

Structuring Ownership

Of English country property

by Alexander Caton

This article is aimed at the non UK domiciled and non UK resident prospective purchaser of an English country property.

The problem

There may be a saying that "an Englishman's home is his castle", with property ownership in the UK widespread, but this does not mean that property ownership is tax-free. Inheritance Tax ("IHT") is charged on a non UK domiciled individual's UK sited estate at the rate of 40 percent on all assets above a comparatively low (given UK house prices) threshold of £325,000 (his non UK sited assets are exempt from IHT). There is, broadly, a full exemption on assets passing between spouses and there are specific agricultural and business property reliefs that may help reduce the IHT liability, depending on

the circumstances. But the prospective purchaser must give thought to how his country property is to be held if a considerable tax charge is to be avoided. In this he will be assisted by the comparatively benign IHT treatment afforded to non-UK domiciled individuals.

Personal ownership

The purchaser may favor owning his country property personally. If he does so, although the purchaser may be non UK domiciled, the asset that he owns is UK sited and so within the scope of IHT.

There are ways of managing this IHT liability. Life insurance may provide a fund to pay any IHT liability, or the property may be purchased using a mortgage, the value of which is deducted from the value of the property for IHT purposes. Furthermore, if it is thought unlikely that the purchaser or his spouse will wish to retain the property after the first death, then the property may pass by Will to the survivor IHT-free and the survivor needs simply to sell the property and transfer the proceeds overseas to remove the value of the property from the IHT net.

An advantage of personal ownership is that a non UK domiciled, non UK resident (and non





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UK ordinarily resident) individual is not liable for capital gains tax (“CGT”) on any gains in the value of a house during his ownership. Furthermore, on the death of the owner, there is a CGT-free uplift in the value of the property.

As Probate will be needed to deal with the property on the owner’s death, an English Will to apply to the UK sited property should be prepared.

Corporate ownership

Given that IHT is levied on the UK sited assets of a non-UK domiciled individual, a way to avoid coming into the IHT net might be to convert the country property into a non-UK sited asset. This may be effected by purchasing the property through a non-UK holding company. For IHT purposes the non-UK shares are the asset in the purchaser’s estate and, being non-UK sited, are excluded from IHT. This has the further advantage

of confidentiality (in that the company name appears as the owner of the property at the Land Registry) and avoids the need to obtain Probate in the UK on the owner’s death.

However, professional tax advice should be sought should the prospective purchaser ever be at risk of becoming UK resident as non UK corporate structure ownership can then lead to an exposure to IHT, CGT and to UK Income Tax.

Using an offshore trust structure

With more valuable country properties the prospective purchaser’s advisors are likely to discuss the use of an “excluded property settlement”. This works by the would-be purchaser settling the property’s purchase price on offshore trustees under the terms of a trust that the purchaser has settled for his and his family’s benefit. The offshore trustees set up an offshore company of which they are the directors and this

is funded with the purchase money. This offshore company then purchases the UK property which is held for the benefit of the trust’s beneficiaries.

The prospective purchaser must be comfortable with the concept of a trust, the loss of control of the purchase funds and the fact that he will not personally own the property himself. But as a result of the structure the offshore trustees will not be liable to IHT, nor will they own a UK sited asset; they will own shares in a non UK sited company. Furthermore, the property will not be part of the estates of the trust’s beneficiaries, so they too escape any IHT liability.

The excluded property settlement structure acts as a complete IHT shelter. Nonetheless, there are other tax implications that will need to be considered, particularly if there is any risk of the purchaser becoming UK resident, and professional advice should be sought. **AH**

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