CAPITAL GAINS FOR THE NON-UK RESIDENT INDIVIDUAL

The basic rule to have in mind is that a charge to UK Capital Gains Tax arises when an individual who is domiciled and resident in the UK disposes of a chargeable asset that is situated anywhere in the world.

By contrast, a person who is not resident in the UK is only chargeable to UK capital gains tax on the disposal of assets that are situated in the UK and that are used for the purposes of a trade, profession or vocation carried on in the UK through a branch or agency.

It should be remembered that capital gains tax is only payable in the UK when the total gains exceed a certain amount in each tax year - the annual exempt amount. For the year ended 05/04/2014 this is £10,900 - and is available to each partner where jointly owned property is sold.

The combination of the above rules means that a measure of tax planning is available for persons leaving the UK permanently, or for an extended period. Broadly, a taxpayer who leaves the UK permanently during one tax year and who realises a gain in the following tax year can reasonably expect to completely shelter the gain from the charge to UK taxation. Care must be exercised however, as the gain may be chargeable to a tax on capital gains in the overseas jurisdiction.

Since 1998 legislation has been in place to attack the situation where a person does not emigrate permanently - in other words where a person resides overseas temporarily. In essence the taxpayer must remain non-resident for at least five years for a gain realised in the intervening years to be outside the charge to UK capital gains tax. Where the taxpayer returns within this period the gains (and losses) are treated as arising in the tax year of return to the UK.

However, this rule is not without its complications, as follows:

- The rule does not apply unless the individual has been resident for at least four out of the seven tax years preceding the year of departure from the UK.
- Gains (and losses) treated as accruing in the tax year of return do not include those arising on assets acquired during the period of absence from the UK. There are some exceptions to this rule, however, including assets acquired from the taxpayer's spouse, and assets acquired under roll-over claims.
- The rule is without prejudice to the terms of Double Tax Treaties. The UK has Treaties in place with many countries and in general they follow the OECD model. These provide that the country of residence shall have sole taxing rights over capital gains with the exception of land and buildings used in a permanent establishment. Thus, an individual who is overseas for a short period may still escape the charge to UK capital gains tax, although he or she may well find themselves within the charge to a tax on capital gains in the overseas country of residence.

It should also be noted that capital gains that arise in the tax year of departure remain chargeable to capital gains tax, even if made in the period between the date of departure and the end of the tax year, save for those taxpayers who are non-resident for at least four of the seven tax years prior to the year of departure, who continue to have the benefit of the "split year" treatment.

The contents of this factsheet are necessarily a general overview of a detailed subject. We therefore recommend that you take professional advice about your circumstances before placing any reliance on the contents of this factsheet.

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