on a proposed repair that depends on inventing a historic obligation. A genuine existing debt or a fresh acquisition is different. Before recommending either route, we would require the company's deduction, the recipient's tax

position, incorporation relief and the lending arrangements to be addressed together. An indemnity cannot provide the lender's required consent. [2, 35, 40, 55]

An indemnity does not establish incorporation relief

Suppose the indemnity succeeds on both sides: the company obtains the relevant deductions and the landlords incur no tax charge on those payments. Section 162 still requires a qualifying business to pass as a going concern with all its assets, apart from permitted cash. A defect in that transfer can create an immediate CGT liability, which favourable treatment of later payments does nothing to remove. [2]

Neidle and counsel raised concerns about legal title and business dealings remaining with the landlord. Those concerns require separation. Under section 60 of the Taxation of Chargeable Gains Act 1992, qualifying nominee and bare-trust property is treated as vested in the person absolutely entitled as against the trustee. HMRC expressly disregards the bare trustee's legal ownership for CGT. Where that entitlement exists, retaining the landlord's name on the register alone does not constitute a retained asset that defeats section 162. [41, 60, 79]

The stronger objection in the Property118 deed is the landlord's power to recover the beneficial interest by written notice. That raises a question about what the company actually acquired and what substantive right the landlord retained. As the next section explains, I regard that power as a substantial obstacle to the claimed complete transfer. The objection concerns the rights created by this deed, not a rule that beneficial ownership can never suffice. [2, 77, 79]

The operating business requires separate attention. The Property118 papers include an agency agreement, which could explain why the landlord continues to collect rent or deal with tenants on the company's behalf. Those activities are not necessarily evidence of a retained business. However, if assets or rights to income remain with the landlord for the landlord's own benefit, the company has not acquired everything required. The question is whose business the landlord is conducting after completion, as judged from the documents and what the parties actually did. [2, 77]

A breach of mortgage conditions is a separate issue. It may expose the borrower to enforcement action and render the proposed structure commercially unworkable. Without further reasoning about the rights created, it does not establish that the company lacks absolute beneficial entitlement as against the trustee. The lender's security must not be confused with a beneficial right retained by the landlord. Any restriction preventing the transfer of a particular business asset must be identified and tested on that basis. [2, 40, 60]

For the LT4L letter under review, counsel considered that beneficial ownership had effectively passed to the LLP without an equivalent recall power. A subsequent sale by that LLP to a company must therefore be treated as a new transfer; the Property118 revocation objection cannot simply be carried across. These distinctions lead to the conclusion: the retained recall power presents a concrete section 162 risk, whereas retained legal title or a mortgage breach alone does not constitute a failure. D32 cannot cure an incomplete transfer of the business. [2, 35, 78, 79]

Revocation and the difficulty of turning back the clock

We are also aware that groups are exploring revocation. A landlord usually wants both the property returned and the historic tax consequences removed. These are different objectives. Recovering the property today does not necessarily undo what happened yesterday.

Three distinct routes require separation. A deed may contain a power to revoke the trust. A court may be asked to set aside the original transfer on the ground of mistake. Alternatively, rectification may be sought to correct an instrument that failed to express the relevant original intention. Each requires its own legal foundation. Calling all three "revocation" obscures both what the landlord must prove and what success would achieve. [61, 77, 79, 64]

What a power in the deed actually does

The Property118 deed must be read as a whole. Clause 2.1 declares the trust for the company absolutely and requires the trustees to deal with legal title as directed, subject to the registered charges. Clause 2.3 likewise requires the trustees to act on the company's written instructions. These provisions support the company's argument that it acquired the beneficial interest and could demand title. [77]

Clause 2.4 then provides two ways for the trust to end. The trustees may give written notice to the company, after which the property is stated to vest immediately in the trustees in accordance with their legal and equitable interests. Alternatively, the trust ends when legal title transfers to the company. The first route gives the trustees a power exercisable by notice. The second depends on a transfer actually taking place. The clause does not say that the company's demand for a transfer suspends or extinguishes the trustees' power. [77]

That distinction matters. The company's right to require performance is not, in itself, the completed transfer specified in clause 2.4. The accompanying property contract also provides for completion on 28 days' written notice from the purchaser. On the face of those terms, the company can require conveyance, but the papers do not make its demand an immediate conveyance or expressly give it priority over a revocation notice. The company was a party to the deed containing that power. [77]

The strongest response is that the binding sale and the duties in clauses 2.1 and 2.3 prevent the trustees from using clause 2.4 to defeat the company's acquired rights. That requires the documents to be construed together; it cannot be dismissed merely by pointing to the word "revocation". Our reading, however, gives effect to the expressly agreed termination provision as a qualification of the more general declaration of absolute entitlement. Otherwise, the trustees' separate power to recover the property would have little work to do. The ordinary bare trustee's duty to obey the beneficiary does not answer an instrument that also grants the trustee a power for its own benefit. [60, 77]

For that reason, we regard the retained-right objection as substantial. Counsel likewise considered HMRC's argument compelling on balance: the landlord retained a route to recover the beneficial interest when section 162 required the whole business and its assets to pass. This remains a disputed construction rather than an established judgment. If the sale terms are held to render the recall power ineffective against the company, the objection would change materially. Retaining legal title alone would still not defeat relief. [2, 60, 79]

Exercising an effective power now would take effect from the notice's effective date. It would not erase the original consideration, intervening rents, or earlier tax consequences, and the return of the property would require its own tax analysis. A revocation notice is not a time machine. Deleting the clause by agreement is also a later event; a court order rectifying the original instrument raises a different question. [77, 79]

The LT4L letter examined by counsel was materially different. It committed the landlord to hold the property for the LLP and to act on its directions, without an equivalent power to recover it. Counsel considered that the signed declaration effectively transferred beneficial ownership. The failure of the anticipated tax treatment did not render that legal transfer ineffective. An agreed return of the property by the LLP would constitute a further transaction, requiring its own analysis of ownership, consideration and tax. [78, 79]

This is where the distinction between clients who signed all the documents and those who signed nothing becomes decisive. For the latter, the first question is whether any effective transfer or trust arose at all. It is premature to incur the cost of unwinding a transaction before establishing that it occurred. Equally, where a valid transfer did occur, disappointment with its tax consequences does not restore the original ownership.

Asking a court to set the transfer aside

A court application for relief from mistake attacks the original disposition. In *Pitt v Holt*, the Supreme Court granted relief in relation to a settlement intended to provide for a seriously injured man, where the settlement's creation was caused by a serious mistake about inheritance tax. The court requires a causative mistake sufficiently grave to render it unjust to leave the disposition in place. A mistaken belief about tax can qualify. Merely predicting that a disputed arrangement will succeed, and later discovering that it does not, is a different matter. [61, 79]

Counsel's analysis begins with the transaction itself. The equitable jurisdiction considered in Pitt concerns voluntary dispositions. Where property is transferred in exchange for shares, the applicant must first identify a voluntary disposition to which that remedy applies. An incorporation cannot simply be treated as a gift when it is convenient to unwind it, while its share consideration is relied on elsewhere to support incorporation relief. [61, 79]

The evidence must then establish the specific mistake, that it caused the disposition, and its seriousness. Carelessness alone does not necessarily defeat the application. Deliberately accepting a known risk is far more problematic. A landlord who acted on an unqualified assurance about an existing legal effect may have a different case from one who was told that a contentious interpretation might fail and proceeded regardless. The original advice, correspondence and attendance notes matter because they help establish what the taxpayer actually believed at the time. [61, 79]

Bhaur v Equity First Trustees illustrates that difficulty. It concerned inheritance tax planning involving an employee benefit trust. The Court of Appeal held that relief should be refused, even assuming a relevant mistake, given the deliberate acceptance of the risk of failure and the artificial character of the arrangements. The court's equitable discretion was not an insurance policy against a tax gamble that had gone wrong. [62]

At *Dukeries Healthcare*, a remuneration trust arrangement also failed to obtain relief. The evidence did not establish the necessary mistake, and the court considered the taxpayer

willing to run the risk that the planning would fail. Signing papers without understanding them did not provide the missing proof. These decisions do not mean that every mistake connected with tax planning is beyond remedy. They explain why precise advice, the taxpayer's understanding, and any acceptance of risk cannot be replaced by a generic statement that the scheme failed. [63, 79]

In the June 2024 opinion, counsel assessed the prospects of setting aside either trust for mistake at less than 50% on the material supplied. The original advice had not been provided. That matters because it could help establish both the taxpayer's mistaken belief and whether a risk of failure had been accepted. This was a qualified assessment of particular arrangements, based on incomplete evidence, not a finding about every participant. Each application requires its own evidence and assessment of prospects. [79]

Correcting the deed is a separate remedy

Rectification seeks to ensure that an instrument records the intention it should have expressed at the time of execution. It can have retrospective effect. Its purpose is not to replace the original bargain or disposition with whichever arrangement would now produce the lowest tax bill. In *Allnutt v Wilding*, the Court of Appeal refused to rewrite a trust merely to achieve an inheritance tax saving: the document recorded the intended settlement, even though the tax expectation was mistaken. [64]

Applied here, evidence that a revocation clause failed to express the relevant original intention could support a different argument from evidence that everyone intended the clause but misunderstood its effect on incorporation relief. The applicable test depends on the instrument and transaction. A general wish to incorporate tax-efficiently cannot be taken to prove an intention to exclude a particular right. That is why the pending High Court application concerning rectification, discussed below, must be distinguished from the mere exercise of a power to revoke. [76, 64]

BHP's view is that these remedies should be pursued only where the client's own documents and evidence support them and the likely benefit justifies the cost. A failed scheme alone does not meet that test. We would not recommend a group application merely because the participants used the same template. Success must also leave the client better off after accounting for the remaining tax, lending consequences and costs. That is the case we would need to see before recommending it.

The conventional route and refinancing

Conventional incorporation remains the standard route. Where a mortgaged business is transferred and suitable company finance is available, the lender assesses the company, the existing mortgage is redeemed under the completion arrangements, and the company becomes liable on its own loan. HMRC is familiar with this process. Neidle discussed refinancing in his original investigation. Its practical strength is that ownership, finance and payment obligations can reflect the transaction actually carried out. [41]

The relief calculation still matters. Paying cash as part of the acquisition price can restrict relief, and the timing of redemption can affect the liabilities at transfer. These are matters to get right when implementing an established route. Ambiguity in D32's wording does not justify a blanket assertion that ordinary incorporation with refinancing fails, or that landlords must await a solution based on retaining personal mortgages. [2, 24, 26, 35]

A routine incorporation enquiry we handled illustrates how the standard process works. HMRC examined the landlords' involvement in the business, including the work retained despite employing a letting agent. Their diary recorded practical tasks such as arranging repairs and supplying temporary heaters. The officer also reviewed the transfer agreement, mortgage redemptions, funds introduced by the owners, and the accounting entries. [81]

Although the agreement envisaged a transfer free of encumbrances, HMRC considered that some mortgage liability passed with the properties and was settled immediately afterwards, thereby reducing the relief available at transfer. The officer also obtained higher property valuations because the figures used were nearly two years old. Even after those adjustments, sufficient relief remained, and both enquiries closed with no additional tax. This demonstrates that a conventional transaction can withstand detailed examination. It does not establish HMRC approval of every refinancing sequence; indeed, the adjustments show why timing and valuation matter. [81]

Leaving a hybrid structure adds another step because the proposed buyer may already be a member of the LLP. HMRC's published view is that section 162 relief is unavailable on incorporation into an existing corporate member, since that member already owns a share of the assets for CGT purposes. A proposal to retire the company before it acquires the business therefore requires an effective retirement and a properly assessed subsequent transfer. The fact that an LLP is a separate legal entity does not prevent it from being treated transparently for CGT, with its members treated as holding interests in its assets. [46, 65]

In one case we reviewed, a lender had withdrawn funding, and the replacement offer, about to expire, was addressed to the existing company member. The LLP agreement ordinarily required three months' written notice of retirement. Counsel identified a practical obstacle. Giving notice that day would leave the company with a single member on the proposed completion date. Under that agreement, counsel considered that all members could instead agree an earlier retirement by deed before the sale and refinancing. The fact that another landlord's agreement also allows retirement says little about when it takes effect. [80]

The cost of putting matters right

An exit must be assessed alongside the history of the arrangement. Settling an income tax enquiry concerns past reporting. A retirement, a change in profit entitlement, or a transfer of property can create fresh tax consequences. The new transaction must therefore be tested in its own right and against the history that led to it.

For SDLT, Schedule 15 to the Finance Act 2003 sets out rules for property moving into or out of partnerships and for changes in interests in property investment partnerships. A change in entitlement to income profits can trigger paragraph 14 even if the Land Registry title remains unchanged. Calling an allocation "discretionary" does not establish that no entitlement arose: the specialist SDLT opinion we obtained examined the effect of approving accounts that allocated those profits. [66, 83]

That opinion also considered a paragraph 12A election in relation to the original property contribution. Such an election replaces the usual proportionate entry calculation with a market-value charge on the whole interest transferred. It can exclude the elected property from later paragraph 14 charges on certain changes in partnership interests, known as

Type B transfers. It does not provide that protection for Type A transfers, which include an acquisition of a partner's interest for consideration. Counsel's understanding was that HMRC would permit a late election in the particular settlement context. Its availability and overall cost must be established for the particular exit. [66, 67, 83]

The identity of the company receiving the property matters too. The opinion distinguished a transfer to a former corporate member from one to a new company. Under paragraphs 18 and 20, the calculation depends on who counts as a relevant owner or corresponding partner and on the applicable profit shares. A company that counts in one calculation may not count in the other. The same family can therefore retain the economic benefit of the business while the two routes produce different SDLT results. Retirement and any indemnity must also be examined in light of the consideration given. [66, 83]

The GAAR: what retirement must change

The General Anti-Abuse Rule (GAAR), set out in Part 5 of the Finance Act 2013, requires more than a tax-saving purpose. Section 207 asks whether entering into or carrying out the arrangements cannot reasonably be regarded as a reasonable course of action under the relevant provisions. The test examines the arrangements' substantive results, the legislation's purpose, and any contrived steps. Commercial pressure is relevant, but it does not, by itself, satisfy that test. [70]

The objection is clear. The company is already an LLP member, so the proposed transfer would not qualify for relief under HMRC's analysis. Retiring it immediately before the acquisition is a deliberate step intended to obtain relief. The question is whether that step makes the transaction satisfy the purpose of section 162, or merely changes the paperwork for an ownership position that has not really changed. [2, 65, 70]

HMRC's stated reason for excluding a transfer into an existing corporate member is that the company already owns a share of the assets for CGT purposes: the whole assets are therefore not transferred to it. Section 162 does not separately prohibit a company that was once a member from acquiring the business. The distinction is substantive. After a genuine retirement that ends its interest in the business assets, the company can acquire the whole business from the remaining owners. Merely removing its name from the membership list while preserving that interest would not address HMRC's objection. [2, 46, 65]

In the case examined, the agreement required three months' notice of retirement. Counsel therefore proposed a deed, agreed by all members, to make retirement effective before completion. For that route to work, the deed and the agreement must set out what happens to the company's asset interests, profit entitlement and capital account. A fixed debt settling an outgoing member's account needs to be distinguished from a continuing ownership interest. Any disposal on retirement also requires its own tax treatment; section 162 does not exempt the retiring company from tax on that earlier step. [2, 46, 80]

On those conditions, retirement does more than briefly alter eligibility. It extinguishes the company's partnership interest; the subsequent acquisition transfers the whole going concern to the company, with the qualifying owners receiving shares and their deferred gains carried into the tax cost of those shares. That is the substantive change the relief facilitates. The short interval warrants scrutiny but does not, by itself, show that the rights failed to change or that the resulting deferral defeats the legislation's purpose. [2, 70, 80]

The financial evidence supports that explanation. Funding had been withdrawn, short-term borrowing was expensive, and the replacement offer to the existing company was about to expire. A fresh company required a fresh lending application. Those facts explain why this company was used; they do not prove that every step was acceptable. The availability of a new-company route is supporting evidence, not the legal answer. [80]

We consider counsel's favourable conclusion on balance to be persuasive on that basis. The retirement must extinguish the relevant rights, its own tax consequences must be recognised, and the following acquisition must satisfy section 162. The opinion considered a proposed transaction; it does not establish that every retirement deed achieves those results. Nor does the GAAR conclusion address the separate SDLT question. [2, 70, 80]

Why section 75A asks a different question

Section 75A of the Finance Act 2003 compares a series of connected transactions with a hypothetical direct acquisition prescribed by the legislation: the "notional transaction". It identifies a disposer, V, and an acquirer, P, and can impose a charge where the actual transactions result in less SDLT. Project Blue confirms that no tax-avoidance motive is required. The parties and interests must be identified by applying the statutory scheme to the tax loss. In practice, an exit that appears to produce no SDLT under the ordinary partnership rules can still carry a charge under section 75a. [68, 69]

The SDLT opinion first considered the original contribution to the LLP and the subsequent incorporation. The LLP had been promoted as an enduring structure, with no intended company transfer thereafter. Counsel regarded entry and exit as separate transactions on those facts. That history supports the argument but does not constitute a statutory exemption. If the full sequence is connected, the original individual owners can be the relevant disposers and the eventual company the acquirer of the same land interests. An argument confined to the retiring company's partnership share would not address that sequence. [68, 69, 83]

The exit itself can be examined separately. Consider the new-company route set out in counsel's opinion. This illustration uses the opinion's assumed 80:20 profit split, not a client's actual percentages. Two connected individuals hold 80% of the income profit entitlement in a property investment LLP; its corporate member holds 20%. The individuals control the proposed purchaser, NewCo. Assume a valid paragraph 12A election subjected the original contribution to a market-value charge. Also assume the profit-share change is a Type B transfer, with no consideration or other feature making it Type A. The elected properties are therefore excluded from the paragraph 14 calculation for that change. [66, 67, 83]

First, compare a transfer to NewCo before changing those entitlements. Under counsel's application of paragraphs 18 and 20, only the individuals are the corresponding partners for NewCo. The existing corporate member is neither NewCo itself nor an individual connected with it. The matched proportions total 80, leaving the chargeable consideration at 20% of market value. This is a proportion of the taxable consideration, not a 20% rate of SDLT. [66, 83]

Now follow the proposed exit. The individuals' profit entitlement increases to 100%; the corporate member's entitlement falls to nil, and it retires without separate consideration. The LLP then transfers the business and properties to NewCo. On the assumptions above, paragraph 14 does not charge the change in the profit share; the retirement meets the

conditions for no charge; and the matched proportions on the property transfer become 100. Counsel's ordinary Schedule 15 calculation therefore produces no SDLT on those exit steps. [66, 67, 83]

The objection under section 75A can now be stated precisely. The profit change, retirement and property transfer are arranged together to effect the acquisition on those terms. Counsel accepted that the profit change and transfer could be connected, but considered that NewCo's freehold or leasehold could not derive from the lesser partnership interest given up by the retiring company. That reasoning treats the retiring company as the necessary disposer. Paragraph 2 of Schedule 15, however, requires us to examine the continuing individuals: partnership land is treated as held by or on behalf of the partners. They dispose of the underlying land interests to NewCo, which acquires those interests. On that analysis, no derivation from the retiring company's lesser interest is required. [66, 68, 71, 83]

The comparison is between no SDLT on the connected exit steps and the tax on NewCo's notional acquisition of those land interests. Section 75C(8A) excludes the Part 3 Schedule 15 rules from that notional calculation, so the matching that reduced the actual consideration to nil is unavailable. Section 75C(6) applies section 53: assuming the connected-company conditions are met and no other relief applies, the notional acquisition is charged at least at the full market value of the relevant interests. Section 75A(5) must also be checked for any greater statutory consideration. The possible charge is therefore not confined to the corporate member's former 20% share. [68]

If that notional calculation produces a positive charge, the nil actual charge is lower, and section 75A applies to this identification of V, P and the connected steps. That is a conditional result for the illustration, not an assessment of a particular landlord. It highlights the point that the lesser-interest argument does not resolve. Before recommending the exit on a different basis, we would need to establish why that identification or connection fails, or why the tax comparison produces a different result. A commercial reason for incorporating does not answer that. [68, 69]

The earlier paragraph 12A charge must also be kept in its proper place. If the original contribution is outside the connected exit sequence, the tax paid on it does not automatically offset the notional exit charge. If entry is included, the actual tax on that wider sequence must be included in the comparison, with the statutory credit rules taken into account. Which transactions are connected can therefore affect both the amount and whether a charge arises. This is why the original settlement and the proposed exit need a consistent analysis. [68]

Ordinary incorporation remains distinct. HMRC's published example of an established letting partnership acquiring a company and transferring its properties applies Schedule 15 without section 75A: the initial share purchase is disregarded under section 75C(1). It contains no corporate-member retirement or rearrangement of profit shares. It supports the conventional route but cannot be used as clearance for the additional steps in this illustration. [72]

Penalties and the importance of the distinction

In the November 2026 LT4L correspondence, HMRC wrote: "When an avoidance arrangement has been used, consideration must be given to charging penalties where there are inaccuracies in the tax returns." The letter concerned the challenged hybrid arrangement. It did not state that incorporation itself was avoidance, nor that a penalty followed automatically. [82]

BHP would challenge any attempt to apply that description to incorporation generally. Parliament has provided incorporation relief for more than 60 years. A properly implemented conventional incorporation, with agreed company finance and accurate reporting, is distinct from the arrangements challenged in Spotlight 63. Using available statutory relief does not, by itself, justify an avoidance label or an inaccuracy penalty. [1, 2, 43, 73]

There is also a specific statutory distinction. Paragraph 3B(3) of Schedule 24 to the Finance Act 2007 excludes arrangements from the special avoidance penalty rules where they accord with established practice and HMRC had indicated its acceptance of that practice when the arrangements were entered into. That exception has limits: paragraph 3B(4) overrides it in specified cases, including where an avoidance-related rule has counteracted the claimed advantage. The evidence must relate to the actual practice followed. The history of incorporation cannot establish HMRC's acceptance of a different promoted arrangement. [73]

HMRC should therefore identify the inaccuracy and explain the legal and factual basis for any penalty. Conventional incorporation offers no immunity from penalties for inaccurate returns. Conversely, an inaccurate return does not invariably attract a penalty. Where paragraph 3A applies to an inaccuracy arising from failed avoidance arrangements, carelessness is presumed unless the inaccuracy was deliberate or the taxpayer demonstrates reasonable care; reliance on certain disqualified advice cannot establish that care. Those rules require a separate assessment of the taxpayer's position, rather than assuming that everyone associated with a promoter should receive the same treatment. [73]

The same caseworker also wrote that, in her view, penalties for income tax and corporation tax "would be suspended". She expressly recognised the clients' full co-operation and their appointment of advisers to take corrective action. That was a constructive response to their efforts to put matters right. [82]

Suspension has a specific meaning. Under paragraph 14 of Schedule 24 to the Finance Act 2007, HMRC can suspend a penalty for a careless inaccuracy on conditions intended to prevent a further careless error. The formal notice specifies the amount, the conditions and a period of up to two years. Meeting the conditions, without incurring another relevant inaccuracy penalty during that period, can lead to cancellation of the suspended amount. Tax and interest remain payable. The email expressed the officer's view. Any formal suspension would still need its amount and conditions settled. [73, 74, 82]

What the different proceedings can resolve

It is understandable that landlords look to litigation for answers, but the question at issue needs to be explained before the result can help anyone.

On 31 July 2026, the First-tier Tribunal allowed the appeal by Property118 and Cotswold Barristers against HMRC's allocation of scheme reference numbers. The case concerned the Disclosure of Tax Avoidance Schemes regime, usually called DOTAS, which requires certain arrangements to be reported to HMRC. The tribunal cancelled the numbers because the arrangements fell outside the reporting rules. [75]

The decision involved comparing the arrangements with other ways of incorporating, including refinancing. This explains the discussion of possible restrictions on relief. Most taxpayer witnesses were still facing their own investigations or assessments, and their individual liabilities remained to be resolved. Some later commentary used the discussion to support much broader claims about whether conventional incorporation works or whether individual landlords had secured relief. Any explanation of the decision should make clear which questions the tribunal decided and which remained open. [75]

The current proceedings also need careful distinction. The FTT case tests the Property118 planning by challenging CGT discovery assessments issued under section 29 of the Taxes Management Act 1970. Those assessments arose from the incorporation of a property partnership and a dispute over entitlement to section 162 relief. Separately, another landlord is bringing High Court proceedings seeking rectification of a revocation clause in a deed of trust. A similar clause features in the arrangements before the FTT. The High Court application therefore concerns the correction of the deed; it should not be described simply as an application to revoke the trust. These are connected issues, pursued by different taxpayers through different proceedings. [76]

The FTT hearing has taken place, and its decision is awaited. I expect a decision in early 2027, though I have seen no confirmed publication date. That expectation applies only to the FTT case. The social media verdicts will probably arrive sooner. When either decision appears, the useful explanation will set out what the parties actually did, what the tribunal or court was asked to decide, and the scope of the resulting judgment or order. Any effect of rectification on the tax dispute will require separate analysis. Neither result should be presented as resolving every affected landlord's position.

HMRC must account for its early response

Scrutiny should also extend to HMRC. The DOTAS judgment records an accountant's evidence that detailed enquiries into clients' 2018/19 returns began in 2020 and concluded on 3 February 2021 without any amendments. He also described 14 additional clients approaching his firm after his endorsement of the promoter appeared on the firm's website. They included people who had already incorporated and others considering doing so; among the assurances they sought was that the structure had been successfully tested and accepted by HMRC. [75]

That evidence makes the consequences of an early enquiry more than an administrative matter. Closing one enquiry without amendment does not authorise a marketed arrangement for everyone. Nevertheless, the outcome can be a powerful source of reassurance for the next landlord. HMRC needs to recognise that practical effect when

deciding how thoroughly to examine a transaction and how clearly to explain its conclusions.

Obtaining the signed transaction documents is a basic starting point. The enquiry should establish what ownership and obligations were created, reconcile them with the accounts and returns, and examine how the transaction was carried out. Where the same documents and selling points recur, the intelligence should inform scrutiny of the wider arrangements and those promoting them. Treating each return as an isolated file risks overlooking the business built around the same disputed proposition.

HMRC should explain what the early enquiries established, whether the issues were referred to appropriate specialists, and how the information informed its response to the promoters. Earlier, coordinated scrutiny, challenge and clear warnings could have discouraged further participation and reduced the eventual damage. The published judgment does not reveal the full enquiry files or establish which action could then have succeeded. HMRC should account for those decisions. Any missed opportunities should be acknowledged and the lessons acted upon; the department's response deserves scrutiny as much as the taxpayers' returns. [75]

There may be an opportunity to improve that response. I recently attended a presentation on a tax research paper in which the author explained how HMRC is using artificial intelligence (AI) to identify contentious planning. HMRC's 2025–26 annual report describes using AI and advanced analytics to identify possible inaccuracies in returns, and document-analysis tools to assist with complex investigations. Its published plans also envisage better connections between case records, entities and advisers, with AI helping officers identify patterns and relevant evidence. [85, 86]

That could help HMRC recognise recurring arrangements earlier and connect information held across separate enquiries. The benefit will depend on experienced officers examining the evidence and acting promptly on what it shows. A smoke alarm is useful only if someone responds. Better detection should lead to earlier scrutiny of promoters and clearer information for taxpayers. Success should be measured by fewer people entering disputed arrangements, as well as by the tax recovered after the damage has been done.

Advice that helps a landlord make a decision

Landlords faced conflicting signals. Neidle's investigations questioned the specialist tax expertise underpinning the planning. [41] Yet promoted arrangements received public recognition. His LT4L investigation described sponsorship of the National Landlord Investment Show and an industry award. For a landlord weighing conflicting advice, that visibility could understandably seem reassuring, despite the published technical warnings. [42]

A social media post can contain useful information and still be written to attract work. A landlord reading a short post may lack the documents or context needed to verify its claims, particularly when the proposed solution offers relief from financial pressure. Good advice should explain what the proposal depends on, address the strongest objection and identify the likely cost. That gives the client a basis for deciding whether further work is worth paying for.

The landlord pays for the technical to-ing and fro-ing. Further correspondence, revised documents and litigation can substantially increase the cost of the original planning. Before

the next piece of work starts, the client should understand what it is intended to resolve, what new evidence or argument supports it, and what happens if it fails. Technical ingenuity has to earn its place in the client's budget.

Independence matters, especially where the adviser recommending litigation was involved in the original planning. The client's best course may not align with the course that best defends earlier advice. Any conflict must be addressed under the relevant professional rules. Before funding further work, landlords should obtain an assessment from someone independent of the original planning, with demonstrable expertise in the relevant tax and litigation issues. The assessment should cover litigation prospects and costs, settlement and other remedies, and put the client's interests first. [84]

Group litigation deserves the same clarity. Before contributing, a taxpayer should understand what a successful outcome would resolve in their own circumstances, the independent assessment of prospects, and the costs of losing. A shared grievance does not guarantee a common legal case. A decision on a fully executed transfer may leave the position of a client who signed nothing unanswered. Funding an argument with little realistic prospect can deepen an already serious loss.

I have seen clients work with advisers to get out of considerable difficulty, only to be drawn to someone who offers the answer they had hoped to hear all along. Those experiences show how pressure can affect a decision and how a taxpayer can end up paying twice for the same promise. Advice helps when it gives the client enough information and time to test that promise.

The human cost

Around 15 years ago, the father of a client rang to tell me that his son had taken his own life. My client had entered an earlier tax scheme and faced a substantial bill. The liability and its pursuit had weighed heavily on him. I have never forgotten that call.

Failed planning can erode savings, destroy businesses and place families under years of strain. Those human consequences deserve as much attention as the advertised saving received at the outset.

Responsibility for the original recommendation lies with those who devised and sold it. Marketing focused on projected savings, public visibility and awards, which can leave the eventual consequences far from view. When the planning fails, the family lives with the bill. Advisers appointed afterwards often have to reconstruct events, resolve the tax position and help the client regain control. Their work addresses damage already done.

BHP's view

For a business that suits company ownership, our starting point is conventional incorporation, with suitable company refinancing where required. The legal, tax and commercial requirements must align. The 2027 property-income changes strengthen the case for reviewing the figures; they do not make incorporation right for every owner. A business owner needs that assessment before paying for a structure or an exit.

We would not recommend funding a retrospective indemnity argument based on obligations that never existed. Nor would we recommend a revocation or rectification campaign without evidence of a viable claim and a worthwhile outcome after costs. Genuine purchase debts and new acquisitions require separate analysis, including any further tax charges and the lender's requirements.

The practical task is to determine what took effect, resolve the historic tax position and compare exits that can actually be completed. If finance is unavailable, or the cost outweighs the benefit, the recommendation must state this. Clients should receive, in writing, a clear view of the proposed outcome, its cost and the remaining risks. A remedy should leave the client better off. It should not simply provide another argument for funding.

Sources and further reading

Citation numbers in the article refer to the sources below, grouped by subject. Public sources are linked for further reading and were checked on 23 November 2026. Some publisher and social media pages may require sign-in or a subscription. The confidential papers supporting the case examples are identified anonymously at the end; client documents and counsel's opinions are not reproduced.

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[3] Taxation of Chargeable Gains Act 1992 as enacted, date of Royal Assent
[4] Gordon v IRC; IRC v Gordon (cross appeal) (1991) 64 TC 173, Court of Session
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[8] HMRC CG17895: taper relief, 6 April 1998 to 5 April 2008
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[40] The Mortgage Works, Standard Buy to Let Mortgage Conditions 2024, section 6; Investec, Mortgage Loan Conditions December 2021 (England and Wales), section 13, pages 8–9: enforcement events, including a trust granted without consent

The promoted arrangements and individual documentation

[41] Dan Neidle, Property118 investigation, 13 September 2023, and reply on refinancing, 15 October 2023; follow-up investigation, 9 November 2023, including criticism of specialist tax experience
[42] Dan Neidle, Less Tax for Landlords investigation, 4 October 2023 (mortgage default and tax treatment of payments)
[43] HMRC Spotlight 63, first published 4 October 2023
[44] Income Tax (Trading and Other Income) Act 2005, section 850C, mixed-membership profit allocations
[45] Limited Liability Partnerships Act 2000, section 1 (separate legal personality)
[46] Taxation of Chargeable Gains Act 1992, section 59A, limited liability partnerships
[47] Law of Property Act 1925, section 53(1)(b) and (2), evidence of trusts of land
[48] Law of Property (Miscellaneous Provisions) Act 1989, section 2, contracts concerning land

Indemnities and the tax treatment of payments

[49] Dan Neidle, correspondence on mortgage indemnity payments, 17 July 2023, points 6–8
[50] HMRC Spotlight 63a, hybrid partnerships and indemnities, 22 April 2026
[51] Corporation Tax Act 2010, sections 1064–1066 (close company benefits and exceptions)
[52] Income Tax (Earnings and Pensions) Act 2003, Part 3 (earnings and benefits code)
[53] HMRC EIM00580, payment of an employee's debt and Hartland v Diggines
[54] Income Tax (Trading and Other Income) Act 2005, section 683: annual payments; section 687: income not otherwise charged
[55] Corporation Tax Act 2009, Part 5 (sections 302, 330A–330C, 441–442 and 455B–455C)
[56] Corporation Tax Act 2009, section 210: property business computations; section 211: exclusion of loan relationships
[57] Corporation Tax Act 2009, Chapter 4 of Part 3, sections 53 and 54 on capital and business purpose
[58] HMRC Corporate Finance Manual CFM33275, transfer of loan risk or reward and accounting recognition
[59] HMRC Corporate Finance Manual CFM38120, loan relationships and unallowable purpose

Revocation and relief for mistake

[60] Taxation of Chargeable Gains Act 1992, section 60, nominees and bare trustees; HMRC CG34300, bare trusts and beneficial ownership for CGT
[61] Pitt v Holt [2013] UKSC 26, judgment, particularly paragraphs 104–109, 122–128 and 132–135
[62] Bhaur v Equity First Trustees (Nevis) Ltd [2023] EWCA Civ 534, particularly paragraphs 97–106
[63] Dukeries Healthcare Ltd v Bay Trust International Ltd [2021] EWHC 2086 (Ch), paragraphs 135–141
[64] Allnutt v Wilding [2007] EWCA Civ 412, especially paragraphs 9–20, rectification of a voluntary settlement and mistaken tax expectations

Exits and anti-avoidance provisions

[65] HMRC CG65700, incorporation by partnerships and LLPs with a corporate member
[66] Finance Act 2003, Schedule 15, particularly paragraphs 2, 10–14, 18, 20, 34 and 36
[67] HMRC SDLTM34060, the paragraph 12A election on a transfer to a property investment partnership
[68] Finance Act 2003, section 75A: connected transactions and notional consideration; section 75B: incidental transactions; section 75C: supplemental rules, especially subsections (6), (8), (8A) and (10)
[69] Project Blue Ltd v HMRC [2018] UKSC 30, judgment, especially paragraphs 42–48

[70] Finance Act 2013, Part 5, especially sections 206–209, General Anti-Abuse Rule
[71] HMRC SDLTM33120, partnership personality disregarded for SDLT under Schedule 15 paragraph 2
[72] HMRC SDLTM09390, example of an established property letting partnership incorporating and the application of section 75C(1)

Penalties and suspension

[73] Finance Act 2007, Schedule 24, paragraphs 1, 3, 3A–3B and 14: inaccuracies, avoidance arrangements and suspension; HMRC CH81122: reasonable care and avoidance arrangements; HMRC CH81124: meaning of avoidance arrangements
[74] HMRC factsheet CC/FS10, suspending penalties for careless inaccuracies in returns or documents

Tribunal and court proceedings

[75] Property 118 Ltd and Cotswold Barristers Ltd v HMRC [2026] UKFTT 1111 (TC), paragraphs 82, 125, 134–136, 151, 196 and 233
[76] Anonymised professional correspondence supplied to the author: completed FTT hearing concerning CGT discovery assessments and section 162 relief; separate pending High Court proceedings brought by another taxpayer seeking rectification of a revocation clause. The anticipated timing of the FTT decision is the author's expectation.

Confidential materials informing the case examples

[77] Anonymised Property118 contractual papers reviewed by the author: sale agreement, purchase document, trust deed and agency agreement. Confidential client material.
[78] Anonymised LT4L papers reviewed by the author: letters of trust, LLP agreements and financial records. Confidential client material.
[79] Counsel's June 2024 opinion on the two arrangements, the trust terms, section 162 and relief for mistake. Confidential opinion reviewed by the author; not reproduced.
[80] Counsel's 2025 opinion on the proposed retirement of an LLP company member, incorporation with refinancing and the General Anti-Abuse Rule. Confidential opinion reviewed by the author.
[81] HMRC enquiry correspondence and closure notices for the conventional incorporation described in the article, together with the transaction papers and business records. Anonymised confidential client material.
[82] HMRC email to the firm dated 17 November 2026 on the proposed suspension of income tax and corporation tax penalties. Anonymised confidential correspondence.
[83] Specialist counsel's July 2025 SDLT opinion on the original LLP contribution, profit entitlements, the paragraph 12A election, corporate-member retirement, incorporation and sections 75A–75C. Confidential opinion reviewed by the author; not reproduced.

Professional independence

[84] Bar Standards Board Handbook, Core Duties 2, 4 and 7, rules rC21.2, rC21.8 and rC25, and guidance gC69; Solicitors Regulation Authority Code of Conduct, paragraph 6.1, own-interest conflicts

HMRC's early response and use of technology

[85] HMRC annual report and accounts 2025 to 2026, Performance analysis, "AI focus — close the tax gap"
[86] HMRC, Modernising HMRC's approach to wealthy compliance, section 2: better-connected information and AI-assisted compliance tools

The Ramsay principle and the public debate

[87] W T Ramsay Ltd v IRC [1982] AC 300 (House of Lords, decided in 1981); modern explanation in UBS AG and DB Group Services (UK) Ltd v HMRC [2016] UKSC 13, paragraphs 61–68
[88] Public LinkedIn commentary reviewed: refinancing and full incorporation relief; legal title and share consideration, with subsequent comments; the 20-hour threshold. Examples of the public debate, not authorities for the legal analysis.

Property income rates and the incorporation calculation

[89] Finance Act 2026, section 7: property-income rates for 2027–28; section 8: Scottish and Welsh property-income rate-setting powers; HMRC, Income Tax: changes to tax rates for property and savings income, 29 October 2026 (proposed further increase)

[90] Finance Act 2026, Schedule 1, paragraph 40: residential finance-cost relief at the property basic rate; HMRC technical note on property, savings and dividend income rates

[91] HMRC, Corporation Tax rates and allowances; thresholds and associated companies; CTM03951, close investment-holding companies and eligibility; Budget 2026 rates and allowances, including dividend rates