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Excellence in Taxation

Application and Professional Skills

Taxation of Individuals

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LON

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Instructions

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Taxation of Individuals

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Report

From: Harry Bals

to: Mick Gruber

Date: 22 April 2019

Subject: Divorce

This report is provided in response to your email dated 21 April 2019.

This report will cover the following:

Section A: Advice on transfer of various assets to Julie

Section B: Residence status and tax implications

Section C: IHT implications on the transfer of assets.

Once you have a chance to digest the Report, please let me know if you have any questions.

②

Executive Summary:

Section A: Advice on transfer of various assets to Sophie.

- Transfer first the assets which would not be ~~paying~~ ^{having} capital gains tax implication, such as cash and shares in Vampire and Butter plc

- Transfer the painting and part of shares in Marmalade by such as saving the ~~big~~ ~~big~~ ~~big~~ capital gains tax on increase of the value of the assets

- CGT tax payable on transf. of £1.5m is £85,327

Section B:

- You will be resident in ~~both~~ the UK even after you take full time employment overseas by virtue of the number of days you spent in the UK

- In ~~20/21~~ 21/22 when you would become deemed domicile you should spend less than 90 days in the UK and meet 3rd automatic overseas test

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Section 6: IHT implications on transfer
of assets

- All transferees are potentially
exempt transferees

- Gifts out of income or maintenance
expenditure paid to Jodie with no IHT
implications.

(4)

Section A: Advise on transfer of various assets

You separated from your wife on 3 January 19 and up until the end of the tax year 18/19 you were connected therefore if you would have transferred any properties before 5 April 19 it would have been covered by inter-spouse ^{exemption.} no gain/no loss for capital gain tax purposes.

Since the time have passed from 6 April until the divorce you will be connected, which means that any transfers between you will be at the market value of asset at the date of the transfer.

With the view of transfer of Larkview property to Julie. I note that this property has been your main residence since you jointly acquired the property in May 14.

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You moved out of the property on 3 January 19, therefore if you will transfer your interest in the property within 18 months from that date it will still be covered by the private residence exemption and as a result you will have no tax arising on this transfer.

Although there will be no tax to pay, you will have to report this transfer to HMRC within 30 days.

Josie will have uplift if your half of the base cost transferred from you.

Please see Appendix 1 where I calculate your gain, which we will be reporting in your tax return and base cost for Josie.

You have also mentioned that additionally you will be transferring assets or cash with a total value of £1.5m.

As the transfer will be at the market value of the assets in order to

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optimize the tax we will need to give ^⑥ priority to the assets, which are not standing at the gain.

Transfer of cash will not be subject to capital gains tax, therefore you can transfer cash without ~~an~~ income tax implications. Based on your after tax income of around £400,000 for 17/18 I assumed that you might ~~be~~ have around £200,000 cash left after your living expenses to transfer to Jodie.

In this way we can have a lower proportion of assets standing at a gain. Please let me know if my assumption is incorrect or if you could transfer even higher amount of cash in this way we can select lower proportion of shares ~~to~~ to transfer, which will be subject to capital gain tax.

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Looking at your assets schedule I can ⁷ see that ^{value of} Butter plc and Jam plc did not go up since you purchased them in April 10. therefore from capital gains tax point of view if you transfer those shares to Jodie, there will be no capital gains tax to pay.

Therefore by transferring cash and shares in Jam plc and Butter plc, you have transferred £500,000 worth of shares and cash without any CGT consequences.

Further £1,000,000 worth of assets we need to select the one with the lower gain. From Appendix 2 you can see that the lower gain will be by transferring shares in Marmalade plc, however it is only worth £300,000. It is also income producing asset, which we need to consider for future as you would need to have income in the UK of around £100,000.

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Therefore if you do not have any special preferences we would advise to transfer the painting as non-income producing asset and $\frac{2}{3}$ of shares in Marmalade plc. (8)

I have provided the calculation of the capital gains tax arising in Appendix 3.

Recommendation:

First you should transfer non assets such as shares in Jam plc and Butter plc as you will have no capital gains tax arising on this transfer.

Transfer of cash will not give rise to tax.

Finally you should transfer the assets which will give you the least capital gains tax liability and also transfer income-producing assets in your portfolio such as shares in Honey plc and $\frac{1}{3}$ of holding in Marmalade plc.

Joint rental properties (9)

The interest will be transferred between you and rollover relief will apply automatically as the transfer will be at the market value, therefore you would each exchange the share in the ownership in the property.

The only cost to consider will be legal costs

Maintenance payments

* Payments to Dore are not deductible from your income and not taxed on Dore, therefore they are ^{are made} ~~made~~ only after after tax being considered.

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Section B: Residence status and tax implications

We need to consider your residence status as it will ~~be~~ determine how you will be taxed.

~~As~~ you are taking a full-time job in Rutlandia in November 19. Until November 19 you will be resident in the UK. However depending on the number of days you spent in the UK after November 19 you might be eligible for a split year treatment.

After November you are planning to spend two nights each week, which means 40 days in the UK ^{plus} including holidays of 11 days you will be entitled from November 2019. As such in total you will spend 51 days.

In the 20/21 tax year you will spend 104 days over the weekend and 28 holiday days, so in total 132 days in the UK.

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So under the Case 1 of the Statutory residency test we can not split your tax year in 19/20 as you will be a UK resident in 20/21 under sufficient ties test.

As you have been resident in the UK for more than 3 tax years you are at "lover" and so if you spend over 120 days in the UK, only one tie ^{to the} ~~can~~ UK is enough to consider you as a UK resident.

You have a family tie to the UK as your minor child is in the UK.

Therefore you will be UK resident until you will reduce the number of day from September 21 as you are planning.

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(12)

Please note that there is a further complication as if you will be resident in the UK after 6 April 2021. From this day you will be a deemed domicile individual in the UK, which means that you will be taxed on all of your worldwide income without accessing the remittance basis.

If you will become non-UK resident you will be taxed only on the income received in the UK, such as your rental income and dividends from your shareholding.

We will need to consider your residence position for 20/21 carefully as until September if you would only spend your weekends in the UK, it is 40 days, so if in future you will spend fewer than 91 days out of which the number of days in the tax year on which you work for more than 3 hours in the UK is less than 31 under third automatic

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overseas test by virtue of you full time employment overseas you can be non-resident in the UK. (12)

I have considered double tax Agreement between the UK and Ruritania as until 20/21 you ~~might~~ ^{will} be resident ~~to~~ considered as resident in both countries.

In the Ruritania under residence treaty ~~to~~ you will be considered as resident in the UK. However your employment income will only be taxable in Ruritania unless you will perform some duties in the UK.

I understand that you will be paying maintenance ~~of~~ of £120,000 per ~~to~~ year to Julie from your salary in Ruritania this payments will be taxed on you in the UK as remittance to the UK.

As income has already suffered tax in Ruritania at rate of 25%, you will

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Be only taxed on the difference between ⁽¹⁰⁾ UK rate of tax on remittance and Ruritania, which could be additional 10% of tax to pay on your remittance.

Dividends income received by you in the UK as you will still be resident in the UK will continue to be taxed, however dividends may also be taxed at Ruritania up to 15%, which can be reclaimed in your UK tax return by virtue of double tax relief.

Any capital gains arising in future will only be taxed where the property is located. Such as if you decide to dispose your rental property in the UK it will only be taxed in the UK.

Rental income received in the UK will only be taxed in the UK.

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(15)

Therefore when you become non-resident in the UK in ^{the} 21/22 tax year your income tax return will change and you will have to be paying less tax in the UK to the provision that your dividends will become a disregarded income, ~~and~~ you will not be tax on the remittance of income to you by virtue of your non-residence status and the only income payable will be tax on rental income.

Recommendation.

From 6 April 2021 to spend less than 90 days in the UK considering you continue full time employment in Romania.

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~~11/11~~

Section C: IHT implication on the transfer of assets to Jodie

As assets transferred to Jodie are UK situs assets, they will be subject to IHT.

All the transfers you will make are potentially exempt transfers if you survive 7 years from the date the transfers were made. There is also reduction in tax if you survive more than 3 years from the date of the transfer. This reduction is by 20% each year until nil after 7 years.

Your maintenance payments will be done as a gift out of your income as you are able to maintain your normal lifestyle ~~so~~ after those ~~supper~~ payments are made and therefore they are exempt from IHT.

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Appendix 1

(7)

Transfer of Larkview

MV @ 30 Apr 19 $2,000,000/2 = 1,000,000$ Cost $1,000,000/2 = \underline{500,000}$ Gain $500,000$

Covered by PPR

Jodie Base cost

Cost $1/2 \times 1,000,000$ $500,000$ Uplift on you trf. $1,000,000$ $\underline{1,000,000}$ Base cost $1,500,000$

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Appendix II

Gain on the assets, t

	MV	Cost	Gain
Jam plc	200,000	200,000	—
honey plc	400,000	100,000	300,000
Marmalade plc	300,000	100,000	200,000
Butter plc	<u>100,000</u>	<u>100,000</u>	—
	<u>1,000,000</u>	<u>500,000</u>	<u>500,000</u>
Painting	800,000	500,000	300,000

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Appendix 3

19

List of assets to be transferred

Car

UK quoted shares

Jam plc MV 200,000

Cost 100,000

Gain Nil

Butter plc MV 100,000

Cost (100,000)

Gain Nil

Partnership MV 800,000

Cost (500,000)

Gain 300,000

AE (11,700)

288,300

Tax @ 20% 57,660

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Appendix 3 (cont)

(19)

Marmalade plc

MV $\frac{2}{3} \times 300,000$ 200,000Cost $\frac{2}{3} \times 100,000$ (66,667)

133,333

TAY @ 20% 26,667

total tax on transfer of assets
 worth £1.5 mln = £85,327

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Planning

- Transfer of house PPR 1mln
 - Further \leftarrow assets 0.5mln
cash
- before divorce

- 2 rental prop. - joint ownership
- maintenance payments £19,000 p/m
- need £100,000 p/y in the UK (profit from UK land £80,000 + div.)

- residence position Nov 19
- return rented flat in the UK
- In the UK $4 \times 7 = 28$ holidays
 $2 \times 52 = 104$ days
 132

Family tie

90 day tie

- Deem dom 21/22 6 Apr 21
Sept 21

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$$\text{Jam pec MV } 1/2 \times 400,000 = 200,000$$

$$\text{Cost } 1/2 \times 100,000 = \underline{(50,000)}$$

150,000

Tax @ 20%

30,000

Total CGT on transfer of assets

$$\text{worth } \pm 1.5 \text{ mln} = \pm 87,600$$

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A: Advice on the ~~gifts~~ transfer of Lakshmi and further assets of H. Srinivas, untangle the joint ownership

B: Residence status and tax implications of dual residence

C: Tax planning of income & payment of maintenance expenses

D: ITC implications on the gifts of the assets

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Salary

19/20.

Till Nov 19 in the UK - resident in the UK

Split year treatment from Nov 19

Take up full time employment overseas

PIA

will remain resident in the UK as
you were resident in the UK prior to
becoming resident in both states

Dividends

Taxed in the UK - still resident
in the UK

Taxed in Ruritania @ 15%, we can
claim this tax against UK tax if higher
CG

Only taxed in the UK as situated in
the UK

Rental income

Taxed in the UK.

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Maintenance

£120,000 per year

18/19 tax year

19/20 move to Ruritania

resident in both countries

20/21 employed in Ruritania

21/22 deemed domiciled in the UK

Sept 21

NET

BEI for NET

gift out of income

became non-UK res

disregarded income

registered as non-res landlord

Remit income of £120,000 to the UK
taxed as remittance

£160,000

For tax (40,000)

120,000

Further taxed in the UK @ 45%, extra 20%
-tax

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Transfer of house after end of TY of separ.

MV

Covered by PPR if trf within 18 m

MV @ 30 Apr $2,000,000 / 2 = 1,000,000$

Cost $1,000,000 / 2 = 500,000$

Gain

500,000

Covered by PPR

Further assets or cash

17/18

Income 690,000

Tax (287,495)

402,505

Cash no CGT +200,000

Shares no CGT value +300,000

Painting gain +300,000 no business

asset, no gift relief

Can pay tax in 10 installments → no

halt of holding of gain, gain

Proceeds MV 200,000

Cost (50,000)

150,000

Taxation of Individuals

Appendix

Holdings left in your ownership

MV

Cost

Jam plc 200,000 50,000

Marmalade plc 300,000 100,000

500,000 150,000