

Incorporation of Property Rental Businesses by the Beneficial Interest Company Transfer (BICT).

1. This note is prepared for the general information of secured lenders, and does not constitute formal legal advice. It is confidential to the addressees.
2. In 2015 I was asked by Property118 to consider how best to alleviate the impact of the stepped removal of finance cost relief for PRS landlords. One obvious answer was incorporation of the business into a limited company, where profits would be taxed on the Corporation Tax regime (CT) and finance costs were fully deductible. Many PRS businesses had taken this route, and the criteria for securing CGT relief and SDLT exemptions were well known. The stumbling block was refinancing, namely the costs associated, increased interest rates, or simply availability.
3. The BICT solves both issues by treating the legal estate and beneficial ownership separately.
4. The legal estate is the legal ownership as recorded at the Land Registry. This is what any mortgage loan is secured on.
5. The beneficial interest is the economic benefit of the property, the right to income and net sale proceeds.
6. The two normally go hand in hand, but they are distinct parts of the package of ownership.
7. An example would be shares in a company purchased and held by a nominee (legal owner) for the true (or beneficial) owner.
8. In an incorporation by BICT the beneficial ownership passes to the new company, but the legal estate remains with the borrower. This results in the company owning the economic benefit of the property and being taxed upon the income arising and any further capital

appreciation post sale of the property by the company. This scenario is compliant with HMRC requirements.

9. The consideration for the sale of the beneficial interest is the issue of shares in newco to the borrower at the premium of the market value of the property. Thus, the transaction is at full market value at that stage.
10. The borrower remains liable to the lender and is indemnified by the company. This status is achieved by the business sale agreement.
11. The borrower holds the legal estate on trust for the company. This is achieved by a trust deed.
12. The lender's security is not affected by the BICT, as if any action to enforce the security is taken against the borrower as legal owner the borrower's dealings with the beneficial interest are irrelevant as they are overridden by the rights of the lender as chargee of the legal estate.
13. When the time comes to refinance into company borrowing the company will already own 100% of the beneficial interests in the property. The refinancing will involve the conveyancer transferring the legal title to the company from the original borrower in person simultaneously with the loan being advanced. This will perfect the lender's security in that the entire legal and beneficial interest is then reunited, and the company is fully liable to the lender with that entire ownership as security.
14. The market value of the legal estate at that stage is nominal or nil, as there is no value in the legal estate shorn of the beneficial interest
15. The TR1 transfer would be endorsed in Box 11 as follows:

'The Parties record that the beneficial interest in the said property was sold to the Transferee by the Transferor on (date) for full consideration namely the issue of shares in the Transferee to the Transferor at a premium of £xx, as part of a business sale agreement. This transaction was the subject of an SDLT return dated yy under reference zz OR The transferee was exempt from having to file an SDLT return as the chargeable

consideration was under the threshold as calculated under FA2003/Sch15 as amended by FA2004/Sch17A '.

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