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Wealthy UK Non-Doms: Start Planning for New Labour Government

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High net-worth individuals who are concerned about the proposed changes to the "non-dom" tax regime should review their options now, say David Lesperance, Piers Master, and Melvin Warshaw.

The "non-dom" tax regime has recently been subject to increased controversy that allows for some top earners in the UK to be subject to low tax rates. More than one in 10 residents of some of London's wealthiest neighborhoods have claimed "non-dom" status at some point. Furthermore, more than 20% of top earning bankers in the UK have benefitted from "non-dom" status, according to a London School of Economics and University of Warwick report. Finally, non-doms also make up a sizeable share of top earners in the UK – those in the top 1% earning over £125,000 annually – in the oil and the car industry. The bottom line is that the very rich have historically been more likely to make use of "non-dom" status.

"Non-dom" status gained a heightened level of notoriety in 2022 when it was revealed that the wife of current Prime Minister Sunak was benefiting from the "non-dom" tax regime. As a result of being a "non-dom" of the UK, his wife is estimated to have saved up to £2.1M per year in taxes. This caused a controversy, and since then the "non-dom" tax regime has been subject to increased public awareness and political debate.

What Is "Non-Dom" Status?

The term "non-dom" is short-hand for "non-domiciled" and refers to an individual who is not domiciled or deemed domiciled in the UK and opts to take advantage of the UK's remittance basis tax regime.

An individual can be "non-dom" in a number of ways. The most common is if they were born to non-UK domiciled parents. Specifically, an individual will have a non-UK "domicile of origin" if at the time of birth, they have either: (1) a non-UK dom father and the parents were married, or (2) a "non-UK dom" mother and the parents were unmarried They will keep that non-UK domicile status (unless their parents' domicile status changes while they are under 16) unless and until they acquire a "domicile of choice" in the UK, which they do by becoming a UK resident and intending (a subjective test) to remain in the UK permanently or indefinitely. Equally, someone with a UK domicile of origin can lose that UK domicile by moving to another country and intending to remain there permanently or indefinitely, but such individuals are, by definition, non-UK resident and so cannot take advantage of the remittance basis of taxation.

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It is also possible to be "deemed domiciled" in the UK for most UK tax purposes. The most common way to acquire a UK deemed domicile is to be a UK tax resident for 15 out of the previous 20 tax years. Someone who is deemed domiciled cannot take advantage of the remittance basis of taxation, but some useful planning can be undertaken prior to becoming a UK deemed domiciled.

"Non-dom" status becomes relevant to the UK tax and legal system when the individual comes to live in the UK and they have connections in the UK such as investing assets in the UK.

It is possible for an individual to move to the UK and live in the UK full-time but retain their domicile of *origin* in their home country. This is referred to as "resident non-dom" (RND). Their "non-dom" status will only change if they adopt an intention to remain permanently in the UK or if they live in the UK on a long-term basis (currently over 15 years) – in this latter case they would become "deemed domiciled" in the UK, even if they retain an actual domicile outside the UK.

"Non-dom" status is a unique UK classification that applies to individuals who are residents of the UK but do not have their *permanent home* or *domicile* in the country. This tax status offers significant tax savings for income, capital gains and inheritance, making it an ideal financial planning goal for transients moving to the UK.

An individual who is not domiciled in the UK is "deemed domiciled" in the UK for tax purposes once they have been tax resident in the UK for 15 out of the previous 20 years. Unless and until a domicile of *choice* is adopted in another country, an individual's domicile of *origin* remains in place.

Remittance Basis. A "non-dom" individual can choose to be taxed in the UK on the "*remittance basis.*" Under this tax regime, the individual is only required to pay UK tax on income and gains from UK sources and on non-UK income and gains that are brought into or *remitted* to the UK (There are some limited categories of non-UK income which are immediately taxable even if not brought into the UK, the most common example being certain types of trading income.)

For "non-dom" individuals, this means that their foreign income and gains can remain untaxed in the UK if kept outside the country.

Significant Income and CGT Tax Savings. A "non-dom" choosing the *remittance basis* tax regime can result in substantial tax savings for individuals with significant foreign income and gains. Preferential UK tax charges allow professional investment managers to manage the finances of a "non-dom" in a way that minimizes their UK annual income and capital gain tax liability.

Inheritance Tax Benefits. "Non-dom" individuals also benefit from favorable treatment for UK Inheritance Tax (IHT) purposes. Only assets situated in the UK are subject to UK tax, while assets outside the UK are typically excluded. UK assets can generally be "wrapped" in a non-UK company to escape liability to IHT, although this is not possible for UK residential property, and there can be other tax issues to consider with wrapping UK assets in non-UK companies.

Excluded Property Trusts. It is possible for a non-dom to permanently shelter his or her non-UK situs assets from IHT by transferring them to an "excluded property trust." In order for a trust to be eligible for "excluded property trust" status in the UK, it must meet the following criteria: the settlor must be non-UK domiciled (and non-UK deemed domiciled – see below) at the time the trust is settled and

funded, and the trust must not directly hold any UK situs assets, nor can it hold directly or indirectly any UK residential property interests.

Under current rules, as long as these conditions are met, the assets in the “excluded property trust” will be shielded from IHT indefinitely, even if the settlor subsequently becomes domiciled or deemed domiciled in the UK.

Who Qualifies for “Non-Dom” Status in the UK?

Anyone who is non-UK domiciled as a matter of general law and who is not UK deemed domiciled (for example, as a result of having been a UK tax resident for 15 of the previous 20 UK tax years) is eligible to be taxed on the remittance basis of taxation.

The remittance basis applies automatically to: (1) non-UK domiciled individuals who have under £2,000 of unremitted non-UK income and/or gains in the UK tax year in question, and (2) non-UK domiciled individuals who have no UK income or gains at all in the UK tax year in question, and do not remit to the UK any non-UK income or gains.

In all other cases, it is necessary for the non-UK domiciled individual to claim the remittance basis on a UK tax return.

If the remittance basis is claimed, but not if the remittance basis applies automatically, the taxpayer loses their right to a personal allowance for income tax and an annual exempt amount for capital gains tax.

What is “Non-Dom” Residency in the UK?

In order to be eligible to be taxed on the remittance basis, it is first necessary to be a UK tax resident.

The question of tax residency demands a whole article to itself, and so we do not attempt to cover it in any detail here.

In very broad terms, however, an individual who has never been UK tax resident before can spend up to 45 midnights in the UK in a UK tax year (which runs from April 6 to the following April 5) without becoming UK tax resident. An individual who works full-time outside the UK and spends no more than 90 days in the UK in the tax year, of which no more than 30 days involve working for 3 or more hours, will also be a non-UK tax resident.

Conversely, an individual who spends more than 182 midnights in the UK in a UK tax year (which runs from April 6 to the following April 5) will always be a UK tax resident. An individual will also be a UK tax resident if the individual works full -time in the UK, or has their only permanent home in the UK, and spends at least 30 days in that UK home in the course of the UK tax year. For anyone wanting to avoid UK residence, it is usually essential to maintain a permanent home outside the UK throughout the UK tax year, and to spend more than 30 days in that non-UK home in the course of the UK tax year.

For individuals who do not fall into any of these categories, the question of UK tax residence is resolved by looking at the number of “ties” an individual has to the UK, by reference to a specified list of ties. The more ties an individual has to the UK, the fewer days an individual can spend in the UK without

becoming UK tax resident. The devil is very much in the details, and no two cases are the same, but many taxpayers who do not have a UK resident immediate family (spouse/partner/minor children) find that they will be non-UK resident if they spend fewer than 90 midnights in the UK in the course of the UK tax year.

A taxpayer who is UK resident but non-UK domiciled (and not UK deemed domiciled) is eligible to claim the special remittance basis of taxation.

What is the Annual Cost of "Non-Dom" Status?

For the first seven years of UK tax residence, there is no charge for claiming the remittance basis of taxation. However, as noted above, if the remittance basis is claimed, but not if the remittance basis applies automatically, the taxpayer loses their right to a personal allowance for income tax and an annual exempt amount for capital gains tax.

After 7 out of 9 years of UK tax residence (i.e., from the start of tax year 8), there is a charge of £30,000 per year for claiming the remittance basis of taxation.

After 12 out of 14 years of UK tax residence (i.e., from the start of tax year 13), the charge for claiming the remittance basis of taxation increases to £60,000 per year.

After 15 out of 20 years of UK tax residence (i.e., from the start of tax year 16), the individual becomes deemed domiciled in the UK and the remittance basis of taxation is no longer available. From that point, the individual is subject to UK tax on a worldwide "arising" basis, subject to any applicable double tax treaty or other reliefs.

It is important to stress that paying the £30,000 or £60,000 charge does not then allow the taxpayer to bring funds freely into the UK. Any non-UK income or gains which are remitted to the UK will still be subject to UK tax. In this regard, the UK remittance basis differs from certain other favored tax regimes, for example the Italian lump sum regime.

What Is the Political Landscape in 2024?

Prime Minister Rishi Sunak is campaigning on a Conservative Party platform of no significant overhaul of the "non-dom" tax regime. He has also advocated abolishing the IHT regime at some point in the future.

The Labour Party announced that its tax agenda would scrap the "non-dom" tax regime altogether. In the run-up to the election, Labour Party leader Sir Keir Starmer has sought to expressly associate the "non-dom" tax regime with what it claims is lost revenue for the Treasury. The Labour Party's proposal is to replace the "non-dom" tax regime with a more modern scheme for individuals who are genuinely living in the UK for short periods (perhaps up to 5 years, rather than the current 15) to allow the UK to attract the top international talent.

Recent polls have indicated that the Labour Party will form an overwhelming majority government in the next election. While PM Sunak has the power to call the election at any time, he must do so by December 2024 at the latest, meaning that the latest possible date for the General Election is January

2025. This means that “non -doms” and their advisors need to come to grips with the inevitability of the elimination/radical changes to the current remittance tax basis.

What Is the Future for Non-Doms Under a Labour Government?

This is a very significant question. There are numerous ways in which Labour could “abolish non-dom status.” The way in which it chooses to do so could have profoundly differing consequences for current remittance basis taxpayers.

On the face of it, the impact of eliminating/reforming the remittance tax system will be significant for current non -doms in the following two ways:

1. Future income and capital gains taxation on a world-wide basis rather than UK source and foreign remitted only; and

2. Future Inheritance taxation on a world-wide basis rather than UK situs assets only.

However, as often in matters of tax, it is not that simple. For example:

- Would Labour “grandfather” the existing rules for past tax years, so that non-UK income and gains for those past tax years would still be taxed on the remittance basis if brought to the UK? At present, non-UK domiciled individuals approaching deemed domicile can transfer their non-UK assets to “protected trusts.” Non-UK income and gains arising in protected trusts are not subject to UK income tax, capital gains tax, or inheritance tax while they remain within the trust, even after the taxpayer has become UK deemed domiciled. They are only taxed on distributions from the trust to UK residents, and so offer valuable tax protection and the ability for gross roll up of investment returns.
- Will Labor abolish the privileged tax treatment of these protected trusts (which were themselves introduced in 2017 in an attempt to dissuade non-UK domiciled individuals from leaving the UK following the last major round of changes to the taxation of non-UK domiciliaries)?
- Would Labour really change the connecting factor to the UK for inheritance tax from domicile to something else? Such a change could easily open up opportunities for tax planning – for example, wealthy pensioners could leave the UK and know that they were no longer subject to inheritance tax on their non-UK assets (perhaps after a run-off or tail period of a few years). At present with domicile as the connecting factor, they can have no such certainty.

We do not know the answers to these questions.

How Should Non-Doms Prepare?

Step One: Evaluate Impact. This involves running the numbers on the increases in UK income and capital gains taxes should the remittance basis regime be abolished but the taxpayer chooses to remain UK resident. In addition, an estimate should be made of the IHT liability on global assets.

Step Two: Strategies to Mitigate Impact. Non-doms really have two different approaches to dealing with the loss of the current remittance tax regime. The first approach is to "play the game better" by using the same types of tax strategies that are used by regular UK taxpayers. The second approach is to "leave the game" by becoming non-UK resident and possibly ensuring that they are not tagged with a UK domicile.

It is not yet apparent whether Labour will outright eliminate the remittance tax regime or severely restrict the availability of the current regime. In addition, there has been only general statements made about changes to the IHT regime. Finally, many Labour supporters will continue to push for a new Labour government to consider enacting a wealth tax comparable to those in continental European jurisdictions.

Therefore, non-doms should not solely rely on a "play the game better" approach but should have a backup strategy to leave the game.

What are the Income and Capital Gains Strategies? The right approach here is going to depend on exactly what the Labour changes are, and when they are enacted.

It may be possible, for example, that protected trusts are grandfathered, and so non-UK assets could be transferred to such trusts before the rules change. That would be a powerful planning strategy, but again, we do not know.

But, in a scenario where all of the preferential treatment afforded to non-UK domiciliaries is withdrawn, some of the ways to "play the game better" with legal tax avoidance for UK tax residence are:

- Income tax and capital gains tax reliefs and allowances may be utilized as much as possible. Some of these allowances may not look exciting in themselves but can add up over time. For example, every UK resident (apart from some remittance basis users) can realize £6,000 of capital gains free of tax in the current tax year. It may not sound like much, but it can add up over time.
- Certain investments (e.g., those qualifying for Enterprise Investment Scheme or Venture Capital Trust reliefs) offer income tax and/or capital gains tax reliefs. Often these reliefs are in place as an incentive to invest in riskier UK business start-ups.
- It is often possible for spouses to equalize their assets so as to take advantage of the lower tax bands available to the less well-paid spouse.

The above are just three suggestions in the UK domestic planning universe. A full consideration of the topic would require not just an article, but a book, to itself!

Becoming Non-UK Resident. In order to leave the game for UK income and capital liability, the individual must become non-UK tax resident. Again, exactly how to do this is a complicated subject, and careful advice should be taken on an individual basis.

The position is determined by the UK's "statutory residence test" ("SRT"), which is divided into three parts.

1. Automatic non-UK tax resident test. The first part determines whether or not an individual is "automatically non-UK resident." If an individual is automatically non-UK resident, that is the end of the matter and there is no need to consider the other two parts of the SRT.

An individual who is currently UK tax resident and wishes to become non-UK tax resident will be "automatically non-UK tax resident" if any of the following is true:

- He spends fewer than 16 midnights in the UK in the UK tax year in question: a UK tax year runs from 6 April to the following 5 April; or
- He works full-time outside the UK, does not spend more than 90 days in the UK, and does not undertake more than 30 days of work (of 3 hours or more) in the UK in that UK tax year.

2. Automatic UK tax resident test. If the individual does not satisfy any of the automatic non-UK tests, we then turn to the automatic UK tests. If any of these tests apply, the individual will definitely be UK tax resident and there is no need to consider the rest of the SRT:

- He spends at least 182 midnights in the UK in the tax year;
- He has a "home" in the UK in which s/he spends at least 30 days in the tax year, and does not have a "home" outside the UK throughout the UK tax year in question in which s/he spends at least 30 days in that tax year; or
- He works full-time in the UK in the tax year.

In practice, it tends to be the "home" test which catches people attempting to become non-UK resident, and this test should be carefully considered in every case.

3. Sufficient ties test. If neither of the automatic non-UK tests nor the automatic UK tests is satisfied, we then turn to the best known part of the SRT, the "sufficient ties test."

This limb of the test sets out five ties to the UK. The greater the number of ties the individual has, the fewer the number of days he can spend in the UK in a tax year without being a UK tax resident in that year.

For an individual is currently UK tax resident and wishes to become non-UK tax resident, the five ties are:

- Family: having a UK resident spouse, civil partner, unmarried partner, or minor child.
- Accommodation: having a place to live in the UK available in which (usually) he spends at least one night in the tax year.
- Work: performing at least 3 hours work in the UK on at least 40 days in the tax year.
- 90-day presence: spending over 90 midnights in the UK in either of the previous two tax years; and
- Country presence: spending more midnights in the UK than in any other single country in the tax year.

The maximum number of midnights the individual can spend in the UK without becoming UK tax resident is as follows:

Number of Ties	Maximum Number of UK Midnights
0	182
1	120
2	90
3	45
4 or more	15

Note that for someone wishing to leave the UK, it is likely to be impossible to have zero ties for the first two years, as that individual will almost certainly have spent more than 90 midnights in the UK in the previous two tax years, and so will have the 90 -day tie.

It is also likely to be difficult to avoid the accommodation tie.

So, for people leaving the UK, it is frequently the case that the maximum permissible number of midnights is 90, and even then, great care has to be taken, for instance with the work tie. For many people, the maximum number of midnights can be 45 or even 15.

Once an individual has been non-UK resident for three tax years, the day count requirements are relaxed somewhat.

What Are the Inheritance Tax Strategies? If the non-dom remains in the UK after the elimination of the remittance tax basis, it is likely that they will be deemed domiciled in the UK for IHT purposes.

There is uncertainty about how IHT would be charged if domicile were eliminated as the connecting factor to the UK for IHT purposes. However, on the assumption that the individual would become subject to worldwide UK IHT, common current strategies for UK domicilaries in relation to managing IHT are:

- Ensuring that assets pass to a spouse or civil partner on the first death. That postpones the IHT charge until the death of the survivor. A well drafted will is often the solution here, though it is important to check the position as regards to forced heirship and whether it may apply to some or all of the taxpayer’s estate.
- Taking advantage of IHT reliefs. After a minimum holding period (often of 2 years), some assets attract 100% business property relief from IHT. This relief is not limited to obvious business interests, but includes other assets such as unquoted shares in trading companies. Another useful relief is agricultural property relief, which can be available after a minimum holding period on the agricultural value of qualifying agricultural property.

- Taking out life insurance, written on suitable trusts, to manage the IHT liability. This form of IHT management is increasingly popular.
- Making lifetime gifts of assets. Unlike in the US, under present rules it is possible to make unlimited gifts from an IHT perspective, and after 7 years, the value of those gifts is removed from the donor's estate for IHT purposes, provided that they do not enjoy any ongoing use of the asset given away. It is possible to insure against the donor dying within that 7 -year period. Gifts of chargeable assets are, however, disposals for capital gains tax purposes, so capital gains tax must be watched carefully when considering lifetime giving. Contrast the position on death, when there is a tax free uplift to market value for capital gains tax purposes.

An important point, which many people find surprising, is that planning to avoid IHT using lifetime trusts is difficult for UK domiciliaries. Since 2006, gifts to almost all types of inter vivos trusts in excess of an individual's IHT "nil rate band" (up to £325,000 per person, refreshed every 7 years), gives rise to an upfront IHT charge of 20%. This much criticized restriction on the use of lifetime trusts has led to alternative forms of planning, such as family investment companies, the idea of which is for the economic interest in assets to be given away to children while parents, or others, retain control over those assets.

In order to leave the UK inheritance tax regime, the individual needs to ensure they are not UK domiciled and not UK deemed domiciled. That is much harder for those who were born with a UK domicile of origin (which in most cases means their father having had a UK domicile at the date of their birth). In looking at The Times Rich List for 2022, just 38% of the wealth of the top 250 comes from those with a UK domicile of origin — a decrease from 45% a decade ago. In fact, just one of the top 10 wealthiest billionaires had a UK domicile of origin.

Unfortunately, many of these ultra-high net worth non-doms have domiciles of origin in jurisdictions where they do not want to live for various reasons. These include countries like Russia, China, Saudi Arabia or Gulf states, South Africa, or India. For these non-doms or those who have a UK domicile, then in order to leave the game, the acquisition of a domicile of choice is necessary.

A UK domicile of origin is very difficult to break. In order to do so, an individual must do two things:

- Establish their chief residence in a jurisdiction outside the UK – this is relatively easy to arrange; and
- Intend to remain in that jurisdiction permanently or indefinitely – this is the hard part.

At the point at which an individual successfully loses their actual UK domicile of origin, there is a further "tail" of deemed domicile, of at least three full calendar years and often more.

It can be appreciated that the difficulty lies in convincing the UK tax authorities that the individual has formed the intention to remain permanently or indefinitely in the new jurisdiction. Extensive steps must be taken, and documented, to put down roots and connections in the new jurisdiction, and to sever ties with the UK. It may well take 10 or more years living full-time outside of the UK before a UK domicile of origin is lost or abandoned in the eyes of the UK tax authorities.

A domicile of origin will revive by default at any time if the individual abandons their non- UK domicile of choice without immediately acquiring a domicile of choice in a third jurisdiction, which is usually not easy to do immediately.

Note that, in the case of the US, which is a federal jurisdiction, an individual is domiciled in a particular state, and not simply in the US. Therefore, moving states can cause a UK domicile of origin to revive.

There are a few treaties that the UK has entered with other countries, which can affect the scope of the IHT in relation to individuals who are domiciled outside the UK but are deemed domiciled in the UK for IHT purposes. The effect of one of these treaties applying is that, on the individual's death, IHT may not apply to non-UK assets, notwithstanding the individual's deemed domicile in the UK, if the individual can establish a non-UK treaty domicile Some of the more useful treaties only have effect in relation to transfers on death, and they do not affect the application of IHT if the individual makes a lifetime gift of non-UK assets to a trust.

The treaties which are best-known for avoiding the impact of a deemed UK domicile at death are those with India and Pakistan. The UK treaties with India and Pakistan are most useful for death time planning where the individual has his actual domicile in one of these countries, regardless of where the individual is resident. They can be taken advantage of by long-term UK residents who remain domiciled in a state or province of India or Pakistan. By contrast, the other IHT treaties are generally only on point where the individual is resident in the other country, and therefore do not provide assistance where an individual is domiciled in the other country but is resident in the UK.

For former non-doms who become "deemed domiciled" in the UK under the 15 out of 20 rule, or by remaining UK resident after the abolishment of the remittance basis, these individuals will cease to be domiciled after three full tax years of non-UK residence. This means that an individual who is domiciled in the UK but who leaves and acquires a domicile of choice elsewhere could potentially become non-UK domiciled more quickly than those individuals whose UK domicile status is only deemed.

UK Departure Planning and Trusts

Particular care must be taken when considering trusts. An IHT event will be triggered where any assets are transferred into trust by a UK domiciliary or deemed domiciliary, or UK assets are transferred into trust by a non-UK domiciliary. This is because gifts into trust are immediately chargeable transfers for IHT purposes. They will give rise to immediate chargeable transfers for IHT purposes and an immediate IHT charge of 20% (increasing to 40% if the donor dies within seven years of the transfer) on the value in excess of the available nil rate band (NRB). Further, the trust will be subject to the relevant property regime. Basically, this means that the assets will be subject to IHT charges of 6% every ten years and a charge of up to 6% on distributions of capital between the ten -year anniversaries.

The takeaway is that while those US "drop-off" trusts may be desirable for residents of other countries, in general they are a "no go" for UK domiciliaries or deemed domiciliaries. On the other hand, if the individual was a non-UK domiciliary (i.e., resident of the UK for less than 15 years) they should be able to undertake establishing a "drop-off" trust and funding it with non-UK assets prior to moving to the US Therefore, when encountering a client who has been formerly UK resident, it is always essential for the US practitioner to obtain an opinion on domicile as a matter of English law before implementing any US trust planning.

What Are The Considerations in Selecting a Non-UK Domicile?

Whether motivated by not wanting to return to a foreign domicile of origin, or wanting to rid themselves of a UK deemed or origin domicile, the selection of a jurisdiction for a domicile of choice should take into account the following:

- The needs of ALL family members (e.g., personal security, education, work, lifestyle etc.);
- A tax-favorable income/capital gains outcome either through existing tax regimes (i.e., remittance, lump sum etc.) or through pre-immigration structuring (e.g., Non-Habitual Tax Resident).
- Allowance for the establishment of not only residence but also the establishment of a permanent home. In order to abandon a domicile, it is necessary to intend to remain “permanently or indefinitely” in the new jurisdiction, and an individual is unlikely to be able to credibly claim such an intention in jurisdictions whose immigration programs do not allow for the possibility of permanent residence. (Note: The UAE only allows for a maximum 10 year residence period under its “Golden Visa” program.)

What Are the Various Categories of Non-UK Domicile?

1. No income, capital gains, or estate tax (e.g., Bermuda, Cayman, Monaco):
Since these jurisdictions do not tax income, capital gains, or estates, aside from meeting the necessary requirements to establish residence and a permanent home, only the UK issues such as the 6 year clawback (i.e., the temporary non-reisdence rules), and domicile issues (e.g., IHT and deemed domicile) etc. need to be considered.

2. Income, capital gains, but no estate tax (e.g., Canada, Singapore, Australia):
For those jurisdictions which allow for some type of pre-immigration planning, care must be taken that such planning does not trigger adverse UK tax issues. For instance, if it were desirable to establish a trust as part of pre-immigration planning, the UK issues such as whether the establishment of the trust might trigger an IHT charge would need careful consideration.

3. Income, capital gains, and estate tax but reduced estate tax liability with planning (e.g., United States, Switzerland, Italy):
Non-doms who are interested in acquiring a domicile of choice in these jursidictions will need to engage local tax counsel to work with their UK advisors to make sure that they do not jump out of the UK tax frying pan and into another jurisdiction’s tax fire. Each jurisdiction is different but to present an example of the issues involved, we will take a look at considerations relating to acquiring a tax residence and domicile of choice in the United States.

US Tax Residence and Domicile of Choice

Unlike any other industrialized country, the US taxes not only on the basis of residency but also on the basis of citizenship. US citizens are taxed on their worldwide income and gains regardless where they live and regardless of the source of the income or gains. A non-US citizen will be taxed in a similar way under one of two objective income tax tests: the green card test and the substantial presence test.

Individuals who are not deemed to be US resident for income tax purposes generally are taxed on US source investment income and effectively connected US business income, subject to tax treaty relief.

US citizens and US domiciliaries are subject to US transfer taxes on worldwide assets, subject to an historically unprecedented but interim significant lifetime exemption amount ($13.62M in 2024) and treaty relief. A green card holder physically present in the US is presumed to be a US domiciliary.

A non-US domiciliary is subject to US estate tax on US situs assets (including US stocks and US real estate) in excess of a very small exemption amount of only $60,000.

In general, the best way to mitigate potential US tax exposure is to plan ahead.

For an individual moving to the US, there are several types of pre-immigration tax planning that should be considered. These considerations include realizing gains or income before becoming a US income tax resident (especially if moving to either California or New York).

Other available techniques may involve restructuring ownership of investments and/or business assets, depending on whether there are adverse local tax implications in the current country of residence. Such restructuring may be able to mitigate the impact of US anti-deferral rules under the US CFC and PFIC tax regimes. This restructuring may be able to allow rebasing of assets prior to moving to the US.

From a US income tax perspective, to the extent the individual is the owner of a UK company (almost certainly treated as an opaque entity for UK corporate income tax purposes), there may be an opportunity before the individual owner moves to the US to make a special election in the US (known as a “check-the-box” (CTB) election) to treat the non-US company as a transparent entity solely for US tax purposes. To the extent the non-US company is solely owned by the inbound individual who files a CTB election, such election will cause the foreign entity to be taxed as a disregarded entity solely for US tax purposes. To the extent the company is owned by at least two persons one of whom is the first person to file a CTB election, such election will cause the foreign entity to be taxed as a foreign partnership solely for US tax purposes.

In addition, it is important to examine the tax implications of existing trusts.

Concluding Thoughts

When one looks coldly at the current UK election polls, the question is not whether or not Labour will form the next government. Rather it is what tax policies they will implement. Most UK voters do not have additional disposable income to make future contributions to the Treasury. Therefore, the wealthiest UK tax residents will be targeted to fund the proposed policies of a new Labour government. While some of these wealthy taxpayers believe that they should contribute more to the tax coffers, this is by no means a universally held belief. Furthermore, even for those who advocate further payments to HMRC, there is little agreement as to the types of policy changes that should be made and certainly no agreement as to the additional amount of tax that should be paid.

For those UK taxpayers who are concerned about the proposed changes by Labour, the uncertainty of the possibility of Wealth Taxes, or major IHT changes, they should prepare by equipping themselves to have the option to become non-resident in the UK. Whether or not they “pull the trigger” will depend on their perception of the unfairness of any new tax laws and whether or not it overcomes their “life inertia” in the UK.

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