

## **OTHER UK TAX IMPLICATIONS**

### **United Kingdom Capital Gains Tax**

Capital gains tax applies to profits on the sale of investments held as long term assets. The sale of property by a residential investor will typically constitute a capital gain rather than “income” received. It is possible that the proceeds of a property might be deemed to be an “income” receipt where it is part of a trade of buying and selling property. This issue is critical as the United Kingdom exempts non-residents from Capital Gains Tax, but not from Income Tax. Until recently, the UK Capital Gains rate was 40%. This has been reduced to 18% in 2008.

Typically, an Irish person selling a residential investment property in the United Kingdom will be exempt from UK Capital Gains Tax and will be subject to Irish Capital Gains tax only.

### **UK Value Added Tax (VAT)**

United Kingdom VAT will not generally be an issue for an Irish residential property investor. In Ireland the Value Added Tax is charged at 13.5% on new residential property. In England new residential property is zero rated. This removes a significant cost from the construction and development of residential property.

New commercial and industrial property is subject to VAT at 17.5%. Usually, a commercial investor will be able to recover VAT where the property is let to a purchaser or tenant who can re-claim VAT.

### **UK Stamp Duty Land Tax**

Irish Stamp Duty will not generally apply to the purchase of United Kingdom Property. There are exceptional circumstances where an agreement may contain certain elements

to performed in Ireland, e.g. the issue of shares in an Irish company in return for a UK property, which may itself attract Irish stamp duty.

The UK System of Stamp Duty Land Tax is broadly similar to Irish Stamp Duty. Unlike Irish Stamp Duty, most of the techniques for avoiding and delaying Stamp Duty were removed with in 2003, when UK Stamp Duty Land Tax was introduced. Once the transaction is completed, the obligation to pay Stamp Duty Land Tax arises and must be discharged within 30 days.

The rates of tax for residential property are as follows;

<£175,000;	Nil
£175,000-£250,000	1%
£250,000-£500,000	3%
£500,000 +	4%

As in Ireland, Stamp Duty Land Tax is payable within thirty days of the purchase or lease transaction. It must be factored into any purchase budget. Penalties arise for non-payment although they are less severe than in Ireland. Without a Stamp Duty Land Tax Certificate, it is not be possible to re.g.ister property. Failure to self-account for the tax is an offence which could be prosecuted.

Stamp Duty Land Tax is much simpler in the United Kingdom than in Ireland. There is no distinction between owner/occupiers, first time buyers etc. There are only three rates of tax and there is almost no distinction between treatment of residential and commercial properties.

There are rules in relation to linked transactions which charge tax at the higher rate where a number of transactions are connected. If, for example a person buys two properties in the same development on the same occasion, they are likely to be deemed linked and thereby subject to the tax rate applicable to the sum of the two transactions. For example 3 properties each costing £200,000 will be charged at 4% Stamp Duty on the basis of linked transactions totalling more than £500,000, as opposed to separate transactions at 1% each.

The whole area of linked transactions is subject to different opinion by various bodies and authors. HMRC will contend that any transactions between the same parties or even similar parties, (say a number of apartments in the same development) are linked. Arguments can be made to show that no link in fact exists and that the transactions are in effect coincidental. The transaction will be always linked if there is any question of a discount or better terms on account of purchasing multiple properties.

### **United Kingdom Inheritance Tax**

United Kingdom Inheritance Tax is radically different from Irish Inheritance Tax, notwithstanding that they have the same name. In some respects, the English Inheritance Tax system is more favourable to the tax payer than the Irish equivalent, and in other respects it is less so. In Ireland there is a single gift tax and inheritance tax (called Capital Acquisition Tax or "CAT") which covers both lifetime gifts and inheritances received on death. Gifts include anything whereby a recipient receives the benefit of an asset without having paid full monetary value.

In the United Kingdom there is no tax on gifts, provided that they are absolute gifts and that the person giving the gift survives by seven years. In contrast, an Irish resident recipient of such a gift is potentially subject to Gift tax if he has used up his nil rate allowance. Inheritance Tax applies to all the assets of an individual domiciled in the UK. Broadly speaking an individual is "domiciled" if he or she is a long term resident. Non-domiciled individuals are subject to UK Inheritance Tax on their property situated in the UK.

UK Inheritance Tax applies to certain gifts, including gifts given within 7 years of death, inheritances and bequests arising on death. Irish Inheritance Tax looks at the position of the recipient. English Inheritance Tax looks at the position of the deceased. There is a single tax allowance of £312,000 allowed to the estate. Gifts and inheritances between spouses are generally tax free in both the United Kingdom and Ireland. English Inheritance Tax can arise on certain lifetime gifts. Notwithstanding the exemption for

spouses, where an UK domiciled Individual transfers to a non-UK domiciled spouse, Inheritance Tax can arise after an allowance of £55,000.

In Ireland, in contrast, each child can receive up to €520,000 tax free from a parent, counting back to 1991. In the United Kingdom there is a single £312,000 allowance available on the death of each individual. Since 2008, unused allowance can be passed between spouses. This means an allowance or “nil-rate” of up to £624,000.00 may be available for assets passing to children on the death of a second spouse. The rate of inheritance tax in the United Kingdom is 40%. It is only 20% in Ireland.

The effect of the above is that UK Inheritance Tax can represent a significant burden. It is charged at 40% on the entire of the Estate over the nil rate allowance amount. Lifetime gifts are generally exempt, provided the individual survives 7 years.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.