Moving to the UK for the non-domiciliary

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Historically, the UK has been a favoured place of residence for wealthy foreign individuals because of its relatively benign tax treatment of such "non-domiciliaries" provided they did not intend to remain permanently in the UK. Before 6 April 2008, a "non-domiciliary" was only subject to UK tax on UK source income and gains. Foreign income and gains were only taxable if remitted into the UK. This is known as the "remittance basis". Following Finance Act 2008, the remittance basis now only applies to non-domiciliaries who are "remittance basis users" (RBUs). To be an RBU the individual must either have been resident in the UK for less than 7 out of the last 9 tax years or pay a "remittance basis charge" of £30,000 p.a. Despite the changes, a foreigner coming to reside in the UK can still take advantage of their non-domiciled status, by careful structuring before and after arrival in the UK.

Resident and ordinarily resident

The UK tax year runs from 6 April to 5 April. A person is tax resident if present in the UK for 183 days during a tax year. A person is also treated as "ordinarily resident" if he spends or has the intention to spend an average of 91 days in a tax year in the UK over a four-year rolling period. HM Revenue & Customs (HMRC) will view the ownership of a UK home as showing that intention. By concession, only days where the individual is present in the UK at midnight count.

Domicile

A person is born with a domicile of origin which is retained for life. This is usually the domicile of his father at birth. It is possible for an individual with a non-UK domicile of origin to reside in the UK for a long period of time, but for that individual to remain non-domiciled, provided that at no time they form an intention to remain *permanently* in the UK. HMRC have to prove that subjectively the person intends to remain indefinitely in the UK. There are steps that can be taken to show there is no such intent.

Even though the individual may retain a non-domiciled status for UK income tax and capital gains tax (CGT) purposes, the position is different for UK inheritance tax (IHT) purposes. A person is deemed to be UK domiciled for IHT if he has been resident for 17 out of the previous 20 tax years. This makes his worldwide estate subject to IHT.

Income tax

An RBU is chargeable to UK income tax on:

- UK source investment income as it arises
- Non-UK source investment income on the remittance basis

"Remittance" means bringing the income into the UK. The rules on what constitutes a remittance are very broad and advice is needed. For instance, making a payment in the UK on a non-UK credit card paid from a non-UK account containing income is a remittance. Non-UK source income deemed to be received from offshore trusts is also taxed if remitted to the UK.

Employment income and benefits

An RBU who is UK resident but not yet ordinarily resident will pay income tax on employment income to the extent that his employment takes place in the UK with the balance taxable on the remittance basis. Once an RBU becomes ordinarily resident he will be subject to income tax on all his worldwide employment income. Exceptionally if he is performing a significant amount of his duties outside of the UK, then the non-UK element of his employment income can remain taxable on a remittance basis by having separate contracts for UK and non-UK employment. However, in practice these arrangements are very hard to operate to the satisfaction of HMRC: It is necessary to show that the taxpayer has two entirely separate roles which would include having separate phone lines, separate e-mail accounts, separate laptops etc.

Capital gains tax

An RBU is chargeable to CGT on:

- UK source gains as they arise
- Non-UK source personal gains on the remittance basis

Structuring capital and income

Before becoming resident, a non-domiciliary should maximise the benefit of the tax rules as follows. He should

- work out what he will require to maintain his desired lifestyle in the UK;

- establish his "pre-residency capital". All income and *realised* gains before arrival are considered to be capital for UK purposes and so not taxable if remitted. Any non-UK assets with latent gains should before becoming resident either be sold or transferred to an offshore trust in order realise the gains so that these can be remitted tax-free to the UK in the future;
- open offshore UK sterling bank accounts to fund UK expenditure. These must be structured so that interest is directly mandated to a separate income account. UK expenditure can then be funded tax-free from remittances of capital. Non-sterling accounts should be avoided, because any currency exchange gains will give rise to CGT on remittance. Unlike income, capital gains can never be separated from their original capital;
- place assets which are likely to produce capital gains, such as foreign currency, shares or bonds, in an offshore trust. The trust will act as a deferral vehicle for CGT purposes, as even if gains (of UK or non-UK source) are realised within the trust, no liability to CGT will arise until a UK resident beneficiary of the trust receives a capital payment "matched" by the gains. RBUs will only be taxable if they remit the capital payment. The meaning of "capital payment" is very wide and includes benefits conferred on a beneficiary, for example rent-free occupation of a property or an interest-free loan.

Technically, a person is resident for a whole tax year (6 April to 5 April) if he is resident at any time during it, even if he arrives part of the way through the year. In practice HMRC operate a concession to treat a person as resident from the date of arrival. In order not to need to rely on this concession, it is preferable to carry out the above planning before 6 April in the year in which the person is planning to become UK resident.

Inheritance tax

A person who is UK resident but non-domiciled is only subject to IHT on assets situated in the UK. A UK domiciled person is subject to IHT on his worldwide estate. IHT is charged at 40% on death the chargeable value of the estate above £325,000. Transfers of chargeable assets into trust can trigger lifetime IHT at 20% with IHT at 6% payable every ten years thereafter.

IHT deemed domicile

IHT is a problem for non-domiciliaries who wish to reside in the UK for the medium to long term. Once a person starts his 17th year of continuous residence, their worldwide estate becomes potentially subject to IHT as they are deemed UK domiciled. Apart from simply taking a full four-year break outside of the UK, there is one other way to avoid the effects of deemed domicile: Any assets outside of the UK can be put into trust before the person becomes deemed domiciled and such non-UK assets can retain their IHT-free status.

IHT and the UK family home

Unless the non-domiciliary rents a property, one significant asset in the UK will still be exposed to IHT, the family home. The simplest way of purchasing the property is for the non-domiciliary to do it in his own name. IHT exposure can be reduced using leverage or term life assurance. A more complicated arrangement to avoid the IHT exposure is to purchase the property through one offshore trust which is then financed by debt from a second offshore trust. Although it can eliminate IHT exposure, the use of an offshore company to purchase a UK property is not advisable unless a market rent is paid. If a UK resident non-domiciliary was to occupy a UK property held through an offshore company rent-free then he risks being a "shadow director" of the company and being deemed to be receiving a benefit in kind chargeable to income tax. Unlike personal ownership, no main residence exemption from CGT applies. If a company is desired for anonymity then a company holding as nominee should be considered.

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The Swiss perspective

Whereas special tax regimes and schemes for corporations have been controversially discussed during the last couple of years, favorable tax regimes for (wealthy) individuals were like Sleeping Beauties during the last two decades.

Many high networth individuals usually made their choice between the United Kingdom, Switzerland, Austria and some other more or less exotic jurisdictions as their tax residence. All of these jurisdictions provided (and still provide) favorable tax regimes, which allow wealthy individuals to avoid a taxation of their worldwide income and wealth. In the last two to three years the economic and political environment changed significantly. As a consequence, public (and political) perception is changing as well, and the two most popular "special" tax regimes for wealthy individuals (the UK taxation rules for resident but not domiciled persons and the Swiss forfeit tax regime) came under public pressure.

The UK government reacted and increased the threshold in order to benefit from the favorable taxation and achieved the continuance of the well-known tax regime. In Switzerland the federal and cantonal governments missed the time to reform the forfeit taxation regime and, after the disastrous and unnecessary public voting in the Canton of Zurich, went into a defensive crouch (malicious tongues say that the situation bears some analogy to the [missed] reform with regard to the banking secrecy).

Even if there is no reason to panic, the time has come for the Swiss government to regain control and proactively develop a modern and intelligent taxation system for individuals, which is likely to be accepted by the majority and – at the same time – is attractive for wealthy individuals, such as low income tax rates for all residents and the abolishment of all wealth taxes, stamp duties for investors and all inheritance and gift taxes.

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