



## SpeechlyBircham

# I'm a Non-Dom, Get Me Out of Here!

Before throwing in the towel and crying out the Ant and Dec mantra, UK resident non-domiciliaries (non-doms) who are dissatisfied with the UK tax regime should consider carefully their options before upping sticks and leaving the UK to become resident in another country. It is not as straightforward as it may at first appear.

Heading for alpine life in the Swiss Canton of Vaud, for example, can be a veritable black run, fraught with practical and tax moguls both in the UK and new home of choice.

### Why?

A hot topic at non-dom dinner parties in London continues to be the Finance Act 2008 which has finally reached our statute books, after much debate and opposition. The depressing economic climate and the fall of institutional giants such as Lehman Brothers aside, many non doms are considering leaving the UK for more tangible reasons. These include the introduction of the £30,000 charge, the worldwide taxation of income and gains, the new rules as to the remittance of foreign income and gains, the changes to day counting, the extension of the anti-avoidance rules for offshore trusts (especially in relation to trust gain pools) and the latest announcement by the Chancellor of the 45% income tax rate for high earners.

### Where?

The choice of jurisdiction will depend upon numerous factors and any decision should not be based simply upon which place has the most favourable tax regime compared to the UK. There are myriad practicalities to bear in mind when considering popular jurisdictions, such as Switzerland, Monaco, Dubai, Luxembourg, France and Bermuda.

Take fictitious non-dom UK resident clients, Alfredo and Carla. They are considering the pros and cons of moving to a certain jurisdiction, not only should they obtain competent tax advice in that country (to ensure they are not escaping from the UK fire into a foreign tax furnace) but they should also consider the day to day practicalities of life in a new place and how their family will fit in.

Some basic questions that Alfredo and Carla should themselves consider asking include:

- **Are there good schools for the children?**
- **Can they speak the language?**
- **Are there suitable houses available to purchase/rent?**
- **Will they be able to work there?**
- **Will using a Blackberry count as working?**
- **Are health services comparable to the UK?**
- **Can they continue to pursue their sporting and leisure interests?**
- **How easy will it be to move their antique furniture and paintings?**
- **Are there galleries, museums and theatres in the area?**
- **Are there high quality restaurants?**
- **Will friends and family be accessible?**
- **What is the shopping like?**

Even if they are saving money on taxes in their new home, they ought to think carefully whether they can actually continue the lifestyle to which they are accustomed.

Gone for good from the UK?

Becoming non-UK resident is not as simple as just buying a plane ticket and moving house.

An individual leaving the UK will become non-resident if he/she emigrates permanently (ie stays away initially for an entire tax year and thereafter is present in the UK for less than 90 days in any tax year). This

might include:

- **leaving to work under a contract;**
- **being self employed for a period of a complete tax year; or**
- **going abroad for another purpose which lasts for a complete tax year.**

Having said this, there are no fixed rules to determine whether an individual is resident in the UK. It is a question of fact and a case of persuading HMRC. The following checklist of practical action points may be helpful to ensure that Alfredo and Carla do everything possible to convince HMRC that they have left the UK for good.

Alfredo and Carla's advisers should be telling them the following:

### **1. YOUR PROPERTY**

- Sell your property or let it out for at least 12 months. You should not leave your property empty and it should not be available for your use when you visit the UK. If you are intending to rent the property you should leave the rental arrangements in the hands of a UK lettings agent.
- Pay all your utility bills before you depart from the UK.
- Notify your house insurers (as required under the terms of your insurance policy most likely).
- Notify your mortgage lender (if applicable).
- Notify your local authority (for council tax reasons).

### **2. YOUR CAR**

- Sell your car in the UK.
- Cancel any subscriptions with the AA or RAC.
- Notify the DVLA.
- Cancel your car insurance.

### **3. HM REVENUE & CUSTOMS**

- Send form P85 to HMRC notifying them that you are leaving the UK.
- Do not return to the UK for an entire tax year: this means no days at all in the UK in the first tax year following your departure, as you cannot rely on the 90 day rule in the first year of non-residence.
- Do not return to the UK for more than 90 days in any other tax year.

### **4. FINANCIAL**

- Cancel your UK credit cards.
- Reduce your UK balances in your UK bank accounts.
- Ensure that any outstanding bills are paid in the UK.

### **5. UK COMPANY**

- Change your business cards.
- Consider resigning from your UK company (any directorships or secretarial positions).

### **6. OTHER**

- Notify your UK doctor that you have left the UK.
- Cancel your UK club memberships.
- Consider appointing an attorney in the UK to deal with your UK affairs.

### **7. YOUR NEW COUNTRY OF RESIDENCE**

- When you arrive in your new jurisdiction obtain a residence permit, where necessary.
- Contact the tax authorities in your new jurisdiction to inform them that you have become resident there.
- Purchase or rent a property in your new jurisdiction.
- Register with a doctor in your new jurisdiction.

- Open a bank account in your new jurisdiction.
- Buy a car in your new jurisdiction.

Once Alfredo and Carla have demonstrated to HMRC that they are no longer UK resident, they will be subject only to UK income tax on UK source income, unless it is UK investment income. Alfredo and Carla should also be aware that once they have left the UK they may still be subject to UK CGT. They should be careful with disposals made in the tax year of departure, gains realised in the tax year of emigration (even if they were realised after departure) may be subject to UK CGT. In addition, they should not become resident again in the UK for more than five years, once they have left the UK for good. If they were to return to the UK after being resident outside the UK for fewer than five complete tax years, they would be considered to have been subject to CGT for the whole period of non-residence. If Alfredo and Carla have been long term residents of the UK, that is they have lived in the UK for more than 17 out of 20 tax years and have therefore become deemed domiciled for UK IHT, depending on their circumstances, it is likely to take four tax years following their departure to shed their deemed domiciles. However, any UK situated assets will remain in the UK IHT net despite the foreign domicile status of Alfredo and Carla.

### **Conclusion**

It may sound quite obvious, but anyone leaving the UK for good and setting up home in a new country should seriously weigh the UK tax rules and the London lifestyle against the practicalities of living in a new jurisdiction, as well as the details of its seemingly favourable tax regime. Life in the mountains may be idyllic for a few weeks of skiing and vin chaud, the Swiss forfait regime may suit, but what about the day to day practicalities of life over there? Are London-based non doms really ready to swap the pace of life and leave behind a 24 hour lifestyle where convenience, glamour and culture are on the doorstep? All to avoid the £30,000 charge and a 5% increase in income tax rates? I'd like to bet my Christian Louboutins they are not.

**Catherine Dineen, November 2008**



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