

## GUIDE

# Investing in UK commercial property

Since 2000 the value of the UK's commercial property stock has grown at an average rate of 3% year on year which is ahead of the average UK retail prices index measure of inflation which has grown at an average of 2.8%. The commercial property market in the UK was valued at £883 billion with investors owning £486 billion worth of commercial property in the UK. In central London alone, £2.352 billion was invested in 2017.

'I have always received excellent client service from everyone there who I have ever dealt with. They always give very prompt and detailed attention to any matters that arise.'

Chambers UK 2017

Despite the ongoing uncertainties created by Brexit, demand still remains high for UK commercial property investments particularly from overseas investors. There is also ongoing demand from occupiers for office space including in central London. Market commentary confirms that the number of occupier requirements for offices has not substantially fallen away as many had predicted. In addition available office space to rent has reduced due to a shrinking stock with many office buildings being converted to apartments.

In addition certain sectors of the UK commercial property market have achieved much greater returns and proven particularly attractive for investors including the warehouse and logistics sector what with the growth of the internet and the wish for many businesses to have central hubs for the distribution of goods around the UK.

The UK has one of the most active property and mortgage markets in the world. In addition, the UK has always been and undoubtedly will remain attractive to overseas investment following Brexit as a result of:

- provides a State guaranteed title to all properties purchased or sold and which is open to public inspection
- transparent planning process
- level and sophistication of information and data available in relation to individual properties as well as regions and the UK market
- ready availability of mortgage finance in connection with the purchase or development of properties on competitive terms
- openness in the property market in the UK generally
- no barriers or restrictions to the entry into the UK of capital nor any controls or restrictions on its repatriation out of the UK
- sophisticated legal and regulatory protections for consumers, investors and business people
- transparent tax regime, although one that is now considerably more complicated and somewhat less "friendly" to overseas investors than in the past.
- stability of political process
- robustness of the UK economy over the medium to long term despite specific short term economic issues
- safe and secure Land Registry which



'Stephen Brower is a practical negotiator with in-depth knowledge and experience.'

Legal 500 2016

### UK tax

The UK tax environment for commercial property investors remains attractive though requires careful navigation to avoid unnecessary complications and unexpected exposures to tax in relation to rental returns and/or gains made in relation to investment property.

The core issues for investors to consider include:

#### ■ Stamp Duty Land Tax (SDLT)

- The acquisition of commercial property in England, Wales or Northern Ireland (including lease premiums) directly is subject to SDLT at the following rates:
  - up to £150,000 – zero
  - between £150,001 to £250,000 – 2%
  - above £250,000 – 5%.
- SDLT is not applicable to the acquisition of shares (though if the target is a UK company Stamp Duty at 0.5% is in point) in a company holding commercial property. This can be both attractive as part of assessing the tax cost of acquisition and also when considering how to maximise return on an eventual sale.
- Purchases of commercial property in Scotland are subject to Land & Buildings Transactions Tax (LBTT) and acquisitions in Wales are within the scope Land Transaction Tax (LTT). The regimes for LBTT and LTT are similar to the SDLT regime but there are differentials.
- On the purchase of residential property in England, Wales or Northern Ireland, SDLT rates are different to those applying to commercial property. SDLT commences from £125,000 and at a rate of 3% and then increases between various value bands. There is also an additional 3% SDLT charge where a property is purchased as a buy to let/second home. Rates also differ where a residential property is purchased by a Company depending on whether it is an investor or developer or not. Full details of the SDLT rates applying to residential property can be provided on request.
- Where multiple dwellings are purchased (including a single property where there are two or more separate units say an annex or separate apartment with its own front door) there are SDLT reliefs against the full rate otherwise payable. This can work in two ways. One is to apportion the price and then calculate the SDLT payable on each. If the purchase is of 6 or more units (not necessarily on the same site) then the commercial rate of SDLT (see above) will apply. This is a very valuable benefit as it is likely to mean a much reduced SDLT

rate if the purchase price is significant. Again more details of this relief or the amount of SDLT payable in total can be provided on request.

#### ■ Value Added Tax (VAT)

- VAT is a tax on the supply of goods and services. It applies across the EU.
- Unless it is a new (less than 3 years old) building, a supply of real estate (freehold/leasehold/grant of lease) is generally exempt unless the seller has 'opted to tax' (OTT) at which point an additional 20% of the purchase price of the commercial building is payable as VAT. Exercise of the OTT enables the owner of commercial property to recover VAT that it has incurred both on purchase and during ownership.
- If seller and buyer are VAT registered, a sale of commercial property will be outside the scope of VAT if it constitutes the transfer of a going concern (TOGC). Generally TOGC treatment applies where the property is acquired with a tenant in situ or arrangement for a tenancy is already in place. (even if occupation has not yet begun)
- VAT considerations are a key aspect of the design of any acquisition structure.

#### ■ Taxation of rental income – individuals and trustee

- Individuals who let UK commercial property are subject to income tax at their marginal rates (at 45% once income exceeds £150,000) on their net rental profits.
- Trustees, wherever resident, are subject to tax at 45% on their net rental profits.
- UK resident companies are subject to corporation tax (19% reducing to 17% from 1 April 2020) in relation to their net rental profits.
- Finance costs are generally fully relievable but there are restrictions in certain circumstances, though subject to a de minimis threshold of £2 million (this applies to group scenarios also). The rules here are complex.
- Non-UK resident companies are currently subject to income tax at 20%. This position will change from April 2020 at which point these entities will come within the scope of corporation tax, this also brings the interest relief restrictions described above in to point.

#### ■ Taxation of gains

- Currently non-resident individuals and companies are not subject to capital gains tax (CGT) in relation to gains made from the disposal of UK commercial property.



'They give such a high-standard and quality service and always respond promptly with tailored advice. Their advice is always succinct and clear both in writing and verbally.'

Chambers UK 2016

- From April 2019 the position will change and all non-resident owners will be subject to a form of UK tax in relation to gains. The charge will only apply to those gains which accrue after April 2019 (i.e. re-basing is available).
- The new regime also applies to sales of interests in vehicles which derive 75% of their gross asset value from UK land (referred to as "property rich" vehicles).

#### ■ Inheritance Tax (IHT)

- Individuals with direct interests in UK commercial property are generally subject to IHT at 40% on death (after deduction of the 'nil rate band' – currently £325,000).
- Non-UK resident companies are not within the scope of IHT (companies generally are not), and presently individuals holding shares in such entities are also outside of the charge. This is not the case where UK residential property is held through such a vehicle.

There are further issues to be considered in the context of development projects and in particular the Transactions in Land legislation (TIL). These rules were introduced in April 2016 with a view to countering situations where developers would argue that the development or dealing of trade was situated outside of the UK. The effect is that profits from the development project are subject to income tax or corporation tax (ownership dependent).

#### How Edwin Coe can help

Edwin Coe is ideally placed to advise clients looking to invest in UK commercial property. The firm provides a full service offering which has been developed for clients who are looking to invest in or relocate to the UK in particular to offer a "one-stop-shop" which includes providing advice in relation to:

- efficient tax structuring
- establishing required trust or corporate structures
- commercial contracts
- working with other trusted advisors including property agents and surveyors
- the specific purchase, financing and sale of commercial property including full due diligence on all aspects of each
- purchase of residential property
- development of re-construction of property whether residential or commercial
- immigration into the UK (if relevant).

The service provided by Edwin Coe is fully Partner led with Partners dedicated to each client and who remain in regular contact with clients from the outset and who are therefore fully aware of the client's requirements and intentions.

The firm also prides itself on being able to provide speedy and efficient and cost effective advice and solutions on each of the above areas and more.

Edwin Coe prides itself on providing a fully "joined-up" service to clients looking to invest in the UK and in commercial property. The key also to building relationships with clients is the wish to become a key trusted advisor to steer clients through making business decisions and achieving successful outcomes.

We also try at all times to be entrepreneurial and to where possible make suitable introductions either to third parties or other potential opportunities. This includes introductions to other professional advisors such as mortgage brokers or potentially Banks and Lenders who may assist either in relation to banking or loan facilities or bank accounts in the UK. We also work very closely with various other advisors including property agents and property finders who can source or advise in relation to potential investments in UK commercial property. The Partners of Edwin Coe have built a large network of preferred third parties which is invaluable when investing in the UK commercial property market.

Edwin Coe has strong professional links in Europe, the US, the Middle East, Northern Africa, Sub-Saharan Africa, Russia, and the Far East. We frequently assist clients with global business issues.

#### Commencing the process

We strongly advise all clients who are looking to invest into UK commercial property to first take proper "bespoke" advice from us in relation to structures and tax efficient means of investing funds into the UK market. This is extremely important particularly in relation to tax and especially minimising UK tax exposure or potential unexpected tax consequences as a result of legislative changes which have been introduced in the UK, over the last 3 to 4 years.

This process is a must do before even contemplating making a first investment as the process to set up a structure and then suitably document it and create any relevant trust of corporate vehicles (including potentially in overseas jurisdictions) can take several weeks and can, if not resolved beforehand, mean that there is not sufficient time to close a transaction.

Edwin Coe regularly work with client's other advisors such as accountants in their home jurisdiction or one of the off shore jurisdictions to create a bespoke and efficient structure.

#### Language capabilities

We are able to offer support for clients with native speakers in Arabic, Farsi, Cantonese, Mandarin, Urdu and French.



# EdwinCoe LLP

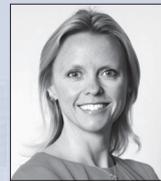
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## Our Team

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