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Navigating beyond the horizon:
Considerations for the HNW family on coming to the UK

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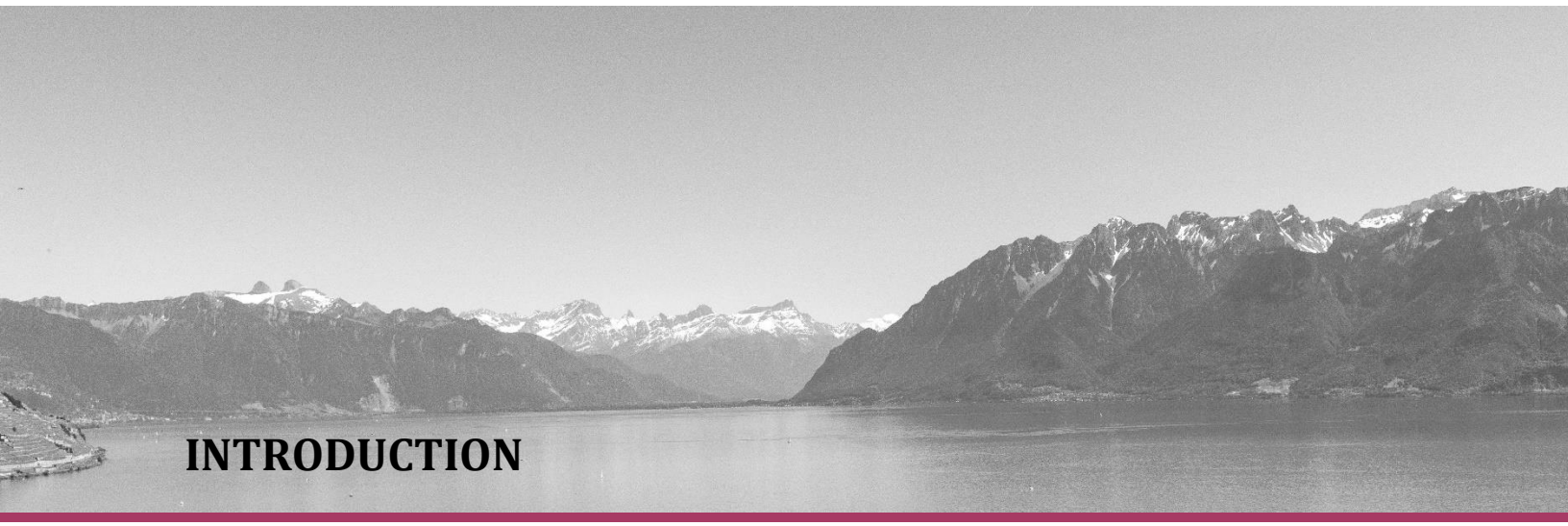


INTRODUCTION

The world has opened up again, and new opportunities and challenges are emerging as a result.

One such opportunity is the chance to travel the world and meet valued friends and contacts. In that spirit, a team from MTG came to Geneva and Zurich in May 2023 to host presentations and discussions around the general theme of moving to the UK.

The topic of global mobility is firmly back under the spotlight. The desire to have freedom of movement, and being able to invest freely around the world, brings with it a range of technical questions. Beyond that, the underlying political climate is (at the time of writing) highly fractious in various parts of the globe. The possibility for legal systems to change dramatically, and with little warning, always needs to be borne firmly in mind.

We hope that the summary of the key topics we discussed during our trip is useful. As always, if you have any questions in relation to any of the issues raised below, please do not hesitate to contact any of the authors, or your usual contact at MTG.

DOMICILE

Domicile is an incredibly important concept in English law.

Despite its huge importance, the rules and principles are notoriously vague. It is a very unusual test, particularly given the huge impact it can have on a person's UK legal and tax status.

Unlike **residence** (which is a physical test of where someone lives) domicile is a much more amorphous concept. A person's domicile depends on a mixture of their personal history, and their present and future intentions.

The rules are complex, but to give an example of their seemingly arbitrary effect: two twins could lead similar lives, moving to the same countries and dying together in the same country: and *still have different domiciles*.

The impact of an English domicile is hugely significant in a number of legal areas.

- It can completely change the basis on which someone is subject to UK tax.
- It can have an impact on other matters, such as divorce; and the laws that apply to the succession to a person's estate.

Where a person has any sort of historic or present connection to the UK, a cautious view on domicile should be taken unless they are as certain as they can be that they are non-UK domiciled.

There is now a "15 year" test for "deemed" domicile for certain tax purposes – but take care:

- It should not be assumed that a non-UK person who has been resident for fewer than 15 years is definitely non-UK domiciled. They might well be domiciled much before the 15 year test is met.

- Even after the 15 year test to be deemed domiciled is satisfied, it is often extremely important to be able to sure that the "common" law test of domicile is not met – i.e., that the person does not intend to stay in the UK permanently *or* indefinitely.

Domicile statements – while sometimes viewed as self-serving – are very useful tools to critically assess someone's domicile, and to use as a yardstick to ensure that future patterns of behaviour are consistent with the stated domicile.

Domicile has been a politically sensitive subject for a number of years, and the rules should be kept under review. There are a number of different ways in which they could potentially change.

The non-domiciliary status and favourable tax regime are political "hot topics".

Sir Keir Starmer (leader of the Labour opposition party) in a radio interview in May 2023 voiced his intention to abolish non-domiciliary tax status.

With an election looming (to occur by January 2025 at the latest), what will happen to the regime and whether there will be any grandfathering to protect existing arrangements remains to be seen.

We recommend keeping in touch with your UK advisors to keep your fingers on the pulse and help clients to organise or consider their affairs in light of any proposed amendments.

THE REMITTANCE BASIS

What is the remittance basis?

Protection from UK income tax and capital gains tax (CGT) on certain types of non-UK income and capital gains (but not all), as long as they are not remitted to the UK.

Available to individuals who are resident in the UK, but not domiciled or deemed domiciled in the UK. Need to pay the remittance basis charge from the 8th tax year of residence, and cannot claim the remittance basis once deemed domiciled (if/once UK resident in 15 of the prior 20 UK tax years).

What is a remittance?

Broadly:

- Foreign income or capital gains brought to, received in, or used in the UK by a relevant person – includes services provided in the UK.
- Foreign income or capital gains utilised in respect of a relevant debt

What income/gains can be protected?

Employment income

Taxable in the UK where the services are provided in the UK; can also be taxable in the UK where the services are provided outside the UK. In the first three tax years of UK residence, employment income for services provided outside the UK can be protected utilising "Overseas workday relief". Thereafter, generally employment income, even for foreign services, is taxable in the UK (unless it is a wholly different job none of which is carried out in the UK, or it is taxed in another jurisdiction at a certain minimum level).

Self employment income

Generally taxable in the UK wherever the services are provided. Usually look to protect overseas work by using a non-UK company – but be aware of potential control and management issues and possible challenge by HMRC that it is really direct employment income (applying the IR20 rules).

Investments

Portfolio investments are complicated! Easy to separate dividends and interest; but not possible to separate capital gains or offshore income gains. Also, assets taxed under the accrued income scheme (such as Government stock and corporate bonds) can have part of the profit on sale taxed as income. HMRC accept this can be separated, but it must be calculated and done immediately on receipt, and cannot separate any profit element taxed as capital gain.

It's also not always easy to tell whether an asset is a UK or non-UK asset – income/gains on UK assets will be taxable regardless.

Crypto

HMRC consider that crypto is located where the owner is resident, so if a UK resident generates a gain on the sale/disposal of crypto it will be taxable in the UK (the remittance basis will not apply). This is not necessarily correct as a matter of law though!

Life policies

Investment style life policies are very useful in planning for non-UK domiciliaries, but if there is a chargeable event, the remittance basis will not apply – and the charge will be to income tax (not CGT).

Flights – to/from UK

1. Use: flights which take off from or land in the UK are treated as the provision of a UK service (however long they are) – so must be paid for using clean capital, to avoid a remittance.
2. Private jet: if a private jet has been paid for by funds provided by the UK resident non-domiciliary, there could be a remittance (if those funds include foreign income/gains) when the jet lands in the UK. There are two possible protections: (a) Business Investment Relief (BIR) which can prevent a remittance if the jet is operated as a qualifying business through a company; or (b) temporary importation relief, which provides that if it is in the UK in total (whether in one go or on multiple visits) for 275 days or less, there will be no remittance, but if it is in the UK for more (including cumulatively on multiple visits), there would immediately be a remittance of any income/gains used to acquire the jet on the 276th day!

Jewellery/watches

Bought with foreign income/gain will be exempt under the "Personal use" rule. There is no limit on this – but beware of selling in the UK (which could trigger a remittance).

Credit cards

If used to pay for goods or services in the UK, there will be a remittance if paid off using foreign income/gains.

Purchase of real estate in the UK

1. Home – funding must be from clean capital to avoid a remittance.
   Borrowing to finance the purchase would be clean capital, but beware:
   Security: if the security for the loan includes foreign income/gains then it would, in principle, be a remittance of the income/gains used for the security;
   Servicing interest – must be done from clean capital;
   Repayment of the capital (if done whilst the individual is still UK resident).

2. Investment – it may be possible to acquire investment property in the UK using foreign income/gains, by doing so in a company, which can qualify for BIR.

Gifts

1. To children: Can gift foreign income/gains to a child or grandchild over 18 outside the UK, who can then use the gifted funds in the UK without a deemed remittance; but if the individual gifts foreign income/gains to a child or grandchild who is under 18 and those funds are used in the UK, then that will constitute a taxable remittance (by the donor) – a child or grandchild under 18 is a "relevant person" for these purposes.
2. Charity – can use gift aid to gift outside the UK and claim relief in the UK.

Old Income

If an individual was previously UK resident and taxed on the remittance basis then, any old unremitted income/gains can become taxable if remitted later – if/when he/she becomes UK resident again some years later. It may be possible to "cleanse" such old income whilst non-UK resident – e.g. by bringing it to the UK whilst non-UK resident.

Professional fees

There is no remittance if professional fees (such as for UK legal or accountancy services) are paid overseas where the service relates wholly or mainly to property situated outside the UK.

Planning

Needless to say, there is quite a lot that can be done, particularly prior to becoming UK resident, to plan for a move to the UK – so as to optimise tax efficiency once the client is there. We can advise on this!

TRUSTS

A key consideration prior to anyone moving to the UK is whether they are trustee of any trusts.

An individual trustee becoming UK resident could *potentially* make the trust UK resident for UK income tax and capital gains tax purposes:

- Broadly, UK trusts are subject to 45% income tax (39.35% on dividends) and 20% capital gains tax (except residential property, 28%).
- Trusts that are charitable in their home jurisdiction can still be caught.
- It is hard to reverse: if the trustees are changed or in future relocate and the trust ceases to be UK resident that could "export" the Trust. The trustees can be treated as having disposed of and reacquired the trust property at market value with a (possibly significant) dry capital gains tax charge.

A change of trustee residence can also trigger the requirement to register under the Trust Registration Service (TRS) (the UK's beneficial ownership of trusts). The tax and TRS tests for residence are not identical.

It is worth taking advice and considering trusteeships in advance. It may be appropriate to change the trustee composition pre-arrival.

It can still be helpful for an individual who is approaching deemed domicile status to set up a trust.

The trust assets would remain "excluded property": they would be outside the scope of UK inheritance tax on the individual's death and the ongoing trust IHT charges.

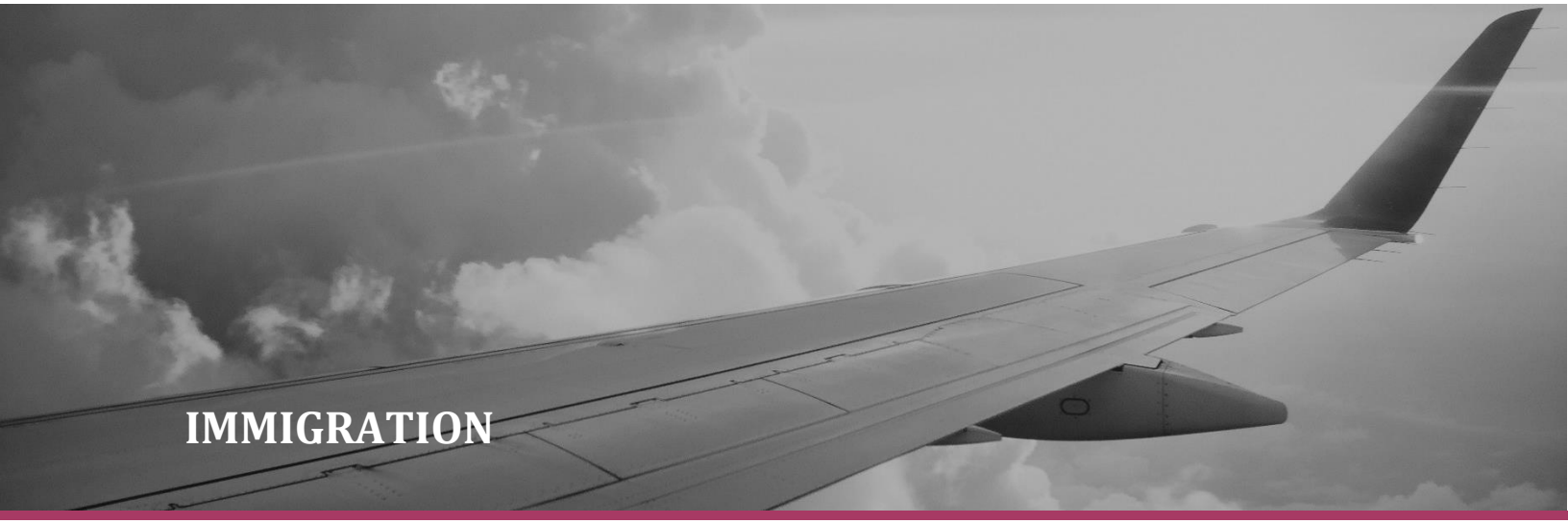
Foreign income and gains realised in such a non-UK resident trust roll-up tax free and are broadly only taxable if the settlor or another UK resident beneficiary receives a benefit.

It is beneficial to seek advice on this in advance of the 15th year of residence. The benefits can be lost in certain circumstances and the golden rule is that general domicile is critical.

Where the trustees are required to obtain protector consent to exercise certain powers there is uncertainty regarding the extent of a protector's role.

Case law in Bermuda favours the narrow view i.e. ascertaining whether the decision is one that a trustee could reasonably arrive at. Jersey favours the wider view, that protectors should exercise independent discretion.

It is unclear which approach the English courts will favour. In the meantime, it is advisable to consider including express wording in the trust deed to cater for the settlor's preference.



IMMIGRATION

The HNW and UNHW individual or family are facing a more uncertain and difficult UK immigration landscape.

Previously an individual or family with means could look to the Tier 1 (Investor) program as an easy and low risk way to migrate to the UK without having to resort to employment or study where it was not strictly necessary or desirable for them. Since the cancellation of the Tier 1 (Investor) visa in February 2022, options have become much more limited for clients, and it has been necessary to explore alternatives which are not always readily available or easy to obtain.

This cancellation, coupled with the UK's exit from the free movement regime, has meant that a wider base of HNW and UHNW clients are facing some immigration uncertainty if they want to relocate to the UK on a permanent or long-term basis.

Existing Tier 1 (Investor) migrants can still extend until February 2026 (giving them an additional two years), and eligible applicants can still apply for Indefinite Leave to Remain until February 2028, however the more mobile clients who are ineligible for indefinite leave to remain by virtue of their absences are having to start considering their options after they can no longer extend their existing Tier 1 (Investor) visa permissions.

Whilst not recent, the Tier 1 (Entrepreneur) visa's replacement by the Innovator visa has also not been necessarily welcome.

The Innovator visa aims to provide entry clearance and limited leave to remain to individuals where they are seeking to establish a business in the UK based on an innovative, viable and scalable business idea they have generated, or to which they have significantly contributed. An Innovator visa requires endorsement from a third party, which creates some risk that this third party will not agree that the business is indeed innovative, viable and scalable. This additional subjective step adds complexity to the

process, and clients who have recently had a liquidity event, or do not have the energy or desire to start a new business are not enamoured with the concept of starting from scratch in the UK.

Routes to the UK on the basis of an individual studying or working with an accredited sponsor are still available.

Arguably this has been made easier by removing certain barriers such as the level of education an individual requires in order to be sponsored, and the removal of the Resident Labour Market Test which required a sponsor (in employment circumstances) to confirm why they had decided to hire overseas, and not within the UK market. Given the reduction in available visa options for those with passive wealth, clients are increasingly looking to these visas to provide them with options to relocate to the UK.

The Global Talent visa (and Exceptional Talent/Promise visa) allows individuals who have made significant contributions in their field to be endorsed by a third party to come to the UK and bring their talents.

Much like the Innovator visa, this route can be difficult as you need a third party to agree that an applicant falls within the relevant criteria, so there is an element of subjectivity which will always bring some uncertainty to an application. However, it is an option that can be available to clients that should not be ignored.

Finally, individuals are still able to come to the UK based on their relationship with a UK individual, an individual with a long-term visa or indefinite leave in the UK.

The main obstacle with this route is demonstrating that there is a genuine and subsisting relationship between the applicant and the individual who already holds rights to live in the UK. For a lot of applicants, this can be done with little resistance from the Home Office but care always needs to be adopted by the adviser and applicant to ensure that the Home Office are convinced that all the relevant criteria have been met. It is an unhappy client who are told by the Home Office that they are not believed, especially in matters of their personal relationships.

EEA and Swiss nationals should still consider whether they can make a late application to the Home Office for 'status' under the EU Settlement Scheme.

As time marches on, the window of opportunity for clients who were unaware of their eligibility for a status under the Settlement Scheme slowly closes – but a well-advised client should add this option to their list when considering their move to the UK.

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