

SOME PITFALLS FOR OVERSEAS BASED PURCHASERS OF REAL ESTATE IN ENGLAND AND WALES

We detail below some of those issues which overseas based purchasers of commercial property should be aware of when acquiring property within England and Wales.

The Principle of “Caveat Emptor”

The old established principle of “let the buyer beware” still has some currency in English Property Law. Warranties may be given as to title but rarely as condition and it is therefore incumbent on a purchaser to undertake thorough investigation prior to acquiring commercial properties.

Status of the Purchaser

If premises are acquired through a corporate body i.e. a company, this can affect the rights of enfranchisement (i.e. to purchase the freehold) in the case of residential leasehold property. Whilst this area is presently subject to review, a purchase by a company can also impact on potential re-sale as a landlord may wish to resist consent to an assignment to anyone other than another corporate body – in order to deny a subsequent purchaser statutory rights to acquire the freehold (known as enfranchisement) or to extend the lease.

Taxation Aspects

There is no tax on the pure ownership of property where this is a single or sole residence but capital gains tax applies in the UK albeit on a tapering basis – reducing over time.

There are specific rules on income tax in respect of what are known as “shadow” directors. This applies where a company holds property and “shadow” directors may be said to be in receipt of a benefit in kind from use of property which is the property of the company – and thereby attract a liability to taxation.

Transfer of Funds

If these are related to the sale of other assets to enable the purchase to proceed then this may entail the need for prior accountancy advice on realisation of the other asset and transfer of funds.

Impact on Residence Qualifications

Where in the UK a lease is agreed for a term in excess of 3 years and a place of abode is maintained in the UK, this can have an impact on a non-domiciled individuals tax status – as they may be regarded by the Inland Revenue as being resident in the UK and therefore potentially secure a dual charge taxation.

- **Next step**

If you would like to discuss any aspect of the service we can provide, please contact either:-

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Please note this information should not be applied to any particular set of facts without seeking legal, accounting and a surveyor's advice.

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