



Maximising Gains: tax-efficient strategies on a disposal

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Overview

- Short summary of the UK tax environment
- Planning for the Non-Domiciled (“ND”) individual
- Tax for corporate holding structures including updates on the UK corporate regime
- Conclusion

The UK Tax Environment (1)

- UK personal rates: IT: 20% - 50% (2010), CGT: 18%
- UK corporate rate: 28%
- Recent developments include trust taxation (2006), the remittance basis for ND individuals (2008), concern over corporate HQ status as companies such as WPP and Henderson re-locate their HQ offices.
- The UK has a reputation for being a high tax jurisdiction.
- With strategic planning however, the UK can become competitive with low tax jurisdictions such as Cyprus, Denmark, Luxembourg etc.

Relevance of timing to ND individual's net position on disposal

	<u>Timing issue</u>	<u>Tax implications</u>
1.	Prior to UK arrival *	Maximum flexibility; no tax
2.	Post-arrival, still Non Resident	Significant flexibility, but caution is required
3.	Resident ("R") but not yet Ordinary Resident ("OR")	"Remittance" basis; foreign income exclusion
4.	OR but ND – up to 7 years R	Remittance basis – no "entry charge"
	<i>(* The Watershed</i>	<i>If client envisages long-term UK residence consider a non-UK holding entity)</i>
5.	>7 years R	£30,000 annual levy for remittance status: timing of transaction becomes critical
6.	<17 years	Gift/estate tax planning window: non-UK assets are excluded; UK assets are taxable (business assets are exempt)
7.	>17 years	Worldwide basis for gift/estate taxes upon death Client's domicile status needs careful monitoring
8.	Client leaves UK	Loss of residence status; tax-free disposals if there is no resumption of residence status within 5 years.

Additional planning points for ND individual

- Exception to the non UK resident 0% CGT position: trade, profession or agency through UK branch or agency (unless exempted under Double Taxation Agreements)
- Entrepreneur's Relief (Introduced 6 April 2008)
 - Relief on first £1million of gains on the disposal of all/part of a business
- A valid election is required to secure the remittance basis for relevant individuals
 - HMRC self assessment forms and (possible) annual £30k charge
- "Transfer of Assets Abroad"
 - Caution required when moving foreign assets for tax saving purposes
 - The "Genuine Motive Test" protects some transfers of assets
 - Pre-arrival planning is best but is no longer adequate

Summary for ND individual

- To maximise tax efficient planning the following should be observed:
 - Formulation of a strategic plan from the outset.
 - The importance of timing.
- The optimum outcome would be:
 - No tax costs on inward investment
 - No tax costs on dividend extraction if non resident (36% if resident)
 - Split employment contracts: offshore remuneration element is tax free
 - No tax on disposal gains
 - No gift/estate tax exposure for UK or other assets

With early advisory involvement, the optimum outcome outlined above is possible

Corporate holding structures (1)

Sale of Subsidiary

- Tax exemption for disposals of shares in UK and non-UK resident companies (“Substantial Shareholdings Exemption”)
- No claim required - automatic exemption if conditions are fulfilled:
 - Investing company must hold a “substantial shareholding”
 - Substantial shareholding = not < 10% of ordinary share capital of target company
 - Entitlement to not > 10% of profits available and assets available on winding up to equity holders
- Investing company: trading company or member of a trading group throughout qualifying period* and immediately after disposal
- Target company: must be a trading company (or holding for trading companies) throughout qualifying period* or immediately after disposal

* *Continuous 12 month period of ownership beginning not more than two years before date of disposal*

Corporate holding structures (2)

Profit extraction

- New legislation introduced by the Finance Act 2009. The legislation is effective from 1 July 2009
- All dividends/distributions are taxable unless exemptions apply*
- Dividends received by small companies are exempt provided the payer is not resident in the non-qualifying territory
- Dividend received by large/medium sized company is exempt if it falls within the exempt class

* *In practice, exemptions will cover most dividends received by UK holding companies whether from UK or foreign subsidiaries*

Private Client and Tax Services (1)

Advice to Individuals and Families:

- Client profile: internationally mobile high net worth individuals including corporate structuring for entrepreneurs
- Wealth and estate planning: domiciles and non-domiciles
- Trust and corporate structures
- Importance of establishing domicile
- 3 key timing issues:
 - Acquiring UK tax residence
 - 7 year UK residence
 - 17 years deemed domicile
- Asset protection – heavily tax lead
- Contentious estates
- Charity law

Private Client and Tax Services (2)

Examples of Recent Assignments:

- Protecting Employee Benefit Trust beneficiaries in hostile takeover
- Remodelling international structure for overseas client (included working with Austrian advisers to recover dividend WHT incorrectly paid in Austria)
- Second opinion on offshore trust attacked by Revenue
- Divorce of company shareholders: new Articles
- Shareholders' Agreement, Wills & Trusts
- Pursuing assets in Monaco “stolen” from the estate of a London-based German widow
- Pursuing assets in Rio defrauded in Panama from a French client
- Reviews of international holding structures for HNW clients

Private Client and Tax Services (3)

Some Jurisdictions

- France
- Australia
- Belgium
- Ireland
- USA
- Israel
- Norway
- Sweden
- Switzerland
- Germany
- Netherlands
- Greece
- Spain
- Italy
- Malaysia
- Russia
- Austria
- Offshore locations

Contact Details

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