

And so it begins...

Personal tax

Tax voice



23 May 2018

David Bateman provides an initial insight into the range of issues that a returning expatriate will potentially need to address.

The phone rings, your colleague invites you to a conference call with his client who is seeking to return to the UK after a period outside the UK; this is a typical introduction to the client who will require UK tax advice whatever wealth they and their family have accumulated whilst they were outside the UK.

With the many changes that have occurred in recent years around UK tax residence, UK tax treatment of UK property, the effect of non-domicile status and use of offshore trusts and offshore companies to mention just a few, it is important to be

fully aware of the client's facts and what the client requires before you begin to formulate and provide the tax advice they need.

What is very obvious now, but which may have not been so obvious back in the early nineties, is the need to retain the records, correspondence and notes surrounding any correspondence concerning a domicile determination. This is now very important especially as I am increasingly seeing HMRC challenge determinations that were obtained in the nineties and in the noughties. The difficulties are being compounded as some of the professional firms that assisted the clients then have long since disposed of their correspondence. The client, unsurprisingly, often has very limited records.

The following are some of the points you will need to think about and may need to look at:

- Due diligence: do you need to identify the client? This will give you so much more information than that simply required to ensure that you adhere to the anti-money laundering regulations: such as, relationships between family members, how old are the children, is the taxpayer actually married (or in a civil partnership) (and if not, are they likely to marry shortly?). You may also need to be looking, where relevant, at the residence status of the client's offshore company as well. If the client is looking to come to the UK and they are the only director and shareholder of an offshore company, then the central management and control of that business will, as likely as not, also move as well.
- Objectives: what does the client want to achieve? The range of questions may encompass; Is the client looking to retire or to carry on in business or to continue with the same employment working from the UK? Under which structure will the business continue to trade? Is the foreign business looking to establish a permanent establishment or a UK company in which it will trade from the UK? Or is the client just looking to be an agent and intending to work in the UK under a contract of employment from the offshore company through a direct pay PAYE scheme?
- Longer term: Is the client returning to the UK on a permanent basis with no expectation to move abroad again? Is the client transient? This will dictate in the main how you will proceed with any planning.
- When do they expect to move back to the UK? It is important to understand how much time there is in establishing the planning that may be appropriate.

Clearly, it is no good suggesting settling a trust and looking at crystallising capital gains and a transfer of the offshore business to a UK company with only, say, four weeks before the family lands in the UK. In such circumstances, you would be seeking a non-statutory clearance to get HMRC agreement on the transfer of the business to the UK company and this may simply not be achievable in such a short period. In the case of the trust this may turn on the deemed domicile position of the client.

- Understanding the circumstances under which they moved offshore: Were they posted to their present offshore employment? Did they start their own business? Will the client wish to continue trading outside the UK? These are important issues as this may dictate how you will address the statutory residence test and whether there is a split year if the client is looking to return during a tax year and is looking to depend upon obtaining split year treatment.
- Where are they returning from? It may be that looking at the tax treaty of that territory may provide some assistance in understanding where to hold assets and manage those assets whilst the client is living in the UK. An examination of the transfer of assets provisions may be required here.
- Domicile status: you need to ask about their domicile position. Whilst post 5th April 2017 changes have reduced the value of this status to a formerly domiciled resident individual, significant tax issues continue for foreign born individuals. This will require asking about their family history. The client will need to provide documentary evidence to provide backup if they are required to defend a non-UK domicile status. Key questions arising are: are they likely to be able to qualify to claim the remittance basis in the UK? Is it an opportunity to look to settle a trust before they become UK resident?
- Pension provision: this will necessitate further detailed examination: Has the client already got a UK pension? If so what has happened to it since they left the UK? Are they still making contributions and the administrator was not aware of their residence status? Look closely at the local jurisdiction rules. Are they able to establish a local pension and what is the local tax position on assets moving in and out of the pension scheme? Look at any tax treaty provisions with the UK. Get local tax advice to fully understand the circumstances. You may be surprised at the results you may find when you look at what can be achieved. It is also important to take account of local management costs and compliance obligations as they may be more stringent than in the UK. This is a very important area of planning bearing in mind the limited lifetime allowance in the UK and the inheritance tax planning that may be available using pensions

for family wealth planning.

- Did they live in the UK before they left to work/live in the overseas country? Have they still got assets/property in the UK and whether these assets are subject to a lease and are in receipt of rental income and how they are managed in the UK? Are they pregnant with a capital gain? Is there residential property with main residence relief?
- Schedule of assets: Ask for a complete list of their owned assets both in the UK and offshore with likely capital gains so you understand what the present position would be if they wished to sell the assets before they become UK resident. This will assist in looking at whether there is a need to look at the bed & breakfasting the assets before the client returns to the UK and whether they are best looking at establishing a Family Investment Company and /or an offshore trust before they return to the UK for inheritance tax purposes.
- Lastly, look to provide access to professional will writing and estate planning from a UK lawyer (taking account of those clients who may have interests in Scotland and may have a need for advice regarding Scots Law.

These are just some of the points you need to ask for in an initial conversation.

There may be a requirement to have subsequent conversations to complete an initial report and then formulate a plan for the family to return to the UK.