A Guide to International Wealth Planning

Mishcon de Reya

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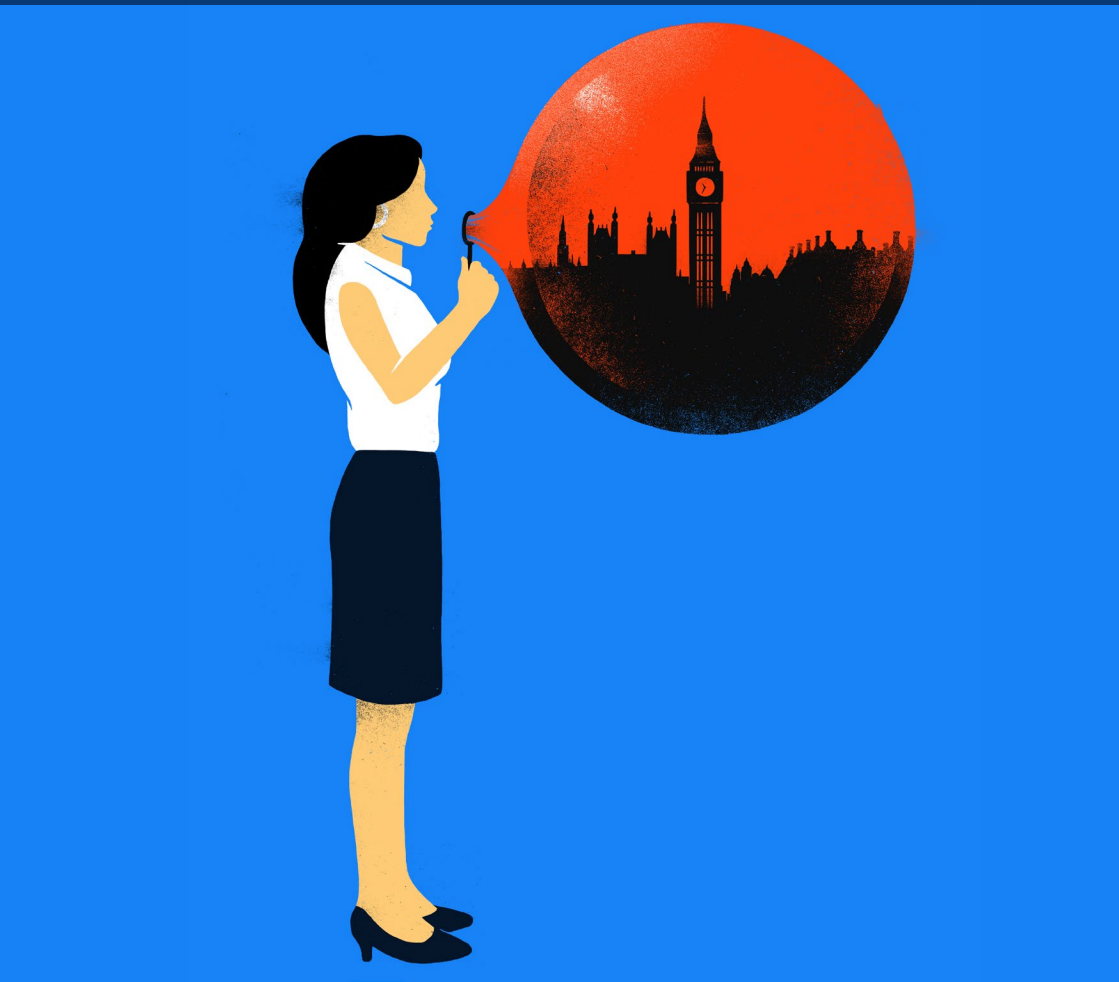

Mishcon de Reya has an established practice dedicated to the tax and estate planning needs of international individuals. We have extensive experience in advising on international wealth planning and are well placed to assist with any queries you may have in relation to your personal tax position and your residence or domicile status, whether you are contemplating a move to the UK or restructuring your assets.

Becoming tax resident in the UK

The extent to which an individual is subject to UK tax depends on whether they are resident or domiciled in the UK. The underlying principle is that those who are resident and domiciled in the UK should pay more tax than those who are:

— resident in the UK but not domiciled in the UK
— not resident or domiciled in the UK.

An individual's domicile is not necessarily the same as their nationality, or the country in which they live. A person can be resident in the UK for many years and yet be domiciled elsewhere. For example, if you were born in France to French parents, you may remain French domiciled even if you become tax resident in the UK. The UK Government has recently announced that, from April 2017, the tax advantages for non-UK domiciles will be limited to a person's first 15 years of UK tax residence.

Case law on residence – applicable to 2012-2013 and earlier tax years

Your residence status for tax years prior to 2013-2014 generally relied on a combination of case law principles and HM Revenue & Customs (HMRC) guidance. Case law principles state that whether or not you were UK tax resident is determined by a number of different factors, including how much time you spent in the UK, whether or not you had available accommodation in the UK, how often you came to the UK and why you were coming to the UK. It also considers your family, social and business links with the UK and whether you intended to become resident in the UK, during these tax years.

HMRC guidance on residence – applicable to 2012-2013 and earlier tax years

Under HMRC guidance for tax years prior to 2013-2014, if an individual came to the UK permanently or for at least three years, HMRC treated the individual as UK tax resident.

Otherwise HMRC applied the "183 day" and "91 day" tests to determine whether or not you were UK tax resident. You had to keep your visits to the UK each tax year below 183 days and your average visits below 91 days where that average was taken over a four-year period in order to avoid becoming tax resident in the UK.

Statutory residence test for tax years 2013-2014 and later

The statutory residence test has applied since 6 April 2013 but in some circumstances the old tests for earlier years remain relevant. The statutory test uses the number of days you have spent in the UK to determine whether or not you are resident in the UK for tax purposes.

You start by counting the number of 'midnights' you are present in the UK during the tax year. This will determine whether you meet the high day count threshold for automatic UK tax residence or whether you have a sufficiently low day count to conclude that you are definitely not resident in the UK. In all other cases, certain UK ties are looked at to determine whether you are resident or not. Broadly, the more UK ties you have, the fewer the number of days you can spend in the UK without becoming resident.

UK income tax and capital gains tax

If you are non-UK domiciled and become tax resident in the UK, all of your UK-source income and gains will be taxable in the UK. Any foreign income and gains will not be taxable unless you bring them into the UK. Once you have been resident in the UK for broadly seven tax years, you will have to pay an annual charge to continue to benefit from this tax treatment.

Assets treated as 'clean capital' can be brought to the UK with no UK tax liability. It is therefore important to structure your overseas assets as early as possible before you arrive in the UK so that you can demonstrate separate offshore capital, income and capital gains accounts. The capital account should be denominated in sterling.

As mentioned, the UK government has recently announced that, from April 2017, the income tax and capital gains tax advantages for non-UK domiciles will be limited to a person's first 15 years of UK tax residence.

UK inheritance tax

In many cases you will be able to retain your foreign domicile after you become a UK tax resident. If you are not UK domiciled, only assets you own that are physically situated in the UK will be subject to inheritance tax on your death. Foreign assets will not be subject to UK inheritance tax until you have been resident in the UK for 17 tax years, at which point you become deemed domiciled for UK inheritance tax purposes and your worldwide estate becomes liable to UK inheritance tax. We can advise on how to improve your position if you are a long-term UK resident and this is relevant to you.

As mentioned, the UK government has recently announced that, from April 2017, the inheritance tax advantages for non-UK domiciles will be limited to a person's first 15 years of UK tax residence.

Foreign taxes

It may be that foreign taxes remain payable while you are tax resident in the UK. However, double tax treaties may apply to stop you being taxed twice on the same assets, capital gains or income. Mishcon de Reya is very well placed to co-ordinate advice required in other jurisdictions if necessary.

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