REAL ESTATE PROPERTY ADVICE

Lawyer David Ivars provides you with more advice on the legal aspects to be considered when purchasing property, the problems that may pop up and the necessary paperwork to be carried out.

By David Ivars - lawyer (real estate, building and town planning law degree)

Keep the tax man away from your Spanish property

Did you know your hard earned legacy might have to be sold off to pay crippling tax bills when you pass away? Spanish inheritance tax, death duties in the UK, legal fees - can be at least 40%. Can you be absolutely sure those you leave behind will have the money to cover these costs? Would you prefer your children and grandchildren to enjoy the property you worked so hard to own? Or will they be forced to sell your property to cover the tax demands?

It's a sobering thought, isn't it?

Also, did you know that in the UK system of IHT, a husband or wife is usually an exempt beneficiary, but in the Spanish system your spouse will not be exempt from Spanish inheritance tax.

So, while it's not something we like to dwell on, have you considered what will happen to your dream of leaving something of value to your children when you depart this world? Especially when you are leaving it to family who reside in the UK.

The harsh reality is that your gift could become a financial burden your loved ones simply can't pay off.

How much debt?

When you take into account Spanish death duties, inheritance tax, legal and agency fees, accounting fees in both Spain and the UK, and other 'incidentals', the debts could escalate to 40%, but maybe as much as 50% of the value of your property. But it could be a lot more.

For example IHT in Spain differs from the UK. After an allowance (typically 15,957 euros) the balance is taxed at rates from 7.65% up to an incredible 34%.

time the Spanish government freezes the property and bank accounts until all the taxes are paid.

This means that if you don't plan ahead, and start now, the cold fact is that a huge chunk of your spouse or children's inheritance will go in taxes.

Now you know what happens if you don't plan, are you happy with what you have done about it?

If not, what action can you take today; to protect the property you worked so hard to own, in the future?

The good news is that you CAN take a positive step, and do it right now!

Up until now, there have been very few legal strategies to side step Spanish inheritance taxes.

Now there is a simple way to structure the ownership of your property and keep your money out of the tax mans pocket.

This is how it works:

■ The technical issues surrounding the transfer of a property from a person, to a UK company.

■ Proposition to save death duties and legal fees in Spain and make the property easier to deal with by the executors of the client's estate in the UK, and to retain the maximum value of the property for the beneficiaries.

■ Requirement to establish a UK registered company owned by the client for the purpose of owning the client's property in Spain. The client's share holding to be lodged with and noted in the client's will in the UK. The property to be legally transferred from the client to the company.

Method

1) A UK private limited company is to be formed by our

payable if applicable.

6) The 'gestor' will deal with the tax forms in Spain for the company in the future at a small cost.

Advantages

1) The company can be dealt with in the UK by a UK lawyer, the Company shares and shareholders loan accounts can be dealt with in the owners will and estate. There is no need to involve lawyers in Spain, or the Spanish property.

2) The beneficiaries can become involved in the company prior to the demise of the owner. This enables easy continuity of the management of the company and the management of the property, most certainly if the owner has become ill or incapacitated.

3) Should one of the owners die there is no need to deal with the person's estate in Spain. It can take years to transfer a partner's ownership to the surviving partner, as well as the payment of death duties and taxes in Spain.

4) The company being the owner of the property means that no action is required in Spain and no will is required in Spain for dealing with the property.

5) The owner/director of the company may be entitled to claim expenses for things like flights and car hire. The company can also claim relief on overheads ie insurance, community fees, electric, water and council taxes. These can be financed by

owned by the company means that there is no need to involve lawyers in Spain when it is the time to deal with the owners' estate or to pay the onerous complicated death duties in Spain.

It will also save the costs of the UK Lawyer in the time required to instruct the Spanish lawyer to deal with matters in Spain.

The cost of dealing with the transfer of property in Spain can sometimes be 10% of the value of the property and if a sale is required then a further 5% agents' fees would be charged.

In the UK the only thing that needs to happen is to transfer the shares and loans to the beneficiaries. It may be that the shares in a UK private company may not form part of the estate for death duties.

The loan accounts would form part of the estate for death duties but these could be transferred to the beneficiaries over a number of years as the tax system allows.

UK lawyers' fees and inheritance tax can take as much as 50% of the value of the property. This, added to the UK system of IHT, a husband or wife is usually an exempt beneficiary, but in the Spanish system your spouse will not be exempt from Spanish inheritance tax.

So, while it's not something we like to dwell on, have you considered what will happen to your dream of leaving something of value to your children when you depart this world? Especially when you are leaving it to family who reside in the UK.

The harsh reality is that your gift could become a financial burden your loved ones simply can't pay off.

How much debt?

When you take into account Spanish death duties, inheritance tax, legal and agency fees, accounting fees in both Spain and the UK, and other 'incidentals', the debts could escalate to 40%, but maybe as much as 50% of the value of your property. But it could be a lot more:

For example IHT in Spain differs from the UK. After an allowance (typically 15,957 euros) the balance is taxed at rates from 7.65% up to an incredible 34%.

It gets worse, when the inheritor is not a close relative of the deceased the tax can increase by 140% that means a possible top rate of 81.6%.

What is the difference between death duties in the UK and IHT in Spain?

In the United Kingdom, it is the estate of the deceased that is subject to taxation. In Spain however, it is the individuals who inherit that are taxed.

The other major difference is that there is no marriage exemption in Spain for non-domiciled people. When a property is in the joint names of a couple and on the death of one partner, the surviving spouse must pay inheritance tax on the value of the half he or she inherits. In the mean-

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■ Requirement to establish a UK registered company owned by the client for the purpose of owning the client's property in Spain. The client's share holding to be lodged with and noted in the client's will in the UK. The property to be legally transferred from the client to the company.

Method

1) A UK private limited company is to be formed by our UK subsidiary, Companies 4 U Limited (C4U).

2) C4U will provide the ongoing service of registered office and company secretary in the UK to include the annual filing fee at Companies House.

3) A UK Notary will provide a translated copy of the articles of association and a certificate of good standing, notarised and apostil.

4) A Spanish Abogado will apply to the tax office for a CIF no for the company, he will provide the transfer documents and attend the Spanish notary to effect the transfer, and he will deal with the registration of the property in the company name.

5) Power of attorney costs and 'Plus Valia' tax will be

need to involve lawyers in Spain, or the Spanish property.

2) The beneficiaries can become involved in the company prior to the demise of the owner. This enables easy continuity of the management of the company and the management of the property, most certainly if the owner has become ill or incapacitated.

3) Should one of the owners die there is no need to deal with the person's estate in Spain. It can take years to transfer a partner's ownership to the surviving partner, as well as the payment of death duties and taxes in Spain.

4) The company being the owner of the property means that no action is required in Spain and no will is required in Spain for dealing with the property.

5) The owner/director of the company may be entitled to claim expenses for things like flights and car hire. The company can also claim relief on overheads ie insurance, community fees, electric, water and council taxes. These can be financed by loans to the company by the shareholder, increasing the shareholders loan to the company. This loan can be withdrawn later if the asset is sold and may be tax free.

6) Finance can be arranged with a lender jointly between the owners and the company to assist with the purchase. The repayments can be financed by shareholders loans that may be available to draw in the future tax-free.

7) Should the owner wish to involve their family members or beneficiaries in the company this is easily done, with the owner keeping control of the company and the property, it makes it easy to manage different levels of this ownership.

8) The property being owned by the company means that there is no need to involve lawyers in Spain when it is the time to deal with the owners' estate or to pay the onerous complicated death duties in Spain.

It will also save the costs of the UK Lawyer in the time required to instruct the Spanish lawyer to deal with matters in Spain.

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UK lawyers' fees and inheritance tax can take as much as 50% of the value of the property. This, added to the costs in Spain, make it sensible to protect the property in a UK company.

9) The increase in value of the property is to the advantage of the company and not directly for the beneficiary therefore a saving on death duties may be made.

10) In the last UK budget the chancellor removed the benefit in kind tax on owners or directors staying in their company-owned property, effective as from April 2008.

Once they have this structure in place, the property ownership is transferred to a UK company. If they want to sell it they can, rental income doesn't change, except visits to Spain, hire cars and all kinds of bills become tax deductible.

We will answer your queries by telephone, letter, fax, email or via the web.
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