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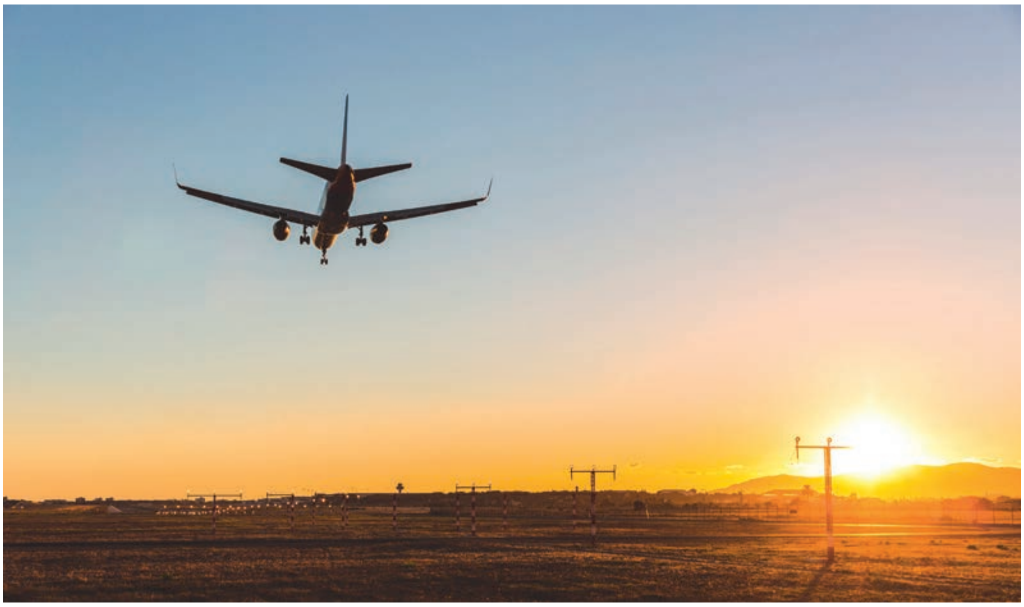


THE TAXING QUESTION OF DOMICILE

by Rachel Horner, senior associate at Meridian Private Client LLP

The imminent changes to the taxation of 'non-UK domiciled' individuals will undoubtedly impact upon where internationally mobile individuals choose to base themselves in the future, especially in the wake of the momentous worldwide political events of 2016.

Currently, a UK resident but non-domiciled individual can, by paying a remittance basis charge, choose to pay tax on his or her foreign source income and gains only when they are brought into or "remitted" to the UK.

However, from 6 April 2017, such individuals will be taxed as though they were UK domiciled once they have been resident in the UK for 15 of the last 20 years.

This new 15 year rule will apply for income tax and capital gains tax purposes, removing the ability to claim the remittance basis of taxation in respect of foreign source income and gains after 15 years of UK residence. It will also apply for inheritance tax ('IHT') purposes. Although there has been a 'deemed domicile' rule for IHT since the 1970s, it is currently a 17 year rule rather than a 15 year rule and the change will potentially make UK IHT an issue for many sooner than before. Since the UK has had two sets of residency rules in the past five years alone, the application of this new rule will not be a straightforward matter.

The 15 year rule will also mean that anyone who lives in the UK from birth will automatically be treated as UK domiciled before he or she becomes an adult and will continue to be UK domiciled whenever resident in the UK, so removing the ability for second generation migrants to the UK to claim non-UK domiciled status.

In publishing the new rules, the government has confirmed its earlier promise to allow offshore trusts established by non-domiciled individuals to retain tax favoured status, provided they are set up before the individual becomes UK domiciled under the 15 year rule. This means that non-domiciled individuals will be able to establish new trusts or add funds to existing trusts within that time frame, although where this comprises UK residential property held via offshore companies, benefits have been removed.

There are no transitional rules in respect of their domicile for those already resident in the UK, therefore all non-domiciled individuals who are already long-term UK residents should consider their position. However, the changes are not necessarily all bad for the internationally mobile individual. For example, those who leave the UK and come back will still be able to use the remittance basis as long as their break from UK residency is sufficiently long.

This is a complex area, which requires immediate specialist advice for those who may be affected.

DRIVE FOR OFFSHORE TAX COMPLIANCE DRIVEN BY INCREASING GLOBAL TRANSPARENCY

by Jon Croxford, partner at Meridian Private Client LLP

Jon Croxford

In its increasingly aggressive approach to tax evasion, and in anticipation of the full adoption of the Common Reporting Standard (CRS) by September 2018, HMRC has announced further measures to deal with undeclared offshore income by way of new 'failure to correct' penalties, the risk of criminal investigation, and 'naming and shaming' proposals.

As part of this drive, HMRC launched a new worldwide disclosure facility (WDF) in September 2016 following the closure of the Liechtenstein disclosure facility (LDF) to new registrations in 2015.

The CRS will result in the automatic information exchange of bank data from around the world as well as registers of beneficial ownership.

The effect is that HMRC will shortly receive data from more than 100 countries. Although the final countries will not join the CRS until September 2018 some, such as the Channel Islands, BVI and Isle of Man, have chosen to participate from January 2016, meaning that HMRC is already receiving data from these territories.

The WDF has been badged by HMRC as taxpayers' 'last chance to come forward' before the new sanctions and penalties are enforced from September 2018, and they have stated that there will be no chance of a better deal in future.

The minimum penalty for non-disclosure under WDF is 30 per cent of the tax due which is more than previous disclosure facilities. While WDF does not offer deals, it does allow for penalty reductions for voluntary disclosure and cooperation, as well as the opportunity for taxpayers to put their affairs in order before much tougher sanctions are introduced.

Whilst there are no guarantees of immunity from prosecution, it is believed that, for those who come forward voluntarily and tell all, criminal prosecutions are unlikely.

Taxpayers who have relevant offshore tax non-compliance to declare as at 6 April 2017 and who are found to have failed to correct by September 2018, will suffer penalties of up to 200 per cent of the underpaid tax, with a minimum of 100 per cent even where the disclosure is voluntary.

This will result in a total effective tax liability of two to three times what it would have been had the offshore income been properly declared in the first place. Add to this the reputational risk of 'naming and shaming', and potential for criminal sanctions, the WDF becomes a more attractive prospect.

There is clearly a window of opportunity for taxpayers to put their affairs in order with respect to offshore income. Specialist advice is essential.

NEW INHERITANCE TAX RULES FOR UK RESIDENTIAL PROPERTIES

by Peter Gate, associate at Meridian Private Client LLP

Peter Gate

New legislation means that from 6 April 2017, all UK residential property will fall within the inheritance tax (IHT) net regardless of ownership structure, value or how it is used.

In a move designed to target non-UK domiciled individuals (non-doms) holding UK property, from that date, the value of offshore company shares, which are currently excluded from IHT for non-doms, will be brought into the charge for IHT to the extent that they derive value from UK residential property. Directly owned UK property (residential or otherwise) is of course already within the IHT net.

The charge to IHT will be based on the value of UK residential property owned by an offshore company or other entity (such as a non-resident trust) when a chargeable event occurs. Such events will include the death of the individual who owns the company shares, and the ten year anniversary of a trust that holds UK residential property through a company.

An individual or trust will be exposed to UK IHT for two years following disposal of a residential property, where it would have been brought into charge on the above basis.

The responsibility to account for the charge and the payment of the IHT will fall on executors, trustees and beneficiaries.

HMRC will receive new powers to prevent the sale of a property until any outstanding IHT charge has been paid.

It is likely that many non-doms will want to consider unravelling the current ownership structure or 'de-enveloping', taking personal ownership of UK residential property going forward.

Such restructuring can be a complex matter and specialist advice is essential.

CHANGES IN QUALIFYING RECOGNISED OVERSEAS PENSION SCHEMES

by Rachel Horner, senior associate at Meridian Private Client LLP

Rachel Horner

In his first and final Autumn statement, Chancellor Philip Hammond announced an alignment of the treatment of overseas pensions with UK pensions from 6 April 2017.

Currently, UK resident individuals who receive offshore pension income from Qualifying Recognised Overseas Pension Schemes, known as QROPS, are taxed on 90% of this income. The new rules seek to tax 100% of this income. As a result, higher rate taxpayers who have been paying 36 per cent on income from this source will pay 40 per cent.

The government's intention is plainly to make it less appealing to move pension pots overseas. Such moves are not new – past attacks have been targeted at the status of the overseas schemes themselves and in any event, QROPS have only ever been appropriate for individuals who have already emigrated, or plan to do so within the foreseeable future.

Further changes come with an extension from five to ten years of the taxing rights over foreign lump sum payments where they are paid to UK non-residents who have recently emigrated. The new and longer period applies where such payments are made from funds that have had UK tax relief.

Other proposed changes include the alignment of the tax treatment of funds transferred between registered pension schemes, and an update on the eligibility criteria for foreign schemes to qualify as overseas pensions schemes for tax purposes.

PLANNING VITAL FOR YOUR OVERSEAS HOME

by Philip Harrison, partner at Meridian Private Client LLP

Philip Harrison

Without careful planning, families of UK individuals who own holiday homes in mainland Europe can face wrangling and international legal and taxation issues on the death of the owner.

Few of those who buy such homes consider what would happen to the property on their death and even fewer take UK advice on their exposure to UK inheritance tax (IHT) and any changes that are needed to their UK Wills.

The UK's inheritance laws are unusual compared with the rest of Europe. In the UK, when you die, you can leave your estate to whoever you choose, whether your beneficiaries are your family, a trust, or a charity. In much of the rest of Europe, there are 'forced heirship' rules prescribing who can inherit your estate and how much of it they are entitled to.

Take the example of a married couple with two children owning a holiday home in France. Under French law, on the death of the first spouse, the ownership of the property transfers to the children but gives the surviving spouse the right to live there for the rest of his or her life, known as a 'life interest'. However, the surviving spouse would also be responsible for maintaining the property and this arrangement can cause arguments between the spouse and children, particularly where step-children are involved or an elderly spouse is no longer able to use the property and has little enthusiasm for paying maintenance costs.

A carefully drafted UK Will can avoid these problems. Recent changes to EU laws mean that British people can now opt for assets in mainland Europe to be treated under UK inheritance laws. However, an appropriate 'choice of law' clause must be included in the Will. It will also be sensible for individuals with separate foreign Wills to review their arrangements as it is unlikely that the 'choice of law' issue will have been addressed.

European forced heirship rules can lead to unexpected IHT liabilities. A married couple owning a holiday home in Spain would be forced to leave a share of the property to their children on the first death. Depending on property value, this could result in tax being payable both in the UK and in Spain, which may force the surviving spouse to sell a property he or she had hoped to keep.

Careful lifetime planning can significantly reduce exposure to IHT. However, specialist advice is needed to avoid potentially expensive pitfalls. For example, a UK based parent may gift the holiday home to children in the expectation that, if they survive for seven years, IHT will be avoided. However, if the donor continues to use the property, the gift may not be effective in avoiding IHT but it could still trigger UK capital gains tax. In addition, many European countries also charge a separate 'gift tax' which could be triggered.

Even though we are headed for the 'Brexit door', these issues are unlikely to change. In any event, owners of homes in mainland Europe should take specialist advice now.

PENSIONS TAX BREAK MAKES PORTUGUESE RESIDENCE AN ATTRACTIVE OPTION FOR SOME UK TAXPAYERS

by Philip Harrison, partner at Meridian Private Client LLP

Blue sky, long summers, golden beaches and a reputation as one of Europe's safest countries in these troubled times seem like powerful reasons for UK individuals to move to the country long known as 'Britain's Oldest Ally'.

But there can also be a powerful financial incentive for those from the UK who have built up substantial pension funds or entitlements from private sector employment.

Portugal has a scheme called 'Non Habitual Residency' or 'NHR' which is designed to encourage high net worth individuals to move to the country and register as Portuguese taxpayers. For example, UK citizens who commit to spending at least 183 days in Portugal in each tax year and who have not been taxed as Portuguese taxpayers in the preceding five years may apply. If the status is granted, they will be taxed under the NHR scheme for at least the following ten consecutive years.

NHR has potentially huge tax benefits for some. For individuals from the UK, income from UK-based pension paying institutions could be paid free of UK tax. Pensions are not taxed in Portugal and the double tax agreement between the UK and Portugal overrides the normal rule that UK pensions are always taxable here - providing instead that pensions paid to a Portuguese resident can only be taxed in Portugal. This favourable treatment only works for personal pension funds and private sector pensions – UK state or public sector pensions would not qualify.

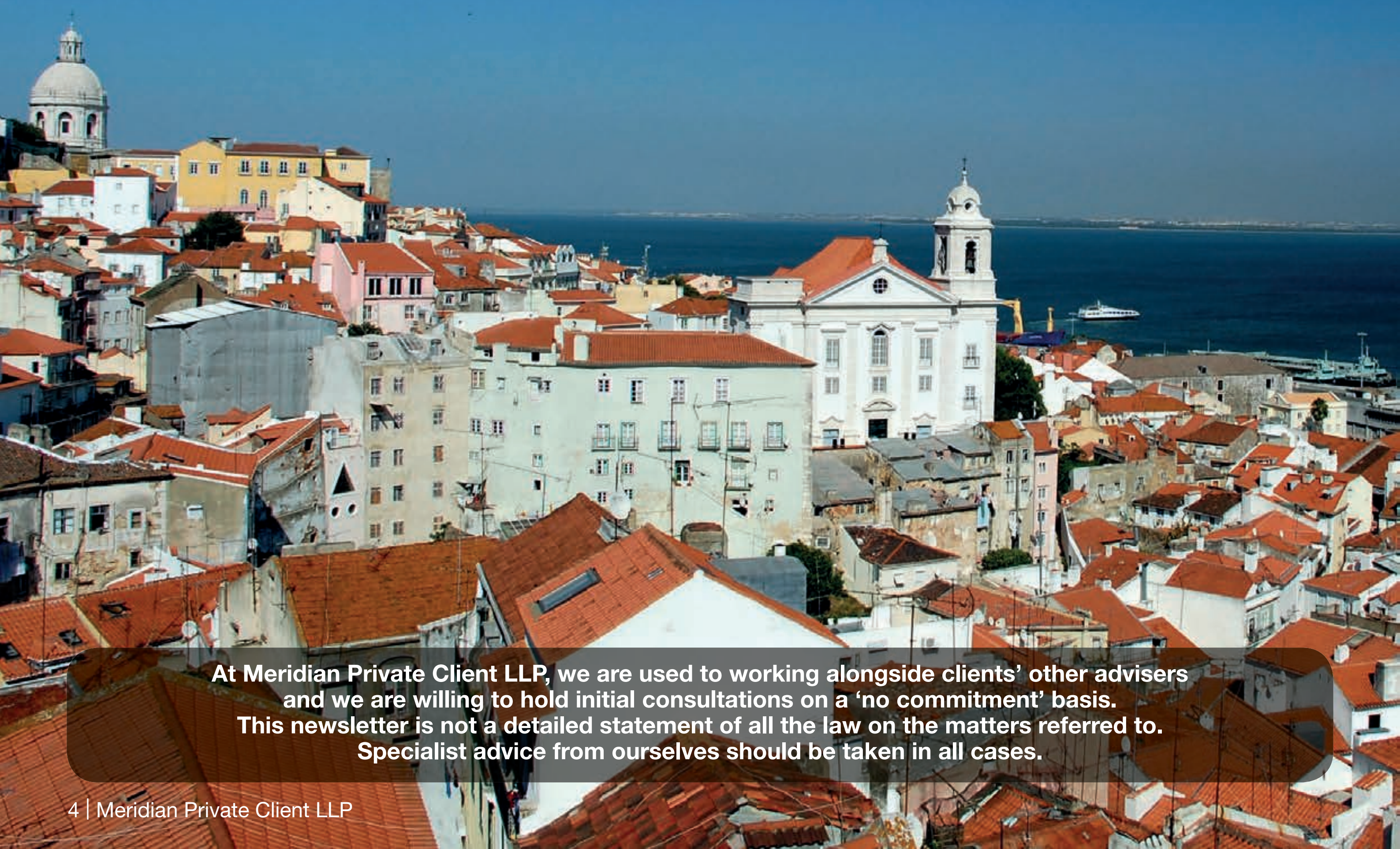
There are potentially other tax benefits from NHR, including lower income tax rates than the individual would pay if he or she had retained UK tax residence.

For NHR status to be beneficial, the individual has to be able to convince the UK tax authorities that they really have emigrated. For this to work, they have to consider what is termed the statutory residence test, which is applied by HMRC for any particular tax year. This will determine whether or not an individual is resident or non-resident for tax purposes in the UK. Only if non-resident status can be demonstrated in the UK can a former UK resident benefit from the NHR regime in Portugal. There are also complications when someone leaves the UK part of the way through a tax year.

The UK non-residency rules are too complex to cover in full here, but it is almost certainly true that they will be more difficult to meet than it would be to satisfy the Portuguese tax authorities on eligibility for NHR.

There are of course other issues resulting from emigration for tax reasons – for example individuals with sterling pension income could be losers from exchange rate fluctuations to the extent that their income is in pounds and their expenditure in Euros, and there remains uncertainty about the implications of BREXIT.

But the benefits of zero taxation on private pension income can be very substantial over a ten year period. Specialist advice in both Portugal and the UK is essential before any decision is taken on NHR or any other question relating to international tax status. Meridian Private Client LLP has a link with Tax Angels, a specialist Portuguese tax adviser, so expert advice from specialists in both countries can be coordinated appropriately.



At Meridian Private Client LLP, we are used to working alongside clients' other advisers and we are willing to hold initial consultations on a 'no commitment' basis. This newsletter is not a detailed statement of all the law on the matters referred to. Specialist advice from ourselves should be taken in all cases.