

How to sell your buy to lets and pay no Capital Gains Tax (CGT)

Please note that taxation 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.

Q I have done well out of my buy to lets but want to sell. The problem is the Capital Gains Tax. My accountant has worked it out and it will cost me a fortune to sell. Is there a simple and legal way to avoid it?

A At the moment yes, by simply moving to France. If you exchange contracts whilst you are not UK or ordinarily resident during an entire UK tax year you pay no tax in the UK.

Q But doesn't this mean if I move to France I pay the CGT there?

A No. The current UK France tax treaty provides that you only pay tax where the property is situated. It is not in France so you pay no tax there.

Q So there is no country to collect the tax?

A Yes. You effectively fall between both tax nets and are exempt from CGT in both countries.

Q How long do I have to be out of the UK?

A For 5 tax years. However you can come back for up to 6 months a year.

Q Sounds too good to be true.

A It is true new draft UK France tax treaty will put an end to it by allowing France to tax the gain.

Q When will this come into effect?

A We are not sure. It could be 1st January 2005 or 1st January 2006. Signs are that it will be 1st January 2006. If it is 1st January 2004 then it will be too late for you unless you went non-UK resident before 5 April 2004. This is because you need to be non-UK resident for a whole tax year i.e. from 6 April 2004 to 5 April 2005.

Q If the new Treaty comes into force on 1st January 2006, then what can I do?

A A lot. You will need to start planning to move to France before April 2005. You will then be able to sell your portfolio after April 2005 however timing here is important and specialist advice is essential.

Q How can I set the deals up now before I leave the UK because I don't want to try to sell them when I am living in France. I also want to get the buyers committed now in case the market goes down towards the end of 2004.

A You cannot exchange contracts before 5 April 2005 if you are currently UK resident and so will pay UK CGT. Exchange of contracts not completion is what counts for CGT. **You can however enter into a form of contract which is not an exchange of contracts for tax purposes but which locks the buyer in straight away. This needs to be prepared by a tax lawyer not a residential conveyancer.** This arrangement allows you to exchange for tax purposes after 5 April 2005. By then you are in France so no CGT to pay.

Q So would I exchange and complete simultaneously?

A Yes you would do this in practice.

Q Can I take a deposit?

A Yes. This would be taken when the initial agreements are put in place before 5th April 2005.

Q What about management and rental of the property?

A The buyer can safely take over this once the agreement is in place. The property belongs to you but you can have a management agreement with him under which he deducts his agreed commission which could be agreed between you.

Q Is this route tried and tested?

A **Yes. Clearances from some of the UK and French Inland Revenue's are regularly obtained by us so you know it will all work both in the UK and France.** You don't need to rely on any trusts or artificial arrangements. There are no offshore trustee fees or any other costs.

Q How are your fees dealt with?

A We can either give you an estimate or work on a percentage of the tax saved. If we do not save you the tax in the UK and France you pay us nothing.

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