By **David Lesperance** & **Melvin A. Warshaw**

Lessons Learned From U.K. Chancellor With U.S. Green Card

Tax evasion scheme versus legitimate planning strategy

The British press recently revealed that Rishi Sunak, the former No. 2 person in the British government, who's been a Member of Parliament (MP) since 2015 and was Chancellor of the Exchequer (the U.S. equivalent of Secretary of the Treasury) from February 2020 until July 2022, held a U.S. green card until October 2021.[1] Sunak is now a candidate to succeed Boris Johnson as Conservative Party leader and the next Prime Minister of the United Kingdom. The press also disclosed that Sunak's wife, Akshata Murty, had legitimately escaped U.K. taxes on millions of pound sterlings of overseas investment income. The story behind this discovery brings up these questions: What taxes should Sunak and Murty be paying, and are actions like these a tax evasion scheme or a legitimate planning strategy?

A Wealthy Couple

Sunak is a brilliant British national with Goldman Sachs credentials on his resume. He became a partner at two London hedge funds, where he became quite wealthy before age 40. Sunak and his wife met at Stanford University in Palo Alto, Calif., where both obtained their MBAs. Murty is the daughter of N.R. Narayana Murty, a co-founder of a multinational technology company based in India known as Infosys Ltd. The shares of lnfosys Ltd trade on the Bombay Stock Exchange (BSE). Infosys Ltd is engaged in the information and digital services and consulting business, providing end-to-end business solutions.

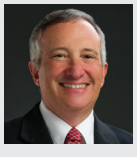
Infosys Ltd ADRs (American Depositary Receipts) trade on the New York Stock Exchange (NYSE). An ADR is typically issued by an American bank or broker, representing shares of foreign company stock held by that bank or broker in the home stock market of that company (BSE in this case). Those ADRs that are listed on the NYSE can be traded, settled and held as if they were ordinary shares of U.S.-based companies.

ADRs allow foreign companies to raise capital in the United States. Most ADRs will have tax withholding on any investment income (for example, dividends and possibly capital gains) in the home country of the company. The United States will generally impose an income tax on U.S. shareholders, subject to a foreign tax credit in the United States for any taxes paid in the foreign country. The overall tax due may be reduced under an applicable U.S. tax treaty with that foreign country.

We don't know whether Murty or, as has been reported more likely, one or more Cayman Islands trusts for her benefit established by her father, are the beneficial owners of the Infosys Ltd shares, or whether she or the trusts own Infosys Ltd ADRs. Murty holds a 0.9% position in Infosys Ltd, and her stake was recently valued at $900 million.[2] Her stake in Infosys Ltd alone generates annual dividends of roughly $15 million (USD), making Murty wealthier than Queen Elizabeth II.[3]

We believe that Sunak and his wife obtained green cards while attending Stanford University or shortly thereafter. Green card holders must generally pay U.S. tax on their worldwide income and pledge to make the United States their

(From left to right) **David Lesperance** is the founder of Lesperance & Associates and is currently based in Europe, and **Melvin A. Warshaw** is an international cross-border tax and private client lawyer based in Massachusetts



permanent home. However, under a tax provision adopted in 2008, a green card holder is permitted to live abroad and pay U.S. tax only on their U.S. source income. To qualify, such individuals must file Form 1040NR and attach a Form 8833 treaty election claiming nonresidency in the United States due to residency in a treaty country (such as the United Kingdom). Nevertheless, living abroad indefinitely makes re-entering the United States very tricky. What do you tell the U.S. Citizenship and Immigration Services (U.S. CIS) border patrol staff when returning to the United States?

Six Key Questions

Sunak retained his U.S. green card for six years while serving as an MP, including initially while he was Chancellor.[4] At least six key questions concerning the financial and tax affairs of Sunak and Murty have arisen:[5]

1. **How much tax did Murty pay on her roughly $15 million annual dividends from Infosys Ltd?** According to *The Guardian*, as a U.K. non-domiciliary (non-dom) reporting on the remittance basis, Murty paid no U.K. tax on her income from Infosys Ltd dividends.[6] Very broadly, "non-dom" is a term used for a U.K. resident whose permanent home is outside the United Kingdom.

   The Guardian also reported that until April 2022, Murty had legitimately claimed non-domiciled remittance basis tax status in the United Kingdom, allowing her to legally avoid U.K. tax on her foreign earnings. Murty and Sunak so far haven't explained how much tax she would have paid on nearly $72 million of dividends from Infosys Ltd over the past seven-plus tax years. Going forward, Sunak said Murty would pay U.K. tax on her worldwide income from sources outside the United Kingdom.

   Under the current U.K. tax system, Murty could have continued to report on the remittance basis until 2028, at which point her non-dom status would cease because that would mark her 15th year as a U.K. resident.

   Until very recently, Murty has been claiming the remittance basis of U.K. taxation, a favorable tax regime in the United Kingdom only available to non-doms. As a result, she has been able to shelter foreign (to the United Kingdom) investment income (for example, dividends declared by Infosys Ltd) and capital gains from U.K. tax to the extent that such foreign income and gains haven't been remitted to the U.K.

2. **Why did Sunak and Murty retain U.S. green cards, and when did they give them up?** *The Guardian* reported that the couple had green cards when living in the United States before Sunak became an MP and still had them until late in 2019 when Sunak was already Chancellor.[7] The *Cayman Compass* (*Compass*) reported that Sunak admitted that until October 2021, he was holding a green card, and he used it for travel purposes.[8]

> Individuals who become U.S. green card holders are required to give the United States a legal commitment to make the United States their permanent home.

On April 8, 2022, a spokesperson for Sunak told the *Daily Mail* that on Sunak's first trip to the United States in his capacity as Chancellor, Sunak discussed the appropriate course of action with U.S. authorities as to his retaining a green card. "At that point it was considered best to return his green card, which he did immediately."[9]

The *Compass* indicated that Sunak continued to file U.S. tax returns, but specifically as a nonresident of the United States, in full compliance with U.S. tax law. According to *The Guardian*, it doesn't appear that the retention of a green card gave Sunak any tax advantages.

U.S. lawyers have wondered, nonetheless, how Sunak would have presented himself to U.S. immigration officials when returning to the couple's Santa Monica, Calif. apartment and

whether U.S. border officials would have been misled about Sunak's true residence while an MP.

U.S. green card holders generally must file annual U.S. tax returns and are "responsible for reporting income and paying U.S. tax on any foreign earned income"[10] and the obligations that flow therefrom.

The Guardian also reported that Sunak indicated that his wife didn't want to become a British citizen because she regards herself as an Indian domiciliary and planned to return to India. Further, Murty relied on her U.K. non-dom status because Indian law doesn't allow her to have dual citizenship in both India and the United Kingdom. However, individuals who become U.S. green card holders are required to give the United States a legal commitment to make the United States their permanent home. *The Guardian* article suggests that it was fair to ask why Murty was prepared to make the United States her permanent home for tax purposes but chose to take advantage of her U.K. non-dom status to legally avoid paying U.K. tax at a time when her husband was the second most powerful individual in the U.K. government.

In what the *Daily Mail* referred to as a "dramatic U-turn," Murty has now agreed she would pay U.K. tax on her global income.

3. **Did Sunak waive his salary as an MP to avoid paying U.S. income tax?** When Sunak was appointed Chancellor in 2019, he waived his salary for five months for a total of roughly $44,000. After 2019, it's unclear whether Sunak took a salary for serving as an MP. Instead, *The Guardian* raised the prospect that he may have earned the MP's basic annual salary of about $107,000. This amount was just under the maximum threshold of $108,700 that U.S. green card holders can earn overseas while avoiding payment of U.S. income tax under the foreign earned income exclusion tax provision available to U.S. taxpayers living abroad.
4. **Does Murty have other overseas income beyond Infosys Ltd dividends, and if so, did she pay any tax on this income?** Murty's earnings from her Infosys Ltd dividends aren't made public because Sunak didn't declare them on his U.K. register of ministerial interests. He merely declared her ownership in Infosys Ltd because the company had government contracts with the United Kingdom. *The Times of London* reported that Murty had lent about $5.6 million to the couple's start-up Catamaran Ventures UK (Catamaran), a London-based investment entity she co-founded with Sunak in 2013.[11] The *Daily Mail* raised the issue of whether the loans by Murty to Catamaran could circumvent the grounds for her non-dom remittance basis tax reporting in the United Kingdom if it were found that the loans gave her "monetary or non-monetary returns" whether through profits or influence.[12] The *Daily Mail* reported that the company's unaudited accounts describe her loans as "long-term" and "interest-free" but don't give any details about the terms or the repayment schedule.[13] Murty is now the sole director and shareholder of Catamaran. Sunak resigned his directorship and gave up his ownership stake in Catamaran when he became an MP in 2015.

   More recently, *Bloomberg Tax* reported that Murty has developed links to some of the world's richest families through Catamaran.[14] *Bloomberg Tax* reports that Catamaran was an early backer of dara5, a private investment community for "next generation global leaders" co-founded in 2019 both by a member of Qatar's ruling Al-Thani family as well as New Craftsmen, a luxury U.K. curator and seller of unique high-end contemporary furniture and crafts.[15] *Bloomberg Tax* reported that Catamaran oversaw holdings worth more than $1 billion spanning e-sports, insurance and Elon Musk's Space Exploration Technologies Corp. Catamaran has offices in Bangalore, India and London.[16]

   As of May 2022, the Bloomberg Billionaires Index estimated that considering her Infosys Ltd shares, Catamaran investments and various real

estate holdings, Murty had a net worth of about $1.3 billion (USD).

Being a U.K. non-dom reporting on the remittance basis would allow Murty to pay only an annual $39,000 fee to the United Kingdom. Under the U.K. remittance basis of tax reporting, Murty's foreign earnings, investment income and capital gains weren't subject to U.K. taxes as long as those funds weren't spent in the United Kingdom. This means that if she kept the money in India or the Cayman Islands, Murty would be exempt from paying U.K. tax on such earnings. However, in what the *Daily Mail* referred to as a "dramatic U-turn," Murty has now agreed she would pay U.K. tax on her global income.[17]

The *Daily Mail* added that Murty is "still set to save money on U.K. inheritance tax (IHT) by retaining India as her formal place of domicile."[18]

5. **How much money is in Sunak's blind trust, and where is it located?** *The Guardian* raised the question of what ownership interests are in Sunak's blind trust.[19] The MP registry of interest provides that MPs don't have to declare the existence of blind trusts to the public, and MPs don't know how their assets held in their blind trusts are invested.

   However, MPs can receive reports on the trust's overall performance and give general instructions when the trust is established. Before Sunak became an MP, he was involved in managing hedge funds, including for Theleme and the Children's Investment Fund.

6. **What are the details of the Cayman Islands trusts that were established to help manage Murty's tax and business affairs?** The *Times of India* reported that Murty's father created the trusts in the Cayman Islands to help manage the tax and business affairs of his daughter, and some of these trusts listed Sunak as a beneficiary.[20] A spokesperson for Sunak told the *Times of India* that no one in Sunak or Murty's family was aware of the alleged trusts. The *Times of India* emphasized there was no suggestion of legal wrongdoings with the offshore trusts, only that more details should be forthcoming.[21]

   As experienced tax professionals, we believe it's possible that some years ago, Murty's father, a co-founder of Infosys Ltd and an Indian tax resident, transferred some of his Infosys Ltd shares to irrevocable Cayman Islands trusts for the benefit of his daughter and her family. There are two principal U.S. transfer tax issues that can arise on the death of a non-U.S. domiciled alien settlor of a foreign trust, such as Murty's father.

When an individual has a green card, they can't maintain that they're a permanent legal resident of the United States if they live outside the United States indefinitely and return only for visits.

Our view is that generally, the most important U.S. tax issue for Murty's father would be the extent to which the foreign trust assets may be exposed to U.S. estate tax because they consist of U.S. situs property. If Murty's father originally owned U.S. stocks or U.S. private equity investments, both are considered U.S. situs property subject to U.S. estate tax when held in the personal name of a non-domiciled alien of the United States such as Murty's father. On the other hand, if Murty's father owned Infosys Ltd shares (in an Indian company) or Infosys Ltd ADRs traded on, say, the NYSE, neither of these investments are considered U.S. situs property subject to U.S. estate tax. Non-U.S. domiciled aliens such as Murty's father sometimes like ADRs because they own an asset that trades in the United States, but they're not considered a U.S. situs for U.S. estate tax purposes. The non-U.S. domiciled alien can then buy and sell on the NYSE by using the ADRs.

When a non-domiciled alien such as Murty's father establishes either a U.S. domestic trust or a

foreign trust, the rules of Internal Revenue Code Section 2104(b) must be analyzed on the date of the settlor's death to determine whether any of the rules of IRC Sections 2035 to 2038 would apply to cause U.S. estate tax inclusion of the trust assets. If they do, then U.S. estate tax would be imposed to the extent the trust owns U.S. situs property at Murty's father's death. (A non-domiciled alien such as Murty's father is only entitled to a $60,000 U.S. estate tax exemption on his U.S. situs assets.) The most common risk is that the non-domiciled alien settlor (Murty's father) will be deemed to be the owner of the foreign trust's assets under IRC Section 2036 because he has an ongoing interest in the foreign trust either as a beneficiary or because he's deemed to control the trustee.

The IRS takes the position that a treaty nonresident is subject as if they were a resident alien of the United States to the various U.S. international activity reporting forms.

Because a principal objective in establishing a foreign trust as an irrevocable trust will often be to avoid U.S. estate tax for a non-domiciled alien settlor on the foreign trust's U.S. situs property, a threshold question to consider before the foreign trust is even established is whether there would be a risk of federal gift tax that could be imposed on the transfer of U.S. situs property to the foreign trust. To the extent that the transfer of assets to the irrevocable foreign trust constitutes a completed gift for U.S. tax purposes, no U.S. gift tax will be imposed on the transfer to the trust of any assets that consist of U.S. situs intangible property such as U.S. stocks. While U.S. stock is considered U.S. situs property for estate tax purposes, for U.S. gift tax purposes gifts of U.S. stock (and intangibles such as shares in Infosys Ltd and its ADRs) located anywhere in the world are exempt from U.S. gift tax.[22]

What happens when the Cayman Islands trusts receive income subject to U.S. tax (for example, dividends paid by U.S. corporations) that's then distributed to U.S. beneficiaries (such as Murty as a green card holder) either in the same year or in a later year? The Cayman Islands trusts will realize U.S. source dividend income from any U.S. shares, and such dividend income is subject to 30% withholding tax at source by the U.S. custodian for the U.S. corporation (because there's no tax treaty between the United States and the Cayman Islands, and presumably Murty never received trust distributions).[23] U.S. beneficiaries are also subject to U.S. income tax on the same dividend income when it's distributed to them by the trustee of the foreign trust as if they had realized the income directly.[24] However, U.S. beneficiaries may claim a credit for the U.S. income tax that was imposed on the foreign trust itself. Based on the statement that she was apparently unaware of the Cayman Islands trusts, it's doubtful Murty received distributions from the Cayman Islands trusts while a green card holder. She and her husband have claimed not to know much of the details of the Cayman Islands trusts.[25] Murty's apparent lack of familiarity with the Cayman Islands trust set up by her father and simultaneously not remitting any of the investment income and gains of these trusts to the United Kingdom is a consistent position for a non-dom taxpayer like Murty.

Note that the U.S. income tax rules that apply to U.S. beneficiaries of a foreign non-grantor trust (FNGT) are very complex and beyond the scope of this article. One major reason for this complexity is that U.S. beneficiaries are subject to U.S. income tax on worldwide income rather than on only U.S. source income. In addition, under the various rules relating to distributions out of prior year undistributed net income (UNI), the net U.S. tax cost to a U.S. beneficiary who receives such a distribution can be very high.[26]

Moreover, if the foreign trust realizes long-term capital gains, and if so, whether those are

distributed currently or fully accumulated for distribution in a subsequent year, is an important trustee U.S. tax decision. To the extent that such gains are distributed currently to U.S. beneficiaries, they retain their character and are taxed in the beneficiaries' hands at the maximum 20% rate (plus 3.8% net investment income tax applicable to U.S. persons). To the extent they're accumulated for distribution in a later year and become part of UNI, however, they lose their character as long-term capital gains and will be taxed to the U.S. beneficiaries as ordinary income when the distribution is made.[27]

To assist a U.S. beneficiary in calculating income tax correctly on distributions received from foreign trusts, IRC Section 6048(c) and Internal Revenue Service Notice 97-34 require the trustee of a foreign trust to provide the U.S. beneficiary with a detailed FNGT Beneficiary Statement (FNGT Statement) containing the same information that would be furnished by a trustee of a U.S. domestic trust to its beneficiaries on Schedule K-1 of Form 1041. A U.S. beneficiary who receives a distribution in any amount from a foreign trust is required to attach Form 3520 to Form 1040, and the above-mentioned FNGT Statement must also be attached to Form 3520.

We doubt Murty received distributions from the Cayman Islands trusts while a green card holder for the U.K. non-dom tax reasons discussed above. To the extent the trustees of the Cayman Islands trusts did distribute the trust income while Murty was a U.S. taxpayer (because she was a green card holder), Murty would have been required to file Form 3520 as a U.S. beneficiary of an FNGT. We presume the trustees of the Cayman Islands trusts would provide Murty with an FNGT Statement with respect to such trust distributions and attach such FNGT Statement to her Form 3520. We would also presume that the trustees of the Cayman Islands trusts would be careful never to distribute more than current year income and gain of such foreign trusts to Murty while a green card holder to avoid making "accumulation distributions" to a U.S. person of prior year income or gain, which is subject to the punitive throwback tax rules.

It's more likely that the trustees didn't make any distributions of current year income and gains earned by the Cayman Islands trusts, recognizing that at some point, Murty would eventually decide to abandon her green card and therefore her U.S. tax residency. (Further, she was a U.K. non-dom taxpayer for these years.) Once Murty was no longer a U.S. tax resident, she would no longer be subject to the U.S. throwback tax rules.

Now that Sunak divested his ownership in Catamaran and Murty is no longer a U.S. income tax resident, the CFC and PFIC rules can't apply to Catamaran because it's no longer controlled by a U.S. shareholder.

While we're not privy to the actual details of the U.S. and U.K. tax advice provided to Murty, our understanding is that although not obligated to do so under the current non-dom tax rules in the United Kingdom, Murty will now voluntarily begin to report the roughly $15 million of annual dividend income earned on her Infosys Ltd shares presumably held in the Cayman Islands trusts on an arising basis in the United Kingdom.[28] Murty has stated that she "will no longer be claiming [the U.K.] remittance basis for tax…and will now begin to pay tax on an arising basis on all my worldwide income, including dividends and capital gains, wherever in the world that income arises."[29] Moreover, like her husband, Murty has now abandoned her green card status so she's now a non-resident beneficiary of the foreign trusts from a U.S. perspective.[30]

Once Murty abandoned her green card and was no longer a U.S. resident, in theory, she would be entitled to the same credit in calculating her

own U.S. income tax. This becomes meaningful if the nonresident beneficiary is subject to less than 30% tax (due to a tax treaty, such as the U.S.–U.K. income tax treaty) and files a U.S. tax return to obtain a refund.[31]

What are the long-term implications for Sunak and Murty finally abandoning their green cards before 2022?

Murty is now apparently paying U.K. income tax on her global income, including presumably from the Cayman Islands trusts that own the Infosys Ltd shares or possibly Infosys Ltd ADRs. Also, now that she's abandoned her green card, she's a non-U.S. beneficiary of such Cayman Islands trusts. Murty should be able to claim a credit in the United Kingdom for any U.S. tax paid by the Cayman Islands trusts on any U.S. source dividend income, provided such income is distributed currently to Murty. We would further presume that the trustees of the Cayman Islands trusts would make sure to provide the U.S. custodian for any U.S. corporations in which the trusts own stock (presumably a U.S. qualified intermediary under Notice 2001-41) with a Form W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity or Certain Branches for U.S. Withholding and Reporting) confirming Murty is a U.K. resident. Doing so should entitle the Cayman Islands trusts to a reduced 15% withholding tax at source by the U.S. custodians on any U.S. source dividend income under the U.S.–U.K. tax treaty, provided such income is distributed currently to Murty, a U.K. tax resident.

Due to the scale of Murty's annual foreign dividends, the recent press coverage in the United Kingdom has focused on the remittance basis under the non-dom rules and the income and capital gains shelter this delivers to certain U.K. residents like Murty who aren't domiciled in the United Kingdom. However, as noted, in our view, the most valuable protection a non-dom status can provide to someone like Murty is IHT shelter on her non-U.K. situs assets. A major complaint with the present IHT system is that the well advised can protect foreign situs assets from U.K. IHT for longer than 15 years when these assets are settled into a non-U.K. (offshore) trust created before the 15 years is up.[32]

Public Perception

The *Compass* had concluded that although there's no suggestion that Sunak and Murty's tax arrangements are illegal, the circumstances have raised questions over the fairness of the British tax system. According to the BBC, the British Labor Opposition Leader felt that Sunak was guilty of "breathtaking hypocrisy" for raising U.K. taxes while his wife benefited from non-dom status.[33]

The BBC also reported that the British Labor Shadow Transport Secretary said it was clear that Sunak's arrangements were legal, but she questioned whether it was ethical and right that the Chancellor, while piling (increasing) U.K. taxes on the British public, was benefiting from a tax scheme that allowed his household to pay significantly less "to the tune of tens of millions of pounds."[34]

In June 2022, one U.K. professional advisor summarized in *Bloomberg Tax* the current non-dom debate in the United Kingdom as follows:

> The non-dom debate is often embroiled in a class war and is perceived as a system used only by the super-rich—not helped by the recent focus on Murty. This, however, is not always the case. We often advise people with relatively modest means who are in the U.K. for a short period of time, with, say some rental income in their home jurisdiction.
>
> In these scenarios, the remittance basis is often used not just to save tax but also to simplify reporting.
>
> Given the bad press, there is certainly political pressure to make changes. This has not been helped by the media's portrayal of the non-dom regimes as a form of tax avoidance

scheme, which is certainly not the case. There is, however, no quick fix.[35]

Given the scale of Murty's foreign dividends, the recent press coverage in the United Kingdom in the run-up to the election of a party leader to replace Boris Johnson as Prime Minister has focused on the remittance basis and the income and capital gains shelter this regime delivers. (Murty's husband, Sunak, is now trailing Liz Truss to become the next leader of the Conservative Party and presumptive Prime Minister.)

Our initial reaction is that Sunak and Murty did nothing wrong or improper, but their lack of transparency and opaqueness leaves one to question their judgment around public perception of their actions, especially regarding Sunak retaining a green card while simultaneously serving in the British government.

To be clear, neither Sunak nor Murty needed U.S. CIS approval to live abroad. However, when an individual has a green card, they can't maintain that they're a permanent legal resident of the United States if they live outside the United States indefinitely and return only for visits. Extended absences from the United States will lead port-of-entry staff in the U.S. CIS to question whether such individual has abandoned their permanent residency in the United States.

Domiciliary Considerations

Sunak was born in Southampton, England, and so the United Kingdom is his domicile of origin. Under the U.K. rules on domicile, an individual who had a domicile of origin in the United Kingdom and later abandons a domicile of choice (in Sunak's case, the United States) would be deemed to have reacquired his domicile of origin in the United Kingdom whenever they move back.

The rules are different in the United States for someone with a U.S. domicile of origin. Under the U.S. rules, an individual only reverts back to the last domicile they had before abandoning their most recent domicile of choice. An individual doesn't automatically revert to their domicile of origin when they lose their current domicile of choice.

Murty isn't a U.K. domiciliary. Murty clearly had an Indian domicile of origin through birth and her father's Indian domicile. Although we believe she acquired U.K. permanent residence (called an "indefinite leave to remain") possibly in 2014, Murty didn't acquire U.K. citizenship because she didn't want to trigger a loss of her Indian citizenship due to India's ban on maintaining Indian citizenship if an Indian citizen chooses to naturalize in another country. Such a position would strengthen her claim of her Indian domicile of origin.

> The term "expatriate" means either a U.S. citizen or a long-term resident of the United States who ceases to be a "lawful permanent resident" of the United States, for example, because they cease to be a green card holder.

Until the story broke in the British press in Spring 2022, Murty wasn't paying any U.K. income tax on her $15 million of annual dividends earned on her Infosys Ltd stock because she was a U.K. non-dom eligible for the remittance basis of income tax. Rather than paying U.K. income tax on worldwide income like her husband Sunak, a U.K. domiciliary, Murty legitimately reported her U.K. income tax only on any employment income or investment income earned from U.K. sources or possibly business income earned through Catamaran's London office. As of April 2022, Murty has agreed to pay U.K. tax on her worldwide income in the future and for the last tax year, but she'll continue to be a non-dom resident of the United Kingdom.[36] This potentially still confers considerable U.K. IHT advantages on her overseas wealth.

U.S. Tax Implications

As green card holders living in England, Sunak and

Murty should have both filed their U.S. tax returns taking the position that they're nonresidents of the United States. In 2008, Congress inserted language in the U.S. Tax Code as a way to prevent U.S. resident status for income tax calculation purposes:

> An individual shall cease to be treated as a lawful permanent resident of the U.S. if such individual commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the U.S. and the foreign country, does not waive the benefits of such treaty applicable to residents of the foreign country and notifies the Secretary [of the Treasury] of the commencement of such treatment.[37]

Our assumption is that Murty was presumably fully U.S. tax compliant for the five years before her year of expatriation and that Sunak would be in a similar U.S. tax reporting position.

Once a foreigner becomes a U.S. resident by obtaining a green card, they maintain their status at least for U.S. income tax purposes until one of three things occur: (1) revocation or rescission of the green card by the immigration officials, (2) voluntary abandonment/relinquishment (typically by filing a Form I-407 with the U.S. CIS), coupled with an administrative or judicial ruling confirming such abandonment (that is, acknowledgment letter accepting Form I-407), or (3) after 2008, demonstrating that an individual should be considered a resident of a foreign country under a tax treaty and filing the necessary forms with the IRS to claim such status, including Form 1040NR (Nonresident Alien Income Tax Return), Form 8833 (Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)) and, for the final year, Form 8854 (Initial and Annual Expatriation Statement).

We presume that Sunak and Murty were both advised to file Form 1040NR and attach Form 8833 claiming that under the treaty tie-breaker rules in the U.S.–U.K. tax treaty, they were U.K. residents and not U.S. residents, at least for all tax years after 2009. The Treasury regulations provide that treaty nonresidence only applies for purposes of computing tax and withholding and not for other purposes of the Tax Code (for example, determining whether a corporation like Catamaran is a controlled foreign corporation (CFC)). The IRS takes the position that a treaty nonresident is subject, as if they were a resident alien of the United States, to the various U.S. international information reporting forms.[38]

Report of Foreign Bank and Financial Accounts (FBAR). Neither the FBAR form (FinCEN Form 114) nor the instructions address the issue of filing by a treaty tie-breaker taxpayer, but a page in the 2011 preamble to the most recent FBAR regulations states: "A legal permanent resident [i.e., green card holder] who elects under a tax treaty to be treated as a non-resident for tax purposes must still file the FBAR."[39]

When a green card holder files Form 1040NR with the IRS stating that they should be treated as a resident of a foreign country under the treaty tie-breaker rules of the relevant treaty, the green card holder must still file the FBAR. We presume that Sunak and Murty both filed FBARs for every year after 2008 and will do so until they abandon their green card status in connection with their U.K., Indian or other non-U.S. financial accounts.

Form 8938. In promulgating the final regulations under IRC Section 6038D governing who must file Form 8938 (Specified Foreign Financial Assets), the IRS received at least one comment suggesting that dual residents who file Form 8833 claiming foreign residency under the treaty tie-breaker rules shouldn't be considered a "specified individual" for purpose of filing Form 8938. Surprisingly, in the final regulations, the IRS accepted this recommendation and reversed course from the temporary regulations. The final Treasury regulations contain a rule expressly relieving dual residents from filing Form 8938 in various circumstances.[40] We assume

neither Sunak or Murty would have a filing requirement.

Form 5471. We know that in 2013, when Murty and Sunak established Catamaran, both were green card holders, and therefore the U.S. CFC anti-deferral tax rules should have been applicable to both of them. However, back then, the CFC rules generally only applied to Subpart F passive investment income and related party income of a CFC. Nevertheless, we would expect to find that Murty and Sunak were advised by their U.S. tax professionals back in 2013 to file a check-the-box election on this non-U.S. corporate entity to treat Catamaran as a pass-through entity (that is, a foreign partnership to the United States with at least two owners). Filing a check-the-box election in 2013 would have prevented the CFC classification as well as the passive foreign investment company (PFIC) rules from applying to them in connection with Catamaran and, importantly, would have relieved Sunak and Murty from annually having to each file Form 5471 with respect to Catamaran. As important, absent a check-the-box election by Catamaran, any foreign taxes paid by Catamaran (for example, in the United Kingdom or India) wouldn't have been creditable by Murty and Sunak on their personal tax returns. Making the election would have provided them with a pass-through of these foreign tax credits to their personal U.S. tax returns.

With the introduction in the 2017 Tax Act of the Global Intangible Low-Taxed Income (GILTI) rules applicable to CFCs beginning in 2018, the benefit of Catamaran's presumed prior check-the-box election back in 2013 would have prevented Catamaran from being subject to an entity-level U.S. corporate tax on most of its active business income beginning in 2018 while Sunak and Murty were both still green card holders. Now that Sunak divested his ownership in Catamaran and Murty is no longer a U.S. income tax resident, the CFC and PFIC rules can't apply anyway to Catamaran because it's no longer controlled by a U.S. shareholder. This means that even if Catamaran failed to file the check-the-box election, the company is no longer controlled by U.S. shareholders.

If Sunak and Murty didn't make a check-the-box election with respect to Catamaran back in 2013 when it was established, then as green card holders they would have had to comply with the Form 5471 filing requirements. The current rules regarding whether a treaty tie-breaker taxpayer must file Form 5471 take the position that a treaty tie-breaker taxpayer who owns a CFC can comply with the Form 5471 filing requirements by attaching the audited foreign financial statements of the foreign corporation to the individual's Form 5471.

Section 877A(f) provides for an automatic deferral of U.S. income tax on a covered expatriate's interest in a non-grantor trust—whether the trust is a U.S. domestic trust or a foreign trust.

We assume that if Catamaran is a CFC and Sunak and Murty failed to make a check-the-box election in 2013, they've properly complied with their Form 5471 filing obligations. Prior to 2015, Sunak and Murty each might have attached a simplified Form 5471 to their respective U.S. tax returns. Thereafter, Murty as the sole shareholder would continue with her simplified Form 5471 filing.

Offshore trusts. We believe that Murty's father (and possibly her mother), both Indian citizens and residents, may have made significant gifts of Infosys Ltd shares to a series of irrevocable Cayman Islands trusts for the benefit of Murty, Sunak and presumably their two minor children, with an independent trustee making all trust distribution decisions. To the extent her parents created these irrevocable trusts for Murty's family's benefit, such trusts will be classified as FNGTs for U.S. income tax purposes.

As discussed above, her parents' gifts of intangibles (that is, stock in Infosys Ltd or any U.S. stock) to the Cayman Islands trusts aren't subject to U.S. gift tax. India has no gift or inheritance tax. However, for U.S. estate tax purposes, any U.S. stock owned by Murty at her death would be considered U.S. situs assets

were Murty to own such U.S. shares in her individual name, either as a green card holder or now as a non-resident/non-domiciliary of the United States. The irrevocable trusts settled in Cayman Islands might, therefore, be effective U.S. estate tax blockers for the U.S. stocks. (To the extent Murty's Cayman Islands trusts own shares in Infosys Ltd, those shares aren't U.S. situs property for U.S. estate tax purposes.)

Form 3520. Our assumption is that the Cayman Islands trusts are FNGTs for U.S. tax purposes, which in prior years had U.S. green card holders as current beneficiaries. This means that in past tax years, Murty (and potentially Sunak) might have had a U.S. reporting and tax liability but only to the extent the trustees made distributions from these foreign trusts to either of them. However, due to Murty's prior U.K. non-dom status until 2022, we doubt the trusts made distributions to her. See our discussion above, p. 33, regarding Form 3520 in Question 6, "What are the details of the Cayman Islands trusts that were established to help manage Murty's tax and business affairs?"

Murty was originally scheduled to become a deemed domiciliary of the United Kingdom beginning in 2028, at which time she would no longer be able to claim the remittance basis of U.K. tax.

Covered Expatriate

What are the long-term implications for Sunak and Murty finally abandoning their green cards before 2022 and thus avoiding or minimizing the dreaded covered expatriate classification?

In 2008, Congress enacted the current U.S. exit tax rules with different tax regimes applicable to a variety of asset categories, including a mark-to-market tax regime imposed on the worldwide appreciated assets of certain U.S. taxpayers who leave the United States by expatriation as well as another tax regime applicable to "interests in non-grantor trusts."

The mark-to-market exit tax regime requires these taxpayers to report a hypothetical taxable sale of their worldwide appreciated assets at fair market value the day before their expatriation date and generally pay income taxes at a long-term capital gains tax rate of 23.8% to the IRS for such tax year. Under the non-grantor trust exit tax regime, the taxable portion of all future trust distributions from non-grantor trusts would be subject to a 30% withholding tax liability imposed on the trustee of such trusts.

This so-called "exit tax" applies only to "covered expatriates."[41] Thus, for the exit tax to apply, the taxpayer must not only be an "expatriate" but also a "covered expatriate."

The term "expatriate" means either a U.S. citizen or a long-term resident of the United States who ceases to be a "lawful permanent resident" of the United States, for example, because they cease to be a green card holder.[42] The term "long-term resident" is defined by cross-reference to IRC Section 877(e)(2), which states:

> [T]he term 'long-term resident' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States [i.e., a green card holder] in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in paragraph (1) occurs.

The IRS instructions to Form 8854 (Initial and Annual Expatriation Statement) contain guidance confirming that the exit tax applies only to "long-term residents" and, for purposes of determining this status, a taxpayer doesn't count the year in which they're treated as a resident of foreign country under a tax treaty.[43]

For purposes of Section 877A, the term "covered expatriate" means an expatriate (including a long-term resident of the United States) who: (1) has an average annual net income tax liability for the five years preceding the cessation of long-term permanent residency of $178,000 (2022 inflation-adjusted amount), (2) has a net worth of $2 million, or (3) can't

certify that they've been in full U.S. tax compliance for the five years preceding the year of expatriation.[44] If the expatriate fails any of the preceding tests, they'll be classified as a "covered expatriate" and will be subject to all of the expatriation exit tax regimes.

We assume Murty wasn't a covered expatriate when she relinquished her green card because her U.S. tax accountants had her file Form 1040NR enclosing a Form 8833 treaty election to be treated as a non-resident of the United States for all tax years during which she held a green card while living in the United Kingdom or India. Moreover, we assume that her U.S. accountants also filed FBARs for all these tax years, Forms 5471 reporting the Catamaran income and assets and Forms 3520 reporting her receipt of any distributions from the Cayman Islands trusts. Our assumption is that Murty was presumably fully U.S. tax compliant for the five years before her year of expatriation and that Sunak would be in a similar U.S. tax reporting position.

What if Murty was a covered expatriate when relinquishing her green card? If Murty's U.S. tax return preparers didn't have her attach Form 8833 with her Form 1040NR for each year that she lived in the United Kingdom (or India) claiming non-resident tax status under a U.S. tax treaty, Murty most assuredly would have been a covered expatriate as of the year she expatriated under the "8 of 15" long-term residency definition for green card holders. We doubt this to be the case. We presume she filed Form I-407 with the U.S. CIS and thereafter, Form 8854 with the IRS for such year of her expatriation. Such classification as a covered expatriate would occur for someone like Murty if her U.S. tax accountants failed to file Form 8833 with Form 1040NR for enough years while she was a green card holder living abroad. Given her access to the best U.S. tax advisors and U.S. tax return preparers, we doubt this outcome occurred for Murty. Otherwise, she clearly meets the net worth test, resulting in her being classified as a covered expatriate under the U.S. exit tax rules. Were Murty a covered expatriate, she would be potentially subject both to the mark-to-market tax regime on her personally owned worldwide appreciated assets[45] as well as potentially subject to the under-publicized exit tax regime requiring an ongoing 30% withholding tax on the income component of trust distributions received from non-grantor trusts.[46]

Section 877A(f) provides for an automatic deferral of U.S. income tax on a covered expatriate's interest in a non-grantor trust—whether the trust is a U.S. domestic trust or a foreign trust. We presume the Cayman Islands trusts are non-grantor trusts. A covered expatriate may elect to pay federal income tax on the value of their beneficial interest in the trust as of the day before the expatriation date if certain IRS procedures are followed.[47] We doubt Murty would accelerate exit tax on the value of her beneficial interests in all the Cayman Islands trusts due to our sense of the scale of these trusts. Rather, we presume that if Murty were a covered expatriate and were to receive a distribution of income from a non-grantor trust (that is, the Cayman Islands trusts) after her expatriation date, the post-expatriation timing of U.S. income tax on the income component of trust distributions would be similar to the timing of U.S. income tax on receipt of eligible deferred compensation under that exit tax regime.[48] This means that the trustee (including presumably a foreign trustee of each of the Cayman Islands trusts) would be obligated to withhold 30% from the gross amount of the taxable portion of a trust distribution made to the covered expatriate long after the individual had left the United States.[49]

Although many questions remain unanswered concerning an expatriate's ongoing substantive tax liability on distributions from non-grantor trusts, the rules appear to be open-ended in that the expatriate's ongoing U.S. exit tax liability isn't limited to what would have been the value of the covered expatriate's interest in the trust on the day before expatriation—unless they elect to include their entire beneficial interest in the trust in gross income as of that day. As noted, we seriously doubt that Murty would want to elect to accelerate to immediate full income tax liability on the entire value of her beneficial interest in these non-grantor trusts, which might have had a value of $900 million or more at the time of her expatriation.

Suffice to say, Murty's U.S. tax accountants would take extraordinary steps to make sure she was fully U.S. tax compliant as a treaty tie-breaker non-resident of the United States for all years

during which she was a green card holder to prevent classification as a covered expatriate for the year of expatriation with serious adverse U.S. exit tax rules for many years thereafter.

Our understanding is that Murty and Sunak have two minor daughters who appear not to have been born in the United States but most likely were born in England. Accordingly, Murty wouldn't be concerned about possible future U.S. inheritance tax implications for her daughters (under IRC Section 2801) even if she were classified as a covered expatriate as of the date she relinquished her green card. Now that Sunak has also relinquished his green card, were Murty to be classified as a covered expatriate, any future lifetime transfers made by Murty to Sunak following his expatriation from the United States wouldn't be subject to U.S. inheritance tax.

Except for retaining green cards for extended periods of time while living in the United Kingdom, Sunak or Murty's other actions, as well as those of her father, appear to have been consistent with legitimate advanced planning undertaken by very sophisticated former U.S. taxpayers.

Inheritance/Estate Tax Implications

Murty was originally scheduled to become a deemed domiciliary of the United Kingdom beginning in 2028, at which time she would no longer be able to claim the remittance basis of U.K. tax. Therefore, volunteering to pay U.K. tax on her worldwide income beginning in 2022 represents a major financial concession but one that she can easily afford.

When Murty becomes a U.K. deemed domiciliary, the United Kingdom would be able to impose IHT on her worldwide personally owned assets, including potentially her Santa Monica, Calif. apartment, as well as her U.K. homes and any assets in India in her personal name. However, based on our understanding of the current U.K. IHT rules, none of the Infosys Ltd shares or other assets held by the Cayman Islands trusts established while Murty held non-dom status would be subject to U.K. IHT. We also assume that while a non-dom over the last decade or so, Murty would have taken steps to shelter her other non-U.K. assets from U.K. IHT before she becomes a U.K. deemed domiciliary in 2028. (Based on a 2017 revision to the U.K. IHT all U.K. residential property is within the scope of and subject to U.K. IHT. There is, therefore, likely little that Murty can do to prevent U.K. IHT on her multiple U.K. residences.)

Generally under the U.S.–U.K. estate tax treaty, only the domiciliary country (that is, the United Kingdom) can impose its estate or inheritance tax on Murty's Santa Monica, Calif. apartment.[50] However, immovable property (that is, real estate) and business property may be taxed exclusively by the situs country (that is, the United States).[51] If the domiciliary country (the United Kingdom) also taxes that property, that country will have to afford a tax credit. We would presume that as a current non-domiciliary, non-resident of the United States going forward, Murty has only a $60,000 exemption from U.S. estate tax at death with respect to her personally owned U.S. situs assets. This means Murty's estate would incur significant U.S. estate tax liability attributable to the Santa Monica, Calif. apartment, unless it was originally purchased by an effective estate tax blocker such as a Cayman corporation or perhaps the Cayman trusts. Under the U.S.–U.K. estate tax treaty, the United Kingdom should provide a tax credit for any U.S. estate tax paid by her estate on such U.S. property.

We presume that a major planning feature of the Cayman Islands trusts that her parents funded were to shield Murty's very valuable position in Infosys Ltd from future U.K. IHT. Although we aren't U.K. tax advisors, our understanding is that the Cayman Islands trust property should be regarded

as "excluded property" for U.K. IHT purposes and will never come within the U.K. IHT regime even if Murty as the primary beneficiary of the trusts later becomes deemed or actually domiciled in the United Kingdom.

Our view is that except for retaining green cards for extended periods of time while living in the United Kingdom, Sunak or Murty's other actions, as well as those of her father, appear to have been consistent with legitimate advanced planning undertaken by very sophisticated former U.S. taxpayers.

Endnotes

1. Reuters, "Chancellor Rishi Sunak Held US Green Card Until Last Year," *BBC News* (April 8, 2022), *www.bbc.com/news/uk-politics-61044847.*
2. Justin Parkinson and Brian Wheeler, "Infosys: Tech Firm Part-Owned by Chancellor Rishi Sunak's Wife Closing Russia Office," *BBC News* (April 1, 2022), *www.bbc.com/news/uk-politics-60952063.*
3. Aishwarya Dharni, "Akshata Murthy, Narayan Murthy's Daughter, Has More Assets Than Queen Elizabeth II," *India Times* (Dec. 3, 2020), *www.indiatimes.com/trending/social-relevance/akshata-murthy-richer-than-queen-elizabeth-ll-528935.html;* "UK Minister Rishi Sunak's Wife is Richer Than the Queen: Report," *NDTV* (April 8, 2022), *www.ndtv.com/world-news/uk-minister-rishi-sunaks-wife-is-richer-than-the-queen-report-2871536.*
4. "From Non-Dom to Green Card: Questions Still Facing Rishi Sunak," *The Guardian* (April 10, 2022), *www.theguardian.com/politics/2022/apr/10/from-non-dom-to-green-card-questions-still-facing-rishi-sunak.*
5. "Five Key Questions Rishi Sunak and Akshata Murty Have Yet to Answer," *The Guardian* (April 9, 2022), *www.theguardian.com/politics/2022/apr/09/five-key-questions-rishi-sunak-and-akshata-murty-have-yet-to-answer.*
6. *Ibid.;* Sai Ishwarbharath, "Akshata Murty to Voluntarily Pay Taxes in UK on Overseas Income," *The Economic Times* (April 9, 2022), *https://economictimes.indiatimes.com/tech/technology/akshata-murty-to-voluntarily-pay-taxes-in-uk-on-overseas-income/articleshow/90749208.cms.*
7. "Sunak and Murty Held US Green Cards While Chancellor—Reports," *Goad News, https://goadnews.com/sunak-and-murty-held-us-green-cards-while-chancellor-reports-akshata-murti/.*
8. Michael Klein, "UK Chancellor in Hot Water Over Alleged Cayman Trust Links," *Cayman Compass* (April 10, 2022), *www.caymancompass.com/2022/04/10/uk-chancellor-in-hot-water-over-alleged-cayman-trust-links/#:~:text=UK%20Chancellor%20of%20the%20Exchequer,and%20British%20Virgin%20Islands%20trusts.*
9. Greg Heffer and David Wilcok, "Rishi Admits He DID Have a US Green Card for Over a Year After Becoming Chancellor but Gave it Back After 'Taking Guidance'—As Boris Claims He Had No Idea Sunak's Wife is a Non-Dom Amid Tory Backlash," *Daily Mail* (April 8, 2022, updated April 10, 2022), *www.dailymail.co.uk/news/article-10700421/Rishi-Sunak-admits-DID-Green-Card-year-Chancellor.html.*
10. *www.irs.gov/individuals/international-taxpayers/us-tax-residency-green-card-test.*
11. James Hurley, "Rishi Sunak's Wife Akshata Murty Lends £4.3M to Start-Up Catamaran Ventures," *The Times of London* (Oct. 2, 2021), *www.thetimes.co.uk/article/rishi-sunaks-wife-akshata-murty-lends-4-3m-to-start-up-catamaran-ventures-7pfj39wxp.*
12. Anna Mikhailova, "Rishi Sunak's Wife in £4M Loan Riddle: Tax Experts Call for Investigation Into Whether Akshata Murty Broke Non-Dom Rules by Lending Money to Her UK Company With No Interest Charges," *Daily Mail* (April 9, 2022 updated April 10, 2022), *www.dailymail.co.uk/news/article-10703531/Rishi-Sunaks-wife-4m-loan-riddle-Tax-experts-call-investigation.html.*
13. *Ibid.*
14. Bloomberg Tax, "Sunak's Billionaire Wife Murty Builds Ties to World's Super-Rich" (May 30, 2022), *https://news.bloombergtax.com/daily-tax-report-international/sunaks-billionaire-wife-murty-builds-ties-to-worlds-super-rich.*
15. *Ibid.*
16. *Ibid.*
17. Laurence Dollimore, "Now Rishi Sunak's Billionaire Heiress Wife Faces Call to Pay MILLIONS in Tax That She Avoided Through Non-Dom Status After Embarrassing U-Turn to Save Chancellor Husband's Career," *Daily Mail* (April 9, 2022, updated April 10, 2022), *www.dailymail.co.uk/news/article-10702239/Rishi-Sunaks-heiress-wife-backdate-tax-payments-cough-millions-Lib-Dems-say.html.*
18. James Tapsfield, "Rishi and Billionaire Heiress Are Accused of 'Breathtaking Hypocrisy' After it Emerges She Has 'Non-Dom' Status Despite Living in Downing St—and Could Have Avoided Millions of Pounds in UK Tax While He Increased Burden on Families," *Daily Mail* (April 7, 2022), *www.dailymail.co.uk/news/article-10695205/Row-non-dom-status-Rishi-Sunaks-billionaire-heiress-wife.html.*
19. *Supra* note 5.
20. "Rishi Sunak Faces Fresh Questions Over Offshore Trust Beneficiary Claims," *The Times of India* (April 10, 222), *https://timesofindia.indiatimes.com/world/uk/rishi-sunak-faces-fresh-questions-over-offshore-trust-beneficiary-claims/articleshow/90755687.cms.*
21. *Ibid.*
22. Internal Revenue Code Section 2501(a)(2).
23. IRC Section 871(a), IRC Section 881(a), IRC Section 1441(a) and IRC Section 1442(a).
24. IRC Section 871(a)(1).
25. *See supra* note 20. It's possible for a Nevada or South Dakota trust to

be set up as a "confidential" or "quiet" trust, in which the trustee is explicitly prohibited from disclosing the existence, terms or financial information about the trust to adult beneficiaries for a prescribed period. However, we're unaware of a similar provision under British Virgin Islands or Cayman Islands trust law and would have thought that a corporate trustee in these jurisdictions would have a fiduciary duty to disclose the terms of the trust to adult beneficiaries and to keep them informed of the trust's activities.

26. To the extent that a distribution to a U.S. beneficiary from a foreign non-grantor trust is traced partially or entirely to prior year's undistributed net income (UNI), it's an "accumulation distribution" under IRC Section 665(b) and is subject to the throwback tax rules of IRC Section 667. There are three potential "penalty effects" to the U.S. beneficiary that can result. First, the U.S. beneficiary receiving such "accumulation distribution" must take into account their marginal tax rate of income tax during three of the five years preceding the year in which the UNI is distributed. Second, if the calculation under Section 667(a) results in an amount of "partial tax," an interest charge is added under IRC Section 668. Third, to the extent that the foreign trust realized long-term capital gains that weren't fully distributed out of distributed net income in the current year, those gains effectively lose their character when eventually paid out as UNI. *See* Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976.
27. *See* Joint Committee on Taxation, *ibid.*
28. Lilly Waddell, "Rishi Sunak's Wife Akshata Murty Vows She Will Pay UK Tax on Worldwide Income," *Evening Standard* (April 8, 2022), *www.standard.co.uk/news/politics/rishi-sunak-wife-akshata-murty-uk-tax-non-dom-status-worldwide-income-b993415.html.*
29. "Rishi Sunak Admits Having US Green Card While Chancellor—As His Wife Says She Will Now Pay Tax in the UK," *SkyNews* (April 8, 2022), *https://news.sky.com/story/rishi-sunak-admits-having-us-green-card-while-chancellor-12585472.*
30. Jack Mandel, "Rishi Sunak Held Green Card While Made Chancellor Meaning Tory Bigwig Was Permanent Resident in US," *CityA.M.* (April 8, 2022), *www.cityam.com/rishi-sunak-and-akshata-murthy-held-us-green-cards-while-he-was-chancellor-meaning-he-was-us-permanent-resident/.*
31. BNA Portfolio 6420, "1st Tax Planning for Portfolio Investment into the United States by Foreign Individuals," Section V, "Taxation of Foreign Trusts Where There is No Foreign Holding Company, C. Foreign Trust That is Irrevocable During the Non-Domiciled Alien Grantor's Lifetime, 2. Income Tax Rules, b. Non-Grantor Trust Rules, (2) Income Tax on the Foreign Trust Itself."
32. Bloomberg Tax, "'The Non-Dom' Tax Regime—And Its Future in the UK" (June 7, 2022), *https://news.bloomberglaw.com/payroll/the-non-dom-tax-regime-and-its-future-in-the-uk.*
33. "Rishi Sunak Faces Questions Over Wife Akshata Murty's Non-Dom Tax Status" (April 7, 2022), *www.bbc.com/news/uk-politics-61017993.*
34. *Ibid.*
35. *See supra* note 32.
36. Rowena Mason, "From Non-Dom to Green Card: Questions Still Facing Rishi Sunak," *The Guardian* (April 10, 2022), *www.theguardian.com/politics/2022/apr/10/from-non-dom-to-green-card-questions-still-facing-rishi-sunak.*
37. *See* IRC Section 7701(b)(6).
38. Treasury Regulations Section 301.7701(b)-7(a).
39. 76 Fed. Reg. 10238 (Feb. 24, 2011).
40. Treas. Regs. Section 1.6038D-2(e)(1), (2) and (3).
41. IRC Section 877A(a)(1).
42. Section 877A(g)(2).
43. Internal Revenue Service Publications 519 ("U.S. Tax Guide for Aliens") expressly states that, for purposes of determining "long-term resident" status for purposes of Section 877A, a taxpayer doesn't count the year in which they're treated as a resident of a foreign country under a tax treaty.
44. Section 877A(g)(1)(A); Revenue Procedure 2021-45.
45. Section 877A(1) and (2).
46. Section 877A(f).
47. IRS Notice 2009-85, "Guidance for Expatriates Under Section 877A," Section 7D.
48. Section 877A(f)(4)(A).
49. Section 877A(f)(2).
50. U.S.–U.K. Estate Tax Treaty, Article 5(1).
51. *Ibid.*, Article 5(1)(b).

SPOT LIGHT

Be Bold

2 There Should Be. No 'More' No Less / 1 to Embody the Power. / 1 Crave. by RETNA (born Marquis Lewis) sold for $100,000 at Heritage Auctions Urban Art Signature Auction on July 28, 2022 in Dallas. RETNA is known for his large scale canvases featuring his own geometric script. The script is inspired by global typography, including Hebrew script and Egyptian hieroglyphics. His murals have appeared in major cities, including on Houston Street in New York City.