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Veteran Asia-based Tax Lawyer Michael Olesnicky on the Vital Importance of Clients Planning with Realism and Professionalism

Michael Olesnicky is a senior consultant covering tax and wealth management at law firm Baker McKenzie, and for many years based in Hong Kong. Armed with many years of experience, he is an acknowledged expert on the tax implications for private clients in APAC as they review potential alternative residence or citizenship options around the world. He looks at these issues from the angles of tax and structuring, and he knows from long experience that those who do not approach these issues professionally often end up with some major problems along the road. We have summarised some of his key observations and words of advice in this short report.

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Michael has plenty of experience in these matters. He is a veteran of the tax and wealth management spheres. He is a former Asia Pacific Chair of the Baker McKenzie Tax Practice (from 2000 to 2014) and, during those years, a member of the firm's Global Tax Steering Committee. Quite simply, he has accumulated a wealth of experience in his more than 25 years in Hong Kong and Asia, working on regional tax advisory work, tax disputes and litigation, as well as wealth management and estate planning.

"Not planning properly in advance exposes individuals and their families to some major potential hurdles or crises in the future," he warns. "People all too often inadvertently get caught up in problems when they move to other countries if they have not planned thoroughly and professionally in advance. Firstly, people must be aware that if you do take up residence in a country, in many of those jurisdictions, you are deemed to be resident from the beginning of the tax year, meaning that you have to do your tax planning in the prior year."

The 'grace' periods are coming to an end

He told delegates that many people since the pandemic hit might have moved jurisdiction in order to mitigate the worst impacts, and the tax authorities in some countries have taken a concessionary view about tax residency issues during the worst of Covid-19 for those who might be stuck in those countries and perhaps might even be working from within those countries. "However, this type of approach from regulators and tax authorities is on the wane," he cautioned. "More recently, many tax authorities have been starting to issue more notices to indicate this generous approach is coming to an end, and that the pandemic excuse is no longer valid to avoid becoming a tax resident where people are holed up."

He said that many companies are becoming increasingly concerned about their employees working from another jurisdiction because, technically, that can create a taxable presence for the employer in that jurisdiction. As a result, he had seen a number of major institutions in the financial sector and from other sectors forbidding their employees from working from overseas in order to avoid that type of tax consequence.

Beware of rose-tinted glasses

Michael also observed that among the expatriate communities, there had always been, and there still is, a certain romanticism about retiring and going off and buying lifestyle assets such as a chateau in France, or a villa in Tuscany, or moving to a beach resort somewhere in Bali.

"But the reality for many is, after a few months, when they don't speak the local language, and they don't have a vibrant social circle, they become quickly bored," he warns. "So, as I see it from my perspective of a tax planning practitioner, you also need the right reasons to emigrate. You must make decisions that involve smart tax planning, but not have your decisions driven by tax."

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The watchers are watching...

He added an observation on the EU initiatives around citizenship by investment programmes. "The EU has been looking at these types of national investment migration programmes to make sure they are properly regulated in terms of their investment migration programmes," he said. "The EU's concern appears to be corruption-related and the undesirability as a concept of countries selling off citizenship and residency rights to the highest bidder. The OECD is also looking at this issue but its approach is actually more tax-focused in my view, as they appear concerned

about people obtaining visas and passports in other countries, and then pretending that they are residents in those countries to avoid tax reporting obligations, when in fact they're not in reality resident there."

He said that the OECD has its CRS, or Common Reporting Standard programme, but people can obtain their residence visas and even passports and still self-declare incorrectly or deceitfully to the financial institutions with which they deal. "The OECD's approach has been not to try and ban these programmes but to remind financial institutions of the additional due diligence that they need to undertake," he explained. "Because the OECD is tied in closely to FATF, I think it is only a matter of time before the due diligence they are seeking from the financial sector becomes more of a formal requirement."

His final point centred on his own long-time home jurisdiction, Hong Kong. "It is still going through some tough times due to the pandemic, but in the future, I imagine there will be a renewed attempt to attract more investment to Hong Kong," he observed. "Indeed, we see the government introducing a tax concession for family investment holding vehicles. This is basically an encouragement to foreigners to come to Hong Kong and set up family offices, similar to the Singapore type of incentives. This is likely to become of far more interest as the pandemic wanes, and we anticipate significantly more inflows in the coming years." ■