

SITR AND PROPERTY DEVELOPMENT

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This note has been prepared to help provide some further clarity around which property transactions can and can't qualify for SITR, as we understand many have asked questions about this. The note has been prepared for information purposes only and does not constitute legal advice.

INTRODUCTION

Social Investment Tax Relief (or “SITR”) is available for individuals who invest, by way of debt or equity, into social enterprises.¹

However the relief is only available where the money raised is used to support a so-called “qualifying trade”.

A qualifying trade means any trade other than an activity which is excluded.

The list of excluded trades is set out in the legislation governing SITR.² But “property development” is on that list of excluded activities.

Many social enterprises hold or own some kind of interest in real estate. And some may look to raise funds in order to buy or refurbish property that they hold. All of which gives rise to the concern that those enterprises may not be eligible to raise funding under SITR.

We’ve seen a number of social enterprises raise the concern that they may not be eligible for SITR. So in this note we look in a little more detail at what “property development” means, and when and how a social enterprise with an interest in property might still be eligible for SITR.³

WHAT IS PROPERTY DEVELOPMENT?

It means the development of land where the social enterprise:

- Has (now or at any time in the past) an interest in land
- Has the sole or main object of realising a gain from the disposal of an interest in that land when it is developed.

So we have to look at the intention of the social enterprise at the time the land is first bought. Why did the enterprise buy it? What does it intend to do with the land? Does its trade typically involve buying or selling land or property?

WHAT IS NOT PROPERTY DEVELOPMENT?

Buying and selling a piece of land, but doing absolutely nothing to it in the meantime, is not property development. Because there’s no “development” activity. It might be an investment activity. Or it might be a trade (depending on the circumstances). But it’s unlikely to be regarded as property development.

Being a landlord is not “property development”. In fact, a letting business not a “trade” at all. The rules on this are complex, but the starting point is that letting property in return for rent is not a “trade”. It is taxed as a property investment business, and subject to its own set of tax rules. But is not, technically, a “trade”. So even though it is not “property development”, it is not an activity which can qualify for SITR investment.

And just to make things a bit more complicated, it is possible that an enterprise might buy a property for redevelopment, and then let it out once developed. In that case it’s carrying on two separate activities for tax purposes. First, it’s a property developer. And secondly, it’s a letting business. But neither activity qualifies for SITR investment.

¹ See Part 5B of the Income Tax Act 2007

² See section 257MQ of the Income Tax Act 2007

³ Property development is referred to in section 257MR of the Income Tax Act 2007

EXAMPLES

By now, you may be thinking this stuff is quite complex. Well it can be. So in the rest of this note we have set out a few situations where enterprises may hold an interest in property, and explain whether or not that amounts to “property development” for the purposes of SITR.

A social enterprise buys the freehold, or pays the premium on a lease, of a building out of which the enterprise will trade

The intention of the social enterprise is to acquire premises out of which it trades. It is not doing this with the “sole or main object” of developing the property and selling it on for a profit. So this is not property development.

A social enterprise buys a piece of land with the intention of building a property on that land, and where the enterprise will – once the property is built - trade out of that property for the foreseeable future

The intention of the social enterprise is to acquire premises out of which it trades. It is not doing this with the “sole or main object” of developing the property and selling it on for a profit. So this is not property development.

A social enterprise owns a property out of which it trades. It needs to expand so it refurbishes and extends that property to make it fit for purpose

The intention of the social enterprise is ensure that the premises out of which it already trades are fit for purpose. It is not doing this with the “sole or main object” of developing the property and selling it on for a profit. So this is not property development.

A social enterprise owns a property out of which it has operated for a number of years. It needs to expand its operations, so it sells that property in order to fund the expansion, and moves to bigger premises. It uses the profits from the sale of the original property to fund the purchase of the new property

Whether or not the sale of the existing property amounts to “property development” will depend on the intention of the parties at the time the original property was acquired. But if the enterprise has traded out of that property for a material length of time, it is unlikely that HMRC would argue that this is property development – HMRC would have to demonstrate that when the property was acquired the sole or main object was to develop it and sell it on for a profit.

The acquisition of the new property is not “property development”. The intention of the social enterprise is to acquire premises out of which it will trade. It is not doing this with the “sole or main object” of developing the property and selling it on for a profit. So this is not property development.

A social enterprise owns a property out of which it trades. It needs to expand its operations, so it sells that property in order to fund the expansion, and moves to bigger premises. It uses the profits from the sale to fund the purchase of the new property. However the new premises are bigger than is needed. The enterprise believes it will expand into the whole of the new premises over time, so agrees a short term lease of some of the floor space in the new building, and uses the rest of the building for its own trade

The acquisition of the new property is not “property development”. The intention of the social enterprise is to acquire premises out of which it will trade. It is not doing this with the “sole or main object” of developing the property and selling it on for a profit once developed. So this is not property development.

The fact that in the short term the social enterprise lets out a portion of its new premises should not alter that. However, by letting out a proportion of its new building, the enterprise is now operating two businesses – its existing trade, and the business of a landlord. This raises two questions.

First, is the letting business a “trade” at all? As we’ve already mentioned, letting property in return for rent is not a “trade”. It’s not “property development”, but it is not an activity which can qualify for SITR investment.

There is an exception to this where an enterprise lets out surplus accommodation on a temporary basis. To qualify for this exemption, an enterprise must meet the following conditions:

- the accommodation is temporarily surplus to requirements, meaning:
 - if it has either been used in the trade, or acquired within the last three years,
 - the enterprise intends to use it in the trade at a later date, and
 - the letting is for a term not longer than three years.
- the building or land is not held as “trading stock” (i.e. part of the assets of an enterprise which are bought or sold for profit);
- the rental receipts are in respect of part of a building of which another part is used to carry on the trade; and
- the rental receipts are relatively small.

Secondly, if the letting business is a “trade” (i.e. the enterprise qualifies for this exemption), is it a qualifying trade for the purposes of SITR? Answer to which is probably yes. Although leasing assets is excluded for the purposes of reliefs such as EIS and Seed EIS, it is not on the list of excluded activities for SITR.

A social enterprise buys a property as an investment – it does not occupy the property, but leases it out. After a year or two, it sells the property (with the tenant in place) and makes a profit. It uses that profit as working capital in its trading activities

This is not a qualifying trade for SITR purposes. It is either property development or an investment activity. And the letting of the premises is also not a “trade” (see above). The fact that the profits from the property are applied in achieving the enterprise’s social objectives is irrelevant.

A social enterprise trades by buying run-down houses, and employs homeless people in refurbishing the properties. The employees earn money to help them afford sustainable accommodation, and learn job skills. Once each house is fully refurbished, the enterprise sells the house for a profit. That profit is then ploughed back into the enterprise or used to fund the purchase of the next property to be refurbished

The intention is clear – i.e. to renovate the property and then sell it on for a profit. The fact that by doing so the enterprise achieves its social impact objectives is irrelevant. This is property development.



A social enterprise trades by buying run-down houses, and employs homeless people in refurbishing the properties. Once each property is refurbished it is let (on a commercial basis) to the homeless people that the enterprise supports. The rental income is used as working capital in the enterprise or to help fund the purchase of the next property to be refurbished

Whether or not this might amount to “property development” will depend on the intention of the parties at the time each property was acquired. If the intention is to build up a “bank” of properties to be let as some form of social housing for the long term, it may well not be regarded as property development. However, the activity of letting may not be a “trade” at all (see above), so the enterprise may well not qualify for SITR.

A social enterprise trades by refurbishing or redeveloping run-down houses, and employs homeless people in refurbishing the properties. However the social enterprise does not own the properties, which are bought and sold by a local property company which is a supporter of the social enterprise.

This is not “property development” because the social enterprise has no interest in the properties being developed. It is a building contractor – which in these circumstances is a qualifying trade for SITR. However if the local property company that owns the properties, and contacts with the social enterprise, is also a shareholder in the social enterprise there may be an issue.

The small print (or stuff our lawyers tell us to say)

This note is intended only as a guide. It is a very brief overview of what can be a complex area of the law. People have written whole books on this area, and we’ve restricted ourselves to a few pages. And the tax treatment of property transactions is very specific to the facts in each case, making it difficult to generalise. So this note is not advice and if it’s wrong we will not have any liability to you. We’re just trying to be helpful. If you are an enterprise looking to raise SITR-eligible funding, or an investor looking to make an SITR-qualifying investment, you must take independent advice from a suitably qualified professional adviser **before** you act.

These notes are not a comprehensive review of the law relating to SITR. They are for information purposes only to give the reader a better understanding of this area and have been produced by Big Society Capital in its capacity as champion for the social investment market. Neither Big Society Capital nor Neil Pearson Consulting Limited can give any advice in this area and will have no liability to any third party who may rely on the contents of these notes.

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