

FINANCIAL INFORMATION AND ADVICE

This useful collection of information and advice will help to prepare you if you are considering buying or moving abroad.

Courtesy of Nigel Herrick - Director of Shaw Premier Wealth Management, a trading style of The Premier Partnership Limited who are authorised and regulated by The Financial Services Authority. www.shawtax.co.uk

TAXATION AND LIVING ABROAD

Hello and welcome to our regular finance section in which we will be bringing you up to date news on taxation, finance and legislation, and how matters and developments may affect you if you either live, or are contemplating living abroad.

The taxation of individuals, particularly those living abroad, is a complex area, and we would always advise clients to seek independent professional financial advice in relation to their personal circumstances.

Every individual is a member of some body politic from which they may expect protection, but to whom do they owe political allegiance and loyalty? The status endowed by this relationship is your Nationality. Nationality is however different in tax terms to your domicile, and this is often very misunderstood by people leaving the UK to live abroad. Domicile determines your overall taxation status, particularly on your worldwide estate at death. Many people do not realise that merely changing your residency, for example to Spain, and paying local taxes, does not automatically change your domicile, and thus your liability to UK Inheritance Tax. As we go through this regular commentary, we will be looking further into such areas as domicile and residency, commenting on the major differences, and building a useful information library for you.

As an example, you will become a resident in Spain for tax purposes if you spend more than 183 days in the country during one calendar year. You will become liable whether or not you take out a formal residence permit. Temporary absences from Spain are ignored for this calculation, unless it is proven that an individual is habitually resident in another country. So, nipping home to see your dentist will not help you in your assessment of time spent. You could therefore find yourself 'twixt tax authorities, paying tax unnecessarily. If you are a resident of Spain you will be liable for income tax, capital gains tax and succession duty (Inheritance Tax) on your WORLDWIDE wealth and assets. However, due to the double taxation agreement that exists between Spain, the UK and many other countries, (the purpose of which is to determine which country you will be taxed in) ensures that you cannot be resident – and therefore taxed in both countries.

Tax is a complex area, but need not be a limiting factor in your decision-making. Take professional advice prior to making any decisions - it could save you money.

FUNDING YOUR PURCHASE

The lure of living in the sun has never been greater, and the latest statistics from the National Statistics Office showed that over a quarter of a million people owned homes abroad at the end of 2004, and the figure now would be considerably higher. There have been a number of factors behind this boom in overseas property purchases, not least of which has been the advent of low cost air fares to regional

airports, and the continuing rise in UK house prices, from which many people are funding their sunshine property purchases. It is after all, often quicker to get to Bordeaux than Bournemouth.

Many buyers are funding overseas property purchases by tapping into the values created in their UK homes, and then paying cash up front to the overseas builders. In our opinion this is by far the most controllable, cheapest and simplest method if you have equity in your UK home. If you wish to utilise this route we have several UK lenders that will provide loans on this basis, to purchase overseas properties, through their international divisions.

Our advice here is based upon the fact that you should always borrow for mortgage purposes in the currency or country in which you earn your main income, which also avoids any currency risk between Sterling and the Euro. Always remember currencies are very moveable feasts and currency changes could prove very detrimental to the costs of borrowing if the currency of the loan moves against you. Our one caveat here is where potential holiday letting is the objective of the purchase, and then it may be advantageous to mortgage in Euros, so that an individual can offset their Euro rental income against the loan repayments in the country the taxable income arises. This is very much a personal position to each borrower and we would advise taking professional independent advice on such matters before any contracts are taken out.

An attraction of Euro loans is that interest rates chargeable can be lower than those in the UK, but a fall in the currency will increase the sterling equivalent of your loan. Exchange rates can also have a big effect on the overall costs of buying and owning your overseas property, and so it is important to shop around for the best exchange rates. A recent entrant into this market is SAGA who offer buyers the option to fix exchange rates for up to two years at competitive rates, which can be considerably beneficial if you are buying off plan, with a staged series of payments, as each part of the property is completed. As an example, at the time of writing a 250,000 Euro facility would cost £173,379 through the Halifax, but only £171,116 through Foreign Currency Direct, so the savings can be considerable.

Also be aware of the taxes at local level that may be payable on a purchase, such as VAT, which for example, will cost you up to 19% on a new property in France, and between 6% and 10% on older properties. We would be happy to advise on such matters through our specialist VAT department. If you let out your property you will face income tax on the rental income, and in Spain and Italy, you may face a bill even if you have not let the property out, as the authorities have the ability to work an assessment on "deemed income" that could potentially arise from a property.

The last point we would make in this article is the need to make a local Will. We will be dealing with overseas Wills and their effect in future articles, but local inheritance tax laws do come into play, and so a local Will, correctly drafted by an Independent Lawyer who speaks good English, and is qualified in Foreign Law, is a high priority. As always, take professional advice on your purchase and you can fully enjoy your time the sun.

PLANNING AHEAD

In previous articles we have looked at the general rules of living abroad, but over the next few commentaries we will look at the planning involved to move abroad. So we will walk through the scenario of moving to Spain, to give you an insight of what is

required before you actually leave these shores, and what you should be considering in terms of time scales.

There is no doubt that early planning is very beneficial. You will need an adviser who is knowledgeable about both UK and Spanish tax rules, which will enable you to plan and quantify your tax liabilities in the UK and potential tax liabilities in Spain; create and arrange your investment strategies and arrange any pensions you may have; discuss and decide on any ownership structures as may be required and finally, when all is done, arrange your departure from this island and the grip of Her Majesty's Revenue and Customs (HMRC).

Your income and where it derives from, will of course be central to your new life and an area that is oft overlooked is correct pension planning. Properly planned pensions can save considerable sums on Spanish taxes. Similarly, dividends on any UK listed shares you may own, can be paid to you without deduction of tax, but would become liable to local Spanish Tax, if the correct structure and strategies are not put in place. There would be little point in arranging such facilities in the UK only to have the income taxed in Spain. For example, transferring such share holdings into an appropriate offshore trust arrangement, where the Trustees would not pay income or capital gains taxes, could save again considerable sums in local taxes as well as protecting the assets from future Spanish Wealth and Inheritance taxes.

Such structures do not come cheap in terms of the costs of arranging to create such trusts, but should be seriously considered as part of the planning process. Such arrangements can protect worldwide wealth, irrespective of where the beneficiaries to an estate may be based.

We will talk more in future articles about Spanish Wealth and Gift taxes, which can be quite onerous if not considered correctly, for example, there is no exemption to Spanish Inheritance Tax between a husband and wife where they are both resident in Spain - a common scenario. This is often not considered by couples moving to Spain and arranging Spanish tax planning. In the UK we are used to the rules of total exemption between spouses, on the transfer of assets on the first death, but this is not the case in Spain. In Spain, if the husband dies, then the estate left to the wife is fully liable to taxation on the worldwide assets of the husband. Penal indeed, if you are not aware, and have not planned for this scenario.

Planning before leaving is key to your successful transition to your new life in the sun, so don't leave it until the last minute and as a tip, give your advisers up to twelve months planning notice so that the roll of tax year ends and personal tax allowances can be fully considered and utilised.

As always, we would advise that taxation matters and financial advice is relevant to individual circumstances, and professional financial advice should always be sought for your personal situation.

INHERITANCE TAX AND WILLS

Hello again and welcome to our regular finance section, where you will recall, in our last article we looked at the planning involved in actually moving abroad, and we would like to continue with this theme in this months issue. As always we have to advise you that taxation and financial advice is relevant to individual circumstances and so professional advice should always be sought for your particular requirements.

Following on from our previous article we would like to look further at Spanish Wealth and gift taxes, as the situation in Europe generally is far different from the rules of inheritance and wealth in the UK. The first part of this is to look at Wills.

What happens to your estate when you die depends upon your Will, whether in the UK or abroad. Although the rules are complex, in practice if you make adequate provision for your immediate family in a Will drafted under either Country's laws, there should not be a major problem. However, if you own property in a foreign country, then a Will in that Country is essential, irrespective of whether there is also a UK Will in place. It is also important to understand the differences in the legal systems in the country of choice. Using Spain as an example, Lawyers as we understand them in the UK do exist and are known as *abogado/as*. The Spanish Notary however, has no real equivalent in the English System, where the duties are similar to an English solicitor, but the Notary is concerned solely that the legal requirements have been met in full. The Notary has no responsibility to either party, but is responsible for checking that the papers are correct and that Government regulations have been satisfied, including the payment of taxation due. There is a common misunderstanding about the roles of these two people for people moving abroad. You must ensure that your legal representative can undertake the job you require.

In Spain, Wealth Tax is payable by non residents and residents on the basis of all assets, but non residents will only pay Wealth Tax on their Spanish assets, but if you become a Spanish resident, you will be drawn into the Wealth Tax scenario. Cumulative Wealth and income taxes cannot exceed 60 per cent of the total taxable income base of residents, and is subject to paying a minimum percentage of the Wealth Tax calculation. Because there are various exemptions that may apply, this article can serve as no more than a warning that such taxes exist, as many people who move abroad mistakenly believe that they will escape both UK and any foreign taxes, merely by the act of moving. This is a dangerous assumption, and as more integration occurs between the tax authorities of Europe to counter terrorism and money laundering the situation will only become more apparent.

Spanish Inheritance and Gift taxes are also payable, and the main difference here is that unlike the UK, there is no exemption to Spanish Inheritance tax between a husband and a wife where they are both resident in Spain. For example when two people are both resident in Spain and the husband dies, then the estate left to the wife is fully liable on the worldwide assets of the husband. This could prove expensive, so again be aware! Most people who live in Spain leave their widow or widower an usufruct, which is a life interest in the family house, rather than leave them half of the property. This can reduce Spanish Inheritance taxes and should be discussed with your legal representative when making the Wills.

A final point that we would like to make in this report is a ruling that has come from the Special Taxation Commissioners in the UK regarding the old 90 day rule of being able to return to the UK without being deemed resident. Although not completed yet in legislation because an appeal may yet be lodged, the commissioners have decreed that unlike the previous rule where the day of traveling into and out of the UK was not counted in the 90 days, they have now stated that this traveling time will be counted, because they will count the nights stayed in the UK overall, and not the days, which brings the traveling days into the equation- more on this in later reports.

MORE ABOUT TAXES

Following on from our previous article, I have had several questions asked regarding the difference in taxation status of spouses in foreign climes, and how it differs from that in the UK.

In The UK, transfers of assets or cash between spouses (and this can mean anything from cash to shares, cars, houses, in fact anything that can be transferred from one name to another) is exempt from any form of taxation either capital or income wise.

This spousal exemption also applies to death and the transfer of estates. When the first spouse dies, and provided they are still legally married, the whole of the joint estate reverts to the remaining spouse without any taxation being applied. Upon the death of the surviving spouse, Inheritance Tax is assessable upon the whole remaining estate. It is this spousal exemption that does not apply in Europe. Each individual is separately assessed to taxation irrespective of the marital status, and this is probably the most misunderstood form of taxation that UK citizens come across when moving abroad and planning their affairs.

I have referred previously for the need to have a foreign Will to alleviate any major problems occurring with the estate on death, and this should be drawn up by a local English speaking lawyer, who can explain clearly what it is that is covered. This is essential for example under Spanish Law, because if the foreign resident dies Intestate without having made a Spanish Will, the estate may end up being claimed by the Spanish State. When making a foreign Will, avoid including any property held in the UK or outside the jurisdiction you are in, as this could lead to further complications. In other words British and foreign assets should be kept entirely separate.

When you move abroad, you may be asked to present proof of your pensions or other income, to prove you are of "Independent Means" and will be no burden on the country you are moving to. This is quite a normal request, and has recently been brought further into the equation by HMRC in the UK, declaring war on those UK residents holding offshore accounts in places such as Jersey, Guernsey and The Isle of Man.

What has happened here is that under new EU rules disclosure of accounts not ordinarily held in the tax jurisdiction of the individual - say a UK resident having a Jersey bank account - has become compulsory, with the UK Tax authorities acquiring the power from the European Courts to demand that Banks give up their account holder lists for HMRC Inspection. In reality this means that account holders who have not previously declared such accounts, either to their home tax authorities or the new countries tax authorities, are now being caught. This is the subject of a whole article in itself and I will be giving further information on this subject as we continue our series of taxation articles. Needless to say, as always correct planning can avoid such areas of contention with Tax Authorities, and we can give you the information you require.

Planning is the key, and be prepared to spend time prior to moving to get your affairs in order before you do. Many people are disappointed with the time taken by foreign authorities and beaurocratic departments to action matters regarding their new status, and many even consider our own civil service to be actually

quite efficient after dealing with Spanish, French and Portuguese authorities. Whilst we would not go so far as to say it is easy to get things done in the UK, it is often better than the rest of the world. Plan ahead and be patient!

OFFSHORE ACCOUNTS

Although you will probably be bored stiff with Budget news by now, it was interesting for us here at the office, the day after the Budget, for a total of six clients to call and enquire about the mechanics of possibly moving abroad and changing their tax residency status, after reading through Gordon's latest missive. I feel they will not be the only ones once he becomes Prime Minister.

It is one of Gordon's little tax squeezes that becomes the subject of my report today and follows on from my last article regarding offshore accounts. In times gone by, when people moved to Spain, France or indeed anywhere abroad, the sage wisdom of the time was not to import Capital into the country of new residency, but to leave the capital in say Gibraltar - if you were in Spain; or Luxembourg if you were in France, or indeed the Channel Islands for almost anywhere else. The general rule being that if the new host authorities could not see the capital they could not tax it, they could only tax the income arriving into the country for your use. To a large extent this may still be valid in certain circumstances, but this was not the point in relation to offshore accounts that I raised in my previous article, which seems to have caused some confusion.

My previous article dealt not with the type of structures that may have been utilised above, but on offshore deposit accounts with banks where interest had arisen, and where UK residents had not previously had to declare such interest on their tax returns. The scenario here is one of a resident of the UK keeping money in say the Halifax Bank in Jersey, and not declaring the income arising as income they should declare on their UK tax return. The reason that people have been caught in this scenario has been caused by a change in EU taxation laws which now require all banks (under anti-terrorist legislation) to open their account holder lists to all EU tax authorities - including the UK - stating to those authorities the names and addresses of account holders along with the amounts held within those accounts. It is these accounts that are affected by these new disclosure rules and not the investment bond type structures commonly used to create tax efficient income both onshore and offshore.

So my apologies if this caused some confusion. In future articles I will deal with the various types of structures that potentially could be used to protect certain capital in offshore environments, as a follow on to this report. As always I hope the information herein is helpful to you, but remember personal and independent advice is always required in taxation matters, so please contact us if you would like to discuss any matters arising from this or other articles.

MORE ABOUT OFFSHORE ACCOUNTS

Since my last article, things have moved on quickly in the great offshore account debacle, so I thought I would use this article to bring you up to speed.

You will recall that I stated in earlier reports that the UK Banks had been forced by Her Majesty's Revenue and Customs (HMRC), to disclose the names and account

numbers of all individuals who hold accounts in their offshore branches such as Jersey or Guernsey or The Isle of Man, but who are resident in the UK, or have been resident in the UK. This is in order to ascertain if that account is in any way connected to a loss of tax to HMRC in the UK, by the none declaration of Interest. In February, HMRC indicated that they intended to make an offer to those who had evaded tax on interest on offshore accounts, to encourage them to come forward and admit the error of their ways! Well, the "Amnesty" has now been announced and I feel it is worth dedicating this article to this turn of events, just in case some of you may be thinking, " What should I do?"

The main incentive is a promise by HMRC that the penalty charged on undisclosed tax will be limited to 10% of the amount due, as opposed to the normal 100% penalty. However, investors will be expected to make full payment of all unpaid taxes on these accounts for the past 20 years, together with interest. The offer is only open for a short period, with payments due by November 2007, with an earlier declaration of intent that must be made no later than 22nd June 2007.

This unprecedented amnesty follows on from the recent legal rulings that have forced all five high street bank groups - Barclays, HSBC, HBOS, Royal Bank Of Scotland and Lloyds TSB, to divulge the information on offshore clients accounts.

Holders of Swiss Bank accounts have for the moment escaped disclosure because of that Country's banking secrecy laws, although moves are afoot in Europe to change this situation. Remember that in ordinary evasion cases, HMRC have the authority to charge the tax due, interest on the tax due and a penalty of 100% of both figures if they feel that a case merits such action, so this amnesty is seen by The Revenue as quite a climb down from the norm.

So is this an Amnesty? For individuals who have say untaxed amounts of less than £2,500, then the penalty - but not the interest, is waived. This could have occurred for example on an account used to run a holiday home - to pay local rates and bills, or, from money earned overseas. However, for clients with more complex tax affairs, we feel the Amnesty is really no more than could probably have been negotiated as part of a settlement with HMRC, outside of the scheme, so the word Amnesty in this instance could be misleading, as there are still penalties and interest to pay.

For those who wish to legitimately hold offshore deposits without the need to pay tax or declare income on accrued interest, an offshore bond would offer a tax effective solution, but remember such structures are not bank accounts, and so if you have a holiday home account for the reasons above, such a structure would not be effective, but such accounts - if they are interest bearing - are caught by the above legislation.

Like all of current tax legislation, this is being made up on the hoof, and we may see further amendments or changes along the way. But similarly, it is catching individuals who were not necessarily targeted in its conception, (those being terrorists and money launderers), but who nevertheless may now find themselves receiving a letter from the Banks stating that their details have been passed to HMRC. As always, we are here to help, so if you do receive such documents, give us a call and we will be happy to help.

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