MAURICE
TURNOR
GARDNER

Private Wealth

Purchasing UK property for minors

Maurice Turnor Gardner LLP
Third Floor, Tea Auction House, Hay's Galleria, Counter Street, London SE1 2HD
T: +44 (0)20 7786 8710 | F: +44 (0)20 7786 8720 | info@mtgllp.com | mauriceturnorgardner.com

Ownership

Under English law, minors (when a child is under 18) cannot hold legal title to land. However, they can have a beneficial interest in land. The mechanism to achieve this is a "trust" – the legal title is registered in the name of adults or a company (as "trustees"), but the property is held strictly for the benefit of the minors (as "beneficiaries").

The trust can be a simple bare trust/nominee arrangement, where the minors are entitled to have the legal title of the property transferred to them when they reach the age of 18, or can be a more sophisticated trust where the age entitlement can be deferred to a later age or the trustees can have discretion regarding when and how they might benefit from the property.

Practical issues

Mortgage finance: Some lenders will not offer finance where the only beneficiaries are minors (i.e. they require at least one adult to co-own the property), but this can be subject to negotiation.

Co-ownership: Detailed consideration must be given as to how and on what basis different family members will use the property and share the ongoing costs. This is particularly important where the parents/other adult family members would like to use the property whilst the children are minors.

Succession: Minors cannot make a will in England & Wales, so consideration needs to be given to the effect of the English intestacy rules.

UK tax

As with any UK property purchase, it is necessary to consider tax on acquisition, ongoing tax throughout the period of ownership, tax on sale and tax on death (or earlier gift). It is a common misconception that minors are not subject to UK tax, but the reality is that the tax rules do not discriminate based on age.

The tax implications will however depend on whether the trust arrangements take the form of a simple bare trust/nominee arrangement or is a substantive trust (where the minors are not automatically entitled at 18).

Tax on acquisition – Stamp Duty Land Tax (SDLT): A trust purchase is generally treated as a normal purchase (with SDLT charged on the value of the purchase price), although the rate will depend on the nature of the trust (and the circumstances of the purchaser).

Ongoing ownership – Inheritance Tax (IHT): A substantive lifetime trust (but not a bare trust) is subject to special rules that, broadly speaking, impose a 6% IHT charge on the net value of the asset

every 10 years and a proportionate charge (of up to 6%) on distributions out of trust in the intervening years. When correctly structured, borrowing can mitigate the scope of this charge.

Tax on sale – Capital Gains Tax ("CGT"): On any sale any capital gain will be subject to CGT (broadly at 24%), however who is liable to pay the tax will depend on the nature of the trust

Tax on death of the beneficiary - IHT: In the case of a bare trust, the minors are treated as owning the property, such that IHT is relevant on their death. This should not be the case for a substantive (relevant property) trust.

Tax on death of the settlor - IHT: Irrespective of the type of trust used, the most complex tax issue is determining whether there can be tax on the death of an individual who provides the funding for the property purchase. This is likely to be an issue if they continue to use the property but requires careful consideration in order to mitigate this exposure.

These notes do not contain or constitute legal advice, and no reliance should be placed on them. If you have any questions, please do not hesitate to speak to your usual contact at Maurice Turnor Gardner or email info@mtgllp.com.