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Tax residency and the UHNW nomad

Geographical mobility for the wealthy has in recent years become common place, and brings with it both challenges and opportunities which arise from choices made by the tax nomad on tax residency.

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Tax Residency

The term "resident" has a unique definition in the context of taxation laws. Under the Organisation for Economic Co-operation and Development (OECD)'s Model Tax Convention on Income and on Capital 2017, the term "resident of a Contracting State" is defined as "any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature ..."

Tax residency is defined differently by each country's domestic taxation laws, the requirements of which may vary considerably from jurisdiction to jurisdiction. Where individuals are concerned, whether one is considered tax resident in a particular jurisdiction is often determined by the amount of time an individual is physically present in that jurisdiction. For example, a person who is physically present or who exercises an employment in Singapore for 183 days or more is generally considered tax resident in Singapore. In the United Kingdom, an individual is also generally considered a tax resident if he spends 183 or more days in the United Kingdom in the tax year.

Notably, there are different ways of determining tax residency in other jurisdictions as well. For example, in the United States of America, an individual is presumed to be a tax resident if he or she is issued a green card. Japan applies a semi-qualitative test, where tax resident individuals are those who are "domiciled" in Japan, or have resided in Japan for a continuous period of one year or more.

Tax nomad/perpetual traveller

There is no universal definition of a "tax nomad". Generally, this describes a person who does not spend significant time, and is not considered a tax resident, in any jurisdiction.

There are three general characteristics of being a tax nomad. First, a nomad typically avoids residing in a country for more than 183 days during a 12 month period. A good example will be someone who lives on a luxury yacht in international waters. Second, a nomad also does not spend more than 90 days on an average in any particular country over a certain number of years. For example, individuals who have spent an average of 90 days or more in each tax year over a period of four or more consecutive tax years in the Isle of Man are treated as tax residents there. Third, a nomad should not have substantial interests such as a business or a family home in any jurisdiction. This is because there may be a risk of some jurisdictions treating you as a tax resident if you have such substantial interests there. For example, a person who "resides" in Singapore except for reasonable temporary absences therefrom would also be considered a tax resident in Singapore, notwithstanding that he or she does spend 183 days or more in Singapore. Whether a person "resides" in Singapore depends on factors such as substantial business connection or his or her habitual abode.

According to Dominic Volek, Head Southeast Asia for Henley & Partners, the global leader in residence and citizenship planning, scenarios such as the above are becoming more common place as wealthy individuals now not only manage a portfolio of investments and real estate but also a portfolio of citizenships and/or multiple residence (not to be conflated with the concept of tax residence) permits that allow them to live this nomad lifestyle.

IT IS NOT NECESSARILY FAVOURABLE FOR AN INDIVIDUAL TO BE CONSIDERED AS HAVING NO COUNTRY OF RESIDENCE AS FINANCIAL INSTITUTIONS MAY LIST HIM OR HER AS BEING RESIDENT IN ALL JURISDICTIONS WHERE INDICIA RELATING TO THOSE JURISDICTIONS HAS BEEN IDENTIFIED.

Common Report Standards

It is not necessarily favourable for an individual to be considered as having no country of residence as financial institutions may list him or her as being resident in all jurisdictions where indicia relating to those jurisdictions has been identified. In the context of exchange of information under the Common Reporting Standards, the OECD has attempted to address the issue of tax nomads in its Frequently Asked Questions (FAQs). In response to the scenario where an individual account holder indicates on a self-certification form that he or she does not have a jurisdiction of tax residence, the OECD states first and foremost that the financial institution would have to confirm the reasonableness of such self-certification on the basis of other documentation, including those collected pursuant to anti-money laundering or know-your-client procedures. If the

financial institution is unable to obtain a reasonable explanation, it would have to obtain a new, valid self-certification form. In such situations, it is likely that the tax nomad will just submit the same information to the bank again.

In these situations, the financial institutions may report the nomad's account information to any jurisdiction where indicia relating to jurisdiction has been identified (e.g. a declared residence address). Alternatively, the financial institutions may undertake a more extensive indicia search on such individual and report his or her accounts in all jurisdictions in which such indicia is present. The OECD also requires jurisdictions to implement compliance review procedures and they may also more closely monitor such account holders who do not state a jurisdiction of tax residence.

To this end, Volek says that the introduction of the OECD Common Reporting Standard (CRS) has made it more important than ever before for clients to seek objective expert advice when it comes to investment migration. HNWIs must understand that citizenship-by-investment (CBI) or even residence-by-investment (RBI) programs do not offer a solution for escaping the legal scope of reporting pursuant to the CRS.

These CBI/RBI programs grant a right of citizenship of a jurisdiction or a right to reside in a jurisdiction and generally do not provide tax residence. Reporting under the CRS is based purely on tax residence, not on citizenship or the legal right to reside in a jurisdiction. Even where tax residence can be obtained through some CBI/RBI programs, they do not by themselves affect the tax residence in the original country of residence of the individual. The situation of every individual and family is different, and the CRS and its implementation is very complex.

Income tax treatment of income earned by the tax nomad

The tax treatment of income earned by the nomad however may not necessarily depend solely on his or her tax residency.

First, individuals may be taxed globally in certain jurisdictions based on their citizenship even if they are not tax residents in those jurisdictions (e.g. the United States of America).

Here, Volek notes that another trend they are seeing in the investment migration space is for US citizens to seek an alternative citizenship and then renounce their US citizenship although he notes that this is not a straight forward process.

Second, even if an individual is not tax resident in a particular jurisdiction, he may still be taxed on income earned in that jurisdiction based on territorial sourcing principles.

A good example of taxation laws operating on a territorial basis can be found in Singapore. Income tax is charged in Singapore under section 10(1) of the Income Tax Act (Cap 134 of Singapore), which provides:

> "Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person **accruing in or derived from Singapore or received in Singapore from outside Singapore**..."

The charging provision under the Singapore Income Tax Act does not impose income tax on a person based on his or her residency.

Therefore, an individual will still be subject to income tax for any income[1] that is sourced in Singapore regardless of his or her tax residency. However, any income that is sourced outside Singapore would not be taxed in Singapore even if it is remitted into Singapore by an individual (except those received through a Singapore partnership).

Conclusion

Before one decides to sell the house and live on a luxury yacht visiting scenic coasts, that person must carefully consider the tax residency laws of the various jurisdictions he or she has connections to. Given the administrative difficulties that may arise when one claims that he or she is not tax resident in any jurisdiction, one possible option would be to reside in a jurisdiction with a favourable tax regime. ■

[1] Note: Capital gains are not taxable in Singapore.