

## ***A little-known loophole allowing capital gains to be realised without incurring any tax is shortly to close, writes Saul Brownstein***

*Please note that taxation and national insurance is a complex subject and you should not take or refrain from taking any step without full independent advice on the particular facts of your case. The content of this article is of a general nature and no liability is accepted in connection with it.*

As the government tightens internal UK tax law, leaving ever fewer tax loopholes other than those it has specifically designated, it can be fruitful to look to double tax treaties for significant tax savings. As these treaties attempt to reconcile two often very different tax systems, they inevitably leave gaps. And even if these gaps are recognised and closed, this can often take several years of bilateral negotiation. As a result, unlike with the Chancellor's new retrospective tax on previously-owned assets, introduced in the last Budget, tax professionals usually have plenty of warning of the closure of double-tax loopholes.

This is the case concerning the UK and France. While a new bilateral treaty has been signed after some 14 years of negotiation, it has yet to be ratified by either country's parliament and there is little chance that this could be done in time for even 2006, let alone 2005. Indeed some practitioners believe that the most realistic date for its entry into force is 2007, until which time the old treaty will remain applicable.

A double tax treaty works rather like a traffic policeman, but instead directs taxing jurisdiction to the taxman of one or other of its signatory countries, according to certain criteria. In the case of capital gains tax, this particular treaty gives jurisdiction to tax to the country where immovable property is located, yet the basis for the imposition of UK capital gains tax is the taxpayer's status as resident or ordinarily resident in the UK. France interprets the double tax treaty to prevent it from taxing gains on UK immovable property and this has been confirmed to Sykes Anderson LLP by various French tax offices. Thus if the disposer of UK immovable property is verifiably French resident, but the said property is located in the UK, there should be no charge to capital gains tax either in the UK or France.

A caveat: the taxpayer must clearly have left the UK in the UK tax year preceding that in which the property is disposed of, and must not return to the UK within the next five tax years, although the exact nature of what a "return" to the UK would constitute is also addressed by the double tax treaty. Proper advice must be taken as, on the one hand, good planning can serve to maximise the tax saving in certain ways, and, on the other, poor planning can leave the gain fully taxable.

Ultimately, this loophole allows those who are prepared to move to France and to stay outside of the UK for at least five years to realise capital gains tax free. For those who believe that their buy-to-let portfolios have reached their peak value, and who were considering a move to France in any event, this might save them 40% tax which could amount to several hundreds of thousands of pounds. It sounds too good to be true, and this is why the new treaty, according to most opinions, closes the loophole.

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