

PRACTICAL POINTS

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227. Do you have any American clients?

Remember, remember the 31 December! The 'non-dom' changes will probably mean that many readers will have US citizen clients who will need to report worldwide income and gains in the UK for the first time for 2008/09.

Most of us would think that any additional UK tax for 2008/09 would become payable by 31 January 2010. While this is indeed the case for most non-doms, many Americans (and green card holders) will be a special case, because they remain taxable in America.

This is easiest to explain by example. Jim is American and has lived here for years but is not domiciled within the UK. He sells shares in McDonald's on 1 October 2008 and makes a gain of £100,000. If he does not claim the remittance basis and has already used his annual exemption you'd expect him to owe £18,000 in UK CGT.

The American capital gains tax rate is 15%, so he'd owe £15,000 to the IRS. The trick here is that the US will probably give credit for the UK tax under the resourcing provisions of the UK/US Treaty (Art 24). So in practice Jim should owe nothing at all in US tax because the US 15% tax rate is lower than the UK's 18%.

However, to get credit in the States, he'd have to have paid most of the UK CGT by 31 December 2008, long, long before 31 January 2010!

There are likely to be thousands of US citizens living in the UK who will need to pay additional UK tax by 31 December 2008. In practice this will mean that many tax advisers will need to run estimates for 2008/09 as early as November/December 2008. Indeed failing to run these kinds of estimates could be expensive, so ideally you'd be speaking with your American clients or their US advisers now.

You should know that the Treaty position is not certain, because there is no definitive answer from the US Treasury as to whether they intend to allow the Treaty to work in this direction, but the prudent position would be to discuss the options with the client since official US guidance is not expected this year.

Contributed by David Treitel of US Tax & Financial Services Ltd

228. Remittance basis: payment of fees

An amendment to the Finance Bill would seem to provide an opportunity for those clients with foreign assets troubled by the remittance basis to have the professional fees of UK advisers paid abroad without constituting a remittance – as an exception to the new rules. New s 809W, Income Tax Act 2007, inserted by Sch 7, FA 2008, contains an exemption where the service is provided in the UK but in respect of foreign property. It applies to relevant foreign income, employment income and chargeable gains providing the following conditions are satisfied:

- a) The UK service relates wholly or mainly to assets situated outside the UK – for example, for managing an overseas investment portfolio or acquiring a foreign property. HMRC confirms that this can cover fees paid by offshore trustees to UK advisers for advice about managing or considering the acquisition of non-UK assets.
- b) The payment for the services is paid to a bank account held outside the UK of the person providing the service.

It is interesting to note that the situs rules in s 275, Taxation of Chargeable Gains Act 1992 (TCGA 1992) will apply for determining where the relevant assets are situated for all these purposes. This provides a series of artificial rules that may not always coincide with the physical location of the assets.

This relaxation will provide a welcome benefit to UK professional firms and financial institutions that would have otherwise been at a considerable disadvantage compared with those providing such services outside the UK.

Contributed by Peter Vaines of Squire, Sanders & Dempsey

229. A come-back for company cars?

In recent years, many drivers who previously had a low mileage company car will have given it back and instead just claimed reimbursement for business mileage travelled in their own car, using the Authorised Mileage Allowance Payments rates.

However, the current level of benefit-in-kind for the smallest cars with very low emissions makes them a very tax efficient benefit.