COMMON OFFSHORE TAX MISCONCEPTIONS OF UK RESIDENT AND NON-UK DOMICILED INDIVIDUALS
For many years, non-UK domiciled individuals have had the option to be taxed in the UK on their foreign income and gains on the remittance basis. So as long as these are not brought to the UK, no tax is payable – isn’t that right? As the examples below illustrate, unfortunately it is not that simple.

**Misconception: The remittance basis is automatic and free**
The remittance basis applies automatically only in a limited number of cases and normally has to be claimed in a tax return.

Individuals who have been UK resident for more than seven tax years may fail to realise that in order to continue to claim the remittance basis from the eighth year of residence, a remittance basis charge of £30,000 must be paid. Under the rules that have applied in recent years, this charge could increase as high as £90,000 in later years, but new rules from April 2017 end the remittance basis for certain returning former UK domiciled individuals and those who have been resident in the UK for at least 15 of the last 20 tax years.

Even if no charge is payable but a claim for the remittance basis is made, it comes at a cost of the individual losing their UK personal allowance for income tax and annual exemption for capital gains tax purposes.

A review of the affairs of a non-domiciliary as they approach seven tax years in the UK is therefore necessary to evaluate whether paying the remittance basis charge is worthwhile. Those clients for whom paying the remittance basis charge is not cost effective will need to carefully review their sources of overseas income and gains to ensure that all are identified and correctly reported.

**Misconception: I did not remit anything**
A remittance can occur in many ways other than physically bringing cash to the UK or making a transfer into a UK bank account. It can occur indirectly and so it is easy to make an inadvertent remittance to the UK. Examples of common errors by non-UK domiciled individuals include:

- purchasing a UK listed security through a non-UK based investment manager;
- bringing overseas assets into the UK (including where gifts are made overseas to certain family members who then themselves bring the assets or funds derived from their disposal into the UK);
- purchasing UK assets (e.g. residential property) with offshore funds or loans secured on offshore assets;
- purchasing tickets for travel commencing or terminating in the UK with offshore funds.

It is also worth noting that income and gains from a year in which the remittance basis was claimed will be taxable in the UK if remitted in the future.

**Misconception: It is all clean capital**
Non-domiciled individuals who have come to the UK will often have segregated accounts to protect the capital they have accumulated prior to becoming UK resident. This capital can be remitted to the UK with no UK tax liabilities arising.

However, issues often arise where income and gains are paid into these clean capital accounts during a period of UK tax residence, giving rise to a ‘mixed fund’. Remittances to the UK from a mixed fund are complicated; broadly, elements of the fund that would normally be subject to the highest rate of tax (whether income or gains) will always be deemed by HMRC to have been remitted first, in priority to any clean capital.

Another similar common error, often outside the control of the taxpayer, occurs where overseas investment managers transfer amounts between accounts and currencies, as investments are purchased and sold, inadvertently mixing income, gains and clean capital.

**Misconception: It is in a trust; nothing to do with me**
The taxation of offshore trusts for UK resident non-domiciled individuals is a highly complex area and specialist bespoke advice will always need to be taken.

Following changes in Finance Act 2008, offshore trusts no longer confer the same UK tax advantages for non-UK domiciled individuals as they once did. HMRC will in most cases seek to apply anti-avoidance legislation to tax income and gains arising within the structure on UK resident settlors and beneficiaries where any benefits or distributions are received in the UK.

Common benefits include the use of trust assets (e.g. residential property or artwork) and beneficial loans.
**Misconception: It is in a company; nothing to do with me**

Where assets (whether in the UK or elsewhere) are held by an offshore company, the owners of which are UK resident, many tax aspects need consideration. In certain cases, the company itself may still be required to file UK tax returns and pay UK tax, potentially on its worldwide profits. In other cases, anti-avoidance provisions will mean that income arising to the offshore company is attributed to and taxed on any UK based individuals who stand to benefit from it. The various separate taxing provisions for companies and individuals could result in the same income being effectively taxed twice. The situation is complicated even further if the company is held by an offshore trust, with yet another layer of intricate anti-avoidance rules requiring consideration.

If anti-avoidance rules have not been applied, taxpayers should seek a second opinion as to why not, as there are relatively few circumstances in which they would not bite.

Non-disclosure could enhance the prospect of HMRC looking to maximise its tax take by proceeding under the existing penalty regime, as well as applying the new penalties for failure to correct.

**Misconception: I did not make any money on it**

A loss may arise to an individual: for example on rental of a non-UK property or on a sale of a non-UK asset. In practice, however, it may not be as simple.

- If a transaction takes place in foreign currency, the resulting loss may actually amount to a profit when converted into sterling, as the position will depend on the exchange rate at the relevant acquisition and disposal dates for UK tax purposes;
- The outcome of activity or a transaction will need to be evaluated in accordance with UK tax principles – the basis of assessment and rules around the deductibility of expenses may vary between the UK and the jurisdiction where the transaction took place.

**Misconception: I paid tax on it outside the UK**

Foreign taxes suffered may be insufficient to fully offset UK taxes payable and not all foreign taxes can be offset against UK tax liabilities — some are specifically prohibited, and some can only be claimed by deduction. Care must be taken to ensure correct amounts are claimed in the UK — as well as paid abroad.
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