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PRIVATE WEALTH

Executive summary

If you are a US citizen moving to the UK you will be subject to both US and UK tax and reporting obligations. You should take advice before moving to the UK on how to organise your investments and accounts to minimise your UK tax but you will need to take care that your UK tax planning does not impact adversely on your US tax position. Trusts set up by you for US estate planning purposes can cause particular issues. In this guide we highlight the key issues that you will need to consider.

US/UK TAX SERIES: US CITIZENS MOVING TO THE UK

If you are a US citizen who is becoming UK resident you will continue to be subject to US tax and reporting obligations but will also become subject to UK tax. Although there is a double tax treaty between the US and the UK this will not always prevent double taxation. Before becoming UK resident you should, therefore, take UK tax planning advice and organise your investments and accounts so that you can access funds to cover your UK living expenses with a minimum tax cost.

LEAVING THE US – TAX POSITION AND FILING OBLIGATIONS

As a US citizen even if you are no longer living in the US you will be subject to US tax on your worldwide income and gains and will have to file US income, estate and gift tax returns in the same way as when you were living in the US. There is no form to file with the IRS to let them know you are ceasing to reside in the US.

BECOMING UK TAX RESIDENT

You will be UK resident for tax purposes if:

- your only home is in the UK
- you spend 183 days or more in the UK in the tax year (6 April to the following 5 April); or
- you work full-time in the UK.

If you do not meet any of these tests whether or not you are UK tax resident will be determined by the number of days you spend in the UK in the tax year together with the number of UK connections or 'ties' you have.

The only 'ties' that are relevant for these purposes are:

- accommodation – do you have accommodation in the UK available to you?
- family – is your spouse/civil partner and/or any minor child of yours UK resident?
- work – will you work in the UK on 40 days or more in the tax year?
- time in UK in earlier years – did you spend 90 days or more in the UK in either of the two previous tax years?

In most cases, you will be treated as either UK resident or non-resident for the whole of the tax year and for this reason any pre-immigration tax planning should be done in the UK tax year before the tax year in which you become UK resident.

Our 'BCLP tax residence test' app (available through the app store) will help you determine whether or not you are UK resident.

TAX POSITION ONCE UK RESIDENT

UK residents are normally liable to UK tax on their worldwide income and gains.

However, if you are not planning on staying in the UK permanently (for example, you plan to return to the US at some point) you will likely be non-UK domiciled and able to claim to be taxed on the remittance basis. If you claim the remittance basis you will not be taxed on your non-UK income and gains unless you bring them to, or use them in, the UK.

US/UK TREATY TO PREVENT DOUBLE TAXATION

There is a double tax treaty between the UK and the US covering tax on income and capital gains which is intended to prevent double taxation.

Under the treaty, the UK has primary taxing rights over a US citizen who is UK resident (except in relation to US real property income, US business income and US dividends). The US will give the US citizen credit, against his US tax, for any UK tax paid on the same income and/or gains.

SHOULD YOU CLAIM THE REMITTANCE BASIS?

If you are UK resident and do not claim the remittance basis you will be subject to UK tax on your worldwide income and gains. As a US citizen you also remain subject to US tax on your worldwide income and gains. If you are subject to tax in both the UK and the US on the same income or gains, under the terms of the US/UK double tax treaty, you will get credit against your US tax for the UK tax you have paid.

The problem that often arises is that there is a mis-match in the UK and US tax treatment of certain entities – that is, the income and/or gains which are taxed in the UK are not the same as the income/gains that are taxed in the US, or the point at which they are taxed differs. In these circumstances, the treaty does not provide relief from double taxation.

For this reason, it is generally advisable to claim the remittance basis if you hold assets through US LLCs (or other entities treated as transparent in the US but not in the UK) or in US grantor trusts.

If you claim the remittance basis you will not be subject to UK tax on your non-UK income and gains unless you bring them to, or use them in, the UK – this would include using them to buy a UK asset, pay for services in the UK, settle a credit card bill where you have used the credit card in the UK, or repay a loan you have used in the UK.

You should only remit 'clean' capital to the UK, which can be brought to the UK without a charge to UK tax. 'Clean' capital is capital that has not been mixed with any income or gains. For these purposes, capital comprises monies gifted to, or inherited by, you and non-UK income and gains which arose before you became UK resident

You can claim the remittance basis for the first 15 tax years you are UK resident. Once you have been UK tax resident for 7 tax years you will have to pay an annual charge to claim the remittance basis (this is creditable against your US tax).

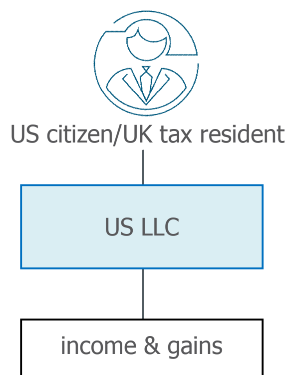
If you claim the remittance basis you do not have to declare your worldwide income and gains to the UK Revenue (HMRC).

PRE-IMMIGRATION PLANNING

If you are coming to the UK for the first time, you will not generally be subject to UK tax on gains you realise, or non-UK source investment income which arises to you, before you become UK resident. You should, therefore, consider receiving non-UK source investment income or realising capital gains before coming to the UK. You need to consider the US tax implications of doing this.

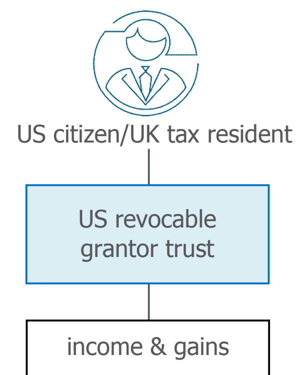
There is no automatic 'step-up' in the base cost of your assets for UK capital gains tax (CGT) when you become UK resident, so if you sell an asset after you become UK resident you will potentially be subject to CGT on the whole gain – not just any gain which has accrued since you came to the UK. You may, therefore, wish to consider rebasing assets before becoming UK resident if you don't want to sell them. You may be able to do this by transferring them to a non-UK trust. If you do that before

MIS-MATCH OF TAX TREATMENT IN US AND UK
- US/UK double tax treaty does not provide relief from double taxation



US
> subject to US income tax on share of income and gains of LLC as they arise

UK
> subject to UK tax on distributions from the LLC and on a disposal of your interest in the LLC



US
> subject to US income tax on income and gains of trust as they arise

UK
(non-UK resident trust)
> not liable to UK tax on income and gains of trust as they arise (other than on UK source income)
> UK tax on trust income and gains if you or any other UK resident receives any benefit from the trust

you become UK resident, any deemed gain realised on the transfer will not be subject to UK tax.

The US does not, generally, impose CGT when a US taxpayer transfers assets by way of gift (as opposed to on a sale or exchange). However, transfers by a US citizen to a foreign (non-US) non-grantor trust are regarded as sales; transfers to a trust can also be subject to the US gift tax regime. Properly structured, however, the trust could be treated as a grantor trust and the transfer as an 'incomplete gift', in which case this should not cause a problem. The transferred assets may, however, still be subject to US estate tax at your death.

TRUST ISSUES

It is common for US citizens to establish a US revocable trust to hold their assets, to avoid the need for probate in relation to those assets when they die (which can be a lengthy and costly process in the US). This can cause issues where the US citizen becomes UK resident as the trust may be taxed differently in the US and the UK resulting in a tax mis-match for treaty purposes.

Another issue that sometimes arises is that the US citizen is the sole trustee of their US revocable trust. In this situation, when the individual becomes UK resident the trust also becomes UK resident and as a result all of the trust's income and gains are subject to UK tax. The US/UK double tax treaty will, again, not provide protection from double taxation as the UK tax is payable by the individual as trustee of the trust (rather than in their personal capacity), whereas US tax is imposed on the individual in their personal capacity. The solution to this issue is to ensure that new (non-UK resident) trustees are appointed before the US citizen becomes UK resident.

UK tax advantages of non-UK trusts

If you remain non-UK domiciled (and not deemed domiciled in the UK) there are UK tax advantages to establishing a non-UK trust. In particular, subject to certain exceptions, gains realised by the trustees are not liable to CGT in the hands of the trustees and are only subject to tax when you or another UK resident beneficiary receives a benefit from the trust. This applies to gains realised on the sale of UK assets (other than those used for a business in the UK and interests in UK property (residential and commercial) or UK property-rich entities) and applies regardless of whether or not you are taxed on the remittance basis. This means that (subject to the exceptions mentioned) UK tax on gains made within non-UK trust structures can, currently, be deferred indefinitely.

INVESTMENT STRATEGY WHILE UK RESIDENT

It is common for UK resident non-UK domiciled individuals to be advised to hold their UK and non-UK investments through a non-UK company and to avoid certain types of investments (for example, non-reporting offshore funds). However, as a US citizen it will be important to ensure that a UK tax-efficient investment strategy does not cause adverse US tax consequences. For example, if a US citizen holds investments through a non-US company that is treated as a controlled foreign corporation (CFC) or a passive foreign investment company (PFIC), the income of the company may be attributed to the individual and need to be included on their US tax returns.

KEY POINTS

- work out when you will become UK resident and ensure pre-immigration planning is put in place in prior UK tax year
- consider whether to claim the remittance basis
- review trusts and trusteeships
- review interests in non-UK companies and directorships
- consider structuring for UK assets and non-UK assets
- If claiming the remittance basis
  - create a 'clean capital' fund
  - maintain segregated capital and income accounts
  - use non-UK income and gains for non-UK expenses

This note is a general guide only and is not a substitute for specific legal and tax advice.

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