



# Taxing Matters

Navigating the complexities of the tax world

RPC

## Spotlight 63: HMRC shines a light on property business arrangements involving hybrid partnerships

**Alexis** Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC.

My name is Alexis Armitage and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information, or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at [www.rpc.co.uk/taxingmatters](http://www.rpc.co.uk/taxingmatters).

**Alexis** I am delighted to be joined today by Simon Howley and Amanda Perrotton from Bell Howley Perrotton.

Simon is the co-founder of Bell Howley Perrotton with over 25 years of experience working within city law firms and accountancy practices. Simon oversees the firm's tax team, is a member of the Association of Taxation Technicians, the Chartered Institute of Taxation [(CIOT)], the Federation of Tax Advisers, the Institute of Financial Accountants and the Institute of Public Accountants in Australia.

Simon sits on the Property Taxes Sub-Committee of the CIOT's technical policy and oversight committee. He is also a freeman of the Worshipful Company of Tax Advisers in the City of London, as well as a member of the Stamp Taxes Practitioners Group. Simon is also the sole author of the Stamp Duty Land Tax Section of the isurv Website of the Royal Institution of Chartered Surveyors. isurv has been developed to provide practical information and guidance for professionals and students in the industry. It is subscribed to by most of the major UK surveying firms, many local authorities and RICS accredited universities as well as some major non-surveying firms.

Simon is also currently undertaking a post graduate research degree in taxation at Oxford University which he hopes to complete this year.

**Alexis** Amanda is a qualified solicitor of 25 years with a wealth of expertise advising clients in the property sector. She has owned her own high street legal practice and been a former managing partner of a four-partner law firm. She has knowledge and experience of not only residential and commercial property transactions but also the regulatory and compliance aspects of running a legal practice. She is a trusts and estate practitioner and a member of the Society of Trusts and Estate Practitioners, the premier qualification for private client trust, tax and wealth advisory matters. She holds the office of trustee of an Ecclesiastical Trust to advise on property held within that trust and is also a business mentor for the Prince's Trust.

So let's get started. Welcome Simon and Amanda and thank you so much - both of you - for joining me today. Just turning to what we are going to discuss today which is Spotlight 63, what is it and how do the arrangements claim to work?

**Simon** It is an arrangement aimed at landlords, property investors. The main two aspects of it, really, it aims to move income that is taxable on individuals - normally husbands and wives - and have that tax in a company and therefore to try to reduce the overall tax take. It also has a rather outlandish claim that it is inserting a company into this structure, it is a 'hybrid structure' for want of a better term. It also brings the whole structure within the business property relief for inheritance tax which of course it was never going to do in the first place.

That is what it does in a nutshell or what it purports to do, but it is never going to work.

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<b>Alexis</b>	And so how does HMRC decide on a spotlight, why have they got to this point with Spotlight 63?
<b>Simon</b>	It has been widely publicised as this arrangement that has been marketed for the five to six years, predominately been marketed via a firm called "Less Tax for landlords" which is a London outfit which is linked to a Chartered Accountant practice up in the North East and also a guy called Chris Bailey as well - which has been struck by the ICAEW for a separate matter. They basically get information from various sources, enquiries, internet forums and so on. Dan Neidle published a very thorough report on this on the same day that the Spotlight came out. So, this is how they kind of got the information together and they have written to Less Tax for landlords demanding that they disclose every case or every client that has undertaken the planning.
<b>Alexis</b>	Ok. So, who were the main types of people and companies affected by it?
<b>Simon</b>	From what we are looking in the class we are dealing with it is mainly landlords with substantial portfolios - the ones we are looking at - they own in excess of 20 properties each. It is normally private individuals these planning schemes are marketed quite a lot by various property investor networks and various shows so they have been well publicised. Basically saying that, private individuals, private landlords.
<b>Alexis</b>	Do we have a sense of how much is thought to be at stake overall, how much HMRC set to recoup if they succeed on this?
<b>Simon</b>	I think substantial I mean we are not quite sure of the exact numbers of clients. It has been going for a number of years so I would imagine best estimates probably in excess of 1,000 clients I would imagine affected by this and if I look at just some of the clients that we are looking at the moment the rental income is quite substantial year on year so if you have been in the planning since 2017, profits of £200,000 a year it seems that most of the profit split, 90% goes towards the company that needs to then be reallocated back to the individuals to bring them back to the higher rate tax bracket. So, I think for the average individual, you are looking at probably a quarter million pounds worth of tax, per individual. So, it is going to go into the millions.
<b>Amanda</b>	One of the reasons that the schemes were promoted in the first place was because Section 24 - that was brought in by George Osborne - which means that you can no longer offset your mortgage interest against your profits. So, you can do that within a company which was why it emanated from those beginnings because people were keen to put their property portfolios into a company to try to alleviate their profit position. As Simon has said, there is the income tax that will need to be reallocated but there is also the question of whether, at the point that some of this documentation was put in place, you were triggering capital gains tax or if you were triggering stamp duty land tax. So, if you have a landlord with a considerable portfolio that has been building up that portfolio since the late 80's early 90's maybe later, you going to have quite a capital gains tax potentially within that. So there are a number of threads that the clients are concerned about.
<b>Alexis</b>	And so what is the latest with HMRC on Spotlight 63, what are their main concerns and reservations about it, why don't like it?
<b>Simon</b>	It purports to do things that it does not achieve. You can't just create a partnership and then insert a company and then just shift the profits across to the company which of course has no capital value in the partnership so it is doing nothing to earn those profits. Those rules were knocked on the head back in 2016 when the hybrid rules came in and of course it is never going to work to bring the property business within the inheritance tax reliefs that is only for trading entities not for an investment vehicle. In effect, it's never going to work, which is why they brought it into the spotlight therefore that is why they are looking into various cases now.
<b>Alexis</b>	And so, what do you think is next for Spotlight 63, what do you think the trajectory is or the expected timeline for a resolution?
<b>Simon</b>	I don't think HMRC are in any particular rush at the moment; I mean, if we work on the basis that they have got, maybe, a thousand cases to look at. Normally such schemes are fairly templative in nature, but what we have found with this planning, or the Spotlight 63 cases, is that some have a complete set of documents signed, some have nothing signed at all, some have partial information signed. All cases, bar none, have no advice at all being provided. It is a mixed bag and, of course, apart from trying to get around Section 24 tax, it was also arranged to try to avoid to, in effect, to refinance. The corporate partnership would normally refinance under the limited company and transfer the assets across at that point but, of course, that is always the hardest bit to do commercially. This outfit - and also another second big competitor of theirs "Property 118", also under separate investigation - tried to come up with some kind of scheme to avoid having to inform the lenders. So, in effect, they can give you all the benefits of the tax relief, minimise the tax relief, and sometimes, with the 118 planning, try to incorporate, ie you qualify for what is called section 162 relief

and, therefore, in effect, you deferred a rollover the tax into the shares you get as consideration – and, of course, that planning is separate to the Spotlight 63 planning is also failing as well.

**Amanda** On that mortgage point, what we've found is that it is not very attractive for landlords to want to refinance, not simply obviously because of the time that it takes, but the cost involved and the additional interest that is charged on commercial rates rather than benefiting from personal interest rates so that was very attractive to landlords to think that they would not have to refinance which, of course, breaches mortgage conditions, but they felt it saved them quite a significant amount of money by not refinancing, they could stay on their residential rates or indeed they could gradually drip properties into a corporate structure as each property, perhaps, needed to be financed; but, again, that was never going to work unfortunately.

**Alexis** You mentioned to me last time we spoke that you have got a number of clients in this situation - with regards to Spotlight 63. Do you want to talk a bit about your group association?

**Amanda** We have instructed counsel, because - you asked earlier whether or not in terms of HMRC's expected timeline finding a resolution they are not going to be rushing to do this if the schemes are found not to work, which we suspect that they will be found not to work, then HMRC are also charging interest on outstanding tax. Once they recoup, additionally, they will look at penalties. HMRC will get to it when HMRC get to it, well a lot of clients feel pretty anxious and worried about the situation that they are in, so we are taking a more proactive approach for the clients that we are acting for.

We've taken instructions from King's Counsel to answer some of the key questions that are regularly coming up. One of the crucial points is that it is never going to be a "one size fits all" because people don't seem to have a consistent set of documentation. So, irrespective of whether the scheme was found to work or it wasn't found to work the crucial point is what you as an individual have actually done and what evidence you can produce to demonstrate what you have done.

We have asked the crucial questions of counsel in order to get some advice so that we can proactively start to look at settling and negotiating with HMRC in order to take clients forward and out of the position they are in currently.

We have spoken to potential clients who are already selling off assets, but our view is "why are you selling off assets?". If you don't know what your starting point is, then it may not be the most sensible course of action to just start to sell parts of your portfolio and any discussions that are had with HMRC at this stage will be on a guidance position and footing only. We are looking at being far more proactive for the clients that we are acting for.

**Simon** The habit we've found - not just us, but other advisers also that are advising people - it is hard to get everyone together "Less Tax for landlords" was not just a non-qualified firm they were backed by people who were chartered accountants, they were backed by people who were STEP members, some lawyers as well, so it's all the things you'd expect from a professional firm, but sadly, for whatever reason, they just peddled this scheme which was never going to work in the first place. So it is difficult to get over that barrier with clients to then say to them you know we appreciate you have already spent money through and with these people and it is unlikely that they are going to get any money back from the indemnity show because I think with all of the documentation being fairly standardised the policy will normally aggregate the insurance and just divide it by the number of cases. So, if you have got a thousand cases and they have got a million pounds worth of insurance it is not a lot to cover your fees, so it is hard to convince clients to then fork out additional monies to then take it forward and, in effect, try to resolve it for them, but unfortunately they are going to have to incur some fees.

**Alexis** Of course. I assume as part of the group association there is an element of people sharing fees and trying to conquer that one together rather than individually as you said and so, do you have any tips or words of wisdom for anyone who took part in Spotlight 63 that may now be finding themselves in difficulty with HMRC.

**Simon** I think for the ones that have not got any representation, go and speak to somebody and I know there is quite a number of them purely because they have not been charged any fees are allowing "Less Tax for landlords" to sort it out for them but unfortunately, they have got a clear conflict of interest there they can't act for the client.

I think they are doing a great disservice to these clients we are aware they were holding secret seminars in effect to try to promote an add on planning scheme called "Alba" which was supposed to rectify the initial scheme that never worked in the first place. They clearly don't have the clients interests at heart here. First of all just get some advice on board, someone who is independent, who is qualified, who is experienced in property tax. It is also a legal and trust matter as well - because obviously the whole planning revolves around a letter of trust of which we have got an opinion on that, so we know whether it works or not. So, that would be my main point really, just don't sit there and do nothing and just accept the fact that the reason why you chose the firms that peddled Spotlight 63 planning was in the first place because they told you what you wanted to hear and secondly because they were cheap. You are going to have to at some point pay someone who is qualified to sort it out for you.

**Amanda**

I think I would just add to that as well some of the clients that we have had some discussions with have come on board with us have got a potential tax bill of five, six, seven million pounds what you need to be really cautious about is thinking, "...well we have all done the same thing, so if X goes and finds out and comes back and tells 50Ys then we will all be covered in the same way" and I think that that is also a real big mistake because we are finding that people even within the same schemes whether that is Less Tax for landlords or it is property 118 their documentation is different.

I mentioned at the beginning of this that if your documentation is different or it has not been correctly signed, or you don't have signed versions of it, that will have a legal impact on the way that the scheme operates so it is really important that you have individual advice that is looking at your documents and the way that the documents that you have got impact the position that you are in because it is most definitely not a one size fits all, although you are within a scheme and the documentation has been standardised, appears to be no standardised approach - that is just something that you need to be very cautious of.

**Alexis**

Yeah, from what you have said it sounds like they couldn't, for example, be, easily anyway, a "lead case" that represents everybody. It sounds like, actually, it might be more of an individual approach. As you said it sounds like it is a good idea to get some advice as soon as possible?

**Simon**

A prime example was two friends who did the planning, signed all the paperwork using a full set of documentation HMRC are looking for (this is a 118 planning), they are looking for about half a million pounds worth of capital gain tax offering and he has got an enquiry letter for him. His friend got a similar letter, but he signed nothing so in effect one transferred nothing at all and therefore has not claimed anything, the other one has claimed everything. So, it is more difficult than just really saying well this applies to everybody. It is a bit more nuanced than that.

**Alexis**

Yes, of course, of course. Has everybody received letters yet or is it a slow burning process, a drip feed approach?

**Simon**

It is a slow burning process at the moment it is just gathering information. There was a lot of disclosure made to HMRC so they have the names, they have a team put in place now to deal with Spotlight 63. So, I would imagine they will start to send letters out at some point during this year but for example I have just settled a SDLT avoidance scheme in the past few months and that was entered into in 2014, so we are ten years later.

**Alexis**

Yeah, it can quite often take a quite a long time to get through a resolution with HMRC!

Brilliant! Well, thank you so much to both of you for your time and for joining me today and discussing all things spotlight 63. Unfortunately that is all we have got time for in this month's episode. Thank you again to Simon and Amanda for today's Podcast. As ever a big thank you goes Inciter Productions and Andrew Waterson for the production, music and sound editing of this episode.

A full transcript of this episode together with our references can be found on our website [www.rpc.co.uk/taxingmatters](http://www.rpc.co.uk/taxingmatters).

If you have any questions for me or for any of my guests or any topics you would like us to cover in a future episode, please do email us on [taxingmatters@rpc.co.uk](mailto:taxingmatters@rpc.co.uk). I would love to hear from you.

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