

Tax challenges for expats relocating back to live in the UK?



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What are the challenges today? How must clients adapt?

If you’ve got an expat, and we’ll come onto what that means in a moment, who’s looking, who’s been based offshore for a number of years, and they’re now considering moving back to the UK, what challenges are they going to face? Well, I think the starting point is to look at what’s happened in the UK in the last few years in terms of the attack that the UK government has made on what we call non UK domiciles, and also structures that are used to hold residential property - and I’ll come on to explain why that might affect an expat in a moment. Now in terms of those changes, what we’ve seen is, in 2017, they introduced a new regime by which persons who were non UK domiciled and they held their property through an offshore structure or an offshore trust, offshore company, they’ll now find that they’re subject to inheritance tax on the value of that property on death, whereas previously there were various ways that you could ensure that was not the case.

The other thing that’s happened is that they’ve amended yet again the rules applicable to non-UK domiciles who live in the UK. So what that meant is that, traditionally, if you were non-dom then you could come to the UK and not pay tax on your worldwide income and your worldwide capital gains, unless it were remitted into the UK. And what we’ve seen since 2008 is periodically the regime has come under attack. So from 2008, once you’ve lived in the UK for seven years, you have to pay this annual charge to access the remittance basis. But really for expats, what we’ve seen in these recent years, particularly in 2017, the second finance act of 2017, is are these deemed domicile rules.

And what that means is if you’ve lived somewhere else such as Hong Kong and you’ve acquired a foreign domicile of choice there, and you return to the UK, even temporarily, which is very, very common for expats who now have their home elsewhere, they come back to the UK when their children are say 12 or 13 to take them through their education, and then they want to go back to Hong Kong or Singapore where they now are based. The problem is for those poor people, they are now deemed to be domiciled upon their return, so for income tax and capital gains tax from day one, for inheritance tax from the second year. And any trust structures that they’ve set up are now ineffective, well from that first/second year. So all sorts of problems for those persons, and in the tax planning world that’s giving us, I suppose lots of work in the sense that to plan for those people is now quite complicated, whereas it used to be quite simple.



So yes, they're really the challenges for expats returning to the UK. The key though, to close in, is to determine whether the individual falls within these new deeming rules where they're considered to be a formerly domiciled resident. If you're a formerly domiciled resident, then you fall within that category of deemed domicile straight away. If you're not a formerly domiciled resident, then you can go back to the UK and still access the remittance basis for 15 years, and you can set up a trust before you go back, and that trust will benefit from gross roll up of income and gains and still be not subject to IHT indefinitely, so even after 15 years. So there's this huge gulf now between persons who were not born in the UK, and didn't have this domicile of origin in the UK, compared to those who were born in the UK with a UK domicile of origin.

If you fall within this second category of a formerly domiciled resident, you really have problems when you go back to the UK under these deeming rules. For foreign domiciles who were not born in the UK with this domicile of origin, they are fine and the UK is, in a way, still a tax haven for those persons. But the level

of fine distinctions that are involved in this are fine distinctions, but quite severe in terms of the effects that they have.

So you could be somebody, to give you an example, whose family come from India, they were born in the UK but they had this foreign domicile of origin, they're okay as long as they're still non-domiciled, they can come back to the UK and they have this 15 year grace period with trusts unaffected. But you have somebody who was born in the UK with a domicile of origin, has left the UK for, it could be 50 years, and they've been based somewhere else. They come back and they're domiciled in the UK straight away. So it's very difficult actually to see the policy behind these rules, but we are left with them and that's where we are.

What is your definition of an expat?

An expat would be somebody who was based, say, in the UK originally, was born in the UK, and has since moved overseas, normally for work purposes, and it typically is in a low tax jurisdiction such as Hong Kong and Singapore, but they still have this

connection to the homeland, which in what we're discussing at the moment is UK. So a UK expat, I think is by definition, someone who doesn't live in the UK, but had lived in the UK and probably is a UK domicile. I wouldn't regard somebody who perhaps is foreign to the UK, who stayed there for a few years, say they came and were educated, they had their initial job in the UK and then they left. I wouldn't regard that person as a UK expat. It's somebody who is actually from the UK and then leaves and as we've been discussing, may or may not subsequently return. Our advice certainly would be that they stay away.

Why did these changes occur?

You can trace it back for political reasons, as they always do, because politicians unfortunately make the law, statutory law anyway. And originally back in 2008, it was the Liberal Democrats that decided to politicise the regime that applies to non-UK domiciles who live in the UK. Previously, such persons could come to the UK and not pay tax on their worldwide income provided they remain non-domiciled and that meant that they could stay in the

UK for a number of years, so you would often see them staying for 25, even 30 years, as long as they had a view to leaving at some point, they remained non-domiciled.

So the Liberal Democrats got wind of this and they politicised it, and then the Labour government, as it then was back in 2008, introduced this new remittance basis charge and various changes to the non-domicile regime applicable to the remittance basis, some of which were actually beneficial in clarifying the law. Then we fast forward to the 2015 UK general election, and one of the few areas that the Labour opposition gained traction was that their proposal to abolish the remittance basis regime completely if they got into power. So that prompted David Cameron and George Osborne to have a review of the remittance basis regime and taxation of trusts and everything else. And that then culminated in the 2017 Finance Act, the second one, there were two finance acts during that year, where all of these provisions are contained.

And it was, as I say, it was originally the Labour government that introduced them, then the Conservative government. But it was clear it was gaining traction politically, and that's why these measures were introduced. But ultimately what we see, which is interesting, is that the regime remains intact and it has been in existence for almost a hundred years. It was only meant to be temporary when it was first introduced. But if you think about it, it does make some sense because these people, they're internationally

mobile. They can base themselves if not in the UK, in Ireland, in Portugal, they come to the UK and they spend money and ultimately contribute to economic growth. So it does make sense. So the counter argument, I think, is that well why should they be able to not pay tax on their worldwide income while locals have to pay tax on everything?

And I mean that is a valid point, I suppose. And it does discriminate against those persons that are a UK resident and domiciled. But there we are. The regime lives on, they've attacked it, but it remains in place. And as I say, as long as you're not an expat returning to the UK, you're a true non-dom if you like, then you can still come and use our tax system to your advantage and have quite a tax efficient existence in the UK.

What other changes might we see in the future?

We're seeing more changes from the European Union actually in terms of these new tests for tax avoidance that they're bringing in, and hallmarks for tax avoidance, and effectively saying that you can't utilise European Union law if you're setting up a structure which has one of these hallmarks for tax avoidance.

So that's the latest that we're coming to see, which is again from the European Union, and the UK has actually signed up to this new regime. So there's that, that is on the horizon. We've already discussed the economic substance provisions. It's difficult to see how much further they can go with all of this before

people who were engaged in this industry just start to say, "Well, it's just too much and we're just not going to engage in this type of thing anymore." And that's probably what they want.

There's always a tipping point with this type of thing where if you've got, particularly I think in the private client sphere, setting up structuring, doing tax planning, it's a cost benefit analysis. So, is it worth structuring and going through these costs, which are obviously increasing because of these new provisions? And it gets to a point I think where they're just going to say, "No, we won't bother doing it's anymore."

Unless it's a case, perhaps, as we've been discussing with non-UK domiciles, where there's a specific tax regime in place, I think the private client world and tax planning for them, when you've got individuals living onshore, is going to become more and more difficult. I think for corporates it's always going to be easier for the simple reason that it's easier for a corporate to justify doing planning commercially than it is for a private client. But we'll see how it all pans out. And of course, with Brexit as well, we'll see how the UK positions itself with a hard Brexit. We could find that the UK wants to position itself as a tax haven in the west. We've heard this notion of the UK becoming the Singapore of the west, and then how that leaves its position in relation to the European Union, in relation to the US, but that as well could have a significant impact, because the UK traditionally hasn't been viewed as a tax haven. ■



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