SPAIN

IHT 'timebomb' could hit Brit owners

Property owners in Spain hoping to provide some security for their children or spouses after their deaths could be leaving them a financial headache instead according to a Corporate property ownership specialist.

"Non-domiciled property owners in Spain are sitting on a ticking inheritance tax (IHT) time bomb," warns Mark Roach of Wincham Investments. "Most owners do not understand that their heirs and their estate may pay IHT in two jurisdictions, Spain and their country of domicile. In Spain, the individual inheritor is taxed, whereas in other countries it is the estate that is taxed.

"This could mean that on the death of an owner the surviving partner, or the owner's beneficiaries, could have a tax bill that virtually wipes out the entire Spanish inheritance. Added to this is the cost of probate in both countries too."

One solution proposed by Roach is for the owner/s to gift the property to a UK Private Trading Limited Company. "There would not be a 7% transfer tax in Spain on this transaction unlike other property transfer transactions," he adds. "This method may eradicate all taxes in Spain in the future, in respect of the property, as a UK Company, for example, is only taxed in one jurisdiction, the UK, and no taxes are payable onwardly in Spain.

"Shares in the UK company can be dealt with in a UK will and, depending on the structure of the company, the shares may be exempt from Inheritance Tax in the UK."

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An alternative view

However, Peter Esders, partner at the International Law Partnership, disagrees with some aspects of Wincham's model.

"It is correct that tax rules in Spain and the UK work differently and UK domiciled owners of property in Spain may have to pay IHT in Spain," he told OPP. "It is also true that IHT may have to be paid in both jurisdictions. However, because of Double Taxation Treaties, tax paid in Spain is offset against tax due in the UK. Therefore, only any difference due in the UK is payable. The problem is therefore not as detrimental to property owners."

Esders added that the solution proposed by Wincham, in which owners gift the property to a UK Private Trading Limited Company, has been around for many years, but is not advisable for the majority of cases.

"Firstly, a gift of a property in Spain can give rise to gift tax which is taxed at the same rate as IHT in Spain – meaning there is no saving in Spain. Even if the transfer is carried out as a sale there will be taxes associated with the transfer (transfer tax, capital gains tax) and legal fees which could amount to more than the tax the owner is trying to save."

Not for everyone

"It is vital to remember there is not one solution for everyone, rather, any tax problems should be tackled on an individual basis taking personal circumstances into account," added Esders.

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