The Schmidt Tax Report

Tax, Money & Property

July/August 2016

For a nation to try to tax itself into prosperity is like a man standing in a bucket and trying to lift himself up by the handle.

- *Winston Churchill*

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Tax

HM TREASURY

News

EU proposes clampdown on corporate anti-avoidance

The European Commission has published recommendations regarding how to stop corporations from avoiding tax, although many MEPs feel the recommendations don't go far enough and want stricter limits on deductions for interest payments, tougher rules on foreign income, more transparency for trust funds and foundations, common rules for 'patent box' tax reductions on intellectual property earnings and an EU blacklist of tax havens and sanctions against uncooperative jurisdictions. The European Commission proposals are based on the principle that tax should be paid where profits are made and include legally binding measures to block the methods most commonly used by companies to avoid paying tax. Measures include: drawing up an exhaustive blacklist of tax havens and countries, prohibiting the use of letterbox companies, introducing a common consolidated corporate tax base (CCCTB), introducing a common method for calculating the effective corporate tax rate in each member state and a common European taxpayer identification number (TIN) to serve as a basis for an effective automatic exchange of information between member states' tax administrations.

Osborne proposes UK corporate tax rate of 15%

George Osborne has revealed plans to slash the UK corporate tax rate from 20% to less than 15%, just 2.5% higher than Ireland's, where a number of multinational corporations, including Facebook and Google, base their European operations.

Tax evaders face jail

HMRC has seen several tax evaders behind bars in the last month, including film producers, accountants, financial advisers and investment bankers attempting to defraud the Government of tax worth £2.2m. Sentences add up to 36 years.

Serious tax evasion up

HMRC experienced an 8% increase in serious tax evasion cases for 2015/16, according to legal firm Pinsent Masons, as the government department referred an additional 3,000 suspected instances for specialist investigation. The law firm suggested that the figures represent how HMRC is under "continued political pressure" to clamp down on aggressive tax avoidance and evasion. Interestingly, HMRC investigations into high-value companies it suspects of using transfer pricing to avoid tax have fallen by 15% in a year, according to UHY Hacker Young. The number has slumped from 450 in 2013/14 to 391 last year, as HMRC is witnessing a decrease in the number of companies that use aggressive methods to mitigate their UK tax bills.

Supreme Court for Spot the Ball

In May, Sportech, the company behind the Spot the Ball competition, won its case with HMRC over £97m worth of

wrongly applied VAT. However, Sportech has been informed that HMRC has now applied directly to the Supreme Court for permission to appeal the Court of Appeal's unanimous judgment. Sportech claims that Spot the Ball is a game of chance, not skill, and should be exempt from VAT.

EU investigation into Panama Papers

The EU has authorised an investigation into the Panama Papers in order to discover how wealthy individuals, politicians and multinational corporations were able to hide substantial levels of wealth in the Central American tax haven. A special committee with 65 members will have 12 months to present its report.

Editor's Notes

A new look for **Schmidt**

Welcome to the new-look *Schmidt Tax Report*. As you will see, we have increased the number of pages and for the first time in over a quarter of a century given the newsletter a more visual feel. Although our main interest is tax, we have continued to extend the coverage to other related areas, such as personal finance and property investment. We hope you will appreciate the new changes and we would be very grateful for your feedback and comments.

What now?

Whatever your personal opinion about the result of the EU referendum and whatever happens next, we are in for a period of uncertainty. As there was no concrete, agreed exit plan prior to 23rd June and none has yet emerged, it is impossible to do more than guess at what the future holds. In no area is this uncertainty more apparent than in that of tax, which, after all, is linked in innumerable ways to every stage of our lives from birth to death and beyond. Over the years, the UK's tax system has become more and more entwined with that of Europe. It is built around the assumption that there will be a single market with the free movement of goods and services and – broadly speaking – a similar tax system in every country.

There are two possible outcomes at this juncture: Britain will leave or remain in the EU. The process will take at least two years and it isn't inconceivable that it could take much longer. During the period it is being resolved, it is unlikely that we are going to see much change to the existing tax system. It is possible that who is in government may respond to the economic situation by increasing the tax burden or (less likely) by reducing it. If Britain does leave, the same is probably true. Although it would be a wonderful opportunity to both simplify the system and make it fairer, few politicians have either the appetite or the knowledge to push through wholesale change. If Britain leaves, there is a chance a future government will offer major tax incentives to foreign investors, but such an offer, if it ever occurs, is years away.

The tax system may look broadly similar in 2017, 2018, 2019, 2020 and beyond, but one thing is pretty definite: taxpayers are likely to have to devote more time to managing their tax affairs. To do this it is more important than ever before to understand all the options, opportunities and possibilities. There is probably more need for *The Schmidt Tax Report* now than ever before.

If things do take a turn for the worse

There is a lot of talk about recession and if things do take a turn for the worse then cutting overheads – including tax – may become of vital importance to the long-term success of your business. Here are a few things to consider.

Spend £100, get £33 back

Larger businesses automatically claim all the research and development (R&D) costs they can against their tax bill. Small to medium-sized enterprises often don't realise quite how beneficial the R&D environment is. Thanks, as it happens, to the EU, research and development can actually be profitable. This is because it is possible to claim 130% of the actual cost plus other benefits, such as a 10% tax rate. The rules also allow claims from businesses engaged in a very, very wide range of activities. On average, the annual R&D tax credit claim made by an SME in the UK is around £50,000. In 2012, the R&D tax claim enhancement (the enhanced deduction) for SMEs was increased to 225% of the qualifying R&D expenditure incurred and in April 2015 it rose to 230%. The cash benefit of an R&D claim can now be up to 33% of the R&D expenditure identified – if an SME spends £100 on R&D, it could recoup £33 from HMRC.

A great loss

I wrote last month about HMRC's attitude to losses, and in particular sideways loss relief, whereby losses from, say, what may appear to have been a hobby business are claimed against income from other sources. There have been many tribunal cases, including *R Murray and Ms J Thorne* (horses), *J Henderson* (commerciality of farming business), *B and R Scrambler* (reasonable expectation of profit) and *Rowbottom* (yachts). If losses are to be claimed successfully, it is vital that you can show you are carrying on on a commercial basis with the purpose of realising profit. Having a business plan, advertising, making sound commercial decisions and even evidence of bartering (see below) all count as badges of trade. Managed successfully, all sorts of activities will be allowable for relief purposes.

The benefits of barter

In the early 1990s, when I owned a business-to-business publication and cash was tight, I joined one of the larger, international barter clubs. I was able to barter advertising space at virtually rate card (i.e. the highest possible rate) for all sorts of others' goods and services, including – ahem – a week-long stay at the Royalton Hotel in New York (a business trip, of course). Barter has come in and out of fashion ever since but it always seems to grow in popularity during a downturn. After all, it is an excellent way to obtain necessary goods and services without recourse to money. Indeed, I would strongly recommend it. A word of warning, however. It may be tempting to forget about one's barter transactions when it comes to preparing your regular accounts. After all,

if you come to a private arrangement with another business owner, who is to ever know? The answer is, of course, probably no one. But for tax purposes, if you provide goods or services, they count as sales, and if you receive them, they count as purchases. It would be worse than embarrassing, moreover, if your barter partner declared the exchange on their return but you didn't. The important thing is to be able to produce evidence to justify any valuation you use.

Cheery news for one taxpayer

A taxpayer who took part in a tax-avoidance scheme in the year to April 2009 appealed HMRC's decision to disallow a £630,000 plus tax saving. HMRC wrote to the taxpayer in 2011 telling him that his return was under inquiry but, by mistake, stated that it was looking at the tax year ending 6th April 2009, which is, of course, a day after the actual date. The tribunal judge, Jane Bailey, felt that HMRC had stated an intention "to enquire into a tax return for a year which did not exist". The taxpayer claimed the mistake about the date was fatal to HMRC's case, even when there could be no reasonable doubt as to which year was intended. HMRC argued that it was clear to the taxpayer which return was under inquiry. It also said the date "was only one day out, it did not mention the wrong year".

Ask The Experts

Q. Wife is 65, 20 years younger than her husband. Can she achieve inheritance tax efficiency by means of commencing a workplace pension now? The husband has property investments and the wife takes a salary as part of her management involvement in looking after the property investments. Her salary is paid through a limited company – the existence of which is for the purpose of acting as principal employer to the husband's pension fund.

The pensions regulator is calling for workplace pension.

Is this an opportunity to pay a workplace pension to the wife – thus allowing her to utilise her expertise in property management in order to grow the assets of the workplace pension – and allowing her in due course to pass on the pension pot of her workplace pension as an IHT-free payment, bearing in mind the changes in pension fund law which occurred as part of the last Autumn Statement?

The wife already has two pensions:

- NHS in full payment
- State pension

On the other hand, by way of seeking to make the matter straightforward, would it just be possible for the husband to arrange a workplace pension where the premiums are paid directly from the property investment business? After all, the wife is in practical effect employed by the private property rental business. Would this overcome any problems arising from the payment of salary through the separate limited company?

Your advice and comment would be greatly appreciated.

I. B. W., via email

A. Normally auto-enrolment is viewed as an unnecessary burden by micro companies, but you are correct: it can also be turned to your advantage. The wife has probably already reached state pension age so she is not obliged to be part of auto-enrolment but she can choose to be. The pension pot which is created can then be passed on to the next generation free of IHT.

The pension must be set up and run by the company for which the wife works; otherwise, the company will not be complying with its auto-enrolment obligation to make a pension available for the wife to opt into. It would not be possible to discharge this obligation by the investment business establishing the pension: the employer is the company and so the employer is obliged to provide the pension.

If the wife is director of the company and there are no employment contracts in place then auto-enrolment obligations can be dispensed with and you can reply to the pension regulator advising him of this fact.

Q. Your articles often allude to investment property having tax advantages in a limited company.

Surely if the investor spends the profits each year he will be paying rates of either 46% or 26% (20% CT on profit and then the dividend rate on net drawings available on higher or lower rate)?

This is compared to income tax rates of 40% or 20%.

Additionally, if the properties are kept out of a corporate structure, profits on disposal will be subject to 28% or 18% CGT, whereas within a company they will be approximately 42% and 34% (again based on drawing all profits available).

Or am I missing something? Particularly with the actual disposal itself unless there are inheritance tax issues I cannot see the benefits of holding properties in a limited company.

K. F., via email

A. We agree with you: as a general rule we would not advocate holding investment properties in companies, but every case must be looked at on its own merits, and for particular people in particular situations it may be a desirable option.

Holding properties in companies is being advocated by some people now as a way of circumventing the new rules restricting interest relief on buy-to-let properties owned by individuals. These restrictions don't apply to companies, so a company will be able to set the full amount of the interest against its rental income. But, then, given that a company only pays tax at 20% on its rental income, is this really a benefit? Transferring properties into a company can create SDLT and CGT charges, which would definitely be a disincentive. Furthermore, borrowing costs are usually much greater for companies. So the extra interest will generally counteract any extra tax relief.

A company can be advantageous if the rental income is not drawn out as it would then only be taxed at 20 rather than 40%, and if the property is sold companies get indexation whereas individuals don't (but individuals get the annual CGT

exemption). But we agree with you that if the profits are to be paid out annually as dividends there isn't much point routing them through a company as the corporation tax + dividend tax is the same as the income tax on rental income for a higher-rate taxpayer.

A family investment company is a good way of splitting income between family members and has many of the advantages of a trust without the punitive tax rates now levied on trust income. They also can be a good way of taking advantage of the new £5,000 nil rate band for dividends.

Look at each case on its merits depending on the clients' circumstances and objectives.

Q. The current total value of my parents' assets (what my father had at the time of his death, plus what my mother had at that time) is a little over £1m, of which the value of the house (held as tenants-in-common) is £370,000.

If we work with the figures of £1m and £370,000, would I be correct in thinking that if we used a deed of variation to get rid of the trust, that were my mother to die after 2020, the allowances would be £650,000 + 2 × £175,000, so £1m, hence no IHT to pay when her estate is distributed to my sibling and myself? And is it possible to claim the £175,000 allowance for my father at that time, even though he passed away on 4th March 2016 just before this year's Budget?

Were house prices to continue rising, and we were working with a figure of £1.2m at the time of my mother's death (again assuming after 2020), is there any way of avoiding IHT on the £200,000 over the £1m figure, ideally without going down the route of buying agricultural land?

J. H., via email

A. You are correct, yes. Your mother will be entitled to 2× the full £175,000 residence allowance if she dies after April 2020. Your father has not claimed any allowance so she is permitted all of his allowance, even though the allowance was not available when your father died. So if the house is worth at least 2 × £175,000, there will be no IHT if the whole estate at that time is worth £1m.

If you feel that the estate may be worth more than £1m by the time your mother dies, you should consider giving some of her assets to you and your sibling now. If your mother survives seven years, these will escape IHT, if she doesn't survive seven years you will be in no worse position than if no action is taken. Alternatively, you can get insurance to cover the potential IHT due or invest some of her money into a portfolio that includes qualifying shares, which will generally be in AIM-listed companies. Many investment houses offer such portfolios and a financial adviser will be able to recommend one for you. Such portfolios qualify for business property relief after being owned for two years.

Buying A Property: A Tax-Planning Checklist

You could be forgiven for thinking that buying a property was sufficient hassle anyway, without having to bother your head about tax matters at the same time. Unfortunately, though, making the wrong decision in any of the areas mentioned below could have a serious effect on the amount of tax you pay in the future. So we hope that what follows is a handy checklist for readers to cut out 'n' keep for future (or present) use when in the throes of negotiating a property purchase.

What any kind of generic article like this can't be, of course, is a complete pack, enabling you to decide exactly how to do things: inevitably the aim has to be less ambitious than that, in listing out the questions you should be asking yourself before buying a property and explaining why these questions are so important. In some cases the answers to the different checklist items will, indeed, point in different directions. The art is then deciding which of the various tax reliefs etc. are more important to you.

1. Are you financing the purchase in a tax-efficient way?

Typically, a property purchase is financed partly by borrowing from a bank or building society and partly out of one's own resources. The days of 100% mortgages are not quite past (indeed there are signs they may be returning), but typically a reasonably substantial deposit is going to be needed.

And when the money you need for the deposit is in a limited company you control, it is very tempting to use that money in a straightforward, but highly tax inefficient, way: by taking it out as a dividend and then buying the property (or putting down a deposit on it) in your own name.

But consider the alternatives. A reasonably straightforward alternative, if the bank will lend to the company, is for the company itself to acquire the property. That way you don't lose the up to 38% or so income tax that HMRC will grab off you because of the dividend. Buying in a company isn't always ideal – there are lots of pros and cons, which we would be digressing too much to list out in full here – but there is also a 'third way'.

This is to buy the property in a limited-liability partnership (LLP) of which the company is a member. The company introduces the funds it has that are needed as equity capital into the LLP, and you, as an individual, are also a partner in that LLP alongside the company. So you can get many of the advantages of individual ownership, including arguably lower capital gains tax (CGT) rates, the ability to take the rents without paying 'dividend tax', and so on, while at the same time using the company's money to fund the purchase. An example of the best of both worlds.

2. Is the buy-to-let loan interest restriction a problem?

This has been very much in the news recently, of course, and a lot of (in our view completely justifiable) indignation has been caused by these new rules, which phase in over four years from April 2017. In short, interest paid on loans to buy such properties will no longer be available for higher-rate income tax relief. In some cases, people will end up paying more tax than they are actually receiving in net rents.

Why is this a planning point? Because, as is reasonably well recognised in the buy-to-let community, limited companies are not subject to this tax relief restriction. So, if you are a potential sufferer from these new rules, consider buying either in a company or in an

LLP with a company member, providing the finance via the limited company.

3. Will you be caught by the new 3% stamp duty land tax surcharge?

Another headline-grabbing move in Mr Osborne's apparent campaign to annoy as many different sectors of society as possible was the imposition of a 3% stamp duty land tax (SDLT) surcharge for purchases of residential property on or after 1st April 2016. Contrary to some mythology which still seems to be floating about, this applies to all potential purchasers, and limited companies aren't exempt. Indeed, limited companies are less favourably treated than individuals, because there are no circumstances in which they can pay anything other than the 'enhanced' SDLT rate.

So, if the circumstances are right, think about whether there is any way you can enjoy the old SDLT rates, without the 3% surcharge. There are two ways to do this:

- Be an individual who owns no other residential property; or
- Be an individual who owns other residential property, but who is buying this property as your main residence.

There are no doubt interesting planning possibilities in respect of the first of these ways of getting relief. Interestingly, if you don't own any other residential properties, you pay the lower rate of SDLT even if what you are buying is a buy-to-let property. So we foresee the spreading of ownership amongst family members, perhaps, here. But bear in mind that you don't get relief for joint purchases where any of the joint purchasers has another property and where the property being bought isn't the main residence of all the purchasers.

4. Is there any non-SDLT-able element in the purchase?

Although this planning idea isn't new, it's become much more important with the massive hike in SDLT rates in recent years (most of us still remember the time when stamp duty was only 1% flat).

In its most straightforward form, you could separately value things like the carpets and curtains in a residential property, and exclude that from the purchase cost. So anything which isn't a fixture (a fixture being legally part of the building and therefore subject to SDLT) should be valued at its full value and taken out of the SDLT calculation. Moving on from the carpets and curtains scenario, there are potentially big savings to be made if the property you are buying is trade related. This is a big source of wrangling with HMRC at the moment, but fortunately HMRC is quite demonstrably wrong: and it knows it. Let's give a bit of explanation of what we are talking about here.

A trade-related property is one where a business is being carried on in the property and the identity of the property itself is central to the success of that business. Examples of this are pubs, restaurants, hotels and care homes. Because the trade and the property are so closely linked in examples like these, the reality of the situation is that, when you buy a trade-related property, you are buying both the structure of the building itself and the goodwill of the business. And this is where the dispute with HMRC comes in. The Revenue's view, although it seems to have changed somewhat, is basically that you can have little or no goodwill where you are buying a trade-related property, because of the way it says you should value the property, and particularly how you should apportion the purchase price between bricks and mortar on the one hand and goodwill on the other. Unfortunately for HMRC, no chartered surveyors (outside the Revenue itself) and no accountants agree with it. Oddly, the cases on this point which are currently progressing towards the first-tier tax tribunal are being subject to massive delaying tactics by HMRC: what can it be afraid of?

So, in the meantime, you should certainly stick up for your rights, and follow what all the real experts say, by making a fair apportionment of what the property would be worth without the trade, and what it is worth with the trade, and allocating the difference to goodwill – which is not subject to SDLT.

5. Fixtures

This one is relevant if the property you are buying is either not a 'dwelling house' or is a dwelling house you are going to use as a furnished holiday let. In case anyone has missed our banging on about this point in previous articles, and for new readers, we should briefly explain here that when you buy a property you are buying a mixture of structure (for which there is no tax relief against any income you receive from the property) and fixtures (for which there is tax relief). So when you're buying a property like this, you need to be careful that you are picking up the full tax-relievable value. Not only that, though, but there is now red tape to be satisfied before the purchase completes.

In the past HMRC has been incensed by taxpayers claiming relief for expenditure that they are due relief on as a result of claims instigated by wicked capital allowance consultants. So their response, predictably enough, has been to make it much more difficult for you to claim your due. We won't go into the details here because if your solicitor is switched on he will know about them, or have access to advice about them, but suffice it to say that you need to get the fixtures element, and the vendor's treatment of fixtures in the past, agreed before you sign that contract.

6. Does the property need work done on it?

This question is relevant if you are buying a property from which you expect to derive an income: either by letting it to a tenant or by occupying it yourself for the purposes of some business.

As far as tax relief is concerned, there is a right way and a wrong way of doing the work once you have possession. Commercial and other considerations may trump the tax ones, of course, but basically the wrong way is to do a massive one-off refurbishment before you start occupying the property; and the right way is to do the work that is needed gradually over a period.

The reason why the tax system favours the latter way of doing things is that major

expenditure, particularly on purchases of a property, tends to be disallowed by HMRC as 'capital' – so that you only get relief for such expenditure when eventually you sell the property, and you claim this as improvement expenditure against your capital gains. Even this relief is only available if the expenditure is still reflected in the state of the property when you come to sell it.

By contrast, gradual work over a period is likely to be allowed as 'repairs and maintenance'.

7. Can you 'spread' the future capital gain?

Most people who buy properties, other than their main home, buy them with a view to enjoying future capital growth, which, at least to judge from past performance, would seem to be a certainty. CGT will ultimately be payable, in all probability, on that future growth in value when you come to sell the property. CGT is charged at a rate of 28% for residential properties and 20% for non-residential. But each individual owner has available an annual exemption from CGT, which is currently worth about £11,000. So, to state what is almost the obvious, if a property was bought in the name of, say, five members of one family (including children who are under eighteen) you will have over £55,000 exemptions to offset, potentially, against that future gain, rather than only £11,000 or so if you buy it in an individual name.

You may say that spreading the ownership of a property like this is easier said than done, because a bank is unlikely to be interested in lending to joint owners who are not spouses and either are very young or have no income of their own for other reasons. Perhaps an answer to this sort of situation will be buying the property in a family LLP, which takes out a loan from the bank on a commercial basis. Within an LLP, you can write the rules such that any future gains are shared out amongst the family or other individuals so as to maximise the annual exemptions. This is obviously rather more ambitious planning than simply buying property in joint names; nevertheless, it could pay dividends in the future if the numbers justify it.

8. Capital losses, anyone?

Sometimes you will find that one of the proposed purchasers, or someone associated with them, has made some kind of capital loss in the past. For example, they may have invested in an unsuccessful business or other investment. So the question arises as to whether one should arrange things, on purchase of the property, to ensure that any future gain on selling that property accrues to the person who has the capital losses. Capital losses can't be passed from person to person, and although you could move the ownership of the property itself to the person with capital losses brought forward at some future date, this disposal is itself likely to give rise to CGT at that time on the transferor individuals. So it's obviously best to get things right regarding the ownership from the outset.

9. Does anyone have rental losses brought forward?

A similar consideration applies if one or more of the proposed owners of the property, or someone closely associated with them, has losses of an income nature brought forward. If, for example, you've consistently paid more interest, and laid out more in repairs etc., than you've been receiving as rents, these losses are brought forward automatically and offset against any rental profits you make.

Or not quite any. HMRC will claim that the profits have to arise in the same 'business' as the previous losses did. While not everyone agrees with them in applying the rules with the same rigour, if it is possible to structure the ownership in exactly the same names for the new property as the losses were incurred for the old property or properties, this will make a challenge by HMRC for the use of the losses impossible.

10. Can you structure the purchase to get rollover relief?

Rollover relief is a relief against CGT. If an individual or a company has made a gain from selling a property, or indeed another type of asset within certain specified classes, the tax on that gain can be rolled over if there is the purchase of a property, which is also used for the purposes of a trade, at any time in the period one year before to three years after the sale of the old asset.

So, again, it's a case of making sure that the person or entity that makes the acquisition is the same as the person or entity that made the gain on the old asset. It may even be that there is an option as to whether to use the property, at least initially, as a trading property and hence make rollover relief available where it may not have been. Interestingly, if you sell an asset you use for a trade, and buy a property which you also use for a trade immediately on acquisition, the gain that is rolled over into the new property doesn't get clawed back and taxed if you then subsequently cease to use the new property for trading purposes.

11. Can you structure the purchase to maximise inheritance tax business property relief?

There are two different scenarios where your choice of ownership structure for the new property could result in a lot more of your estate enjoying 50% or 100% relief against inheritance tax (IHT) under the business property relief provisions.

In scenario one, the property you're buying may be a 'pure' investment, which you are going to let out to an unconnected tenant for rent. If, though, you are also running a trading business, there may be a way to domicile both the trading business and the investment property together so that overall the entire value still qualifies for relief. Relief is available for a business or an interest in a business; or for the shares in a company carrying on a business, except where the business concerned is wholly or mainly one of making or holding investments. So the implication of this is that, if you have at least 50% in the nature of trading activities in your business, you will get relief for the whole value. Mixing together investment properties and trading assets in this way can therefore get you relief where relief wouldn't have been available if, say, you'd bought the investment property outside your trading business entity. (Obviously, there are a lot more considerations to take into account, in deciding whether to buy a property within

the business entity, and what business entity to have in the first place, that we have no space to discuss here.)

Scenario two is where the property you are buying is itself to be used for the purposes of a trade. If you are increasing the scale of your business assets in this way, could you consider doing the converse to the above, and moving other properties which perhaps you own and which are investment properties, into the same ownership as the new trading property?

12. Could you be moving the value out of your IHTable estate?

Again, this is a question of whose name you buy the property in. One way of planning against your own IHT exposure on death would be to execute a trust over the property, under which future increases in value in a property effectively go to the trust rather than going into your estate. For example, you could loan money to the trust, which becomes the legal owner of the property, and which, apart from repaying your loan, excludes you from benefiting. So when the value of the property goes up in the future this doesn't swell your IHTable estate.

13. Are you buying the property for someone else to live in?

If so, why not consider a different sort of trust arrangement?

The most common example of this scenario in practice is where parents buy, or help to buy, properties for their children: either to live in at university or later on in life. Sometimes the parents are reluctant to wave goodbye to the value completely, and so their temptation is to put the property into joint ownership, with themselves having an interest in the property corresponding to the amount of financial help they've given.

But the problem here is that the parents' share doesn't qualify for main residence exemption, even though the property is, perhaps, the main residence of the children. So CGT would be payable on the part of the proceeds, on ultimate sale, that relate to the parents' share.

You can get round this by buying the property in a Section 225 Trust. This trust has both the parents and the children (in our scenario) as beneficiaries, and the parents put money down to help fund the property. Do watch out for IHT charges here, incidentally, because IHT is due where money is put on trust which exceeds the nil band for each settlor (currently £325,000). Leaving that IHT issue aside, though, the benefit is that the whole gain on the property should now qualify for main residence exemption, on the basis that the children, who are beneficiaries of the trust, are living in the property as their main residence. And this is not in any way inconsistent with the parents still keeping a stake in the ultimate proceeds themselves, because they are beneficiaries of the trust too. It is just that, as beneficiaries, they aren't achieving any effective IHT planning by setting up the trust in this way.

14. Should you be making a main residence election?

Still on the topic of main residence exemption from CGT, this question is relevant if the property in question is being bought as a second (or third etc.) home.

The basic rule is that you don't pay tax on selling your own home, but that this relief only applies to one home, not to several. Because it can be a difficult question of fact deciding which of two or more residencies is the main home, the legislation has very sensibly given the taxpayer the right to nominate which one they want to enjoy the exemption. But the action point, which everyone should consider in this situation at or around the time of purchase, is that you only have a two-year window in which to make this election.

So consider carefully both which property you are most likely to sell and which property is likely to give rise to the biggest gain. Then make sure you put in the election in time, and, for a married couple, make sure that both husband and wife sign the election.

Buying a new property, interestingly, doesn't just give you the right to nominate that property as your main residence: it also gives you the right to nominate any of your other properties as your main residence from that date, even if you've owned those other properties for more than two years. So, in situations where you may feel you've missed the boat, because you've owned the properties beyond the deadline for making the election, you can revive the deadline, and start a new two-year clock ticking, by buying a different residence, even where you don't propose to nominate that newest of the residences itself as your main one.

Still on the subject of main residence relief from CGT, if you are a couple who aren't married, you can maximise your main residence relief by buying two residences in your respective names. That is, rather than each of you owning the two residences jointly, partner A could own 100% of property A and partner B could own 100% of property B. By making judicious use of the main residence election, you've doubled the available tax relief.

15. Are any of the proposed owners in financial trouble, or could they be in the future?

We'll finish off here with a point which isn't strictly about tax planning at all, but it is relevant because making a purchase in the name of a given individual may be excellent planning from the tax point of view but appallingly bad planning from the much more important point of view of asset protection.

This point of view is very simply expressed: if you put the property, or a share in it, in the name of any individual or company that could run into financial difficulties in the future, or is even in those difficulties already, you are endangering the whole asset. Often the way round this is to hold the property in some kind of trust arrangement for the financially vulnerable individual. The property is therefore still being held for their benefit, but, hopefully, should be outside the reach of the individual's creditors.

Hopefully the above list of questions isn't so formidable as to put you off the idea of acquiring a property at all! Clearly not all of the checklist items are relevant to all purchases, or even most of them. It's equally clear that there will

be other important tax considerations, in individual cases, which we haven't had space to list out here. But we do think that most of the important points have been covered and, if nothing else, it is good to ask the questions so as to stimulate thought on the areas where potentially huge amounts of tax could hang on doing things one way rather than another.

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Where To Now?

The EU Referendum is a gift for journalists, of course. All round 'Fleet Street' portentous and quasi-authoritative articles are being churned out by the gross, for example:

What will Brexit mean for your personal finances?

Will the Government impose new taxes?

What about inflation?

What about the pound?

Er... We don't know.

Although the above is based (with acknowledgements) on a typical spoof *Private Eye*-type article, this pretty much sums up the situation, as far as we're concerned. But as this illustrious publication isn't about discussing matters of purely academic interest, and has no interest in endless empty speculation, be assured that what follows has some practical relevance we hope many readers will find relevant.

The Government cease fire

Anyone working in advising clients on tax, and anyone interested in tax planning, will know there's been a pretty relentless attack by the Government on the tax-planning industry over recent years. The Chancellor has set the HMRC Rottweiler on businesses and wealthy people who dare do anything to reduce their tax liability – fuelled by the Revenue's inveterate opposition to the idea that anyone could save a penny of tax by being 'clever'.

This relentless bombardment has been excellent news for the paper industry: every year, for five or more years, massive Finance Acts have hit our desk, increasing the amount of tax legislation in this country well beyond breaking point. HMRC doesn't care: it has a mission and it will follow it through at all costs.

But in the March 2016 Budget, all this suddenly stopped. In fact, the tide even ebbed a bit, with some of the 'unintentional' and more vicious changes to capital gains tax entrepreneurs' relief being reversed, and this with effect from the previous year when they were first brought in. A few of us breathed a sigh of relief that we weren't going to have to spend the usual solid days trying to get our heads round all the implications of this profuse new legislation.

But is this a change of heart or only a ceasefire?

We all assumed, it has to be said, that it was only a temporary cessation of hostilities in the war of Osborne versus business and the wealthy. Perhaps he simply didn't have time to attend to the pawing of his faithful HMRC mutt pleading for vast amounts of more anti-avoidance legislation, because the question of Europe loomed much larger in his mind. Perhaps he was looking to woo the business community just a bit: we don't know (to quote the journalists).

We assumed, and still think it's safe to assume, that hostilities will break out again following the truce. However, a new factor has now entered the equation, in that we seem to have the prospect of a complete change of those at the helm. It will depend enormously on who becomes the new Prime Minister and the new Chancellor, now Messrs Cameron and Osborne have fallen on their swords, as to whether they continue this penny pinching and counterproductive assault on business and on our bookshelves or, on the other hand, whether someone who doesn't believe in this populist bashing of the wealthy and the business community takes over in the top job.

Our advice to anyone interested in tax planning is to keep a careful eye on who it is and what they say – not that you can exactly rely on that with politicians.

Recovering our sovereignty?

If you are involved in tax advice in any way, either on the giving or on the receiving end, you will know that we actually yielded our sovereignty to Europe a great many years ago. VAT is the clearest example of this. A pan-European tax, its exact terms were dictated to the UK in minute detail in an EU directive. If the legislators in the House of Commons fail to translate the directive accurately into English in an Act of the UK Parliament, basically UK taxpayers can ignore what the UK Act of Parliament says and appeal straight to the directive.

So this is practical point number one: throw away your copy of the VAT Act 1994 if you want to know what VAT law is: read the European directive on VAT instead. It's surprising how often these two conflict, and sometimes the European version, is more in your favour. Not only do the legislators in Westminster often show a cavalier disregard for the European original, but HMRC in its 'guidance' on the rules often ignores the clear purpose of what has been written in the European original.

Will all this go with Brexit? We don't know, but our own guess is probably not. At least during the period while we are still members of the EU, we will be bound by the terms of the directive, and that

could be a powerful weapon in the hands of the taxpayer (and has been).

Sometimes the actions of HMRC and the Chancellor are amusingly transparent. Take the example of the tax breaks enjoyed by furnished holiday lettings. These were introduced as far back as the 1980s to encourage this particular branch of the tourist industry. What they completely forgot, in those distant days, was that you can't favour somebody looking to establish themselves in the UK over a person looking to establish themselves in another EU member state.

It took them until five or six years ago to realise this (or perhaps some taxpayer pointed it out!) so the rules were hurriedly changed so that the tax breaks applied from a specified date to furnished holiday letting accommodation anywhere in the European Economic Area.

Practical point number two, then: never be afraid to challenge a UK tax law which seems to discriminate in favour of the UK and against other countries, particularly European ones – there are still dozens of examples of these in our tax laws that haven't yet been quietly tippexed out!

Freedom of establishment

Another example we've come across recently was a case where an individual borrowed money to invest in trading companies in other European countries. HMRC has recently kindly extended tax relief for interest on such loans. But perhaps it's not quite so kind as this seems? The fact of the matter is that the original rules, which only allowed relief where the company concerned was established in the UK, were contrary to the treaty establishing the European Union.

Despite this, Inspectors of Taxes still seem to be programmed to refuse claims for periods prior to the change in rules: we think they're entirely unjustified in doing this, and eventually will have to admit it.

Foreign losses

Another example, built into our tax system from at least the nineteenth century, is a sharp distinction made between losses incurred in the UK and losses incurred in other countries. Basically, if you're carrying on a trade abroad, these losses aren't off-settable against your UK income: but this is probably unsustainable in European law as well.

If you're carrying on a business overseas, of course, there are easier ways of bringing about a position where loss relief can be enjoyed than challenging the whole UK legislature under the Treaty of Rome: it's often possible to arrange things so that the business concerned is really a UK business, by managing and controlling it from a fixed base here. Even if a lot of the activities of the trade (such as manufacturing) take place in a foreign factory, if you can build up the picture of a UK trade by the way you organise things, you could sidestep the rules even as they exist in the UK statute.

The way forward

Although most of these points we've made depend on the existence and power of the EU, we don't think things are likely to change very much, at least for a long time, and in any event all the time we are still in the club the taxpayer has a potential weapon here against HMRC, which he shouldn't be afraid to use.

It's Not Fair!

This is a practical article full of what we hope are useful tax-planning tips. It's not an article about the philosophy of taxation. Nevertheless, we are bound to say that most writing and thinking on taxation you come across, particularly in newspapers and from the mouths of politicians, is on an amazingly superficial level, and it seems to be designed more to generate heat than light.
One of the phrases we are sick of hearing is 'paying your fair share'. It's based on the frankly ridiculous proposition that, if people never did any tax planning, the tax system would work out 'fairly' for them and for everyone else. This is a view that could only be held by someone who is unable or unwilling to think, or who is in almost complete ignorance about the way the taxes concerned, which people plan for, actually work.

So we thought it would be useful, and informative, to list just a few of the instances where the tax system acts unfairly to the taxpayer and unfairly in favour of HMRC. We're not so naive or stupid to be surprised that the system is biased in favour of the taxman in this way: after all, he wrote the rules. But it would be nice if we heard less cant about the tax system being fair and tax planning giving an 'unfair' result.

More importantly from the point of view of the purpose of these articles, where we think there's a possible antidote to the unfairness suffered by taxpayers, we'll point this out: so read on, not for a rant, but for a practical tax-saving guide covering a number of different areas.

1. Tax 'nothings'

'Nothings' are the name given by accountants to items of expenditure laid out for business (including investment business) purposes that don't secure any tax relief. As a result, the profit shown in the accounts of the business has to be increased, so that the taxpayer will be paying tax on a level of profit higher than he has actually made.

The most outrageous example of this, of course, is the recent decision to restrict tax relief on buy-to-let loans to the basic rate. You may say this is a populist swipe against the rich, who are higher-rate income taxpayers, but it's actually far worse than that. Individuals who actually have a pittance to live on, because their loan interest is so high, and who are 'naturally' only basic-rate taxpayers as a result, end up becoming higher-rate taxpayers because of the interest disallowance itself.

There are two antidotes to this particular type of 'nothing', each of which will be preferable in different circumstances. One is to hold the buy-to-let portfolio in a limited company or (if you can move it in without unacceptable tax charges) putting an existing personally held portfolio into a company and, second, holding the

portfolio in a limited-liability partnership (LLP) in which a company is a member, and in which it is possible to allocate a share of the rents to the company partner.

As well as this new outrage against fairness, there are a lot of longstanding ones. Business entertaining is an example. Because of the taxman's pathological fear of anyone enjoying themselves and saving tax at the same time, there is a blanket disallowance of all entertaining expenditure for business taxation purposes. It matters not that the entertaining may be customary in the particular trade concerned, or even in practical purposes absolutely essential to enable the business to make any profits. The business is forced to pay tax on a higher profit than it has actually made.

The one crumb of comfort, and one which has to be planned for, is that entertaining incurred by your own limited company, in which you are involved, is not, in practice, treated as a taxable benefit on you as an individual. So, if you take out a friend who is also an important customer, and the purpose of the entertaining is business related, you can at least have your own share of the meal (or whatever) without having to suffer income tax on its value as well. A few crumbs of comfort falling from the entertaining table.

Another nothing the taxpaying public has inexplicably put up with for hundreds of years is the disallowance of so-called capital expenditure. An example is a solicitor's fees for helping you buy a property. At least this type of expense gets added to the overall cost of your property and is offset against the proceeds in computing chargeable capital gains in the future; other types of capital expenditure don't get any relief at all. For example, if a lawyer or accountant is advising you on the capital structure of your business (whether to be a company, or an LLP, and what rules to have) these expenses are treated as capital and are written off against your profits without securing any tax relief.

The antidote here is to make sure that the professional concerned gives full value to any element of his or her advice that is actually allowable. An accountant, then, as well as advising you on how to structure your LLP etc., may also be advising you, at the same time, on the bookkeeping implications. This, arguably, should be an allowable expense since bookkeeping is part of the trade.

Our final example of a nothing (although there are many others) is where you take out a lease over a building and pay a premium. In some cases, and more so for shorter leases than longer, an element of the premium will be able to be claimed each year by way of a kind of 'depreciation' allowance. But a proportion, and in some cases the majority, or even all, of the premiums will not secure any tax relief – even though the landlord receiving the premium is taxable on it.

All we can suggest here is avoiding leases with big premiums, and, wherever possible, agreeing with the landlord a higher rent each year (which will be allowable) in place of the premium.

2. Tails you lose – Twice

Another scandalous offence against fairness, which HMRC pushed through without any difficulty because only a minority of people who run businesses are affected, is the artificial restrictions on loss relief where you make a trading loss. Until very recently, there was a certain fairness and symmetry about the system. If you make a profit in a trade, you pay income tax on it. If you make a loss in a trade, you can claim to offset it against your other income and reduce the tax that would otherwise have been payable on that income.

Not any more. The current purportedly Conservative Government has introduced major restrictions in recent years, in two waves: in the first wave, the overall amount of loss relief was restricted to £25,000 per person, per year where that person was not actively involved themselves in the trade, which means working in it for an average of at least ten hours a week. The second wave introduced an overall restriction even for active traders of £50,000 or 25% of total income.

HMRC would no doubt respond, correctly, that these loss relief restrictions have been introduced in response to aggressive tax-planning schemes whereby losses are created which aren't really losses. This was undoubtedly a major industry not so long ago.

But the real fact of the matter is that the law was arguably sufficiently strong already to deny relief for losses that weren't genuine. But the problem from HMRC's point of view was that it had to prove this in each case. How much easier for the Revenue to introduce a blanket restriction where it doesn't have to do any work.

If you doubt the extreme outrageousness of this change, consider a situation which is far from hypothetical. Alan is an entrepreneur who has successfully built up a business which makes £100,000 a year. Because he is always looking at new business opportunities, he sinks one year's profits in a new business that, unfortunately, is unsuccessful. So he loses £100,000 in that business. Because he's trying to run both businesses at the same time, he can't claim to spend more than ten hours a week on the new one, which is managed for him to a large extent by others.

So in commercial, that is real, terms, Alan has no income for the year at all because his £100,000 from the profitable business has been sunk without trace into the non-profitable start-up business.
Nevertheless, he has a tax liability of over £30,000. This is because £75,000 of the losses in the new business will be disallowed, leaving him with a large tax charge and absolutely no income to pay it out of.

The antidote? Most often, the best way to get out of this anomalous situation is to make use of limited companies. If both the profits and the losses accrue to the same company, or companies in the same group, they can be offset with no restriction, because this restriction only applies to individuals.
Bear in mind, of course, that domiciling the businesses in companies may be disadvantageous from other points of view.

3. Shareholder/Directors are treated as if they were 'employees'

For some reason HMRC acts, and talks, as if this were perfectly fair. The distinction between employment and self-employment is particularly important in the case of

National Insurance, with employees being subject to a much higher rate (sometimes more than twice as much) as the self-employed. In particular, where you are an employee, you have the infamous employer's National Insurance charge, which is neither more nor less than a payroll tax – it doesn't give rise to any entitlement to state benefits, despite the name.

If you are a shareholder/director of a company carrying on a business, you may, in commercial reality, be self-employed. You are in charge of the business, it depends entirely on you and you may also be taking financial risk by guaranteeing the bank overdraft or other creditors. But because you've structured it as a company, HMRC stings you for the payroll taxes.

The Revenue even had the cheek to express moral indignation at businesses being set up as LLPs with limited company partners. People were apparently getting an unfair advantage in the form of self-employed taxation on their own personal profit share from the LLP, but also getting the benefit of the lower corporation tax rate on the share of profits attributed to the company. So what, you might ask?

As far as the National Insurance differential is concerned, the antidote here is to trade as a partnership or an LLP rather than as a company. An LLP has the benefit of giving you limited liability, similar to that of a limited company, but without the National Insurance sting. As well as the National Insurance benefit, an LLP has the benefit of a much more sane and rational basis of taxing cars that are driven partly on business.

4. Capital gains tax when no gain has been made

The most egregious example of this is the fact that capital gains tax (CGT) is payable when you make a gift.

The reasons for this being a rule when CGT was first introduced in 1965 are no longer clear to us. Nevertheless, the impact of the deemed disposal of an asset at its market value, which occurs when you give it away, was reduced, indeed made fair, by the 'general relief for gifts' which used to exist. Under this relief, if both the donor and the donee signed an election form, the donee was treated as taking over the asset at its original cost – so the donor had no CGT to pay. This obviously fair arrangement was abolished many years ago, so now you only get relief for specific assets and types of gift, that is assets used for the purposes of a trade and assets given into trust (where there is a corresponding inheritance tax charge). The antidote to this factitious tax charge can sometimes be to use a trust, in order to benefit from the continuing availability of 'hold over' relief for such gifts.

Take the example of two old ladies living next door to each other. Each has received a portfolio of shares in her late husband's will, many years ago now. Each wants to give the shares to their children, to provide them with an income to assist with things like school fees for the grandchildren.

Edna, in Number One, makes a straightforward gift to her three children of the shares. She is horrified when an accountant tells her she has a big CGT charge to pay, which she hasn't kept enough money to settle. Elsie next door in Number Two had the foresight to take advice from one of these wicked tax planners. He suggested that, instead of giving the shares outright to the children, she give them into a trust for the children. So she did so, and as a result was able to hold over the gain and avoid the tax charge.

5. Non-residents are chargeable on UK rents

Possibly more arguable is the unfairness which we consider is suffered by non-UK residents who invest in UK property. It may be that they enjoy none of the benefits which supposedly flow from Government, and which are paid for by taxation (things like street lighting, policing etc. being covered not by income tax but by council tax or business rates on the same premises) but nevertheless they are chargeable to income tax because the properties are situated in the UK.

This tax charge is levied, no doubt not on the basis of its being 'fair' but on the basis of the fact that these overseas residents have assets in the UK which can be seized if the tax isn't paid.

One antidote to this, which just about still works, is the so-called back-to-back loan arrangement. By taking out an offshore loan secured against the property, the interest can be claimed as a deduction against the rents received, but a corresponding bank deposit, also offshore, gives rise to offshore interest which is not chargeable to UK tax.

We say this is "just about" still available because it is, of course, impacted on the restriction of interest relief we've already mentioned in number 1 above. But it should be borne in mind that this doesn't apply to offshore companies which are landlords, as they are only liable to tax at the basic rate in any event.

6. Taxation of 'earn outs'

It's frequently the case that, when a trading company is sold, the selling shareholders receive further amounts, after the initial purchase price, depending on how well the trade of the company does under its new ownership. These are often referred to as 'earn out' arrangements.

The taxation of earn outs is an unholy mess, owing to sketchy drafting of legislation combined with the decisions of very wise judges in the House of Lords, and inertia (to give no worse title) on the part of HMRC in clearing the mess up.

To give one example of how this can give an unfair result: Boris sells a company for £1 million plus an earn out, which is not ascertainable at the time of the sale. To everyone's surprise, the company, Brexit Limited, actually does very well after the change of ownership, and Boris ends up receiving an earn out of £600,000, that is another 60% on top of what he received as the initial payment.

From the tax point of view, Boris gets entrepreneurs' relief on the £1 million initial payment because this is straightforward. However, because no one thought there was going to be any earn out, the accountants doing Boris's tax return at the time of the original sale valued the rights to the earn out at nil. So the receipt of the £600,000, because of the decisions of the judges mentioned, is treated as the sale, not of Brexit Limited's shares but of the earn-out

rights. And – oh dear – earn out rights don't qualify for entrepreneurs' relief because they don't fit within the description of assets that do.

The antidote here is to avoid earn outs if at all possible or, if this isn't possible, consider taking the rights in the form of shares in the acquiring company. In some circumstances this can secure entrepreneurs' relief on the pay out, but you do need to watch out carefully for the small print here.

7. Input VAT blockages

Similarly to income tax and corporation tax, there are 'nothings' in the VAT world as well. Most notably, input VAT can't be reclaimed on the purchase of cars, even by a fully VATable business that intends to use those cars for the business, because there is a blanket blocking order. The only businesses that can reclaim the VAT element in cars are ones which by definition, almost, use those 100% for business, such as taxi firms and car hire businesses.

You can get round this to some extent by leasing your car rather than buying it, because 50% of the VAT on leasing charges is recoverable.

The same as for direct tax, entertaining is subject to a VAT disallowance. This is the case even if entertaining is essential for the business. We're damned if we can think of any antidote to this one!

8. The 'wholly and exclusively' rule

Here is a tax sacred cow if ever there was one.

One of the rules that applies in computing profits for tax purposes is that expenses are not allowed unless they are incurred 'wholly and exclusively' for the purposes of the business. Quite how anyone can ever have thought this was a fair rule escapes us.

If, for example, a businessman undertakes a journey abroad which is partly to do some essential business and partly to move on to take a much-needed break, the whole expenditure (not just a 'fair share' of it) is disallowable for tax purposes.

A famous case involved a lady barrister who bought dark coloured clothes solely for appearing in court, and gave evidence that she would never use those clothes other than whilst working as a barrister. This evidence wasn't good enough for their lordships, who threw out the claim on the basis that she 'must have' needed the clothes for warmth and decency as well as for business purposes.

Yet another example of a business being taxable on more profits than it has actually made, and the effect of the wholly and exclusively rule can be quite extreme, with a tiny element of private motivation for any expenditure disallowing the whole amount.

Sometimes the effect of this rule is avoided by trading through a limited company, because limited companies, generally, don't have 'private' purposes. In principle the directors of these companies could end up with a tax charge on an element of the expenditure as a benefit in kind; however, this is a lot better than a blanket disallowance of the whole expenditure.

Possibly a more effective antidote to this and the other unfairnesses we've mentioned (together with all the others we haven't mentioned) is writing to your MP: even if the only result is an unhelpful fobbing off letter from the Paymaster General (as normally occurs when you complain to your MP about tax), at least it may have the effect of reducing the current high levels of cant coming from the mouths of politicians!

The Offshore Column

The expat's dilemma (and how to solve it)

Following on from the referendum result, some 1.5 million British expatriates resident in EU countries are faced with the potential loss of their right to own property, live in it on a permanent basis, work without visas, access healthcare on the same terms as other locals and draw their state pensions after retiring. Many, concerned that the British Government will be unable to secure continued residency and work rights for them, are applying to obtain the citizenship of another EU country as an insurance policy.

According to the latest United Nations statistics, the greatest number of British expats are to be found in Spain, Ireland, France, Germany and Italy. If the British Government does not negotiate on their behalf then these expats are going to be in exactly the same position as someone who is, say, American, or Chinese. George Peretz QC, an expert on EU law, went on record as saying: "Anyone British who is in a position to get citizenship of another EU country, through marriage or investment, would be well advised to do so." Just three days after the Brexit result Ireland's foreign minister appealed to people in the UK to stop rushing for Irish passports, owing to the surge in applications.

So, what are the options for British expats? And what should they do to ensure they can go on living in their chosen country? In some countries an extended residency automatically makes citizenship a possibility. In other countries (such as Ireland) a close relationship with the UK is likely to lead to favourable negotiations. For those who are single, of course, there is always the possibility of an arranged (or genuine) marriage.

But what about everyone else and especially those who currently live in the UK and have been planning to become expat at some point in the near future? Paul Chancellor, who advises British residents keen to move to Malta, suggests that the wisest course of action would be to establish residency somewhere else now even if you have no intention of moving for some time. You can, after all, be resident in more than one place at a time. In other words, claim your EU rights to be resident in another country now so that they are well established in the event of Brexit proceeding.

Finally, it is worth remembering that many countries do offer citizenship in exchange for investment. Greece will do so in return for a property investment of €250,000 or

more, Cyprus in exchange for an investment of €2.5 million, Spain if you spend more than €500,000 on a property, Malta for as little as a €650,000 contribution to a national fund and €350,000 in Maltese real estate. Of course, once you have residency in any of these countries, living, travelling and working in other parts of Europe will be considerably easier.

The safest offshore centre in the world?

The Boston Consulting Group believes there is some $800 billion of offshore wealth located in the United States of America, almost 50% of which comes from Latin America. While this makes it a relatively small offshore centre compared to some (Switzerland holds $2.7 trillion) it is, perhaps, the fastest growing since the total amount increases by between 6 and 10% a year. How has it achieved such success? To begin with, it failed to adopt the international disclosure rules introduced everywhere else in the world in 2014. Instead, it introduced its own, much less onerous, regulations. America has also encouraged foreigners to invest in US banks by exempting funds held this way from both taxes and reporting. Moreover, trusts have been able to avoid IRS scrutiny providing the settlor appoints a local trustee and a foreign protector to direct the trustees.

Within the United States, South Dakota has become the leading provider of trusts. The state imposes no personal or corporate income tax, no upward term on dynasty trusts and strong asset protection laws. However, there is a possible fly in the ointment. As South Dakota trusts collect very little by way of fees from trust companies (just $1.79 million last year), politicians are proposing that a corporate income tax be levied (although there is no sign of this happening yet). Interestingly, well-established trust companies from overseas are moving there. For example, Trident, a Swiss trust company, opened an office in Sioux Falls. If you are foreign and have no business or close family connections with America, it is starting to look like the safest and most confidential offshore haven in the world.

A quick update on beneficial ownership

A quick reminder that under the terms of the fourth EU money-laundering directive, beneficial ownership is defined as anyone with control over assets and even those who have powers of management over them. Under the directive the beneficial owner can also be any natural person who ultimately owns, or controls the customer, in the case of trusts, it can include the settlor, trustees, protectors, beneficiaries and any other natural person exercising ultimate control over the trust by means of direct or indirect ownership, or by other means. Once the beneficial owner or owners have been identified, the entity must hold accurate and current information and that information must be held in a central register. Furthermore, the information must be made available to certain persons and authorities as well as any person or organisation that can demonstrate a legitimate interest. The only exception is where access to the information would expose the beneficial owner to acts of fraud, kidnapping, blackmail, violence or intimidation. Incidentally, the register should contain at least the following information on the ultimate beneficial owner: name, month and year of birth, nationality, country of residence and the nature and extent of the beneficial owner interest held.

The value of private insurance

One of the least used and most advantageous methods of managing wealth offshore is through the means of insurance. A properly planned private insurance strategy can help individuals cope with multiple tax regimes, achieve trust-like outcomes, alleviate the complexity in terms of tax administration and ensure the passing on of wealth at minimal or no tax cost. Such insurance contracts can be held by individuals, foundations, trusts or companies. They all, however, follow the same pattern: the client will pay a premium for a contract, the insurer will invest the premium in accordance with the client's chosen strategy and, ultimately, on the death of the insured (or some other agreed event), there will be a payment to the beneficiary or series of beneficiaries. The interesting thing about insurance is that it achieves favourable tax treatment in almost all countries in the Western world. For example, withdrawals from a Swedish insurance contract are completely tax-free. In the UK 5% a year of what has been invested can also be withdrawn tax-free. In France such a tax-free benefit doesn't exist but tax is reduced after a policy has been held for eight years. One of the other advantages of an insurance policy, incidentally, is that the assets belong to the insurance company and not to the individual. Insurance can also, incidentally, be used to defer tax. In other jurisdictions, it is possible to use an insurance policy in order to make tax-free gifts. Finally, there is – potentially – much greater confidentiality.

The Benefits Of Masterful Inaction

How is Brexit going to affect your personal finances? Immediately after the vote to leave, the pound, stock market, bonds and pension values all fell. Economists spoke of the country sliding or plunging into recession, interest rates rising or falling and tax increasing or decreasing. Political analysts announced we would be out of the EU within two years; others said it would never happen. Such a background of uncertainty (which has to be the most used word of the week following the referendum) makes financial planning a tad on the tricky side. Yet, if one looks back to previous periods of economic uncertainty the reality is that they all follow a pattern. Some event triggers a loss of confidence, markets rise and fall, eventually things return to some sort of normality and/or people learn to live with the new economic landscape. In short, there are winners and losers and which side you end up on is as much to do with how well you were prepared for the event as what you do after it has occurred.
As I write this, investors are piling into gold. It was around $1,260 on the 23rd June and now it stands as $1,330. Readers who followed this publication's suggestions may already have hedged with gold and if they had done so, say, six months ago, when it was hovering at around $1,100 they would be sitting on a tidy gain, but unless all their wealth was in gold it is debatable whether it will make a huge overall difference. Those buying now are really gambling on the weak-minded investor's rush for safety when things start to dip. The moment confidence returns, the gold price is going to start to fall again. Also, it has to be remembered that gold produces no yield, although (another recent *Schmidt Tax Report* suggestion) gold mining shares do. Anyway, the point I want to make is that gold is not going to be a universal panacea to all one's financial trials and tribulations until things settle down.

My own belief is that in the short term the best thing anyone can do regarding their personal finances is review their current position, monitor it and stay informed of all the political and economic facts likely to influence it. In the immediate future there is little chance of a sudden return of investor confidence (a dramatic U-turn may achieve this but seems extremely unlikely and, anyway, there would be a lot of patching up to do before things settled). I don't, for a moment, feel that markets have bottomed out. Ergo, masterful inaction is almost definitely the best course to take.

I was raised after the war and was brought up to expect disaster by a generation that had had to deal with disaster. My family's motto in Latin translates rather enigmatically into 'It increases by going on' (not something I can see anyone crying as they charge into battle) but my parents' approach to life was 'hope for the best, plan for the worst'. It's a philosophy that has much to recommend it.

It is a bit early, then, to make any firm suggestions as to how to deal with the current crisis. But there are some general points I would like to make:

• If you are an investor, it is vital to look beyond the market turbulence and bear in mind that low share prices and weak currency present opportunities. It was interesting to see that the FTSE 100, which is made up of multinationals exposed to lots of foreign markets, recovered much faster after the Brexit vote compared to the FTSE 250, which is a much more British affair. Yet, it is mid-caps that will probably offer the best opportunities in the future for they have fallen the most and are the most likely to show sizeable gains going forward. In general, I do not believe in active investing. On the other hand, there is no doubt that the largest gains (if you have an appetite for risk) are to be made by buying when prices have fallen. One way to hedge against further falls (if you believe that this is what is going to happen) is to buy into international markets such as Japan and the US but with weak sterling you are relying on those markets rising. An equally interesting approach would be to look for stocks and funds that will profit from recession. To give you one example, lots of people will probably not travel abroad if sterling is weak but may stay at home. Investing should always be for the long term, which is why doing nothing quickly is most likely to be the best option.

• What about British property? Homebuyers are, understandably, putting off deals, believing the market is going to dip. The only thing I would say about this is that buyers tend to look for discounts before sellers are willing to give them. Property investors always talk about shortages in property but during a recession, shortage or not, people cut their spending and move less. We can, of course, expect foreigners to come in and snap up bargains.

• When it comes to pensions, the people who are most likely to be affected by the current volatility are those approaching retirement. Thankfully, relatively recent legislation allows much more flexibility. There is no need to buy an annuity any more, although some will be tempted in the belief that rates are likely to go even lower in the future. I would certainly recommend, if possible, not drawing on your pension yet if you can possibly wait. It will be worth more by doing so. Younger investors can, of course, afford to ride out the turbulence.

The same pundits who have used the word 'uncertainty' for the last few weeks have also bandied about the expression: 'May you live in interesting times', claiming, of course, that it is an ancient Chinese curse. In fact, there is no such curse or expression in Chinese. Make of that what you will.

Jonathan Self

Tapered Annual Allowance

One of a number of the subsequent amendments to the 'simplified' pensions regime has been the introduction from 6th April 2016 of the tapering of the annual allowance for individuals deemed to have high incomes. Since that date individuals with taxable income of greater than £150,000 in a tax year have had their pension annual allowance for the tax year restricted, potentially to as little as £10,000. As might be expected with the simplified regime, all is not wholly straightforward, given the evident concern that individuals might seek to avoid the new provisions by taking reduced remuneration in exchange for increased pension contributions. The extent of any tapering is therefore based on 'adjusted income'.

However, to provide some certainty for individuals with lower incomes who may periodically experience spikes in their employer's pension provision, a test is first made to see whether the individual's income exceeds the 'threshold income' figure. It is therefore first necessary to define the terms involved.

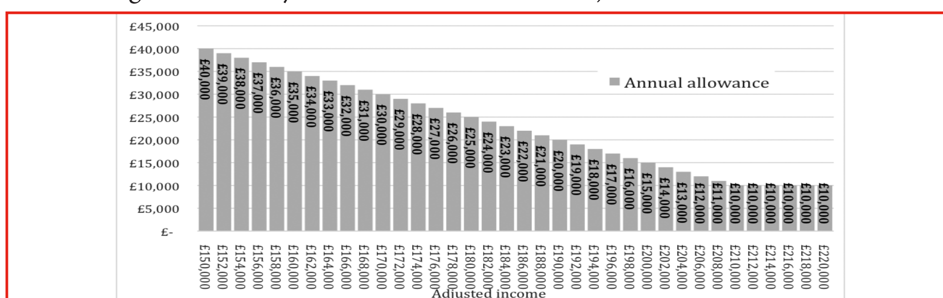
Adjusted income for the tax year is the individual's taxable income (i.e. after trading losses, share loss relief, charitable donations and various other allowances, as detailed in s 23 of the Income Tax Act 2007) from all sources ('net income'):

• plus the value of pension contributions made under a net pay arrangement
• plus the value of any pension contributions using excess relief under net pay provisions
• plus, for UK non-domiciled individuals making contributions to overseas pension schemes, any contributions attracting UK tax relief
• plus the value of pension contributions using relief on making a claim provisions
• plus the value of any employer contributions to defined contribution schemes
• plus the pension input amount (calculated using the annual allowance methodology) less the gross total of any pension contributions paid by the member to defined benefit and cash balance schemes
• less any taxed lump sum death benefits received.

Threshold income for the tax year is the individual's taxable income as defined above:
• plus the amount of any employment income foregone via a salary sacrifice arrangement made on or after 9th July 2015
• less the gross total of any pension contributions paid by the member
• less any taxed lump sum death benefits received.

If threshold income is less than £110,000, no tapering applies. However, if it exceeds this figure, it is necessary to calculate 'adjusted income'.

Individuals whose income from all sources in a tax year exceeds the 'threshold income' of £110,000 and the 'adjusted income' of £150,000 will have their annual allowance tapered down from the normal level of £40,000 by £1 for every £2 of their 'adjusted income' over £150,000 down to a minimum of not less than £10,000 for that tax year. The consequence is an annual allowance of £40,000 for those with an adjusted income of up to £150,000 reducing to £10,000 for those with an adjusted income of over £210,000.



Being subject to the tapered annual allowance does not affect the ability to carry forward unused allowance from previous tax years, although the unused allowance being carried forward from a year in which the taper applied will be the balance of the tapered allowance for that year.

Since individuals who have elected for access to their defined contribution pension benefits via flexi access drawdown become subject to the money purchase annual allowance (MPAA) of £10,000, there would normally be an 'alternative annual allowance' (the standard £40,000 less the MPAA of £10,000, so £30,000) against which their defined benefit savings would be tested. However, individuals subject to the tapering provisions will have this restricted so that for adjusted income of more than £210,000, the alternative annual allowance is reduced to zero.

Some examples may serve to highlight how the system operates in practice.

Example 1

Clive is a member of his employer's defined benefit scheme to which he pays 5% of salary and he also pays gross contributions into a personal pension scheme of £6,000. In 2016/17, his position is:

Earned income		
Pensionable pay	£111,000	plus
Benefits in kind	£5,200	less
Deductible expenses (subscriptions)	£500	less
Less member's contributions under net pay	£5,500	
Taxable pay*	£110,100	
Investment income		
Gross interest	£500	plus
Rents	£9,100	plus
Dividends	£6,800	
Taxable income	£126,500	
Pensions		
Total defined benefit increase	£32,000	less
Member's gross contributions (net pay)	£5,550	
Effective value of employer contributions	£26,450	
Member's gross contributions (relieved at source)	£6,000	
Annual allowance carried forward	£20,000	

The first step is to calculate the threshold income.

Taxable income	£126,500
Less gross contributions relieved at source	£6,000
Threshold income	**£120,500**

Since this exceeds the upper limit of £110,000, it is necessary to calculate adjusted income.

Taxable income	£126,500
Member contributions under net pay	£5,550
Effective value of employer contributions	£26,450
Adjusted income	**£158,500**

Since Clive's threshold and adjusted income figures both exceed the relevant limits, his annual allowance will be tapered by £1 for every £2 that the latter exceeds £150,000, i.e. by £8,500/2 = £4,250 to £35,750. However, since he has £20,000 of unused relief available, he avoids any annual allowance excess tax charge on this occasion.

Example 2

Hannah owns her own limited company and pays herself a modest salary but having an unused allowance of £41,000 at the start of the year decides to use this and the current year's allowance to extract profits in a tax-efficient way by making an employer contribution to her SIPP.

Earned income	
Pensionable pay	£17,000
Benefits in kind	£6,100
Deductible expenses (subscriptions)	£250
Taxable pay*	£22,850
Investment income	
Gross interest	£720
Rents	£6,700
Dividends	£80,000
Taxable income	£110,270
Pensions	
Employer contribution to defined contribution scheme	£81,000
Annual allowance carried forward	£41,000

Again, the first step is to calculate the threshold income.

Taxable income	£110,270
Threshold income	**£110,270**

Since this exceeds (albeit only slightly, owing to an increase in the premiums for her private medical insurance, something which may well be unknown at the time the contribution was paid) the upper limit of £110,000, it is necessary to calculate adjusted income.

Taxable income	£110,270	plus
Employer contribution to defined contribution scheme	£81,000	
Adjusted income	**£191,270**	

Hannah's threshold and adjusted income figures both exceed the relevant limits, so her annual allowance will be tapered by £1 for every £2 that the latter exceeds £150,000, i.e. by £41,270/2 = £20,635 to £19,365 and, since the carried forward annual allowance has already been used, there will be an annual allowance excess tax charge.

This could be disconcerting to Hannah, who probably does not consider herself a high earner at all. However, there is a solution if she realises the situation before the end of the 2016/17 tax year. If she were to make a personal contribution of just £300 to her SIPP before 5th April, that would have the effect of bringing her threshold income down to £109,970, which, as it is below £110,000, would bring her income below the figure that triggers the adjusted income calculation. She still breaches the annual allowance but her annual allowance excess tax charge would now be based on £300 rather than £20,365.

In such circumstances, it may therefore be beneficial for those who could be caught by tapering to make personal contributions to a personal pension scheme rather than use employer contributions. Obviously, this requires that the personal contribution is also covered by earnings, which can be an issue where profits are extracted substantially in the form of dividends.

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The Alternative Investor: Equity Release

Equity release offers retired homeowners a way of unlocking the value of their property without having to move. Cash released this way can also be used to pay for such things as home improvements, care costs or better living standards. The mortgage is only paid when the owner dies or decides to sell and interest is rolled up (compounded) until that point.

According to the Equity Release Council, equity release lending is growing at a staggering 20% a year. It still only accounts for a small percentage of the total mortgage market – some £1.6 billion against a total of £220 billion – but it is up to five times as profitable. This is because typical rates are in the range of 5–% a year, well above the lowest ordinary 25-year fixed rate of 0.99%. Moreover, the market is expected to carry on growing as interest rates, dividends and yields fall. This is because retired homeowners will be desperate for ways of increasing their income.

Of course, there are other options if you are asset rich and cash poor. Both Halifax and Nationwide have lifted the age limits by which a borrower must pay off his or her mortgage in full. Other lenders are also allowing older borrowers to extend and increase their mortgages.

Where am I going with all of this? I think there are two opportunities here for a creative investor. First, if you are an entrepreneur and can face all the regulatory work involved, you could look to create an online P2P platform whereby private investors and those looking for equity release mortgages can be matched up. No small enterprise, but one which would, I am willing to bet, be hugely successful. However, if that's too much for you, you could, discreetly, look for one-off opportunities. I say discreetly because, of course, although one is perfectly within one's rights to lend money to anyone and ask for security, only qualified financial advisers can solicit for business. True, you won't earn any income but you will receive a guaranteed return with total security.

Jim Storm

Why Volatility Is The Investor's Friend

What is going to happen to British and international property markets in the future? Where are the best opportunities? How can investors protect themselves from unduly punitive rates of tax? If these questions were difficult to answer before the Brexit referendum, they are even harder to resolve now. For the foreseeable future, we can expect nothing but uncertainty.

Received wisdom has it that volatility is bad news for property investment, especially when prices are falling and tax is increasing. Yet, there is an argument that a fluctuating market is actually good news. True, there are losers, but there are also winners. More received wisdom has it that the winners will be those who possess cash, are not highly geared and – ideally – trade in a strong currency. Certainly, these are great advantages but even a highly geared UK property investor is in a good position to profit, providing he or she has a clear strategy. The last thing a lender ever wants to do is repossess, owing to all the expense and bother this involves. So even if things become tight for a borrower, providing there is some income coming in, it is almost always possible to renegotiate the terms of the loan.

Moreover, investors are currently enjoying a very, very low interest rate environment meaning that borrowing for solid, medium to long-term investments never cost less. Indeed, I don't think it would be understating things to say that in the current climate it costs nothing to borrow. Swap rates, which are used by lenders to price home loans, have been falling, which allows mortgage lenders room to sweeten fixed-rate deals. Just a couple of days after the Brexit vote, HSBC launched the lowest ever two-year fixed rate loan at 0.99%. Given that in two years or so the UK may be preparing to exit Europe, it may be safer to opt for a slightly higher five-year fixed rate. Especially as, over the longer term, the bond market is pricing in continued low rates.

I invested in Dublin property all through the Celtic Tiger and although I had sold much of it when the crash occurred I was left with a commercial space in Stephen's Green and a couple of blocks of buy-to-let properties in good areas purchased in around 2000. I had no tenant for the commercial space for over two years and then I had to accept a very low rent. I also dropped the rent on my residential properties to keep what were excellent tenants. I was able to borrow again at the bottom of the market (admittedly from overseas) and added to my portfolio. Now, of course, the property market in Dublin is booming. True, prices aren't back to where they were but a back of the envelope exercise suggests that even allowing for lower rents I have made a very reasonable return on my investments over the last 15 years.

Anyway, in the following article I am going to take a look at what has happened to property since the referendum and identify where I believe the best opportunities lie.

At the same time, of course, I am going to look at what is likely to happen in terms of property taxation going forward.

British commercial property

Over the last couple of years, as residential property has become less profitable, owing to falling yields and a harsher tax climate, private investors have been piling into commercial property. Commercial property, the reasoning went, has all sorts of advantages including the possibility for longer leases, higher yields, tax-deductible borrowing and less troublesome tenants. Plus, of course, George Osborne hasn't had commercial property investors in his sights for less favourable tax treatment. We have written about its advantages several times.

A few days after Brexit the *FT* announced that over £650m of commercial property deals in the City of London alone had collapsed, one of which was the proposed acquisition of a landmark office block by Germany's Union Investment worth £465m. Basically, almost anyone who could cancelled or postponed making a deal while waiting to see what happens to the City's financial services sector, the worry being that many companies may decide to relocate. The *FT* reported that elsewhere in the UK it was a similar story, although some estate agents were quoted as being: "Hopeful that the market could be stimulated by the weakening of sterling against other currencies that has made UK property comparatively less expensive for overseas investors." Certainly, there is an argument that London may be saved not by Europeans but by wealthy investors from the Middle East who take a longer-term view of the capital.

What about elsewhere in the UK? It all depends on whether the UK dips back into recession and – if it does – how deep that recession is. Either way, prices have softened and there is every reason to believe they will soften more. A spokesman from Knight Frank told me, off the record, "Whether you are looking at deals worth £100,000 or £100 million we believe that the commercial property market has a long way more to fall."

Which leaves the question of tax treatment of commercial property investment in the UK. This is unclear but if you believe there is going to be a recession expect tax breaks and tax stimulus packages for the worst hit parts of the country.

British buy to let

Britain's buy-to-let investors have taken an awful beating over the last couple of years. George Osborne, on the basis of reasoning that was a little difficult to understand, argued that private buy-to-let investors should be discouraged. Possibly he disliked the idea of investors moving their money out of financial investments (such as pensions, stocks and shares, bonds and so forth) that are easier to tax, into property, which is less easy to tax. At any rate it has been one new rule after another. Investors can no longer claim the same level of reliefs (in particular on mortgage/loan payments) and must suffer extra tax (such as the increased stamp duty on second homes).

The effect of these changes has been to slow down the private investor buy-to-let market. Indeed, the number of new rental listing properties becoming available has been falling by meaningful amounts – April fell by 15.4%, May by a more modest 5.7%. At the same time, the nature of private investment in buy to let is changing. Kent Reliance recently published the results of a survey that indicates mortgage applications via limited companies increased by over 80% in 2015 compared to 2014. Now, limited company loans account for more than one in five buy-to-let mortgages in the UK. Demand is expected to carry on increasing. In the first three months of the year, just under 38,000 loans were issued to limited companies, nearly four times the number issued in the same period in 2015.

It looks, as we go to press, as if George Osborne may have delivered his last Budget. If this is the case then it is anyone's guess what may happen next. It is not impossible that a future government will decide to stimulate buy to let. Equally, those who switched their investments into corporate vehicles may find those vehicles being taxed at a higher rate.

This is probably as good a time as any to mention some interesting research I came across the other day. On average 1 in 20 people move every year. Gocompare.com analysed the ONS Internal Migration data to identify some of the most popular places people are moving to throughout the UK. Apparently, 24% of people who move between the ages of 16 and 19 relocate to either London, Leeds, Nottingham, Sheffield, Birmingham or Manchester, whereas 14% of people who move in their 20s move to London. For those moving out of London in their 30s, Surrey, Hertfordshire, Essex, Kent and Hampshire are the top destinations.

The counties with the highest rates of net migration are Essex, Kent, Devon, East Sussex and West Sussex. These areas in the UK saw a lot more people moving in than moving out. These counties are especially popular with ex-Londoners, who account for 30% of people moving into these areas. Who are the losers? London, Birmingham, Bradford and Manchester losing 68,634, 5,137, 3,336, and 3,076 people respectively.

British farmland

A year ago, British farmland was considered one of the best property investment classes available. Over the previous 15 years prices had grown slowly but steadily from an average of around £1,000 an acre to an average of around £8,000 an acre or £12,500 an acre when sold in blocks of 1,000 acres or more, this time last year. Indeed, between 2014 and 2015 prices grew by 14% and between 2005 and 2015 they grew by 228% – the latter beating the FTSE 100 and even central London property. Why? Population growth, the sense of there being a finite supply of land and increasing global demand for meat (which requires a great deal of land in order to produce food for the livestock). Following on from the financial crisis, land was also seen as a stable and secure repository for capital at a time when the list of assets offering those qualities was shrinking fast.

This all changed when the Government announced the Brexit referendum. *Farmers Weekly*, for example, noted a 24% drop in prices in the three months from January compared to the same period

last year and much lower sales. Why? British farmers receive annually €3.1bn in direct support from the EU's Common Agricultural Policy (CAP) scheme and, given the current low prices for milk, wheat, pork and other agricultural commodities, many depend on it to stay in business. Obviously, if EU subsidies disappear then UK farmers will quickly find themselves in trouble.

It seems to me a relatively safe bet that farmland prices will continue to fall and that we are nowhere near the bottom of the market. Only when investors either know about subsidies going forward or feel prices are so low it makes no difference will they start to buy in. On this basis farmland could, in the not-so-distant future, start to look like good value.

As an aside, and I have farmed myself so I speak with personal knowledge, one of the problems with valuing farmland is that it is very difficult to compare like with like. True, farmland is graded (Grade 1 is the richest and most fertile soil, capable of growing nearly all crops, whereas Grade 5 is the poorest, good for little more than rough grazing). Nevertheless, average figures hide all sorts of variations. For example, a farmer will often pay double the expected price for a contiguous holding and larger investors will pay a premium for holdings where the economies of scale reduce farming costs. Other factors that affect the price include the land's location and distribution, soil quality, crop yields and tenants' rights.

From a tax perspective one of the biggest issues is whether the land has tenants on it. For many farms with so-called 1986 Act tenants, agricultural property relief (APR) can only be claimed at 50%. In tenancies granted after 1995, which are known as 'farm business tenancies', landlords can enjoy 100% APR. Here we touch on one of the major tax benefits of farmland and why it is often used by families as a way of passing on wealth. Agricultural and business property reliefs are aimed at ensuring that family businesses and farms do not have to be broken up and sold to pay inheritance tax. The other big tax advantage to be had from farmland is the fact that it is an ideal capital gains tax shelter. As the *Guardian* wrote last year:

Furthermore, agricultural land also offers generous tax breaks. It is exempt from inheritance tax after two years if it is actively farmed. And additional relief allows the sale of a farming asset to be rolled over into a new business or acquisition. Capital gains tax is thus deferred until the sale of the asset. By any reckoning, this amounts to a substantial, hidden state subsidy.

Farms can offer all sorts of supplementary income including the sale of land for development, forestry, the sale or rental of unwanted farm buildings for use by another business, farm shops, farm holidays and so forth. Each of these is taxed differently. Forestry is subsidised and produces tax-free profits, whereas non-agricultural activities will be taxed at, generally speaking, the same level as any other business activity.

Investing overseas

At the time of writing, the euro is standing at €1.19 to the pound but given the general sensitivity of the market anything could have happened by the time you read this. In fact, I have long been of the belief that there were lots of property opportunities within Europe and the 10% or so increase in prices post Brexit hasn't changed my opinion. This is because inside or outside of the EU there are always going to be variations in currency and it is the underlying value of the asset which is what really matters. Still, there is no doubt that Brexit throws up some interesting quandaries for those who own or who are thinking of buying property within the EU.

The first issue is whether restrictions will be placed on Britons owning property within the EU. At the moment we have the right to buy property without having to apply for permission from the government of that country. Of course, in some of those countries restrictions are – or may be – placed on non-EU citizens purchasing property. Post-Brexit Britons may, therefore, be stopped from making acquisitions or, although this seems extremely unlikely, forced to sell up. My own guess is that with so many Britons already owning property in Europe and so many Europeans owning property in Britain if the exit proceeds then new treaties will have to be signed with each country allowing the reciprocal right to buy property.

If one's sole interest is in investing in European property then providing there are no onerous restrictions in place there is no reason to care how British people living abroad may be treated in the future. However, in many parts of Europe the British are keen buyers (there are an estimated 1.5 million Brits living in the EU) and there is no doubt that this will influence prices in some areas. Many British investors will also have it in their minds to move to Europe, possibly to one of their own properties, at some point in the future. Under a full exit it is possible that anyone British who wishes to live, work or retire within Europe may have to apply for a visa. There will be other issues, too, of course, such as healthcare, other welfare benefits and pensions.

What about tax and European property? At the moment double-tax agreements mean that whatever tax you pay on a capital gain you make overseas can be used against any tax liability here in the UK. Also, investors are not penalised in terms of other taxes they have to pay in respect of their overseas properties. If the double-tax arrangement we have with other EU countries disappears there is a high risk of an increased tax burden here in the UK. Of course, the hope is that new double-tax agreements will be negotiated – but one can't count on it.

(As an aside, and it is a subject that I expect will come up again and again if Brexit proceeds, there is likely to be a breakdown in communication between HMRC and many of the countries with which we have signed tax information sharing agreements. For taxpayers pushing the rules and/or up to no good, this may be very welcome news!)

What if you already own investment property in Europe? Should you sell now? It could certainly be worthwhile to test the

market. After all, at the moment you will definitely benefit from the existing double-tax agreements as well as the 10% currency uplift mentioned above.

In conclusion

I survived and, eventually, prospered during the property crash in Ireland that followed the international banking crisis of 2008. What saved me was the fact that I had good properties both in Ireland and elsewhere even if I was heavily geared. I used the fact that I had a really first-class income stream to negotiate a period of interest-only payments and was, after a couple of years, able to start borrowing again. I bought more properties at the very bottom of the market just before the overseas vulture funds came in and started snapping up bargains.

Sean Dillon

Uk Property Tax Update

There have been a couple of bits of property tax news since the last issue of *The Schmidt Tax Report* that we would just like to bring to your attention.

The first will be of interest to you if you are a residential property landlord who also happens to live in rented accommodation. It arose because of a media story about an estate agent who owned three buy-to-let properties but lived, himself, in rented accommodation. He was advised by his solicitor that he would have to pay 3% stamp duty land tax (SDLT) when he moved into his new house he had purchased. This was because SDLT is levied on any home purchased if the buyer ends up with more than one property — the purchase of a buy-to-let property or holiday home being the two obvious cases. However, it appears that there is a tax-saving concession whereby if a main residence was sold before the new stamp duty rates were announced on 25th November 2015 then the seller has three years to buy without suffering the extra tax.

The second relates to foreigners buying property in the UK. One of the last things David Cameron did prior to the referendum and his resignation was address the Anti-corruption Summit, which took place in London on 12th May. Cameron used the occasion to announce that foreign companies that own properties in the UK will have to register publicly who ultimately owns and controls them. Slightly earlier in the year, during his Budget speech, George Osborne proposed to overrule international double-tax agreements to ensure profits from trading in UK property by non-residents would be taxed in Britain. One expert described Osborne's proposals thus: "Osborne's proposed new legislation will simply ignore our international obligations. The Chancellor will tax everything connected with the development for resale of UK land. For instance, if a German house-builder wants to build houses in the UK, we will tax him on the profit on getting planning consent, the profit on building the houses, the profit on selling them, the profits of his German project management company in managing the development, and the profits of his German building company on doing the work itself." It seems unlikely that either proposal will now make it onto the statue books but we should not forget that they have been suggested, and some future prime minister may want to act upon them.

Luxury Overseas Property Opportunity: The Aeolian Islands

We have carried a couple of articles over the last year suggesting that Italy offered some excellent investment opportunities, and we would now like to suggest a third area for consideration: the Aeolian Islands, that tiny, volcanic archipelago just off Sicily's northern coast. Each of the islands has its own personality. Lipari has the archipelago's only sizeable town and is the easiest to live on. Salina is favoured by the English because it is the greenest. Stromboli, which has an active volcano, seems to appeal to those in the fashion industry. Panarea is the closest the islands have to Ibiza (although it is rather a stretch). Alicudi has no roads, only mule tracks. A number of factors make these islands very special:

- They are a UNESCO world heritage site, which has severely limited development.
- They are relatively difficult to get to as there is no airport and one has to take either a helicopter, a private boat or a ferry to reach them. This has meant they were of no interest to the tour companies or to most holidaymakers – as a result there is no mass tourism.
- In the village of Ginostra, on Stromboli, which is accessible only by boat, electricity and running water arrived only about 10 years ago.
- The climate is fantastic, falling to around 12 degrees in the middle of winter and rarely going above 30 degrees in summer.
- The property market collapsed after the 2008 global crash with prices falling around a third and transactions dropping to around 50% of their pre-crash level. There are signs the market has now turned. On Stromboli, a waterfront villa with seven bedrooms is on sale for €8m with Sotheby's International Realty. A one-bedroom apartment with a private pool is on sale for €370,000, through Engel & Völkers.
- The rental market is strong but seasonal.
- There are opportunities to create small developments.
- There is very little government administration on the islands… which means very little interference or interest in one's financial affairs.

This is a long-term play. As Europe becomes increasingly crowded exclusive holiday destinations that are not – actually – too hard to get to (i.e. a lot easier than the Caribbean, S. Africa or the Indian Ocean) are likely to be even more in demand. What are the downsides? Taxes on a non-primary residence are 9% (based on a council assessment). Restorations can be expensive because transport is so difficult. Otherwise, if you have the money, it is hard to imagine a more perfect luxury investment.

Unusual Overseas Property Opportunity: Saudi Arabia

Prices in Saudi Arabia look very low indeed to those used to buying in the world's leading cities. In the Al-Malqa district in the northwest of Riyadh, local agent Al-Babtain is selling a seven-bedroom villa for SR2.17m ($579,000). In Jeddah, Sloanes Real Estate has a two-bed flat for sale in the high-rise Bayat Plaza development for SR1.096m. Given that the country is famous the world over for its authoritarian regime, poor human rights, anti-feminism and religious intolerance (not to mention the fact that alcohol is banned), why would you ever want to consider investing in the kingdom? The opportunity arises as a result of Saudi's loss of oil revenue. As a result the country is investing in new industries, especially financial services, and needs expats to help it create them. Expats feel safer, in general, in compounds where rental properties cost as much as three times that of similar properties outside compounds. The influx of expats, their need for accommodation, low property costs in general, available finance and a gap between compound property and other property has created an opportunity. For someone who is fed up with Europe, it could prove the perfect antidote.

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