UNITED KINGDOM - NEW RULES REGARDING RESIDENT NON-DOMICILED INDIVIDUALS FROM 6TH APRIL 2008

Up until 5th April 2008, individuals who were UK resident but not domiciled for UK tax purposes (see below) were subject to income tax and capital gains tax ("CGT") on all UK income/gains but only on foreign income/gains to the extent that these were remitted to the UK. With effect from 6th April 2008, there are significant changes to the rules for such persons.

RESIDENT

An individual will be resident in the UK if he:

- Spends more than 182 days in any tax year in the UK, or
- Spends more than 90 days per tax year on average in the UK over 4 successive tax years.

The above rules apply to an individual who does not usually live in the UK. In a recent landmark tax case, the individual concerned spent less than the days in both of the above scenarios in the UK. However it was ruled that, as he had previously been resident in the UK and had not changed his residence to anywhere else, the "days rule" did not apply. In other words, he had never really left the UK in the first place. This means that the days spent in the UK will not necessarily be the only determining factor.

Additional points to note are that:

- A day is counted as a day in the UK if the individual is present in the UK at midnight on that day (previously it was the practice to count complete days only).
- The UK tax year runs from 6th April 200x to 5th April 200x+1.

DOMICILE

The concept of domicile for UK income tax and CGT is totally different to residence. Domicile is the country where the taxpayer is considered to have his "permanent home". This will depend on numerous factors, including:

- Nationality
- Country of birth or of parents' nationality at birth
- Centre of economic and social life
- Future intentions

- Many other factors, including ownership of a burial plot (no joke!).

Many ex-pats living in the UK remain non-domiciled for decades after becoming resident here!

NEW RULES FOR NON-DOMICILIARIES

For non-domiciled individuals who have lived in the UK for not more than 7 out of 9 tax years, the "old rules" still apply. Such persons are not taxed on foreign income and gains unless they bring them in to the UK. This is known as the "remittance basis". Provided therefore they can keep/use their foreign income and/or proceeds of foreign gains outside the UK, they will not pay tax on same. So the UK remains an attractive tax jurisdiction for such persons.

Non-domiciled individuals who have lived in the UK for more than 7 out of 9 tax years will from the tax year ending 5th April 2009 have a choice in regard to their foreign income/gains:

- They may elect to be taxed on the "arising" basis. This means simply that they will be taxed on all of their foreign income/gains in exactly the same way as if they were UK income/gains.

- Alternatively, they may elect to continue to be taxed on the "remittance" basis. If they do, then they will pay an annual "levy" of £30,000 and will lose certain UK tax allowances and the annual CGT exemption.

Further factors to consider in regard to these rules are:

- Should their unremitted income/gains not exceed £2,000 in a tax year, they may use the remittance basis without paying the levy or losing their allowances/CGT exemption.

- An individual may elect either method in any tax year. So for example in a year in which the individual has substantial foreign income, he may elect to be taxed on the remittance basis in that year only. This will be beneficial where the income tax on the foreign income would have exceeded the £30,000 levy plus the tax effect of the loss of the allowances/CGT exemption.

- They may remit the £30,000 levy from foreign income without paying income tax on such remittance, provided this is transferred directly from the non-UK account to the tax authorities.

- Negotiations are underway with various countries' tax authorities in regard to the treatment of the £30,000 levy for the purposes of double tax agreements. This remains a grey area.

There are fairly complex rules for situations where a UK non-domiciled resident is the settlor or beneficiary of an offshore trust or the "owner" of an offshore company. In general, income/gains arising from such entities will be taxed on the individual to the

extent that the related distribution to the individual, paid in the UK, can be matched with the overseas income/gain. Holding UK assets in such structures is especially difficult. It is now more important than ever that professional advice be taken by non-domiciled individuals resident in the UK or non-domiciled individuals who intend becoming UK resident.

It is important to note that, whilst the new legislation took effect from 6th April 2008, it has yet to be passed by Parliament. This is envisaged to take place during the summer of 2008.

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