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| Section 1 | <b>3548</b> | <b>15766</b> | <b>19357</b>  |
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Answer-to-Question-\_1\_

[REPORT]

To: Julian and Olivia Wood, Mulberry Lodge, Oak Avenue,  
Biggleswade, Bedfordshire, SG18 5RZ

From: ClearTax LLP

Subject:

Date:

### Introduction

\_\_\_\_\_ This report is provided in response to your queries on how to fund your world cruises and the purchase of a property in Italy.

The report is intended solely for use by you, Julian and Olivia Wood.

ClearTax LLP accepts no responsibility for any reliance placed on this Report by other parties.

You have asked look into how best to fund your world cruise and purchase of a property in Italy, we have done this by comparing the net amounts recoverable under a variety of options and by looking at the below:

PART 1: YOUR RESIDENCE AND DOMICILE POSITION

PART 2: TAX IMPLICATIONS OF RESIDENCE POSITION

PART 4: Reduction of Julian's income

PART 3: Capital Gains Tax Implications on sale of assets

Part 3: Double Tax Treaty

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### Executive Summary

\_\_\_\_\_ You will be both be resident in 2021/22

You will be non-resident as 6 April 2022 provide you

spend less than 120 days back in the UK

You will be able to split your year for 6 October 2021 provided you do not have a home in the UK and spend more than 15 days back in the UK

If Olivia files on the remittance basis of taxable from 6 April 2021, she will have a charge of £30,000.

Julian should transfer his Unoteq to Olivia this will take place as no charge

Julian should tax the pension income from 6 April 2021 after the transfer of Unoteq share so they're taxed at 0%

Julian may want to transfer 50% of Unoteq shares to Olivia and then both disposal

Net proceeds from the disposal of the shares and pension income can fund the cruise

Disposal of assets other than UK residential property can take place with no charge to UK CGT.

Should you both become resident within 5 years of being non-resident you will be charge to tax on disposal made during nonresident period

Rents from Mulberry lodge can be received gross following a NRL1 application

Disposal of UK residential property whilst NR will be subject to the NR CGT provision

## **PART 1: YOUR RESIDENCE AND DOMICILE POSITION**

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Each of your residence and domicile position is pivotal in determining the extent of your respective liabilities to tax on your income and gains.

(1) Domicile

Julian is UK domiciled and Olivia is domiciled in France. As

non-UK domicile person, Olivia has the option to claim the remittance basis of taxation in the UK. Where the remittance basis is claimed, any foreign income and gains are only taxed in the UK to the extent they are brought into to the UK.

(2) Residence

I understand that you are both currently resident for the 2019/20 tax year. AS you are will be going on a worldwide cruise as of 6 October 2021 following which you will be moving to Italy for a minimum of 3 years, we need to consider your residence position.

You will be auto-matically non-UK resident if either:

(a) You spend fewer that 16 days in the UK in a tax year, a day being counted if you are in the UK at midnight

(b) You work fulltime in overseas and spend fewer that 91 days in the UK, of which fewer than 31 days are UK workdays. Work is full-time if you work at least 35 hours a week, a workday is one in which more than 3 hours is spent working.

Coversely, you will be automatically UK resident if either:

(a) You spend 183 days or more in the UK in a tax year

(b) You have a UK home for at least 91 days in which you spend at least 30 days while spending less that 30 dys in an overseas home during the tax year; or

(c) Your work full time in the UK for a continupus period of 365 days with no significant break and at least one of those working days is in the tx year.

In years were the conditions to be automatically resident or non-reisdent are not met, residence is determined under the

"sufficient ties test". This is based on your ties to the UK combined with the number of days you spend in the UK.

The following ties are taken into account:

Family - If you have family resident in the UK. For the purpose of this tie family is considered a spouse or minor child

Accommodation - Having accessible accommodation available in the UK

Work - Working in the UK on at least 40 days in the tax year

90 day - More than 90 days spent in the UK in either of the previous 2 tax years

Country - Spending as many days in the UK in the tax year as in any other country.

In the current tax year (2020/21), you will both spend more than 183 days in the UK and will remain UK tax resident.

In 2021/22 the year in which you will embark on your cruise you will both spend more than 183 days in the UK prior to your departure on 6 October 21 and as such will remain UK tax resident for the entire year.

In 2022/23 following your 8 month cruise you will immediately move to Italy for at least 3 years and therefore provided you spend fewer than 16 days in the UK during the tax year you will both be non-resident.

As you will not spending more than 16 days in the UK from 6 April 2022 onward will not automatically deem you to be a UK tax resident. As mentioned, where automatic resident or non-resident is not met, residence is determined under the "sufficient ties

test". From 6 April 2022:

Family tie - Neither of you will have family resident in the UK, as you with both in Italy.

Work tie - As you are both retired, you will not be working in the UK

90 day - You both have the 90 days tie, as you have both spent at least 90 day in the UK in either of the 2 tax years.

Country tie - You will not have this tie, as you intent to spend the majority if not all your time in Italy.

Therefore will only 1 tie, the 90 day ties you can spend upto 120 days in the UK for being considered a UK tax resident.

### (3) Split year

Individals who leaves the UK part way through the year and cease having a home in the UK, the tax year may be split into:

- A UK part for which the individual is taxed as a UK resident; and
- A non-UK part for which the individual is taxed as non-UK resident.

Any overseas income arising in the non-UK part of the year is not charged to UK tax.

You will both qualifying for the split year treatment in 2021/22 because:

- You were resident in 2020/21
- You will be reisdnet in 2021/22 as you spend more than 183 days in the UK

- You will be non-resident in 2022/23 provided you spend fewer than 120 days in the UK.

In order to meet the condition to split your years into a UK and overseas part you must spend fewer than 15 days back in the UK and not have a home available to you both UK in the UK for the rest of the year.

As you do not intended to sell Mullberry lodge for a while, but rent it out this will no longer be deemed as a home. As residential accomodation is not treated as your home for tax purposes if you have moved out of that accomodation and have rented it out.

## **PART 2: TAX IMPLICATIONS OF RESIDENCE POSITION**

\_\_\_\_Julian Woods

As a UK resident and domiciled person you are taxable on your worldwide income and gains

When you become a non-resident you will only be taxable on your UK sourced income

Olivia Woods

As a non-domicile but UK resident you have the option to be taxable in the UK on your world income and gains as they arise.

Alternatively you can opt to be taxed on the remittance basis of taxation. If you are taxed on the remittance basis of taxation, your non-UK income and gains are only taxable in the UK to the extent that they are remitted to the UK.

As you have been resident in the UK since the 6 April 2014 if you opt to file in the remittance from 6 April 2021 as you have

been UK resident in a least 4 of the preceeding 7 tax years you will incur a remittance basis charge. The remittance basis charge is £30,000.

When you become a non-resident you will only be taxable on your UK sourced income.

As Olivia can currently utilised the remittance basis of taxation without incurring the remittance basis charge and as transfer between spouses take place and nil gain nil losses.

### **PART 3: Reduction of Julian's income**

\_\_\_\_I understand that you would prefer to recieved the lump sum pension of £42,000 rather than tax the weekly pension about.

The most optimal way to do this is to enusre that Julian's income for the tax year of receipt does not exceed the personal allowance which is currently £12,500.

As present Julian's only source on income is the dividend of £14,000 from the Unoteq shares. This is currently in excess of the personal allowance as such withdrawal of the lump sum at present will create a tax charge of 20%, £8,400 on the pension lump sum.

Therefore we advise that Juliian should transfer his Unoteq shares to Olivia. Thereby reducing his income to below the personal allowance.

Transfers of assets between husband and wife normally tax place at no-gain no-loss, effectively giving an exemption for spousal gifts. This asset will have to same base cost of £130,000 in Olivia's hands as it had in Julian's.

This will ensure that the dividend income is recieved into



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Olivia's hands therefore reducing your income to nil, i.e below the personal allowance for receipt of your pension lump sum.

This transfer should be by 6 April 2021 therefore allowing you to have reduced income for the 2021/22 tax year and obtain the 0% tax rate on the pension income.

Alternatively, you could disposal of half your shares in Unoteq thereby reducing your income the below the personal allowance and liquidating net gains after the deduction of tax of £86,150. These net gains in combination with the pension lump sum could then be used to fund your cruise.

#### **Capital Gain Tax Implications**

Broadly non-UK residents are not generally chargeable to UK CGT, even on the disposal of UK assets. There are however certain exemptions for:

- (a) Disposal of UK residential property
- (b) Disposal of assets used in a UK business; and
- (c) Assets disposed of during a period of 'temporary non-residence'

#### **Temporary non-residence**

\_\_\_\_A person is a temporary non-resident if;

- 1) They were UK resident in at least four of the seven years immediately before they became non-resident, and
- 2) They assume residence in the UK within five years

As you will both become non-UK resident on 6 October 2021. You would have been UK resident in at least four of the seven tax

year immediately before 2014/15 as you were living in the UK between October 2014 and October 2021.

If you plan to return to the UK and resume residence before October 2026, which is less than five years since you would have become non-resident you will fall foul of these rules.

The implication of being temporarily non-UK resident is that gains on assets disposed of during your period of temporary non-residence become chargeable to CGT in the tax year in which residence is resumed.

This only applies to assets that you owned when you became non-UK resident. This will include the Unoteq shares.

If Olivia sells that Unoteq shares or Rue des Fleurs when you become non-resident this will generate a gain of £200,000 and £100,000 respectively that will be outside the scope of UK taxation on the initial sale and will not come back into the scope of UK tax provided you do not become UK resident before October 2026.

These proceeds can then be put towards the purchase of the property in Italy.

### **Renting out Mulberry Lodge**

\_\_\_\_\_ Renting out Mulberry Lodge will generate rental income of £1,000 monthly. Rental income is taxed after the deduction of rental expenses. However for expenses to be deductible they must be incurred wholly and exclusively for the purpose of the rental business and are not capital in nature.

If you have a mortgage over Mulberry lodge you can also take a deduction in part for mortgage interest payable.

Please not only part of any loan interest paid is allowed as a deduction. The balance of the interest is only eligible for basic rate relief. This relief is given as a reduction in your income tax liability. In 2019/20 25% of the interest is allowed as a deduction from income, from 2020/21 all of the interest paid will be relieved by way of a tax reducer.

#### Non-Resident Landlord

As you will be non-resident from the 6 October 2020 you will be classed as a non-resident landlord and be subject to income tax on your rental profits, as this is UK sourced income.

If a tenant living in the UK pays rent to non-resident landlord, the tenant must withhold basic rate tax from the rents. However if you opt let via an agent, the agent will do this on the tenants behalf.

Depending on the route you take the tenant or the agent must inform HMRC. Tax should then be withheld from the rent as the basic rate and sent to HMRC are each calendar quarter.

However as a non-resident landlord you can make an application to HMRC to receive your rental income gross.

HMRC will agree to this application provided you file a UK tax and pay any income tax due in a timely manner. Please not before agreeing to such an application HMRC will look at your record for filing returns and paying tax.

Give both of your levels of income we do not anticipate that you have filed tax return before therefore provided your register your filing requirement by 6 October 2022, the deadline, we see no reason why HMRC would not accept this application. Let me know if you are in agreement with this and we can arrange the required forms.

### Capital Gain on the Sale of Mulberry Lodge

\_\_\_\_\_Should you sell Mulberry lodge after June 2023, whilst you are expected to be a non-UK resident, you will be subject to non-residence capital gains tax on this disposal.

The gain or less will be calculated based on the market value of the property at the time of disposal, less the acquisition cost of £250,000 and the £100,000 enhancement expenditure that you spent to get the property in a livable condition. The resultant gain will that be taxable at the rate applicable to disposals of residential properties which is 18% to level of the unused basis rate band and 28% there after.

When you come to sell this property it is likely that you will be eligible for private principal residence relief. Under PPR rules the gain relating to the period when you both occupied the property as your main or only residence will be exempt from taxation, in addition to this the gain relating to the last 18 months of the property ownership will also be exempt from tax.

As you have rightly noted the three years of absents from the property due to it being uninhabitable will not count as eligible for ppr relief. UK tax legislation allows for periods of absence before occupation for decoration and alterations provided the absence does not exceeds 12 months therefore you will only be deemed occup the property for PPR purposes from the date you actually moved it.

As you are also opting to rent out this property letting relief will be available as you residenital home is let out whist you are both absent from the property.

The amount of Lettings relief that can be obtained is the lower of:

- a) Letting relief can never exceed to amount of PPR relief
- b) Letting relief cannot be more that the gain arising during the period that the property was let out
- c) The maximum amount of letting relief is £40,000

As mentioned previous the disposal of UK residential property is always chargeable to capital gains tax regardless of your residency position.

Since April 2015 uk capital gains tax has been charged on disposals ofr residential properties by non-UK residents. Therefore where UK residential properties are disposed of by non-resident only the portion of the gain arising after the 5 April 2015 is chargeable to capital gains tax.

However Mulberry lodge was purchased in November 2015, the entire gain arising when you come to dispose of it will be chargeable to capital gains tax.

Please note that when you dispose of the property you will have certain reporting and payment obligations. The disposal will need to be discolod on an electronic non residnet capital gains tax return within 30 days from the sale being completed and generally also the payment of tax. Please note that as you own this property jointly you should NRCGT will need to be recorded for each of your respective shares.

By the time as you will already be completeing annual self assessment tax return to record your rental income, you will be able to delay to the payment of tax until the 31 January, when the return for the respective disposal is due.

One note to mention is that should you decided to return to the UK from Italy after 3 years we would advise that before moving to Cornwall you reoccupy Mulberry lodge, as UK tax

legislation allows for certain periods of absence to count as a deemed period of occupation, provided the individual occupies the property as their main residence. The period of absence that will qualify for you is an absence for any reason up to a maximum of three years. HMRC provided no guidance on how long the reoccupation should be before, but the quality and usage of the property should be substantial.

### **Part 3: Double Tax Treaty**

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As you will be resident in Italy from 6 May 2022 we need to consider where you will be treaty resident. The

It is likely that from 6 April 2022 you will be treaty resident in Italy as your only home will be in Italy, as your UK home will be rented out. Therefore you will be considered treaty resident in Italy from 6 May 2022

As you are resident in Italy, Italy may also seek to bring your worldwide income into tax. This means that the same income could be subject to tax in both countries.

The UK and Italy have entered into a double tax treaty. The purposes of a treaty is to prevent double taxation whilst ensuring equitable taxing rights between Italy and the UK.

Once you become an Italian resident the treaty should limit the tax you will pay in the UK to certain UK sources of income.

Some UK sources of income, for example pensions payments are not taxable in the UK under the treaty. A claim for relief will need to be made if your pension income is not paid before 6 April 2022.

The UK-Italian treaty permits the UK to tax rental income, but it does not provide that relief should be given for

the tax paid where Italian tax is charged as well. You should consult with your US accountant how this will be calculated and claimed.

### **Conclusion and recommendations**

\_\_\_\_\_ - Julian should transfer part of the Unoteq shares to Olivia, following which they should both sell the shares, this should happen almost immediately.

- Julian should then draw down on the lump sum pension as his taxable income will be below the personal allowance he will be able to obtain the 0% charge.

- If they do not wish to sell the Unoteq shares, Julian should transfer his portion of the French property to Olivia, following which Olivia should sell the French property keeping the funds offshore, i.e. outside of the UK. The proceeds subject to any French taxes due can then be used to fund the cruise. I would advise this done before 6 April 2021, so as not to incur the RBC on claiming the remittance basis from 6 April 2021. However the practicalities for how quickly the sale can be arranged will also need to be considered.

-If they sell the French property whilst non-resident will be outside the scope of UK taxation and the gain can go towards to French property

- Should they then decided to sell Mulberry lodge and a later date gains from this can be put toward the purchase of a property in Italy, but they need to aware of not having much income bearing assets.

