

BUSINESS IN THE UK **A ROUTE MAP**





chapter 07

**ACQUIRING, HOLDING AND
DISPOSAL OF LAND AND
BUILDINGS**

ACQUIRING, HOLDING AND DISPOSAL OF LAND AND BUILDINGS

OWNERSHIP OF UK PROPERTY

PURPOSES OF OWNING UK PROPERTY

Each owner of UK property will have their own purpose for acquiring it. Typically, there are three main reasons to acquire UK property:

- **For occupation:** for example, as a residence or as premises from which to carry on a business such as a shop, factory or hotel
- **As stock in trade:** for example, a property development or land dealing trade
- **As an investment:** for example, to rent out and/or hold for long term capital appreciation.

The legal process for the acquisition and sale of property is the same irrespective of the intended use.

Read about [BDO's real estate services](#).

LEGAL PROCESS FOR THE ACQUISITION AND SALE OF UK PROPERTY

Two different systems of land ownership operate in the UK – one in England, Wales and Northern Ireland, and a separate system in Scotland.

England, Wales and Northern Ireland

Types of legal ownership

There are two basic types of legal ownership of property:

1. **Freehold ownership:** owning the land in perpetuity
2. **Leasehold ownership:** owning a right to occupy the property for a fixed period (less than 12 months).

For most short leaseholds (less than 12 months), there is typically no lease 'premium' to acquire the leasehold interest. Instead, rent is paid to the freehold owner, and usually a service charge. Those renting a property for less than 12 months have fewer legal rights than under a longer lease.

For long leases, there may often be a premium paid at the outset in addition to rental payments for the duration of the lease. Individuals buying long leases of residential property may have the right to buy the freehold, or a share of the freehold, subject to certain conditions.

Types of joint ownership

In the case of joint ownership of property there are two forms in which the beneficial interest in freehold and leasehold property can be owned:

- **Joint tenancy:** all the co-owners own the whole of the property. They do not own an identifiable share. On the death of any of them, the property passes to the surviving co-owners automatically – there is no divisible 'share' for a co-owner to leave to anyone under the terms of their will. Furthermore, all co-owners must agree to a sale or other disposition of the property.
- **Tenancy in common:** each owner owns an identifiable share of the property and can dispose of it unilaterally. They can also leave their share to who they chose under the terms of any will – it will not automatically pass to any co-owner in the event of their death. In the absence of a will, the deceased owner's share may pass under the intestacy rules of their country of domicile.



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Legal stages of sale and purchase

There are four main stages to the sale and purchase of land and property (both freehold and long leasehold) under English law: negotiation and offer; searches; exchange of contracts and completion.

The time span in which these stages are completed varies. In the case of a sale at auction, for example, the total time from offer to completion is likely to be fairly short compared to an off-market, privately negotiated sale for a niche property.

WHAT – are the legal differences between buying commercial (business) and residential property?

There are no significant differences in the legal process but Local Authorities have to be consulted if there is a wish to 'change the use' of the property, for example, convert a factory into apartments. Different rates of SDLT (LBTT in Scotland, LTT in Wales) apply depending on whether the purchaser is buying commercial or residential property (see page 64).

Negotiation and offer

Usually, the two parties to the transaction agree a price based on an initial inspection of the property by the purchaser. Changes to the price may be agreed up until exchange of contracts.

Searches

On exchange of contracts, the buyer and seller become legally bound to complete the transaction. Before this happens, the buyer must therefore be satisfied as to what they are buying before committing to the purchase. This includes having various searches and enquiries carried out, usually by a property lawyer (conveyancer) including:

- Enquiries of the local authority, utility companies, etc. to establish many issues including the planning status of the land and nearby property, and the likelihood of future repair work
- Enquiries of the seller's solicitors regarding ownership, boundaries of the property, disputes, etc.
- Inspection of the seller's legal title to the property (ie. to confirm that the seller is the legal owner of the land concerned)
- A survey of the property by a qualified building surveyor to ascertain structural defects and for environmental purposes.

Exchange of contracts

This is the point at which a date for completion is set, having been agreed between the parties. When exchange takes place, the buyer and seller become legally bound to complete the transaction. If either party fails to complete, the other can sue for any loss and may apply to the courts for an order of specific enforcement, ie forcing the other party to complete.

At exchange, the buyer is required to pay a deposit (traditionally 10% of the sale price) to the seller. This provides additional protection for the seller: if the buyer then pulls out, the seller is allowed to keep the deposit rather than pursuing the buyer for damages.

Often, the risk of the property becoming damaged or destroyed passes to the buyer on exchange. The buyer should check this and take out insurance on exchange as appropriate. The date of exchange of contracts becomes the tax point (and the date of acquisition) for capital gains tax purposes.

Completion

At completion, the buyer pays over the balance of the sale price and takes possession of the land. The seller hands over the transfer deed and any other legal documents required to register the buyer's title at the UK's Land Registry. The buyer may also forward any 'old' title deeds and documents relating to the property.

The buyer must also pay SDLT at this point (if payable), and complete an SDLT return. VAT may also be due on the purchase which must be collected by the seller.

Following completion, the buyer sends the transfer to the Land Registry for registration. A legal charge (a debt secured on the property) is also registered where a lender has issued a mortgage on the property.

If the buyer or seller is a UK company, any discharges or new charges must also be registered at Companies House.

Read about [BDO's real estate tax services](#).

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Scotland

Types of legal ownership

Scottish law recognises two classes of rights in relation to land:

1. **Personal rights:** enforceable against a defined person or group of people
2. **Real rights:** enforceable against anyone.

Under Scottish law, interests in land can arise through contracts (which are personal rights) and through ownership (which is a real right).

Unless the grant of a lease by an owner to a tenant is specifically made a 'real' right, the lease will be regarded as merely a contract for hire of the land under Scots law and, therefore, will only be enforceable by the tenant against their landlord. This can impact on the tenant's security of tenure in some circumstances, for example, where the landlord becomes insolvent or uses his interest in the land as a security granted to a third party - who then seeks to enforce that security.

In the case of a lease exceeding twenty years, the tenant will have a 'real' right if the lease is registered in the Land Register of Scotland. However, leases for residential dwellings in Scotland cannot be granted for periods exceeding twenty years.

For leases of up to twenty years, the tenant will acquire a real right under the Leases Act 1449 where the lease is in writing (if it is for more than one year), it is for a specified period, it provides for the payment of rent and the tenant takes actual possession of the land.

In Scotland, a tenant is not obligated to vacate the property on the termination of a lease unless his landlord has served a notice to quit.

Legal stages of sale and purchase

There are generally four main stages to the sale and purchase of land and property under Scottish law: missives; examination of title; settlement and transfer of ownership.

Missives

A contract of sale is completed and, at the point of completion, becomes binding on both the purchaser and vendor unless the contract is either conditional on a future event, in which case it will not become binding until that event happens, or one of the parties commits a material breach of the contract - which will then release the other party from their obligations. This might be the case if, for example, it were to be identified during the examination of title that the vendor does not have good title to the land.

Examination of title

For registered land, this stage typically only requires an examination of the land certificate at the Land Register of Scotland, and an examination of the Register of Inhibitions and Adjudications, to confirm that the vendor is not prohibited from entering into a sale of the property. Registration of title was introduced in Scotland in 1981. Prior to this, the Register of Sasines recorded deeds relating to land.

However, whilst registration of deeds was a legal requirement, the inclusion of the deed on the Register of Sasines does not guarantee ownership. Therefore, in the case of older land it can be more complex to demonstrate that a vendor has title to the land.

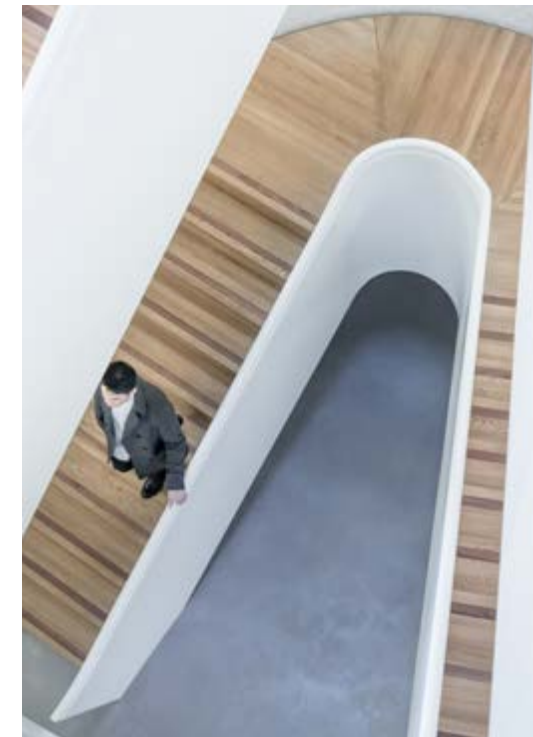
Settlement

Settlement is the date on which the vendor delivers the deed conveying title to the purchaser. The purchase consideration is normally payable by the purchaser on this date and will be the date on which the purchaser is entitled to enter the property. However, the property will still be legally owned by the vendor at this stage.

Transfer of ownership

Legal title to the land will be transferred on the date the deed conveying title is registered in the Land Register of Scotland.

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FINANCING THE PURCHASE OF UK PROPERTY

Unless a buyer is able to pay for the purchase out of available funds, a loan (mortgage) will be needed to enable the buyer to pay the sale price. UK mortgages are usually issued by banks and building societies in the UK for both residential and commercial purchases.

A mortgage is secured on the property and a legal charge is registered with the Land Registry, or in the Land Register of Scotland. This means that if the borrower defaults on the loan, the lender can take possession of the property. It is, therefore, important that the buyer ensures they are able to pay the monthly mortgage payments.

DEVELOPMENT OF UK PROPERTY

Where land and property is acquired for development, it will usually be necessary to obtain a number of different permissions from the Local Authority and other bodies before work on the project can commence. In many circumstances, the granting of such permissions will involve the developer formally entering into a negotiated planning obligation to pay for local infrastructure improvements to support the development (for instance, improved roads or traffic controls). The local authority may also impose certain obligations in relation to the design of the development, such as a requirement to incorporate a specified number of affordable homes.

There may also be a Local Authority tax charge (the Community Infrastructure Levy). Each local authority is at liberty to set its own rates after taking into consideration the local demand for property development and infrastructure. However, if a charge is imposed, it will be levied at an amount in pounds sterling per square metre on the net additional increase in floor space resulting from the development.

Irrespective of size, a business carrying on a trade of property development and which is engaging subcontractors to undertake works, must register with the UK tax authorities as a contractor and operate the Construction Industry Scheme. This primarily involves checking the status of subcontractors with the tax authorities and deducting tax at source from payments made to them where required.

Read about [BDO's real estate services](#).

KEY CONSIDERATIONS WHEN RENTING UK PROPERTY

In most cases, freeholders marketing property for rent will engage the services of an agent. Therefore, it is usual to approach an agent, or a number of agents, rather than make a direct approach to a landlord.

Most properties are listed for rent (lease) on agents' websites and for a residential letting it is relatively straightforward to arrange a property viewing.

For commercial property, if the purchaser has specific requirements, it will usually be easier for the purchaser to appoint an agent to identify appropriate properties and negotiate the rental amount and other terms of the lease agreement with the landlord. Depending on the nature of the property and market conditions, it may be necessary to pay a 'premium' to secure a lease in addition to paying rent.

For both residential and commercial properties, a property transfer tax may be charged on the tenant when taking up a lease depending on the value (see below).

TAXATION OF UK PROPERTY

There are a number of UK taxes that can apply to interests in UK property:

PROPERTY TRANSFER TAXES (SDLT IN ENGLAND AND NORTHERN IRELAND, LBTT IN SCOTLAND AND LTT IN WALES)

Tax is levied on purchases of UK property and applies to acquisitions by both resident and non-UK resident taxpayers. For example, the purchase of a freehold commercial property in England will trigger SDLT at a rate of 2% on consideration (purchase price) between £150,001 and £250,000; and at a rate of 5% on consideration in excess of £250,000. The acquisition of leasehold commercial property in England will trigger SDLT at a rate of 1% on the net present value of rental payments arising under the lease to the extent that the net present value is between £150,001 and £5m; and at a rate of 2% to the extent that the net present value exceeds £5m.

For freehold residential property, there is a much wider range of tax bands with progressive rates of tax, for example, in England and Northern Ireland, the top rate applies to properties valued at over £1.5m. Each rate only applies to the part of the proceeds within that rate band so multiple rates can apply to one transaction. In many cases, these rates will be uplifted by an additional 3% for all purchases by companies, and for purchases by individuals where the individual owns more than one residential property after the transaction. The acquisition of leasehold residential property will trigger SDLT at a rate of 1% on the net present value of rental payments arising under the lease to the extent that the net present value is between £150,001 and £5m and at a rate of 2% to the extent that the net present value exceeds £5m.

In England and Northern Ireland a special 15% rate applies to purchases of residential properties valued at over £500,000 by bodies corporate (largely companies); collective investment schemes; and partnerships whose members include a company and/or a collective investment scheme. However, an exemption from the 15% rate is available where the property is acquired for the purposes of a property rental business or a property development trade.

A separate Land and Buildings Transaction Tax (LBTT) applies for property purchases in Scotland and the Land Transaction Tax applies in Wales.

For detail on the current rates of property transfer taxes in the UK see our [Tax Data Guide](#).

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INCOME TAX (IT)

UK resident individuals and trusts; non-UK resident individuals and non-UK resident companies renting UK property are chargeable to UK income tax on the profits of their trade/property rental business. Different tax treatments can arise for non-UK resident taxpayers who are resident in a territory with which the UK has a double tax treaty. Rental profits of non-UK resident companies letting UK property will be chargeable to corporation tax at 17% instead of income tax from April 2020.

CORPORATION TAX (CT)

UK resident companies and non-UK resident companies trading in UK land (whether or not through a permanent establishment) are chargeable to UK corporation tax on the profits of their property trade/property rental business. UK resident companies and non-UK resident companies trading in UK land through a permanent establishment are chargeable to UK corporation tax on most capital gains arising on the disposal of property.

Most non-resident companies without a permanent establishment in the UK are chargeable to corporation tax on capital gains arising from April 2019 either in respect of disposals of UK land (both commercial and residential) or in respect of disposals of shares in companies which derive their value from UK land. Different tax treatments can arise for

non-UK resident taxpayers who are resident in a territory with which the UK has a double tax treaty. Businesses involved in a building or major renovation project may also need to register for the construction industry scheme.

CAPITAL GAINS TAX (CGT)

Both UK and non-UK resident individuals (including certain trusts) are chargeable to UK capital gains tax on any chargeable gains arising from the disposal of both commercial and residential UK property. Non-UK residents have to submit a non-resident capital gains tax return and pay the tax due within 30 days. This reporting and payment deadline will also apply to disposals made by UK residents from 6 April 2020.

Non-resident individuals will also be chargeable to capital gains tax on any gains they make on disposals of interests in "property rich entities", typically shares in companies. An entity is 'property rich' if, at the time of the disposal, 75% or more of the value of the asset disposed of derives directly or indirectly from UK land (whether commercial or residential).

In addition to CGT on the increase in the capital value of land, a specific tax can now be levied by the Local Authority (LA) on the growth in land value that occurs when the owner obtains planning permission to develop it (ie build houses or commercial buildings on the land). The community infrastructure levy (CIL) seeks to provide a commercial alternative to the

longstanding 'section 106' agreements between developers and LAs. The rate of the CIL (per square metre of developed land) for a particular location will be set by the LA so may vary considerably from region to region.

ANNUAL TAX ON ENVELOPED DWELLINGS (ATED)

Residential properties valued at more than £500,000 and which are not owned by individuals, for example properties owned by companies (either UK resident or non-UK resident), can be charged to ATED. ATED, where applicable, is charged at an annual amount at progressive rates determined by the property value. A number of exemptions are available, in particular for properties let as part of a property rental business or which are held as trading stock by a property developer.

Read about [BDO's real estate services](#).



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VAT

VAT at a rate of 20% can be chargeable on transactions involving new commercial property (defined as less than three years old), or older commercial property where the seller has made an election in respect of the property that brings it into charge for the purposes of VAT.

The VAT treatment of dealings in property and land is complex and subject to constant change. Different rules apply depending on whether the property is residential or commercial, and whether or not exploitation is by way of sale or lease. The large amounts of money involved in property transactions mean mistakes can be costly, with the added risk of penalties imposed by HMRC for errors. Consult BDO LLP at an early stage for expert help in ascertaining the VAT profile of the proposed project.

Read about [BDO's VAT services](#).

INHERITANCE TAX

UK property owned by individuals and trusts can give rise to IHT in a number of circumstances, but most typically following death. Similarly, where a property is owned by a UK resident company and the shares in the company are owned by an individual or trust, a charge to IHT can arise on the value of the shares in the company. Since 6 April 2017, the value of offshore companies (broadly those controlled by five or fewer shareholders) or partnership interests will fall within the UK estate of non-UK domiciled individuals to the extent that the company (or partnership) derives its value from UK residential property. The new rules also apply to trusts with non-UK domiciled settlors and to all chargeable events (eg, a death or a trust 10 year anniversary) after 5 April 2017.

Read about [BDO's private client services](#).

COUNCIL TAX/BUSINESS RATES

Local authorities in the UK raise funds to meet the cost of local services via a charge on property in the area for which they have responsibility.

In the case of residential property, this is implemented via a charge to council tax set at varying levels by reference to the valuation band in which the property falls. Payment of council tax is usually the responsibility of the occupier, which may be the tenant in the case of residential property let as part of a property investment business.

In the case of commercial property, this is implemented via a charge to business rates which is calculated by reference to the rateable value of the property and a multiplier determined by the size of the business.

For more technical detail on the most important tax features for businesses operating in the UK, please request our detailed Doing Business in the UK guide from your local BDO contact.



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