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Issues in US-UK Estate and Tax Planning

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Becoming resident in the UK

- Determined by statutory residence test
- Automatic tests:
 - Only home in the UK
 - Full time work in the UK
 - 183 days in the UK
- Sufficient ties test
 - Specified ties
 - Days spent in UK
- Tax year runs from April 6th – April 5th
- Resident from April 6th (unless “split year” treatment claimed)



The remittance basis of taxation

- Available to UK resident non-UK domiciled individuals
- Remittance basis users will be:
 - subject to UK income tax on UK source income and gains as they arise; but
 - subject to UK tax on non-UK source income and gains only if “remitted” to the UK
- Must be expressly claimed in most cases
- Subject to annual charge after first seven years
- From April 2017, no longer available after 15 years



Impact of US-UK income tax treaty

- US citizen living in UK will be exposed to income tax in both countries
- Treaty residence determined under “tie-breaker” provisions
- ‘Saving provision’ allows US to tax citizens as if treaty had not come into effect (so US retains full taxing rights)
- Effect of treaty is to limit taxpayer’s overall liability to higher of two countries’ effective rates



Exposure to UK inheritance tax

- Non-UK domiciliaries subject to IHT on **UK** assets only
- UK domiciliaries subject to IHT on **worldwide** assets
- Will become UK domiciled if form intention to remain in UK permanently/indefinitely
- Will become “deemed domiciled” after 17/20 years’ tax residence
- From April 2017, “deemed domiciled” from beginning of 16th consecutive year
- Possible ‘excluded property trust’ planning to manage exposure



Issues with US revocable trusts

- What is the nature of the trust for UK tax purposes?
- Is it a real trust (i.e. a “settlement”) or a bare trust?
- Will depend on the terms of the trust (and proper law – e.g. section 603 UTC)
- Issues where it is a settlement:
 - Risk of making trust UK resident
 - Possible CGT “exit charge”
- Bare trusts transparent for UK tax purposes
- Note: risks in the event of settlor’s incapacity



US estate planning while UK resident

- Examples: Use of GRATs, LLCs, QPRTs, etc.
- Immediate 20% IHT charge on transfers of UK assets (over NRB)
- Same applies to worldwide assets once UK domiciled/deemed domiciled
- While non-UK domiciled, can transfer non-UK assets into structures free of IHT
- Note: CGT disposal (no equivalent of carry-over basis on transfers to non-UK resident trusts)



Is an English will necessary?

- No compelling need for English will
- May be required to provide affidavit of foreign law on death (although court-exemplified copy of US will may be sufficient)
- Equally, no compelling reason to avoid if preferred for US reasons
 - NB. Risk of UK domicile should be considered if English will to govern worldwide assets



Pre-immigration planning: Clean capital

- Can be remitted to the UK without triggering tax
- Includes:
 - Non-UK income and gains realised prior to becoming UK resident
 - Gifts/inheritances received from individuals (incl. those received while UK resident)
- **Does not** include non-UK income and gains realised while UK resident
- Consider triggering income/gains prior to becoming resident



Pre-immigration planning: Bank accounts

- Key objective: Segregate clean capital from non-UK income and gains arising while UK resident
- Avoid “contamination” of clean capital
- Rules applying to “mixed funds” work against the taxpayer
- Mandate income (incl. bank account interest) to separate account



Pre-immigration planning: Loan trusts

- Gains on non-UK assets subject to CGT if remitted
- Disposal proceeds treated as “mixed fund”, so cannot be remitted without triggering tax
- Loan trust can provide a solution:
 - Establish trust
 - Lend into trust using clean capital
 - Trustees invest
 - Assets sold at a gain
 - Settlor’s loan repaid using capital (free of UK tax)
 - Gains rolled up /distributed offshore



Pre-immigration planning: LLCs

- Consider UK tax treatment
- *Anson v HMRC* [2015] UKSC 44 (1 July 2015)
- HMRC will still treat LLCs as opaque entities
- *Anson* case confined to its facts
- Consider converting LLC to LP?
- Or review existing LLC agreements to align with facts of *Anson*
- Alternatively, claim the remittance basis and keep profits outside the UK (if practicable)



Ceasing to be UK domiciled

- UK domicile of origin is adhesive (and will revive by default in the absence of a domicile of choice)
- Non-UK domicile of choice is acquired when an individual:
 - becomes resident in a different jurisdiction; and
 - forms an intention to remain there permanently and indefinitely
- Still deemed domiciled in the UK for three years following acquisition of non-UK domicile of choice
- Ordinary deemed domicile (under 17/20 year rule) lost after three tax years non-UK residence – will increase to six tax years from April 2017



Treaty domicile for estate tax purposes

- Possible to be domiciled in both UK and US under domestic law
- Treaty domicile determined by “tie-breaker”
- Note: Article 4(1) – UK national (who is domiciled in UK and US) will remain UK domiciled for treaty purposes during first six years of US income tax residence
- Potential US planning opportunities (subject to UK tax considerations)



US estate planning while US resident

- Should not engage in planning using trusts until UK domicile is lost
- Need relative certainty – risk of immediate 20% IHT charge (over NRB)
- Same will apply on gratuitous transfers to LLCs



Ceasing UK residence

- Governed by the UK statutory residence test
- Automatically non-resident if:
 - Spend no more than 15 days in the UK; or
 - Full time work outside the UK (as defined)
- Sufficient ties test
- SRT allows relative certainty
- Can cease residence immediately if “split year” treatment available (otherwise April 5th)
- Note: Temporary non-residence rules



Pre-immigration planning (US)

- Realising income and gains unlikely to be efficient (except where relief available in UK – e.g. main home)
- Outright gifts to individuals can be effective
- Substantial gifts into trust (e.g. “drop-off” trusts) should be avoided





Contact:

Emma White

Solicitor, Private Client

D: +44 20 7863 8585

M: +44 7887 419618

E: emma.white@forsters.co.uk

