

ALEP

ASSOCIATION OF LEASEHOLD
ENFRANCHISEMENT PRACTITIONERS

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Janet Powell
Pemberton Greenish LLP

Janet Powell

Enfranchisement Doesn't Have
to be (so) Taxing – Effective Tax
Planning for Enfranchisement



Overview

- Explanation of concepts
- Two sets of circumstances
- Three structures for freehold ownership
- How structures work
- Incidences of tax
- Detailed comparison of 18 scenarios
- Common questions



Vote

Are you a solicitor who has handled collective enfranchisements OR a non-solicitor who has been involved in setting up the freehold structure?

A. Yes



B. No



Vote

ONLY if you answered 'Yes', how often have tax considerations driven the structure you have recommended/implemented for your clients?

A. Always



B. Most of the time



C. Sometimes



D. Hardly ever



E. Never



Vote

ONLY If you answered 'Yes', have you ever heard that your clients subsequently got into difficulties over tax?

A. Yes



B. No



Concepts

- 'Legal' interest

'Legal or public ownership of a property bestowing the power to sell the property and to collect the income derived from the property'



Concepts

- 'Beneficial' interest

'Beneficial or equitable interest in a property carrying the entitlement to the proceeds of its sale and to the income derived from the property pending sale'



Concepts

Trusteeship vs. Nominee Purchaser (1993 Act)

- Bare trustee/bare trusteeship
- True trust scenario



Concepts

- Nominee Purchaser (1993 Act)
 - More or less the delegate of participators
 - The body put forward to make transaction
 - Body to whom freehold is conveyed
 - Says nothing of capacity in which freehold conveyed



Two Sets of Circumstances

- Less common, but occasional:
 - A few flats, up to 4
 - 4 = maximum number as registered proprietors at Land Registry
 - All want to participate
 - Facts allow simple arrangement: 4 lessees buy freehold directly, no company



Two Sets of Circumstances

- Most common:
 - ❑ Large-ish number of flats
 - ❑ Mixed status of lessees (individuals, companies/other legal bodies, e.g. foreign trusts)
 - ❑ Mixed tax status (UK resident and non-resident)
 - ❑ Some non-participants
 - ❑ Property with some income elements, e.g.: ground rents, parking spaces, commercial, unleased flat let out, roof space



Three structures for freehold ownership

- **1. Individual**

- ❑ Up to 4 lessees
- ❑ Buy freehold in own names
- ❑ No company involved in any capacity
- ❑ Lessees directly own legal and beneficial interests
- ❑ Each lessee has legal and beneficial interests in own lease
- ❑ Each lessee has fractional share of legal and beneficial interests in freehold reversion



Three structures for freehold ownership

- 2. Trust

- ❑ Freehold is owned by a company as a 'bare' trustee
- ❑ The company owns the legal interest
- ❑ Participating lessees own the beneficial interest
- ❑ This is called a 'trust' structure because the company's role is as trustee.



Three structures for freehold ownership

- 3. Company
 - ❑ Fully corporate
 - ❑ The company owns the legal and beneficial interests
 - ❑ This is a 'company' structure



How structures work

- **Trust**

- ❑ Interested lessees form company
- ❑ Participation Agreement
- ❑ Company obeys participators' directions on grant of new leases
- ❑ Regulates allocation of beneficial interest
- ❑ Allocation of shares
- ❑ Funding of non-participators
- ❑ Participators have two assets: beneficial interest and shareholding



How structures work

- **Company**

- ❑ Interested lessees form company
- ❑ Participation Agreement
- ❑ Company shares issued to participating lessees
- ❑ Shares allocated to non-participators remain unissued
- ❑ Company buys freehold, owns legal and beneficial interests and grants leases to participators
- ❑ Company later grants leases to non-participators



Incidences of tax

- SDLT on acquisition of freehold and subsequent new leases
- When participating lessees acquire new lease from freehold company
- When participating lessees profit from the freehold
- When income is received by the freeholder



18 scenarios

EVENT	“Individual” FH owned by individuals	“Trust” FH owned by Co as bare trustee (Legal interest only) for Ps (Beneficial interest)	“Company” F H owned by Co (Legal & Beneficial)
Purchase of Freehold and	SDLT relief	SDLT relief	SDLT relief
Grant of new leases	No SDLT	No SDLT	SDLT on value of lease



18 scenarios

EVENT	“Individual” FH owned by individuals	“Trust” FH owned by Co as bare trustee (Legal interest only) for Ps (Beneficial interest)	“Company” F H owned by Co (Legal & Beneficial)
P lessee’s surrender of old lease	Disposal but PPR or D39	Disposal but PPR or D39	Disposal but PPR or D39



18 scenarios

EVENT	“Individual” FH owned by individuals	“Trust” FH owned by Co as bare trustee (Legal interest only) for Ps (Beneficial interest)	“Company” F H owned by Co (Legal & Beneficial)
Grant of new lease to P	Partial disposal of Freehold – gains on individual Ps	Partial disposal of Freehold – gains on individual Ps	<ul style="list-style-type: none"> ❖ Partial disposal of Freehold – gains on Co ❖ Deemed distribution to shareholder P who receives lease



18 scenarios

EVENT	“Individual” FH owned by individuals	“Trust” FH owned by Co as bare trustee (Legal interest only) for Ps (Beneficial interest)	“Company” F H owned by Co (Legal & Beneficial)
Grant of new lease to non-P	Partial disposal of freehold – gains on individual Ps who funded non-Ps	Partial disposal of freehold – gains on individual Ps who funded non-Ps	Partial disposal of Freehold – gains on Co



18 scenarios

EVENT	“Individual” FH owned by individuals	“Trust” FH owned by Co as bare trustee (Legal interest only) for Ps (Beneficial interest)	“Company” F H owned by Co (Legal & Beneficial)
Income received by Freeholder	Income of individual Ps	Income of individual Ps	<ul style="list-style-type: none"> ❖ Corporation Tax on Co ❖ If later distributed, dividend rate on shareholders



18 scenarios

EVENT	“Individual” FH owned by individuals	“Trust” FH owned by Co as bare trustee (Legal interest only) for Ps (Beneficial interest)	“Company” F H owned by Co (Legal & Beneficial)
P’s sale of own flat	Gains on disposal of interest in freehold	Gains on disposal of interest in freehold	Gains on disposal of shareholding



18 scenarios – overview

EVENT	“Individual” FH owned by individuals	“Trust” FH owned by Co as bare trustee (Legal interest only) for Ps (Beneficial interest)	“Company” F H owned by Co (Legal & Beneficial)
Purchase of Freehold and	SDLT relief	SDLT relief	SDLT relief
Grant of new leases	No SDLT	No SDLT	SDLT on value of lease
P lessee’s surrender of old lease	Disposal but PPR or D39	Disposal but PPR or D39	Disposal but PPR or D39
Grant of new lease to P	Partial disposal of Freehold – gains on individual Ps	Partial disposal of Freehold – gains on individual Ps	<ul style="list-style-type: none"> ❖ Partial disposal of Freehold – gains on Co ❖ Deemed distribution to shareholder P who receives lease
Grant of new lease to non-P	Partial disposal of freehold – gains on individual Ps who funded non-Ps	Partial disposal of freehold – gains on individual Ps who funded non-Ps	Partial disposal of Freehold – gains on Co
Income received by Freeholder	Income of individual Ps	Income of individual Ps	<ul style="list-style-type: none"> ❖ Corporation Tax on Co ❖ If later distributed, dividend rate on shareholders
P’s sale of own flat	Gains on disposal of interest in freehold	Gains on disposal of interest in freehold	Gains on disposal of shareholding



Common Questions

- **Why use a company structure?**
 - ❑ Simplicity
 - ❑ Easily understood, especially to those unfamiliar with trusts
 - ❑ When value of leases below SDLT threshold
 - ❑ When no new leases need to be granted
 - ❑ When a collective mortgage is necessary
 - ❑ Wealth of lessees makes tax not problematic



Common Questions

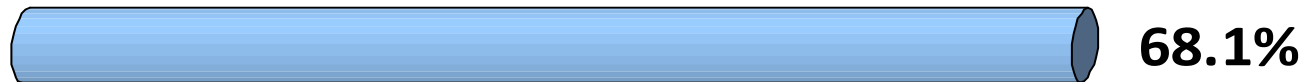
- **What are the chances that the Revenue will know about and tax these liabilities?**
 - ❑ Actual liability depends on the figures in each case
 - ❑ Self-assessment – onus on participator or company to disclose, not on Revenue to discover
 - ❑ Revenue might ask about others at same address
 - ❑ Use accountants to do the calculations!



Vote

Now that you have heard my presentation, do you think that enfranchisement taxation is more or less complicated than you expected?

A. More



B. Less



C. About the same

