Cross-Border Assets
Tax Implications

By Professor John Ward and Dara Burke

Professor John Ward and Dara Burke outline the key capital gains and gift/inheritance tax implications for Irish residents who own investment property in the UK.

Many individuals who are resident in Ireland own investment property located in the UK. The purpose of this article is to provide a practical guide to some of the more salient capital gains and gift/inheritance tax implications which can arise in both jurisdictions for such individuals. It should not be overlooked that in some cases, typically those involving US citizens, a transaction may generate tax repercussions in a third jurisdiction. Space does not permit coverage of the various tax planning opportunities (and pitfalls) associated with the use of offshore companies and offshore trusts. It will be assumed throughout for the sake of simplicity that an individual who is resident in Ireland is not also resident or ordinarily resident in the UK under UK tax law (i.e. without reliance on the 'tiebreaker clause' under Article 4 of the Ireland/UK Double Tax Treaty).

This article does not purport to be exhaustive and in all cases detailed professional advice should be taken in advance of committing to any specific course of action. The exchange rates used in the worked examples are for illustrative purposes only.

Capital Gains Tax

The UK does not impose Capital Gains Tax on UK investment properties held by individuals who are neither resident nor ordinarily resident in the UK.

Individuals who are resident or ordinarily resident in Ireland are *prima facie* liable to Irish capital gains tax (CGT) on their worldwide capital gains. A flat rate of 25% applies from 8 April 2009 with indexation relief given for inflation only up to the tax year 2002. There is a modest annual exemption of €1,270 per individual. A very limited range of tax breaks applies to CGT. An important exception arises where the individual had at some point previously occupied the premises as his private residence in the UK. Full or partial exemption may be available under the Irish CGT rules depending on the precise circumstances (TCA 1997 s604). Such an individual will have to weigh up the increasing tax exposure generated by the erosion of this exemption over time against the desirability of deferring the sale of the property on the hope of a recovery in UK house prices, as well as potential future exchange rate trends. The possibility of adverse changes in the tax system also needs to be factored in as a very live consideration in the current economic environment.

Example 1

Jill, a single, Irish domiciled person, acquired an apartment in London as her principal private residence in July 1990 at a cost of £89,128, including deductible acquisition expenses. She left the UK and returned to Ireland in July 2006. She rented out the UK property from that date and is now considering selling it for £251,818, net of deductible selling expenses. The Irish CGT computation would be as follows:

Sale: July 2009	£	€
Sale Proceeds (at exchange rate 1.1)	251,818	277,000
Cost July 1990 (at exchange rate 1.45)	89,128	129,237
Indexation @ 0.442		57,123
Total Cost		(186,360)
Gain		90,640
Years owned: 19 Years occupied: 16+1*=17		
Taxable Gain (19-17)/19		9,541
Less annual exemption		(1,270)
		8,271
CGT Payable @25%		2,068
Net Receipt (sale proceeds less tax)		274,932

* The final year of ownership is automatically deemed to be a year of occupation.

If Jill assumes that she could sell the property in 6 years' time for £300,000 net and that the euro-sterling exchange rate will then be at 1.0, the estimated Irish CGT computation would look as follows, applying current tax rates:

Sale: July 2015	£	€
Sale Proceeds (at exchange rate 1.0)	300,000	300,000
Total Cost (as above)		(186,360)
Gain		113,640
Years owned: 25 Years occupied: 16+1*=17		
Taxable Gain (25-17)/25		36,365
Less annual exemption		(1,270)
		35,095
CGT Payable @25%		8,774
Net Receipt (sale proceeds less tax)		291,226

* The final year of ownership is automatically deemed to be a year of occupation.

A significant tax advantage may accrue to an individual who is regarded as non-domiciled under Irish law; he will be liable only on remittances of sums representing gains on the disposal of non-Irish assets, including gains on UK property from 2009 onwards. The concept of a remittance is widely drawn and is subject to the anti-avoidance provisions of TCA 1997 s 72 (Section 29 TCA 1997). In general, sums representing capital gains accruing prior to the date an individual became resident in Ireland may be subsequently remitted there free of tax.

It is therefore possible for an Irish resident, non-domiciled individual to realise capital gains on UK properties without incurring either UK or Irish CGT thereon (assuming no remittances of the proceeds are made to Ireland). It is important to note that Irish Revenue practice is to match gains against proceeds remitted into Ireland on a euro-for-euro basis.

Example 2

Jack is Irish resident and UK domiciled. He acquired a UK investment property for £250,000 in January 2003 and sells it for £450,000 in July 2009, after taking into account all deductible acquisition and disposal expenses. The Irish CGT calculation is as follows:

	£	€
Sale Proceeds (at exchange rate 1.1)	450,000	495,000
Cost (at exchange rate 1.5)	250,000	(375,000)
Gain		120,000

If Jack remits, or is deemed to remit, €150,000 out of the sale proceeds, the Revenue Commissioners will match this against the entire gain of €120,000 giving rise to tax at 25% of €30,000 (disregarding the annual exemption). If Jack retains all of the proceeds outside Ireland, no CGT will be payable.

Jack could also make a *bona fide* gift of the proceeds while they remained outside Ireland and any subsequent transfer of those funds into Ireland by the transferee would not normally count as a taxable remittance for CGT purposes (Carter v Sharon 20 TC 229). Additionally, outright gifts of UK investment property by definition can never give rise to remittances, since no disposal proceeds are generated by such a transaction. No Stamp Duty arises on such transactions in the UK. However, UK IHT and Irish CAT considerations may arise in both these situations (see below).

Where an individual who had been previously resident in the UK returns to the UK after realising a capital gain while resident in Ireland, the potential application of Section 10A TCGA 1992 (the 'temporary non-resident' provisions) will need to be considered.

Finally (in every sense!) it should be noted that on death all capital gains accrued up to the date of death will be effectively washed out of the tax system. In essence, the beneficiaries will acquire the property at its probate value, unless the personal representatives dispose of it in the course of administering the estate. In the latter case, they will then be able to set off probate value against the sale proceeds in computing the estate's CGT liability.

The Irish and UK inheritance tax implications of holding property until death will also require careful consideration (see below).

Gift/Inheritance Taxes

Capital Acquisitions Tax (CAT) broadly speaking extends to outright gifts and to inheritances where:
(a) the property is located in Ireland; or (b) either the transferor or the transferee is resident or ordinarily resident in Ireland either when the gift is made or in the case of an inheritance at the date of the transferor's death.

Individuals who retain their non-Irish domicile will only be regarded as resident or ordinarily resident for CAT purposes once they have been resident in Ireland for the previous five consecutive tax years. This provision allows individuals with a high degree of personal mobility to take a 'year out' and become non-resident once every five years and thus avoid being drawn into the CAT net (at least in relation to transfers of non-Irish assets to other non-resident persons). Such individuals will also need to consider the implications of retaining a domicile in a foreign jurisdiction if that jurisdiction imposes gift/inheritance taxes by reference to the domicile of the transferor. Thus, an individual who retains his UK domicile will remain potentially liable to UK Inheritance Tax (IHT) on his worldwide assets. Individuals who are not UK domiciled under general UK law may acquire a deemed UK domicile if they have been resident in the UK for at least 17 out of the 20 tax years ending in the relevant tax year.

Many Irish individuals who emigrated to the UK will fall within this category. However, where such an individual subsequently returns to Ireland, he will shed his deemed UK domicile once he no longer meets the 17 year test. He will still remain within the scope of IHT in relation to his UK assets but transfers of assets up to a net value of £325,000 per individual (or effectively £650,000 in the case of a married couple or civil partnership) will be exempt. Of course, such an individual will come within the scope of CAT in relation to his worldwide assets once he becomes resident in Ireland. However, the impact of CAT is usually less severe than that of IHT; from 8 April 2009 onwards, a child can receive gifts/inheritances from either or both of his/her parents tax-free up to a value of €434,000. As is the case for IHT, transfers between spouses are exempt. Tax is payable at a rate of 25% from 8 April 2009 onwards on the taxable value of both gifts and inheritances, compared to a general rate of 40% for inheritances in the UK.

Example 3

Mr and Mrs. Dawson were born in Ireland and, despite living continuously in the UK for over 30 years, remain Irish domiciled. In January 2008, they returned to Ireland to retire there permanently, living in the home of their eldest son. Their assets currently consist of cash of £900,000 held in a Jersey bank account from the sale of their former UK private residence and an investment property in the UK valued at £600,000. In their wills they leave their assets to each other, with the survivor leaving the assets in equal shares to their four adult children. If they were to die together in a car accident in July 2009, the position would be as follows:

	IHT £	CAT €
UK Assets (at exchange rate 1.1)	600,000	660,000
Jersey Assets (at exchange rate 1.1)	900,000	990,000
Total	1,500,000	1,650,00
IHT exemptions 2x £325,000	(650,000)	
CAT Exemptions 4 x €434,000		(1,736,000)
IHT/ CAT taxable amount	850,000	Nil
IHT/CAT payable	340,000	Nil

If instead they had retired to Ireland in January 2006, and did not make sufficient return visits to the UK to be regarded as resident there from 6 April 2006 onwards, they would have been non-UK resident in 2006-07, 2007-08, 2008-09 and 2009-10. They would have been only resident in 16 of the tax years up to and including 2009-10 and would therefore not be deemed to be UK domiciled for IHT purposes for that year. Accordingly, the computation would look something like the following panel.

	IHT £	CAT €
UK Assets (at exchange rate 1.1)	600,000	660,000
Jersey Assets excluded	Nil	990,000
Total	600,000	1,650,00
IHT exemptions 2x £325,000	(650,000)	
CAT Exemptions 4 x €434,000		(1,736,000)
IHT/ CAT taxable amount	Nil	Nil
IHT/CAT payable	Nil	Nil

Finally, it must be borne in mind that there is no relief in the CAT code equivalent to the potentially exempt transfer (PET) in IHT, under which most gifts to individuals will be exempt altogether, so long as the transferor survives seven years from the date of the gift; where the transferor dies more than three years after the gift, the rate of tax reduces from 40% on a sliding scale. In contrast, under the CAT code, lifetime gifts will erode the relevant exemption threshold and gifts whose value exceeds the threshold will be subject to an immediate charge to CAT at 25%. It may therefore be advisable in appropriate cases for individuals relocating to Ireland to consider making PETs of UK property before they become resident for CAT purposes in Ireland. The UK and Irish CGT consequences (see above) of such transfers will *inter alia* require to be taken into account.

Conclusion

Ownership of cross-border assets raises many intricate tax issues and each individual's circumstances are particular to them. Hopefully, this brief article has flagged up the paramount importance of careful advance planning in this area and the opportunities which exist for significant tax savings.

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