



STEP Annual Conference

Capital Taxes Planning

Patrick Kinnane
Kennelly Tax Advisers

Friday 16 May 2014

Capital taxes planning

- Non-residents and Irish property
- CAT dwelling house exemption
- Topical Irish CAT issues
- UK capital taxes - update



Capital taxes planning

**“Ireland has the
highest death taxes in
the World”**

Irish Independent – 6 April 2014

Capital taxes planning

- UHY study – inheritance tax
- Study of 23 major economies
- USD3m/EUR2.16m property from parent to children
- Ireland most expensive estate taxes

Inheritance taxes

		%
Ireland		26
UK		25.8
France		22.9
Germany		12.1
Italy		3.8
Australia		Nil

Source: UHY study

Inheritance taxes (cont)

	%
Global average	7.67
EU average	14
NZ/Australia	No tax

Ireland – inheritance tax (CAT)

2008 onwards	Tax increases
Rates ↑	Thresholds ↓
Property USD3m/EUR2.16m	
April 2009	Effective tax rate 11%
May 2014	Effective tax rate 26%

Capital taxes planning

- **Non-residents and Irish property**
- CAT dwelling house exemption
- Topical Irish CAT issues
- UK capital taxes - update



“Irish commercial property up 7.2%”

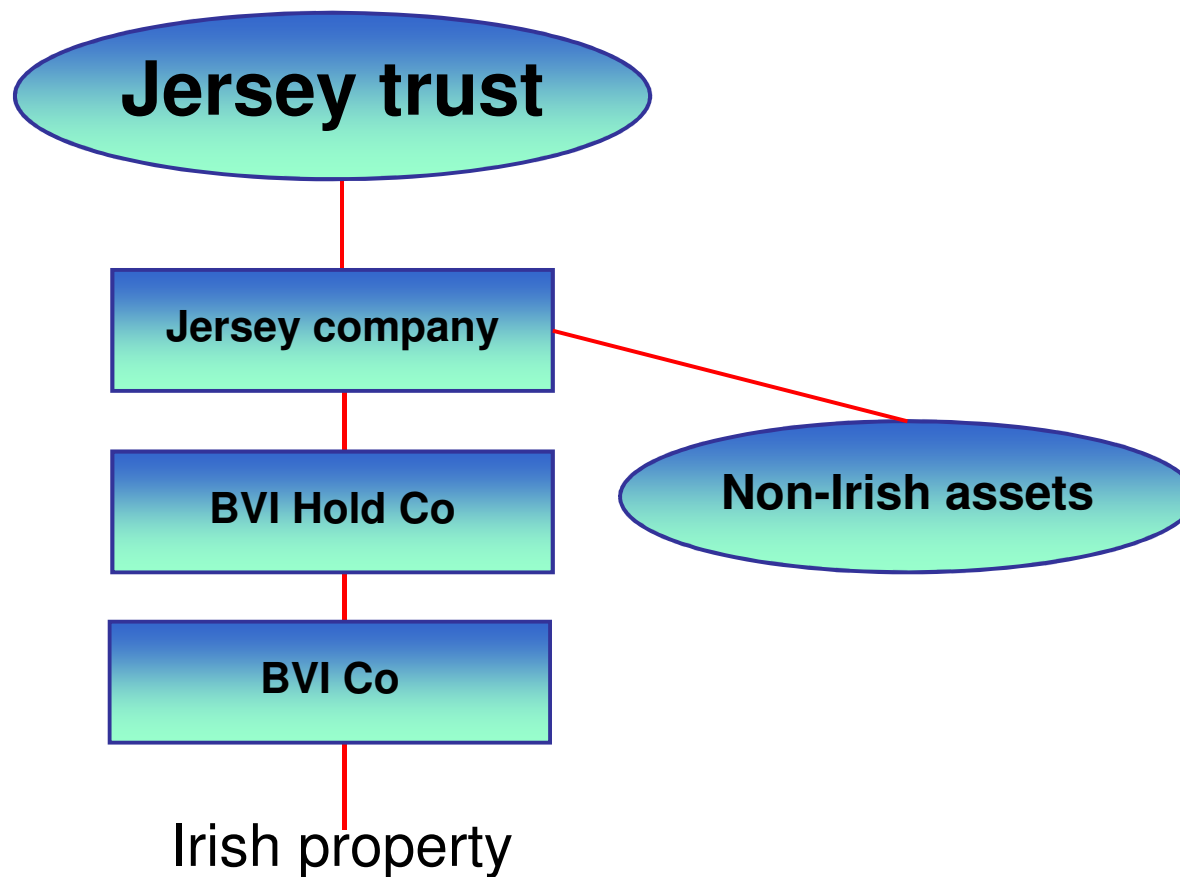
Irish Times 25 April 2014

Case study 1 – capital taxes planning

- Complex overseas trust/company structure
- Settlor not resident and not domiciled
- Beneficiaries not resident and not domiciled
- Intention to keep property out of Irish capital taxes

Case study 1

Offshore structure



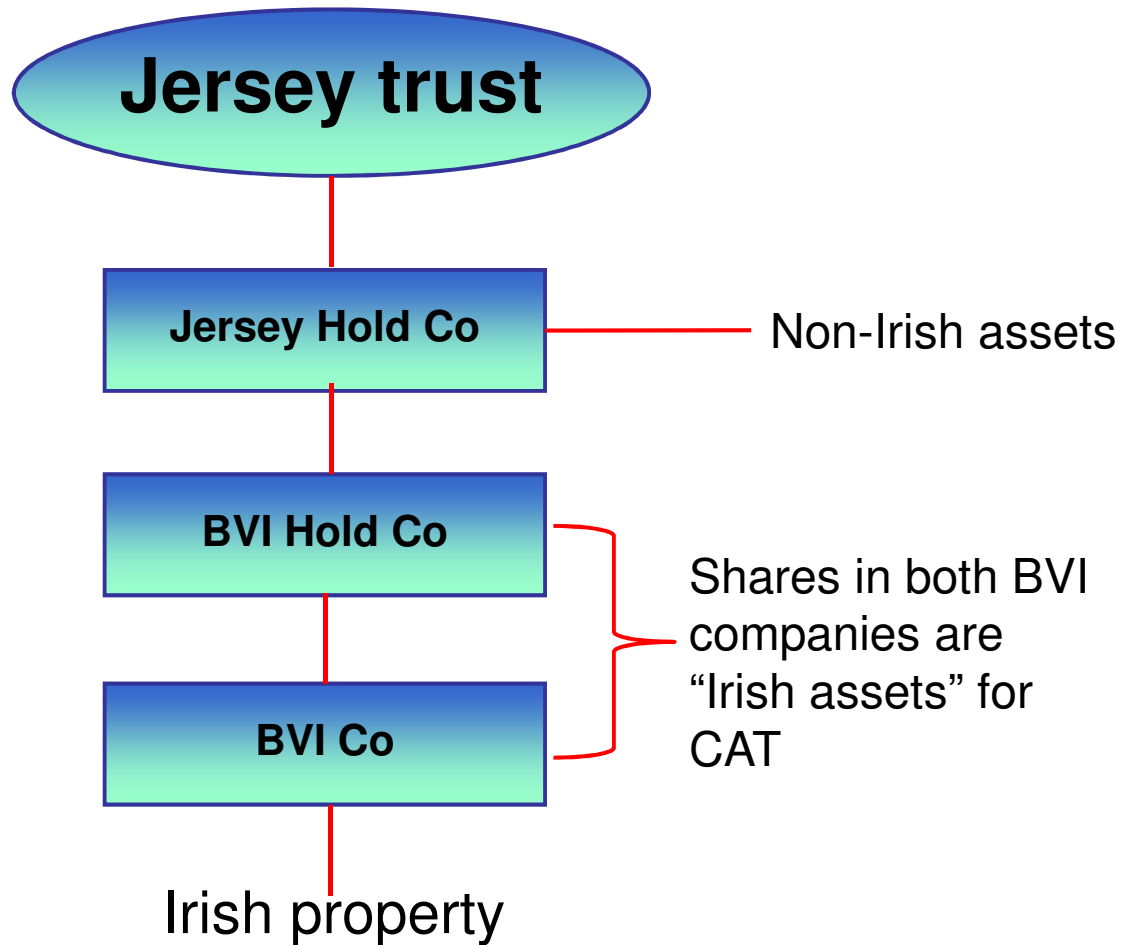
Capital Acquisitions Tax

- Disponer/settlor resident or ordinary
- Donee resident or ordinary
- Irish asset

CAT – Irish asset

- Includes shares in a foreign company the value of which is “attributable, directly or indirectly” to Irish property

Irish CAT



Irish CAT

- Includes shares in a foreign company the value of which is “attributable, directly or indirectly” to Irish property
- Does not apply to non-domiciled disponent/settlor
- Structure effective for Irish CAT

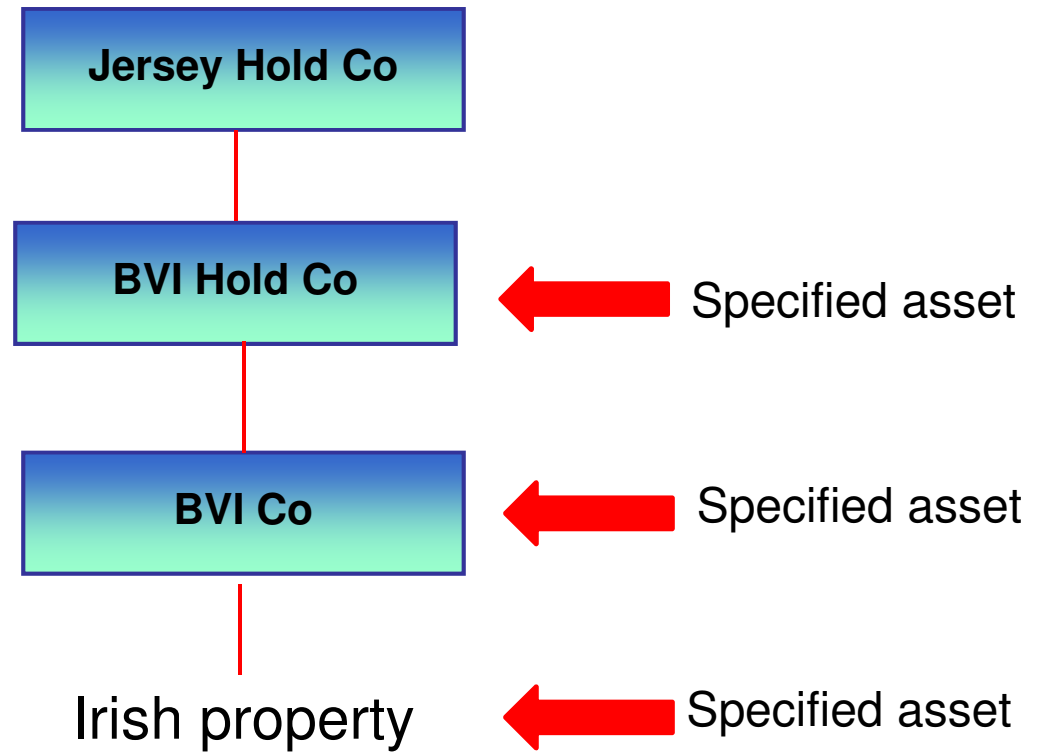
Irish capital gains tax

- Non-resident
- Specified assets – gains liable to Irish CGT

Irish CGT

- *Section 29 TCA 1997 – specified assets*
- *“Shares which derive their value or the greater part of their value directly or indirectly” – from Irish land*

Irish CGT (cont)



Treaty planning

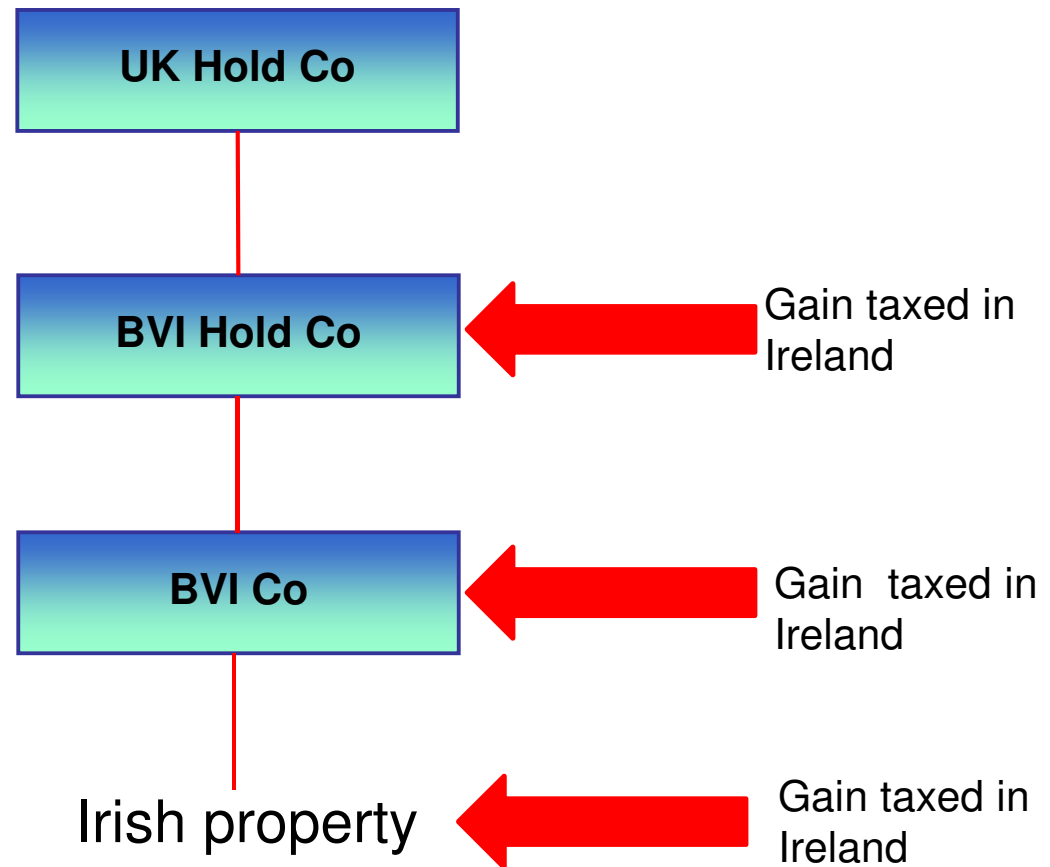
- Change tax residence of Jersey Co
- Use double tax treaty to block Irish tax charge?
- Location?

Treaty planning

- Ireland/UK treaty
- Capital gains article – gains from *“shares, deriving their value or greater part of their value directly or indirectly from immovable property situated in the other state”*



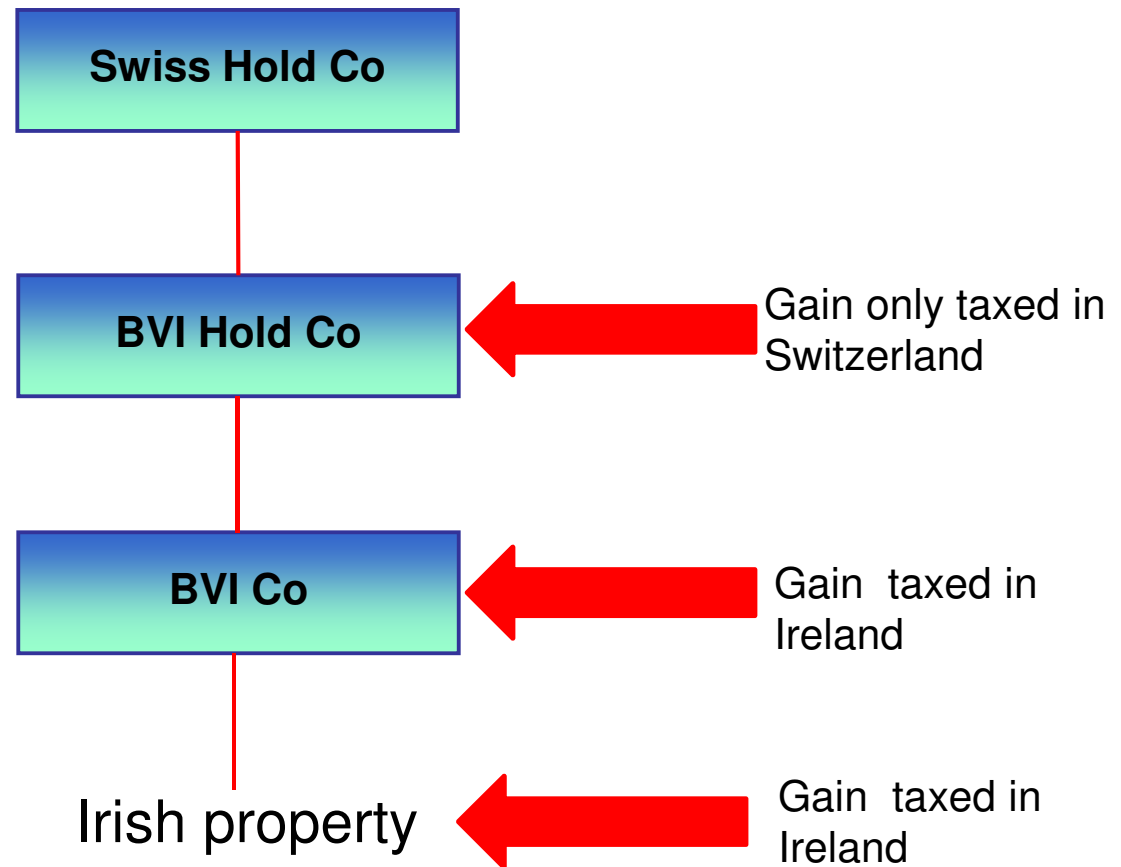
Treaty planning



Treaty planning (cont)

- Ireland/Switzerland Treaty
- Capital gains article
 - *“Gains from shares of a company, the property of which consists principally of immovable property situated in a contracting state may be taxed in the state”*
- All other gains taxed in Switzerland

Treaty planning



Ownership of Irish property

- Income tax rates
- Depends on ownership structure

Personal ownership	51%/55%
Irish company	40%
Irish trust	36%
Foreign company	20%

Sale of property

- 7 year exemption for EEA property
- Property purchased on or before 31 December 2014
- Does not apply to a sale of shares



Capital taxes planning

- Non-residents and Irish property
- **CAT dwelling house exemption**
- Topical Irish CAT issues
- UK capital taxes - update

Case study 2

- Estate – value EUR4m
- 4 children – 3 living in family home
- Family home – EUR2m
- Other Irish and foreign properties
- Dwelling house exemption?

Dwelling house exemption

- Main residence for 3 years prior to inheritance
- Continue to occupy for 6 years
- No interest in any other dwelling at date of inheritance



Case study 2 (cont)

- Disclaimers by children
- CAT – section 12 CATCA 2003
- *“Any liability to tax in respect of such benefit shall cease as if such benefit had not existed”*

Case study 2 (cont)

- Estate now passes under rules of intestacy
- Further set of disclaimers required
- No partial disclaimer possible
- 3 children “disclaim for consideration”

Case study 2 (cont)

- 3 children disclaim for consideration
- $\frac{1}{3}$ interest in the family home and cash
- 4th child received the balance of the estate
- Dwelling house exemption now available

Case study 2 (cont)

- Italian and US properties
- Legal advice required
- Disclaimer in Italy required

Capital taxes planning

- Non-residents and Irish property
- CAT dwelling house exemption
- **Topical Irish CAT issues**
- UK capital taxes - update

Topical CAT issues

- Gifts from parents/grandparents to children
- “Support maintenance and education”
- “Normal expenditure” – “reasonable” having regard to the financial circumstances of the disponent

Gifts to children

- Education costs etc.
- Wider scope?
- Mortgage payments?



Gifts to children (cont)

- Free use of assets
- Interest free loans
- Gift equal to free use of money
- Section 40(2) – “best price obtainable in the open market”

Interest free loans

- Revenue Guidance – interest rates on deposit
- “Highest price a prudent lender/depositor could get in the open market from a prudent borrower”
- Gross or net of DIRT?



Interest free loan

- Loan EUR500k
- Prudent deposit rate 1% gross
0.59% net of DIRT
- Annual gift – EUR2,950

Capital taxes planning

- Non-residents and Irish property
- CAT dwelling house exemption
- Topical Irish CAT issues
- **UK capital taxes - update**

UK capital taxes

- Clients with UK property
- UK domiciled individuals
- Long term residents in the UK



Inter spouse exemption

- UK domiciled spouse to non-domiciled spouse
- GBP325,000 exemption
- GBP325,000 nil rate band
- Election to be domiciled for IHT purposes

Domicile election to be domiciled

- Does not affect remittance basis for IT/CGT
- Ceases to have effect after 4 years of non-residence
- Lifetime or within 2 years of death

Ownership of UK property

- Pre 1 April 2013
 - No UK CGT for non-residents
 - Hold property through a foreign company – no IHT for non-UK domiciled

Ownership of UK property (cont)

Since 1 April 2013

- UK residential property > GBP2m owned by offshore company
 - Used by person connected with company
 - UK stamp duty 15% on purchase
 - Annual charge
 - CGT on sale
- Threshold reducing GBP1m from 1 April 2015
GBP500K from 1 April 2016

Ownership of UK property (cont)

From 6 April 2015

- All residential property liable to UK CGT
- Taxed on increase in value from 6 April 2015

Ownership of UK property (cont)

Personal -	residential -	UK CGT from 6 April 2015
	commercial -	no UK CGT
Foreign company-	residential and personal occupation -	High taxes
	commercial -	No UK CGT/IHT
	Residential -	UK CGT, no IHT



Thank you.