Taxation of UK-Domiciled Individuals in Ireland

By Professor John Ward, FCA and Dara Burke, ACA

A significant number of individuals relocate from the UK to the Republic of Ireland ('Ireland' hereafter), a trend likely to be emphasised as a result of the recent dramatic overhaul of the remittance basis of taxation in the UK. The purpose of this article is to provide a practical guide to some key aspects of the Income Tax treatment of UK-domiciled individuals who are resident for tax purposes in the Republic of Ireland ('Non-Domiciliaries' hereafter). The focus will be on the tax implications arising in both Ireland and the UK in relation to three common sources of UK income, namely employment earnings, rental income and dividends.

Space does not permit coverage of the various tax planning opportunities and the intricate anti-avoidance rules which pertain to the use of offshore companies and offshore settlements by Non-Domiciliaries. Similarly, the use of service companies by Non-Domiciliaries to avoid potential UK taxation on employment earnings is not covered here, but advisers should be aware that in such cases the Personal Service Company (IR35) and the Managed Service Company Anti-Avoidance rules in the UK (Chapter 8 and Section 61B of ITEPA 2003 respectively) will require very careful consideration. Finally, it should not be overlooked that domicile status also has significant implications in both jurisdictions for the purposes of Capital Gains Tax and Inheritance / Gift Taxes.

For ease of exposition, it is assumed that the Non-Domiciliary is regarded as resident in Ireland but not in the UK for all domestic income tax purposes (i.e. without resort to the residence 'tiebreaker clause' under Article 4 of the Ireland/UK Double Tax Treaty). Further, it will be assumed that the Non-Domiciliary is also regarded as domiciled in the UK but not in Ireland under the relevant common law systems. Practitioners should however bear in mind that these assumptions may not always hold good in the real world. It must also not be overlooked that as a result of recent statutory amendments, it will now be easier than heretofore for regular visitors to become resident in both Ireland and the UK under their respective domestic laws.

The Remittance Basis

Individuals who are resident in Ireland are *prima facie* liable to tax on their worldwide income. However, Non-Domiciliaries are liable only on the remittance basis in respect of income arising outside the jurisdiction ('foreign income') (TCA 1997 Section 71; prior to 1 January 2008, the remittance basis did not apply to UK income, in what was plainly a contravention of EU law). In effect, this means that the foreign income of a Non-Domiciliary will only be taxed to the extent that sums representing such income are brought directly or indirectly into Ireland in the form of cash or its equivalent (e.g. cheques which are subsequently encashed here). Bringing income into Ireland in non-cash form (e.g. using sums representing income accumulated abroad to acquire a painting which is subsequently imported into Ireland) would not of itself count as a remittance. However, if such sums were applied in acquiring a painting which was subsequently sold (whether in Ireland or abroad) and the cash proceeds were received in Ireland, those sums would fall into charge at that point (*Patuck v Lloyd* 26 TC 284).

In general, sums which either do not represent income, or which represent foreign income accumulated prior to becoming resident in Ireland, should be regarded as capital in nature and therefore may be remitted free of income tax (although the Capital Gains Tax consequences may also require consideration). In the situation where funds are remitted from an account consisting of both capital and income elements, it is Revenue practice to match remittances firstly with the income

element. Any problems which this approach might generate may normally be eliminated through the adoption of appropriate banking arrangements.

Where the legal entitlement to sums representing foreign income is transferred unconditionally outside Ireland by a Non-Domiciliary to a third party, then a subsequent remittance of such income by the third party is not caught (since, at that point in time, it is no longer income of the Non-Domiciliary). This principle can equally apply to transfer to spouses, though care must be taken to demonstrate that a genuine gift with no element of reciprocity is involved (*Carter v Sharon* 20 TC 229; *Grimm v Newman* [2002] STC 1388). It may be prudent to be able to demonstrate that there are sound non-tax reasons underpinning the gift in view of TCA 1997 Section 811 (the General Anti-Avoidance provision).

A payment out of foreign income to a third party (e.g. a gift) which is made in Ireland by, or at the behest of, the Non-Domiciliary will be treated as a remittance. Anti-avoidance rules also are in place designed to prevent Non-Domiciliaries applying foreign income to make repayment abroad of loans of money or debts incurred in respect of cash which has been brought into Ireland (TCA 1997 Section 72). The rules do not apply however to payments of interest on any such loan or debt if it was incurred abroad.

Where the Non-Domiciliary uses an overseas credit card to pay for goods or services in Ireland and subsequently discharges his debt to the credit card company out of foreign income, this may constitute a remittance under general principles or, failing this, may be caught under the foregoing anti-avoidance provisions, although the position is not entirely free from doubt.

UK Employment Earnings

The categorisation of 'foreign income' is in general reasonably straightforward. A significant exception to this lies in the case of foreign employments. While there are some grey areas, an employment will undoubtedly qualify as 'foreign' on general principles where it is concluded outside Ireland with a non-resident employer under non-Irish law and the employee's salary is paid from outside Ireland. However, to the extent that an employee's remuneration from a foreign employment is attributable to duties performed in Ireland, it will be taxable under Schedule E in exactly the same manner as Irish employments.

Where a Non-Domiciliary carries out the duties of his employment under a contract with a UK-resident company or the UK branch of a non-resident company, their earnings will generally be taxable under UK law only to the extent that they are attributable to those UK duties; for these purposes, one may disregard 'incidental duties' carried out in the UK (i.e. those which are of a merely ancillary or subordinate nature; see *Robson V Dixon* 48 TC 527 and the amplification in HMRC Employment Income Manual EIM40203). If the earnings need to be apportioned between UK and non-UK duties, this will be carried out by reference to the proportion of working days spent in the UK (see *Varnam v. Deeble* 58 TC 501 and *Platten v. Brown* 59 TC 408) unless special factors apply (e.g. where the employment contract explicitly allocates part of the remuneration package to UK duties on a *bona fide* basis). The Revenue Commissioners will adopt a similar approach for Irish tax purposes.

No exemption from the UK liability will usually be available (under the UK/Ireland Double Tax Treaty) where the cost of the employee's remuneration is borne by a UK-resident company or by a UK Permanent Establishment (as defined by Article 4 of the Treaty).

In general, the Non-Domiciliary will be entitled to offset the full basic personal allowance against their UK taxable earnings (£6,035 for 2008-09, increased to £9,180 for those aged 75 or over, subject to income limits), assuming no other UK rental or trading income. In certain other cases, where, e.g. there is also substantial UK investment income, the benefit of the allowances may be reduced or lost (ITA 2007 Sections 35-36).

Example 1

David Honan is a Non-Domiciliary who works for a UK-resident company under a UK contract of employment and is paid from UK head office. It is agreed by both the UK and Irish tax authorities that 40% of this amount refers to his UK duties and 60% to his Irish duties. He has no other income.

On these facts, David will be liable to UK tax on 40% of his earnings, net of his basic personal allowance. He will be liable to Irish tax on 60% of his earnings under Schedule E, exactly as if they had related to an Irish employment. The UK earnings should qualify as foreign income. Thus, he will be taxable in Ireland to the extent that he remits part or all of those earnings to Ireland. However, he will receive a credit for any UK tax attributable to those earnings (but not to exceed the Irish tax treated as attributable to those earnings). Where his Irish tax liability on the UK earnings would not be fully covered by the credit for UK tax, it will be therefore favourable for David to avail of the remittance basis.

UK Rental Income

Rental income from UK properties, as computed under Irish tax rules, will be taxable in Ireland to the extent that it is remitted to Ireland. In the UK, rental income is generally

calculated slightly more flexibly than in Ireland, drawing on the principles which apply to taxing business profits. Where the Non-Domiciliary's net UK taxable rental income is less than the basic personal allowance (see above), then generally there will be no UK income tax liability, assuming no other UK employment or trading income. In certain cases, where, for example, there is also substantial UK dividend income, the benefit of the allowances may be reduced or lost (ITA 2007 Sections 35-36).

Where a property is held jointly, then each co-owner (including spouses) may offset their full basic personal allowance against their share of the income.

There is a withholding tax requirement generally imposed on tenants or, if applicable, collection agents, in respect of UK rent receivable by persons living outside the UK (ITA 2007 Section 971). However this obligation will normally be waived where the Non-Domiciliary registers with HMRC and subsequently complies with all their filing obligations under the UK self-assessment system.

Example 2

Maura and John are married and are Non-Domiciliaries who receive net rental income from a jointly-owned UK property amounting to £12,000 in 2008-09. They have registered with HMRC and file self-assessment returns each year. They have no other UK income. As each Non-Domiciliary's share of the net rental income (£6,000) is below their basic personal allowance, no income tax will be payable in the UK. They will be liable to Irish tax on that income only to the extent that they remit it into Ireland. Thus, it may be possible for each of them to receive all of their income entirely tax-free.

UK dividends

Dividends received by a Non-Domiciliary from UK resident companies will again be eligible for the remittance basis in Ireland. There is no withholding tax imposed by the UK in respect of dividends paid by UK resident companies and in general the Non-Domiciliary should not be liable to account for any UK income tax on such dividends under the UK self-assessment system. Again, in certain cases, where the amount of dividend income is substantial, and for example, the Non-Domiciliary also receives UK rental, trading or employment income, the benefit of the basic personal allowance may be reduced or lost in respect of the latter income.

Example 3

Clare Greer is a Non-Domiciliary with a major shareholding in a UK resident company. She receives dividends of £500,000 p.a. and has no other UK income. There will be no liability to UK tax on those dividends. She will be liable to Irish tax on that income only to the extent that she remits income into Ireland. Thus, it may be possible for Clare to receive all of her dividends entirely tax-free.

Conclusion

The extension in Ireland of the remittance basis from 1 January 2008 to UK income (and with effect from 1 January 2009 to UK Capital Gains) has created some novel and surprising tax-saving opportunities for Non-Domiciliaries. This article has only skimmed the surface of many of the complexities surrounding tax planning in this area, but for those who can successfully negotiate the statutory minefield, the rewards can be spectacular.

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