MORGAN McMANUS SOLICITORS

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With Offices in Northern Ireland and Republic of Ireland
and also practising in England/Wales

IRISH/UK PROPERTY BULLETIN

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1. EDITORIAL

Welcome to the 9th issue of the Morgan McManus Irish/UK Property Bulletin. Those of you unfamiliar with our service can learn more about us by visiting our Website at www.morganmcmanus.com. We have offices in Northern Ireland and the Republic of Ireland and also provide legal services in England/Wales. This publication is being delivered to Accountants and Financial Advisors, Banks, Mortgage Advisors, Property Investment Companies and Private Investors. We hope to give you an insight into the information you will need to ensure that you have adequate legal protection when investing in property, whether that property is in Northern Ireland, the Republic of Ireland or in England/Wales. As we practice in all three jurisdictions we are ideally placed to provide a comprehensive comparative analysis – and that is important, particularly where it is your first venture into international property investment.

We know that you will find the Articles in this issue of interest. Fergal McManus covers the further time concession granted by the Irish Government in its December Budget in the Town Renewal Tax Schemes. This should be read in conjunction with Fergal`s earlier Article on this same subject titled "*The Town Renewal Scheme*" – published on the Articles Section of the Morgan McManus Website – www.morganmcmanus.com . I have written an Article on the recent turnabout made by the UK Government in its Pre-Budget Report on SIPPs and what this means for residential property investment. Seymour Major writes an introductory Article on the obligations which will arise for Landlords of Houses in Multiple Occupation in England/Wales under regulations to be brought into force in April 2006 under the Housing Act 2004 – is it time to sell that property ?!!

As well as providing legal advice to the Private Investor, we also act for Developers and Investment Syndicates and can provide very competitive terms, particularly where we are acting for a number of purchasers in a common property, e.g. a number of apartments in the one block. Further details of our ROI service are available from Fergal McManus(e-mail fmcmanus@morganmcmanus.ie) and Brian Morgan(e-mail bmorgan@morganmcmanus.ie) at our Clones office . Details of our Northern Ireland/UK services are available from Seymour Major of our Enniskillen office (e-mail smajor@morganmcmanus.co.uk).
(See telephone contact details at end of this Bulletin).

Brian Morgan
Editor

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2. EXTENSION OF TOWN RENEWAL SCHEME AND OTHER TAX SCHEMES

Fergal McManus, Solicitor and Professional Tax Advisor, advises of one further and final extension to the Republic of Ireland property Tax Relief Schemes.

On the 7th December last the Minister for Finance introduced a welcome extension to the cut off date for those wishing to avail of certain Tax Incentive Schemes. Of particular importance in Cavan and Monaghan is the extension of the Rural Renewal Scheme and the Town Renewal Scheme. Readers are referred to an article of November 2004 by the writer in respect of a previous extension – titled "The Town Renewal Scheme" – published on the Articles Section of the Morgan McManus Website – www.morganmcmanus.com .Both of these schemes had been due to expire on the 31st July 2006 but new transitional arrangements have been implemented in respect of both schemes.

Provided full planning permission had been applied for before the end of December 2004, full relief will be available for qualifying expenditure up to the end of December 2006; 75% of the normal relief will apply for qualifying expenditure in the period January to end of December 2007; 50% of the normal relief will apply for qualifying expenditure in the period January to end of July 2008 and no relief under the schemes will apply for expenditure after that date. These transitional measures will only apply to "pipeline" projects which will be obliged to have incurred at least 15% of qualifying construction costs (not including site cost) by the end of December 2006.

These deadlines have been extended more than once already and I think it can be said with certainly there will no further extension at this stage as the Minister's decision in respect of these matters is based on an Experts Report and he is giving a long period of time for developers to complete their developments under the various schemes; albeit that, if they delay excessively, the amount of tax relief available to them will be reduced greatly.

Overall the Minister announced the termination of certain other property related tax relief schemes and similar transitional measures were introduced. The other property based Tax Incentive Schemes to be discontinued are: The Urban Renewal Scheme, Special Reliefs for hotels, holiday cottages, student accommodation renewal scheme, multi storey car parks, third level educational buildings, sports injury clinics, developments associated with park and ride facilities and the general rental refurbishment scheme. Specific advice should be taken from your professional tax advisor as to what constitutes a pipeline project in respect of these discontinued schemes, as each type will have its own rules to avail of the transitional measures.

The detailed provisions will be contained in the 2006 Finance Bill which is expected to be published in late January 2006

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3. SIPPS PROPERTY PENSIONS UPDATE - UK

Brian Morgan, Solicitor provides an update on the recent turnabout made by the UK Government in its Pre-Budget Report on SIPPs and what this means for residential property investment.

As advised by a email last December delivered by Morgan McManus to our subscribers, the UK Government has announced that residential property investments bought via self-invested personal pensions (SIPPs) will not enjoy any tax relief. In his pre-Budget speech on the 5th December last Gordon Brown said that "*anti-avoidance and fraud measures published today will address the misuse of SIPPs schemes to purchase second homes.*" Before Mr Brown made his announcement it would have been possible to buy residential property effectively at a 40% discount courtesy of the taxman.

SIPPs allow people to take control of the investment of their pension savings. Before the new rules on SIPPs were announced, only commercial property could be placed in SIPPs. But in December 2003 the Chancellor said that he would relax the rules on SIPPs by allowing savers to put residential properties, including buy-to-lets, holiday homes and even their own family home, into the tax-assisted wrappers. Exotic investments, such as vintage cars, could also be made under the new rules, he said. As subscribers to our Bulletin will know from previous issues, these changes along with other revisions to Pension Rules were to come into effect in the UK on the 6th April 2006 – which has come to be known as "A-Day".

The technical note on Inland Revenue's website says that: "*From A-Day, the Government will remove the tax advantages for investing in **residential property**.*" This effectively prohibits all genuine buy-to-let property investments from pensions.

What is 'Residential Property'?

Not all residential property investments will be banned – ***direct*** property investments will not be allowed but certain ***indirect*** residential property investments will still be permitted. So you will still be able to put certain types of residential property investment into your pension plan and enjoy all the tax reliefs.

Direct property investments are actual bricks and mortar investments. If you own a buy-to-let flat in Manchester you are a direct property investor. But if that flat is owned by a property company you have set up, you are an indirect property investor – you don't actually own the property, you own shares in a company that owns property. This does **not** however mean that you can now set up your own company, put a property in it and then get your SIPP to buy the shares. This is specifically ruled out because the property prohibition will also apply to: "*indirect investments that are a close proxy for direct investment. An example of this would be residential property owned by a company in which a SIPP held 100% of the shares.*"

In effect, the UK Government doesn't want you to invest in residential property in any way that allows you to personally enjoy the property. There are lots of ways you can invest in property indirectly and not derive any personal benefit, for example through property investment funds and unit trusts and, in the very near future, using Real Estate Investment Trusts (REITs). However many property investors will only want to invest in "bricks and mortar" – ie, property which they can see !

What type of Property will now qualify ?

It is difficult to be certain what types of indirect residential property will eventually be allowed. We may only find out many months after A-Day on April 6th next year. However, a close inspection of the Government's announcement reveals what types of property will not qualify and the types of property that will (probably) qualify and, finally, the types of property investment that might qualify:

Property that will not qualify

It seems certain now that direct, bricks and mortar residential property investments will not be allowed into SIPPs. These include your own home, holiday homes and genuine buy-to-let properties.

Property that will probably qualify

In the Inland Revenue Pre-Budget Report technical note two types of property are mentioned that the Government seems to approve:

Commercial Property: Commercial property has always been allowed as a SIPP investment and there is no indication that this is going to change.

REITS: These will be launched next year, as advised in the Report, "*to widen the number of investors in the residential and commercial property markets, we will this month publish legislation to set up in Britain Real Estate Investment Trusts.*" It was also indicated that these will qualify for all the SIPP tax reliefs:

REITs pool money from a large number of investors and use it to invest in property such as shopping centres, offices and apartment blocks. The rental income is then paid out to you, the investor. Outside a pension you would have to pay tax at 40% on this income. But through a SIPP the returns will be totally tax free. The main drawback however with REITs is that gearing (borrowings) will probably be limited. Some investors will see this as a serious drawback because, when property prices are rising, gearing can provide a massive boost to the investor`s returns. The ability to gear a SIPP property investment is however going to be severely curtailed after "A-Day" because of the new cap on borrowing.

Property that may qualify

Although the Government made specific mention of REITs the general point made was that: "*the Government is minded to allow self-directed pension schemes to invest in genuinely diverse commercial vehicles that hold residential property.*" It therefore seems that residential property investments will be allowed as long as there is no possibility of personal use of the property. This means that certain residential property funds, not just REITs, will be allowed into SIPPs.

It would appear therefore that property unit trusts which emulate the returns of direct property investment but via a fully managed fund will qualify. The money raised from investors could be used to buy residential property. There may be scope for some gearing in these circumstances.

Conclusion

It is impossible to be dogmatic at this time as to what will and will not qualify. It is assumed that clarification will issue as we get nearer to "A-Day". Presumably, the Pensions Industry will also demand clarity. Just as we held a Seminar in Enniskillen last September to herald the new developments expected in advance of "A-Day", we intend to sponsor another Seminar in the new year in Northern Ireland to review the changes which have been brought to light by the Pre-Budget Report. Those interested in attending should email Elizabeth Treacy at our Enniskillen office – etreacy@morganmcmanus.co.uk . Also, if you would like to get a full copy of the Pre-Budget Report technical note, simply email Elizabeth and she will forward a copy to you.

Lastly – and so that there may be no misunderstanding – this does not affect Irish Investors who want to invest in property anywhere in the UK through an Irish Pension vehicle. Furthermore, we are aware that our colleagues in the Independent Trustee Company (ITC), Dublin recently launched a new product for investment in property through pensions – which includes residential property – and is ironically, (in retrospect !), called a SIPP. Again, this ITC product is not affected by the UK Pre-Budget Report.

4. HOUSES IN MULTIPLE OCCUPATION

Seymour Major, Solicitor warns Landlords of HMO`s (Houses in Multiple Occupation) that they will become more accountable as a result of new regulations to come into force in England/Wales in April 2006 under the the Housing Act 2004.

If you own a property in the UK, which is divided into separate units (such as bedsits or flats) your property is almost certainly a house in multiple occupation ("HMO"). If the property is an HMO, the consequences are that it is subject to strict regulation by the local Housing Authority. In England and Wales, this is a local Council (a District / City Council or London borough). In Northern Ireland, this is the Housing Executive ("NIHE"). For both jurisdictions, the legislation defines an HMO as a house [or flat] which is occupied by persons who do not form a single household. This definition refers to people - not the building as its starting point.

If an HMO exists and the situation falls foul of the regulations, the Housing Authority can take action in the form of Enforcement Notices. These Notices require the owner to take action. It may be that the action requires specific building work. It may be that building work will not rectify the situation (for example, if the premises are too small causing overcrowding) and the Housing Authority may require cessation of occupation by more than one household. Notices relating to HMOs are usually registered at the Local Land Charges Register (England and Wales) or on the Statutory Charges Register (Northern Ireland). When a property is being bought and sold, these Notices will appear in conveyancing searches. If the property is being sold as a multiple unit for investment purposes, a Notice such as this is likely to prevent the sale from proceeding.

Matters which are the subject of HMO regulations

The regulations are designed to make buildings safer. Statistics show that where there is more than one household, there is a greater likelihood of an accident. The parts of the building which are most regulated are those to do with fire, escape and access, stairways. The regulations are also concerned with layouts, sanitation, facilities and occupancy levels.

In practical terms, a housing authority could put an owner to great expense if it finds that an HMO exists and the building standards are not HMO compliant.

Recent developments in the Law – England and Wales

The new Housing Act 2004, will considerably tighten the existing regulations relating to HMOs. This Act, which is expected to come into force in April 2006 affects regulation of the entire rented sector. Perhaps the most significant part of the new legislation to affect HMOs will be the introduction of a licensing scheme for Landlords. Regulations made under the Act will set out the criteria for adequate management of property and allowing landlords to hold a licence. The whole emphasis of the legislation is to make landlords more accountable for the way they let property. It has important implications for all landlords and will be the subject of further article by me in the next issue of our Bulletin.

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