

TAX TIPS FOR PROPERTY DEVELOPMENT

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The relaxation of planning rules and the need for more housing generally provides increasing opportunities

for families to sell land for property development. Profits realised can be very substantial but, without careful tax planning, a significant proportion can be swallowed up in tax.

It is generally preferable for any gain on the sale of land to be subject to capital gains tax ("CGT") as opposed to income tax. This is because CGT is now charged at a top rate of 20% (other than for gains on residential

property itself, which are taxed at 28%). In comparison, income tax is charged at a top rate of 45%.

However, HMRC can seek to tax as income any gain realised on a sale of land where either the land was acquired with the intention of selling it on at a profit, in which case HMRC may simply argue that the transaction is in the nature of a trade, or where land is developed with the intention of realising a profit. In the latter case, HMRC may resort to anti-avoidance legislation commonly referred to as the "transactions in land" legislation.

Importantly, HMRC do not generally consider simply obtaining planning permission as "development" for these purposes. Therefore, selling land with

the benefit of planning permission or with consideration linked simply to obtaining planning permission, should not fall foul of the income tax rules.

HMRC may, however, seek to apply income tax treatment where a person sells land under an arrangement where they will benefit from any future physical development e.g. sharing in the profit from future house sales.

Therefore, if only for tax reasons but also sometimes for simplicity, it can be best not to become involved in the actual physical development process but simply to sell the land and benefit from the uplift in value derived from obtaining planning permission. This should allow CGT treatment to apply to most gains.

Care should also be taken with

transfers of the land between family members and associated entities in the run up to a sale. Whilst an adjustment in the ownership of the land prior to a sale can appear attractive, it may in fact be counter-productive and give HMRC opportunities to seek income tax treatment.

If the land is currently used or can be brought into use in a trade, entrepreneurs' relief and a 10% rate of CGT may be achievable. However, stringent conditions must be met for this relief to apply and may require planning steps to be undertaken at least a year in advance of sale of the land.

Benefiting from development profits in a tax efficient manner is also achievable but requires planning to avoid costly pitfalls.

