FORSTERS

VINEYARDS & WINERIES

Buying and Running a Wine Estate

RURAL LAND & BUSINESS

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"You only need to drive across the south of England or wander round your local supermarket to see that English wine is everywhere. Having been a rainy backwater, we are now the up and coming place for wine in Europe if not the world. Our sparkling wine is among the best, our whites and reds are not far behind. The growth in quality and quantity looks set to continue as investment, interest and expertise – international and domestic – flows in.

We at Forsters have witnessed the revolution first hand. Wine used to be a niche for us with just one or two vineyards changing hands each year, now it is a key component of our Rural Land and Business practice. The purpose of this guide is to introduce the main legal points we come across when dealing with vineyards and wineries. Best enjoyed glass in hand, we hope you find it useful and would be happy to answer any questions."

Cheers!

HENRY CECIL
Head of Rural Land & Business

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INTRODUCTION

A great bottle of wine is a wonderfully elegant and simple thing, but the process of making it is complicated. Small variables in soil, climate, management and markets can make the difference between a great vintage and an average one.

The same is true of the legal aspects of buying and running a wine estate – there are lots of moving parts and seemingly minor issues can have major repercussions. Vineyards are a particular mix of legal challenges that are widely misunderstood; while vineyards and wineries have a fairly small industry share in England relative to other forms of farming and food production, the level of sophistication of those in the market is now on a par with many of those in continental Europe. Consequently, proper winemakers need proper legal advice. Even if no winemaker has ever said it, it is nevertheless true that "behind every powerful pomerol is a crisp contract".

The key assets of a successful vineyard include the right site, team, intellectual property, goodwill, and working capital. Incorporate on-site processing and you have significant plant and machinery to consider, and with that, potential for more sophisticated financing arrangements. Stepping back from the core assets, the wine industry in the UK relies on a network of contracts for the supply of grapes, processing, and branding. Stepping back one step further and the industry exports to an international market, and EU law still governs many day-to-day practicalities.

Deciding whether to buy or invest in a vineyard is a hard decision. In the first/second century AD the Roman senator Pliny the Younger wrote to his friend Calvisius Rufus:

> *"There are several considerations strongly inclining me to this purchase, while there are others no less weighty deterring me from it... the lands are rich, fertile, and well watered, consisting chiefly of meadow-ground, vineyard, and wood, while the supply of building timber and its returns, though moderate, still, keep at the same rate. But the soil, fertile as it is, has been much impoverished by not having been properly looked after."*
>
> PLINY THE YOUNGER
> Roman Senator

Although Pliny the Younger would have likely associated Britain more with druids and painted tribespeople than wine, he would have recognised the dilemma facing many prospective buyers today.

The final decision is a commercial and personal one but it should be informed by a proper understanding of the legal risks.

Understanding these risks on acquisition will save you a hangover the next morning. Equally, as a business develops, the arrangements for each may need revisiting. Finally, on a sale, the treatment of each asset will have wide-ranging commercial, tax, reputational and personal consequences.

In this series, we will be looking at how to buy, expand and pass on a successful English vineyard and winery. What we hope will become clear is that you need a legal team that can advise you on every aspect of your acquisition and business.

We have brought together a team from Forsters to work with us in the Rural Land and Business team, including colleagues in Private Client, Banking & Finance, Corporate, Tax, Employment and Dispute Resolution, all highly experienced in the matters in hand. We would be delighted to help if you need advice on any aspect of your vineyard business.

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BUYING A VINEYARD OR WINERY

Buying a vineyard or a winery involves acquiring a bundle of assets. Land is at the heart of the transaction, but you may also be buying crops, buildings, subsidies, goodwill, and intellectual property. Overlaid with that is how you are buying them – trading businesses may be sold as corporate transactions or "share sales" rather than a direct purchase of the underlying assets. This article focuses on the assets you are acquiring and what terms your purchase contract might need to address.

LAND

First and foremost, when buying either bare land to plant vines or an existing vineyard, you are buying land. Whether the soil is good for growing grapes is only one factor in determining whether the land is right. Land is a complicated asset and when purchasing it for a vineyard you need to consider questions like:

- Are there restrictions that could stop you growing vines on it? For instance, does it have the right planning consents for its current or proposed use? Can you sell the wine as well as make it, or host wine tastings and weddings?
- Are there any third party rights that could affect operations? For example, is there a public footpath through the middle of the vineyard, or are there historic footpaths that could be registered in future?
- Are you inadvertently taking on other liabilities you were not expecting, such as claims from the seller's employees or environmental contamination?
- What is planned in the area? For instance, is it next to a proposed new housing estate, or is HS2 or a new bypass going to plough through it?
- Where does the water come from? If you have abstraction licences or a private water supply, are you able to use those for the business, and what obligations are you taking on?
- Is there proper access to the public highway?
- How much tax are you going to pay on the acquisition – what are the rates of SDLT and VAT?

Due diligence by your solicitor will answer these questions and more.

Armed with this knowledge you can adjust the price, if necessary, and negotiate sensible provisions into the contract to protect you against the risks.

EXPERT INSIGHTS

"The purchase of a vineyard is a new opportunity for clients to find a real connection with land and a chance to create a legacy investment.

The best sites are hard to find, hard to acquire and the journey is often full of headaches and heartaches – you have to be resilient.

Vines are a long time in the ground, therefore it is important to take site selection and preparation very seriously!"

RUPERT COLES
Director, Rupert Coles Ltd

BUILDINGS AND EQUIPMENT

Turning to production, wineries need premises to lay down bottles, keep expensive kit, house people on site and, increasingly, entertain visitors and customers. From bats to asbestos, there are nuances with bricks and mortar. A good surveyor is important if you want to understand the potential liabilities and costs of upkeep or conversion of the farm buildings.

Complying with the planning regime is critical. Three areas come up most: use, development, and listed buildings. Whether or not the site has the right consents in place for your proposed use must be checked by your solicitor – the planning rules are not straightforward and many wineries will require specific consents for retail and leisure.

Around 400,000 buildings in England are listed, including a surprising number of old agricultural barns. Carrying out unauthorised works to a listed building without consent is a criminal offence so cannot be taken lightly, and there is no limitation period for enforcement action, so you could have to put right unauthorised works carried out by the seller. In the most serious scenarios, you may decide that the seller has to apply for consent for unauthorised works themselves before completion, and you might keep back some of the sale price as a retention to deal with the risk.

Less severe but more common in draughty, old buildings are missing building regulations certificates and potential failure to comply with the Minimum Energy Efficiency Standards (MEES), where Energy Performance Certificate ratings of F or G render a building unlettable. Again, you need to understand how this will affect your use of the site prior to exchange.

Viticulture also requires specialist equipment, much of which is valuable and hard to remove. If it is included in the sale, a key point to check is whether the seller is able to sell you everything you think you are buying – *nemo dat quod non habet*, literally meaning "no one can give what they do not have", is a long-established principle but one that can easily be overlooked where equipment is held on hire purchase terms. Assuming it is owned and included, there may be accountancy elements to address in the contract such as capital allowances elections, and having an experienced accountant to work with your lawyer is essential.

CROPS

Most vineyards will be brought to the market in early spring and contracts are often exchanged in early summer – a quick sale where efficient solicitors have a sales pack ready can exchange in under a week, though most more substantial sales will take six to ten weeks. Most sales will then complete within a few months, either before or after the harvest.

If completion takes place before harvest, then the contract ought to deal with the grapes. Growing crops form part of the land and will be included in the sale by default; if they are, the seller may well require you to pay for them and any other items of what is known as "tenant right" based on a valuation at completion, particularly if completion is close to harvest.

It is more common for the seller to want to keep the current crop. They will then need holdover rights to harvest and store the grapes. A good contract will set out costs, liability and insurance in that period, together with a provision allowing you to keep or sell the grapes if the seller fails to remove them – otherwise you are left as an "involuntary bailee" and will have to follow a notice procedure before you can do anything with the grapes.

Many vineyards will be situated within a larger farm and not all the land will be under vine. The remainder, and indeed the field margins, will often be used for grazing or for more conventional arable crops. While the crops may be dealt with alongside the grapes, it is not unusual to purchase cattle or sheep with a farm and an ingoing valuation or price adjustment may be required for livestock and deadstock.

Growing grapes is still agriculture and the land is, therefore, eligible for agricultural subsidies. These can be lucrative but complicated, particularly as the Common Agricultural Policy fades away post-Brexit in favour of Environmental Land Management Schemes. If buying, you need to decide whether to take the entitlements to the subsidies, in which case the documents need to make provision for the transfer process and set out an agreed price.

THE BRAND

Judging a book by its cover may be frowned upon, but judging a wine by its label is often wise. Name, logo, recipe and method are vital so they need to be properly registered, protected and enforced so no one else can steal or benefit from your intellectual property. You should also consider licensing your name and brand overseas. In the digital wild west the opportunities and pitfalls are bigger than ever.

The contract can cover whether any intellectual property is included, both in the strict sense of copyright in label design and registered trademarks, but also in the looser sense of farm names. It is not uncommon to ask a seller to stop using a farm name in future and to transfer website names and social media handles to you at the point of completion.

Finally, where you are buying the business, you also need to consider the goodwill and, potentially, any book debts. This angle is where it becomes important to use lawyers and agents with corporate experience, as the transaction will become more akin to a merger or acquisition than a single asset purchase.

EXPERT INSIGHTS

"The wine industry in the UK continues to grow and the demand for English wine and consequently vineyards continues to outstrip supply in key areas. A high profile product more often produced in well-established and attractive settings means there is increasing interest in the concept of wine tourism. Wine trails and tasting sessions alongside local, seasonal produce are becoming more mainstream options for tourists in the UK enabling well-advised and forward thinking operators to capitalise on this."

ANDREW CHANDLER
Head of Rural Agency,
Carter Jonas

IN SUMMARY

It will hopefully have become clear that there is no "standard" purchase – every acquisition will have terms unique to the property and business – and, as a result, you need a lawyer who can pre-empt each potential issue and offer you a solution. If you are interested in buying a vineyard or winery, please do get in touch.

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FUNDING

Making wine is expensive. You need the land, the labour and specialist plant and machinery plus long-term capital to support expansion and maintenance. It takes five to ten years for a new vineyard to start selling wine so sufficient capital will be needed in the early years. Where that money comes from is important. Are you borrowing it? From whom? What is the loan secured on? A range of assets can be used for security, not just land itself; some require more bespoke financing than others. The right finance can make a huge difference to the amount you can borrow, the interest you pay and how much flexibility you have over the operation of the business.

Generally, land is the easiest asset to secure and, in recent years money has been reasonably cheap. However, high street lenders will not usually lend against agricultural property, meaning you need to approach the handful of specialist lenders in this area.

Larger and more established vineyards with a trading history meanwhile are increasingly using asset-based lending, which is borrowing against receivables generated by the business as well as land, plant and machinery. This often provides more flexible working capital than vanilla loans secured against just the land.

As with any financing, it is often helpful to approach a specialist broker who can find the right lender for your business and its borrowing needs.

You will need a solicitor to act on your behalf. Lending terms can be onerous and it is important to take legal advice to understand them in the context of running the business day to day. A good lawyer will explain potential defects in your security to your lender and give solutions, rather than simply identifying problems.

Lenders will look at assets in the round and demand adequate security for the debt, like (in the case of companies) a debenture creating fixed and floating charges over all assets or a share charge from the shareholders over the borrowing entity.

Buying plant and machinery on hire purchase terms can make sense from a balance sheet point of view. Sophisticated creditors provide overdraft facilities (secured and unsecured), and legal charges can be left in place for short notice lending too.

Collateral can also come from outside the business. Personal guarantees from beneficial owners or from trustees can be especially helpful for young businesses. Remember that trustees' guarantees should be limited to trust assets and personal guarantees should be capped. Parent company guarantees can have implications for the wider group.

Ultimately a vineyard is a collection of assets and approaching it as a straightforward land purchase is not always the answer. Forsters' Banking & Finance team knows about complicated real estate finance and asset-based lending.

EXPERT INSIGHTS

"With rising temperatures, improved technology, and increasing demand for wine and land suitable for vines, there is a real sense that vineyards in the UK are now, for some, a viable option.

They will work closely with you and the Rural Land and Business team to understand the wider project. Combining these two elements allows us to advise on and structure the most suitable form of finance for you.

C. Hoare & Co. has funded both acquisitions and serious investment in existing businesses. As a 12th-generation family business, we take a long-term view well beyond the usual rolling five-year strategy, and with the cost of capital at a near-historic low, the timing couldn't be better. We recognise, however, that vineyards need the right team on the ground, as well as favourable soil, aspect and climate conditions – we all know it only needs one unexpected frost to wipe out an entire season. This places winemaking some way up the risk spectrum, and it won't be for everyone, but we have been on journeys with a number of well-advised customers and feel we offer a flexible approach".

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EMPLOYEES

Winemaking is labour intensive. No machine can yet pick grapes, so you will need to employ pickers as well as well as a team for the general management of the estate and operations, including sales and marketing.

When buying an existing vineyard, consider the staff already there. In a share sale (i.e. an acquisition of the shares in the existing operating company) the buyer will automatically inherit the staff. In an asset sale (e.g. the property, machinery and goodwill are sold separately), the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") are likely to apply. Under TUPE, employees wholly or mainly assigned to a business/property automatically transfer on their current terms and conditions.

In both scenarios, a well-prepared buyer will review the current arrangements to understand who and what they are inheriting and work out whether they fit with their plans. In addition, under TUPE, the buyer and seller must follow a prescribed information and consultation process with staff members.

Alternatively, if the land does not currently operate as a vineyard or winery, the buyer must decide whether it wants to take on existing staff. Sometimes existing staff are critical to a buyer's intentions (for example, the groundsman who really understands the geology of the soil). Where the buyer does not wish to keep staff on they should ensure that the seller terminates their employment on or before completion and indemnifies them against associated risks (such as unfair dismissal and/or that TUPE should have applied). Where the risk of former staff bringing a claim is high, the sale contract may provide for a suitable retention (a ringfenced tranche of the sale proceeds held back by the buyer until the risk of claims has largely passed).

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A buyer will want to incentivise high value, specialist employees like the manager to stay, versus moving to a competitor. It might be appropriate to agree new terms including retention bonuses and restrictive covenants, preventing them from jumping ship or taking customers or suppliers with them to a future role.

Additional employment issues include:

- Service occupancies: employees might need to live on site, in which case they will most likely need a service occupancy for their accommodation. A service occupancy gives an employee a personal licence – rather than a lease – to occupy the property for so long as they are employed by the employer. Be warned that the threshold for a service occupancy is quite high - the occupation must either be essential for the performance of the employee's duties, or (if not essential) the employment contract must expressly require the employee to live at the property for the better performance of their duties. Setting it out clearly in the contract is usually best. It is important to consider this matter carefully as unless the conditions for a service occupancy are met, an occupier will have a tenancy (a lease) rather than a licence. A tenancy gives additional rights to the employee, including in relation to eviction, and agricultural workers will have a higher degree of protection over and above the rights a tenant of an assured shorthold tenancy ("AST") will have.
- Immigration: make sure that employees have the right to work in the terms of visa and immigration requirements.
- Employer obligations: have a good payroll process in place, provide correct documents to staff (including mandatory policies) and comply with auto-enrolment pensions obligations.

EXPERT INSIGHTS

"We have found that creating an open working environment has been key to our ongoing success as a business. Our employees have a safe space to challenge our decisions so that we can grow and develop our practice. Without this, you begin to operate in an echo chamber. We take pride in the recruitment of the next generation who are full of ambition and knowledge. Their freshness and drive is infectious which only positively influences our workforce."

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SUCCESSION PLANNING

Vineyards and wineries are often family businesses and can rely heavily on key individuals. Therefore, handing over to a successor – whether a relative or a third party – can be difficult.

Where families work together or move to England from overseas it is especially important to plan for succession. A basic checklist might be:

- Who owns the assets now? Who should own them in future? What is the most efficient and commercial means of transferring them? Should the next generation receive land or shares now to ensure a smooth handover and perhaps mitigate tax?
- Do you need protection in the event of divorce or mismanagement in future?
- How will siblings share assets? Will one take on responsibility for the business, and if so, should they receive something in return?
- How should the family make decisions, both now and in future?
- Would there be any specific considerations on a sale of the asset or business? For instance, where one child is going to take over the business rather than his or her siblings, should the siblings receive a share of the proceeds if the business is sold?
- How regularly should you review the arrangements? Many families have five or ten year plans in place, and a well-advised family will have regular family or trustee meetings to review plans and pre-empt disputes.

Successful family businesses plan handovers. They gradually involve the next generation in major decisions. They have transparent discussions about the future. Sometimes these discussions are tricky and experienced professional advisers are often helpful. Complicated family structures benefit from a constitution: a single document setting out how the family wishes to run the business, make decisions, choose trustees and board members, and what should happen if the business is sold.

Some of the areas to look out for are:

- What law will apply to your English and / or worldwide estate? In England you can usually leave your estate to whomever you please, as we have testamentary freedom, but in civil law countries (like France, for example), that is often not the case. So you need to consider whether English assets can pass to the intended beneficiaries. It is critical to ensure the succession of both UK and non-UK assets are seen in the round, as some non-UK jurisdictions impose tax on a gift recipient (rather than the donor). It may be sensible to have both a UK Will for UK assets and overseas Wills for non-UK assets.

- What happens when a family member is working on the vineyard in the reliance on a future inheritance but that inheritance does not materialise? They may have a proprietary estoppel claim, entitling them to the vineyard or a suitable portion of it. This often arises where the income from the land is low or variable and family members are not paid commercially (perhaps in the early years of a vineyard), or where a deceased's estate is one large asset which at least one of the family wants to keep in single ownership. It can apply wherever someone relies on receiving a promised inheritance and acts to their detriment as a result of that promise. Conversely, if the business is passed on during lifetime, has the Will been reviewed to ensure that it reflects current wishes?
- If the business is owned within a trust, disputes can arise between the trustees and beneficiaries or between the trustees themselves – once the asset is in a trust, the settlor cannot dictate the outcome of any dispute – the trustees, the beneficiaries or the court would almost always have to decide. Think carefully about who should be trustee, what powers they need to run the business (and redevelop if the vineyard were no longer an appropriate asset to hold) and what rights different beneficiaries should have or might need to income or to capital.
- If you become domiciled in England and Wales, family members, cohabitants and dependents can claim reasonable financial provision after your death, under the Inheritance (Provision for Family and Dependants) Act 1975. This could be someone living on the vineyard or financially reliant on the land or the income. Keep this in mind in your estate planning.
- If you leave it too late to review your Will, arguments may arise about testamentary capacity. If you involve family members who stand to benefit, others could claim they have unduly influenced the testator or that you did not know and approve the contents of your Will.

All families have disagreements, but with proper planning real disputes can generally be avoided. Lawyers can help by stress-testing estate planning, particularly where the nature of the assets, the testator's domicile or family structure suggest that a claim might arise. That said, the best way to solve a problem is by avoiding it in the first place, which is why every vineyard or winery owner needs a clear succession plan and sound advice and assistance in preparing it.

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TAX

They might be hidden underground, but roots provide physical support and a channel for water and nutrients to make their way to the grape. The same is true of legal structures. How land, assets and businesses are structured make a major difference to the management and distribution of income and tax. For example, it can be more tax efficient to hold a vineyard in a trust or partnership than as individuals or companies. Tax advantages should be weighed against increased management and governance obligations that alternative structures generally demand. Structure is especially important for international buyers.

CORPORATE

Just as an early frost can ruin a crop, an unexpected tax bill can ruin your cash forecast and harm both investment and distribution. Tax will present itself at every stage so at a business level, keep in mind the following:

- Establish the right structure at the outset – tax, liability and exit strategy will inform this decision.
- You should ensure you get proper advice on SDLT and VAT when buying property.
- The vineyard will be cash thirsty in the early years and tax will dictate, to a degree, how that money is infused into the business (ie debt or equity).
- Building, converting and repairing the facilities is expensive and time consuming but with care that expenditure may be relievable from both VAT and capital allowance perspectives.
- To attract and retain talented employees, you ought to consider share incentives and ensure that these arrangements accrue the right amount of tax and NICs.
- You need to ensure that the correct duties are paid on any imports.
- A successful exit – whether that is a sale, IPO or transfer to the next generation – is likely to be taxing but thinking ahead and early implementation may ameliorate this.

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ONSHORE

Disposing of a vineyard/winery or the death of the owner can also give rise to tax liabilities:

DEATH

Inheritance tax ("IHT")

Subject to exemptions and reliefs, on a death IHT is due at a maximum rate of 40% on the value of a UK-domiciled individual's worldwide estate above their available nil rate band ("NRB") (currently £325,000). With proper tax planning, valuable IHT reliefs that can reduce or eliminate the IHT on vineyard assets, leaving them for future generations to enjoy:

- **Agricultural land:** Agricultural Property Relief ("APR") is either 50% or 100% (depending on how the land is farmed/managed) on the agricultural value of land and buildings. This specifically includes land and buildings used to make grapes for wine and, sometimes, extends to a main house from which vineyard and winery operations are controlled. APR is limited to the agricultural value so, depending on the area, the agricultural value may be less than the market value, resulting in IHT on the difference.
- **Business property:** Business Property Relief ("BPR") is either 50% or 100% (depending on the nature of the assets) on the market value of qualifying businesses (including stock), business interests (e.g. a partner's share in a partnership) and land, buildings and machinery used in a business. BPR is better than APR as it applies to market value that, as mentioned above, might exceed agricultural value.

To qualify for BPR a business must be wholly or mainly trading, meaning that (for example) a property letting businesses would not qualify. However, even if a vineyard and winery are only one part of a diversified business, provided that business is wholly or mainly trading (and so, currently, at least 51% trading vs. 49% investment), it should qualify for BPR.

Capital Gains Tax ("CGT")

CGT arises on the disposal of assets at a gain, at a maximum rate of 28% on residential property and 20% on anything else. On a death, the base cost of an individual's assets (on which the gain is calculated) increases to the market value at death. Therefore, the new owner's base cost will be higher, thereby reducing the CGT they pay on a later disposal.

LIFETIME

IHT

Lifetime gifts in the seven years before an individual's death will, ordinarily, affect the IHT due on that individual's estate. APR and BPR can apply to lifetime gifts however, so that even if they are made within seven years of an individual's death, they are not subject to (and do not affect) the IHT position.

CGT

Even if IHT relief is available, the disposal of a vineyard/winery (and even bottles of wine) can still trigger CGT unless CGT exemptions/reliefs apply. The most important reliefs for vineyard and winery owners are:

- **Hold over relief:** The CGT due on the disposal of certain businesses, business interests and assets and agricultural property can be deferred, so that no CGT is due on a disposal. The recipient then takes the assets at the previous owner's base cost (and so, on a later disposal by them, their gain will be calculated accordingly);
- **Business Asset Disposal Relief:** Business owners (that own at least 5% of a business) can claim relief on the sale of all or part of their business, so that they only pay 10% CGT. The relief is capped so that an individual can only claim relief on up to £1 million of their assets during their life; and
- **Wasting Assets Exemption:** Assets with a shelf life of less than fifty years are not subject to CGT. Although, HMRC have argued that certain fortified wines have a longer shelf life than fifty years, most wines will qualify as wasting assets. Certain vehicles and machinery that are used in a vineyard or winery will also be considered wasting assets and exempt.

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OFFSHORE

For buyers of vineyards and wineries who are non-UK resident for tax purposes and/or non-UK domiciled (which, broadly speaking, means that they do not intend to reside in the UK permanently or indefinitely), there are additional considerations (and opportunities).

- Individuals non resident in the UK are liable to higher rates of SDLT on the acquisition of UK residential property, so you must seek advice early in the acquisition process.
- UK income tax and CGT are predominantly territorial and generally impose income tax and/or CGT on non-UK residents for UK income and gains on the sale of UK assets (subject to any relief under an applicable double tax treaty).
- UK residents are, in principle, subject to UK income tax and CGT on their worldwide income. However, individuals who are UK resident but non-UK domiciled can claim the favourable 'remittance basis' of tax for their first 15 years of tax residence, meaning:

  1) they will be subject to income tax on UK source income, and CGT on gains realised on disposals of UK assets; but

  2) they will generally only be taxed on income or gains from assets outside the UK if the income or gains are "remitted" (i.e. brought to, used in or otherwise enjoyed in the UK).

Where possible, non-UK domiciled individuals planning on relocating to the UK as part of the acquisition of a vineyard or winery should time receipts of income and gains so they occur prior to becoming UK tax resident. It should then be possible to bring those funds to the UK tax free after the individual becomes UK tax resident.

However, if it is not possible to generate income or gains prior to becoming UK tax resident, all is not lost. If a UK vineyard or winery is (or will be) operated as a business, it may, with careful structuring, be possible for 'remittance basis' taxpayers to use non-UK income and gains to invest in that business (via a private company) without triggering a taxable remittance, by taking advantage of 'business investment relief'.

- Non-UK domiciled individuals will, generally, be liable for UK inheritance tax only on UK assets until they have been UK tax resident for more than 15 years (at which point their worldwide assets will come within the scope of inheritance tax). While it is no longer possible to shelter UK residential property from UK inheritance tax by holding it via a non-UK incorporated company, it may be possible to use this approach to shelter UK commercial property (which should encompass vineyards and wineries) from UK inheritance tax (payable at 40%, absent any available reliefs or exemptions).

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THE BUSINESS

Just as no vintner wants to sell a corked bottle of wine, no purchaser of a vineyard or winery wants to buy a tainted business. If the structuring of your purchase dictates that, instead of buying the specific assets, you buy the company that owns the assets required to run the business, such as the land, crops, machinery and brand, you will be undertaking a share or corporate purchase. This means that you (and any other purchaser involved) will become the shareholders of the target company.

The purchase structure requires consideration and will likely depend on your circumstances and long-term goals. For example, are you acquiring the business as an individual or with others, possibly as a family investment company? If the latter, consider how to split the shares between the owners and whether all shareholders have the same rights or not.

If one shareholder runs the business, while others are passive investors, different rights to profits or decision-making may be required. To achieve this, you may need to create and issue different classes of share. On the other hand, if all shareholders have equal rights, could this result in deadlock and how should this be resolved? What happens if a shareholder wishes to sell their shares?

Are there restrictions on who they can sell to and the price? All these questions and more can be addressed in a shareholders' agreement and company constitution, but it is imperative that you document the ownership structure and the shareholder rights carefully to avoid disagreements in the future.

In relation to the purchase of the target company, you need to consider and understand the company and business that you intend to acquire. Remember that under English law, the rule of *caveat emptor* (let the buyer beware) applies and so you must do your homework (and instruct trusted legal advisors who can do thorough, yet efficient, due diligence) before signing on the dotted line.

To reduce the risks of any headaches post-completion, consider:

- What assets does the target company own and what does it lease?
- What protection (if any) is there for the Intellectual Property ("IP")? Is the IP adequately protected, for example, have trademarks and patents been properly registered and are domain names held correctly?
- Does the target company have any debt and if so, will this be repaid on or before purchase? There may be security in place, which will need to be released.
- Are there contracts governing business relationships? There might be historic "Gentlemens' agreements" or contracts may have expired and not been formally extended. Check that any contracts have been properly executed and whether the change of control of the company will trigger any obligations or termination rights.
- Are the statutory books of the target company up-to-date and correct? Has the seller made all the requisite filings?
- Are there inherent liabilities in the target company or is there ongoing or likely litigation ? If so, you need adequate protection, for example, through indemnity or insurance in case the company has to pay-out at some point.

Following completion, think about the daily commercial arrangements of the company. If contracts are to be terminated or amended or new arrangements entered into, doing this correctly will protect you from any nasty surprises and ensure that the parties agree what the contract tries to do and their obligations. We suggest putting in place efficient record-keeping and filing processes to make running the business simpler and aiding the exit process when you get to that point. For example, if you decide to sell the business, potential purchasers will consider the due diligence mentioned above. The paperwork and correct processes already in place will make your life, as the seller, much easier.

Additionally, as the life-cycle of the company continues, you may decide to restructure, perhaps to give a family member a greater share of the profits or decision-making rights. Thinking about potential exit strategies early is key. Your strategy may change but giving thought to passing the company and business onto the next generation or selling it to a third party may affect your decisions while in ownership.

Acquiring and running a business is challenging, but it can be vastly rewarding, both financially and personally. The key is to understand what you are purchasing, to structure the purchase and ongoing ownership correctly and manage the business efficiently day-to-day. The correct advisors are critical. Ensure that any such advisors are not only experts in their field, but are also practical, commercial and understand the industry.

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