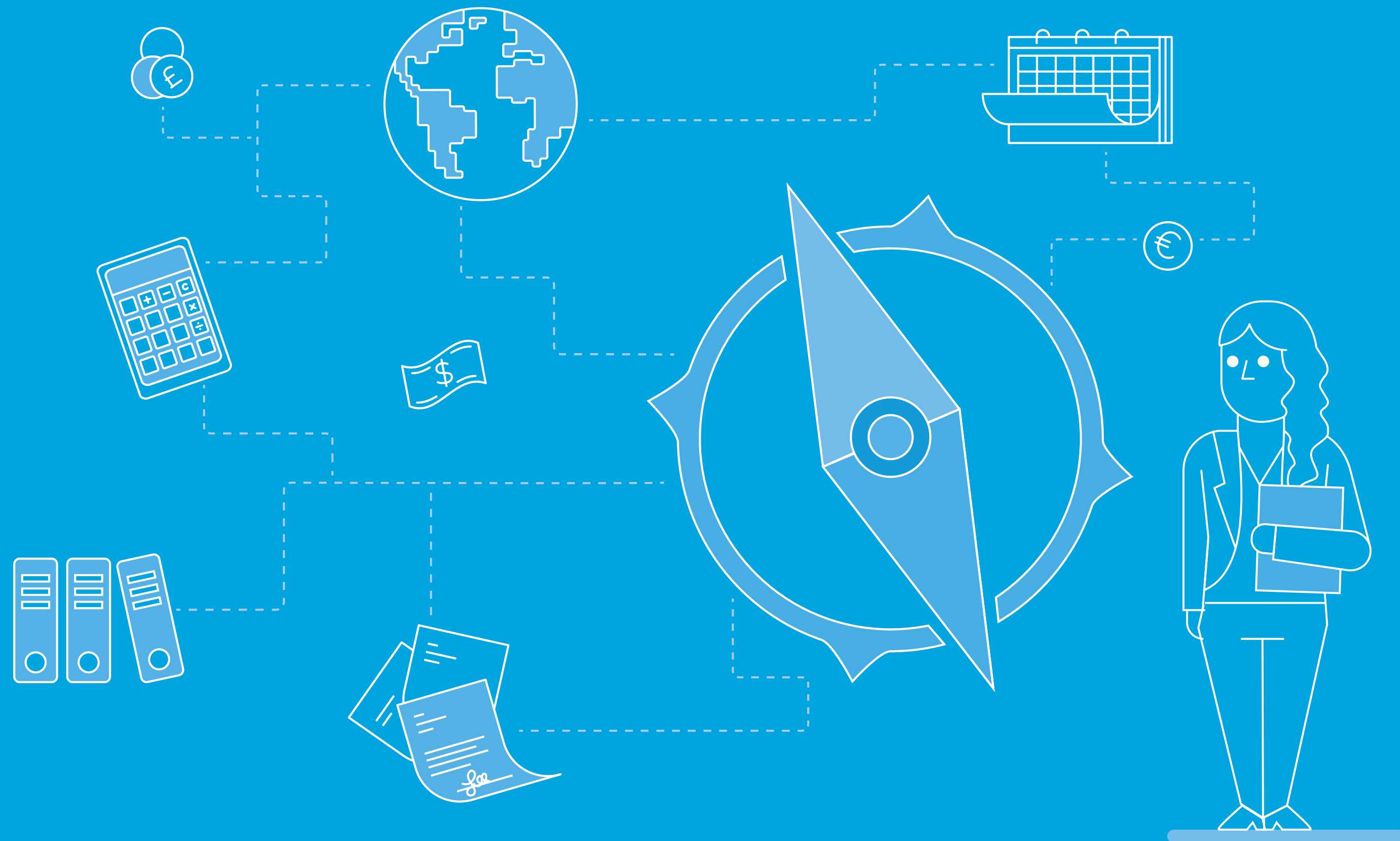
Private client compass

Navigating you through the tax landscape



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Utilising allowances

With periodic changes to tax rates and allowances for individuals, it is important to review asset ownership and the resulting income and capital split between couples to help minimise your overall tax liability.

Couples should review the ownership of income producing assets, such as portfolio investments, rental property, bank accounts or private company shares and seek advice on how ownership can be varied so that income can be shared to best post tax effect. An individual with taxable income exceeding £100,000 will have his/her personal allowance tapered away.

A review of asset ownership between couples on a timely basis can also help reduce capital gains tax (CGT) liabilities. Planning involving the effective utilisation of the annual CGT exemption, together with other available reliefs, can be considered to mitigate a future liability. Do also consider whether one party to a couple has any capital losses from earlier years which could further increase the tax saving.

Inheritance tax

Inheritance tax (IHT) can have a significant impact on the value of assets passed to the next generation. It is never too early to make an IHT plan in order to achieve up to a 40 per cent tax saving.

It is often almost impossible to undertake effective IHT planning shortly before a charge on death occurs. But taking action early, and having a plan for the distribution of assets or maximising the very generous reliefs available, could mean that IHT is fully mitigated and the next generation benefit from a larger part of an estate.

Planning should also be considered regarding the main residence nil rate band (RNRB) (£175,000 until 5 April 2026). The ability to claim this additional allowance should not be assumed. There are complex rules to consider, including conditions regarding who inherits the property and downsizing, as well as a tapering of the allowance for those with estates in excess of £2m.

Individuals who are retired with wealth in excess of the nil rate band (or double the nil rate band for couples) should consider putting a plan in place to deal with IHT. Often, children with parents in that position can formulate an IHT plan together with them so that, with straightforward actions, IHT can be mitigated.

RSM can help you and your family undertake pertinent succession / estate planning (including the creation of appropriate wealth holding structures and putting up to date tax efficient Wills in place) to ensure your estate is managed both during your lifetime and on death, to maximise the value of your assets for the next generation.

Business property relief

Business property relief (BPR) potentially removes the full value of a business from the charge to inheritance tax (IHT), either on lifetime gifts or on death.

This relief is available against an interest in a business, whether this constitutes the assets used in a qualifying business such as a sole trade, the value of a partnership share, or shares in qualifying companies.

There are a number of conditions that need to be met to qualify for BPR and, as businesses change and evolve over time, your position should be kept under continual review. A business which qualified several years ago will not necessarily still qualify now or in years to come. RSM can help establish whether a business qualifies and, if it doesn't, we can advise on what steps could be taken to rectify the position, before an IHT event.

Where appropriate RSM can also help a business owner who thinks they may liquidate their position in the future and whose interest benefits from BPR, to undertake and implement pre-sale planning.

Your friends and family could also help you – as bank funding can be expensive or difficult to secure, companies could seek additional funding from shareholders or friends and family. For example, investing in preference shares could mean that the company might secure funds on better terms than bank borrowing, the investors could receive a better rate of return on investments and, after two years, the preference shares could qualify for BPR.

Shareholdings in AIM listed companies can also qualify for BPR after two years of ownership. Investing in AIM listed companies to mitigate an IHT liability should not be overlooked.

Agricultural property relief

Agricultural property relief (APR) can relieve qualifying property being transferred, from an inheritance tax (IHT) charge, either on lifetime gifts or on death.

With the need to meet certain qualifying criteria and specific definitions as to what constitutes agricultural property, and with the complexities that can arise over the agricultural value of property, there are many issues that can prevent or reduce a successful claim to APR. It is therefore important to review whether APR is available for a specific gift or estate, so any potentially suitable planning can be put in place ahead of an occasion of charge to IHT.

Where agricultural farmland includes a farmhouse or other property, care needs to be taken regarding the character, style and use of that property to ensure that APR can be claimed. RSM can help evaluate your APR position and, where APR does not cover the full value of the asset, we can consider the interaction with business property relief (BPR) and other reliefs, so that all appropriate reliefs are claimed.

Pensions

Tax relief is generally obtained at your marginal income tax rate on pension contributions up to an annual allowance, plus any unused allowance available from the three previous tax years. Although the annual allowance is reduced for those with income above £240,000 (£150,000 prior to 6 April 2020).

Pension contributions made in excess of an individual's available annual allowance are taxed at their marginal rate of income tax.

Pensions are a useful wealth succession tool and there may often be an incentive to maximise contributions – those approaching retirement may even consider bank borrowing to achieve this. Exactly how much can be contributed, and when, will depend on the pattern of historic contributions, the number and types of pension schemes an individual is a member of, the lifetime allowance limit (currently set to remain at £1,073,100 until the 2025/26 tax year) and the individuals total income.

Those aged over 55 can withdraw cash from their pension fund and pay tax at their marginal rate. Individuals who die before the age of 75 can pass on the pension fund tax free, without any restrictions.

When someone dies over the age of 75, the fund can subsequently be withdrawn in stages and taxed at the beneficiaries' marginal income tax rates, rather than otherwise being subject to an immediate 55 per cent tax charge.

Pension planning can be complicated and it is recommended professional advice is sought.

The restriction to the annual allowance may mean that it is time to review remuneration packages which include an employer contribution that exceeds an individual's annual allowance as this may be subject to income tax. RSM can help with this.

High earners who are subject to the maximum pension annual allowance tapering may have not be able to to make substantial, tax-efficient, pension contributions. Individuals who fall into this category may wish to consider alternative tax efficient savings.

Tax efficient investments

Generous tax reliefs are available for investments in an individual savings account (ISA) and in some private companies.

ISAs remain a key method for UK resident individuals to save tax efficiently, whether through a cash ISA, a stocks and shares ISA, or a junior ISA for 16 and 17 year olds. The help-to-buy ISA available for first time buyers closed for new applicants in November 2019, but contributions can still be made to existing accounts until 2029. The lifetime ISA allows those aged 18 to 40 to save for a home or retirement with a 25 per cent government contribution worth up to £1,000 per annum.

Investing in enterprise investment scheme (EIS) shares, seed enterprise investment scheme (SEIS) shares or venture capital trusts (VCT) can provide generous income tax and capital gains tax (CGT) reliefs. EIS and SEIS shares are free of CGT on disposal if held for three years and EIS shares can be used to defer capital gains realised on other assets in the previous three years or the following 12 months. Reinvestment of gains on any disposed asset into SEIS shares in the same tax year can benefit from a partial CGT exemption.

RSM can help you identify the tax implications of possible investment options and navigate the tax position to utilise reliefs.

Investment wrappers

Trusts and companies can be attractive for holding personal assets for reasons of asset protection and succession planning.

Investment wrappers can be used to hold assets which might otherwise be held personally, such as investment portfolios and property, to ensure you retain and grow family wealth. Types of investment wrapper include UK companies, trusts, offshore investment bonds and open ended investment companies. Suitability will depend on long-term aims, objectives and family circumstances.

RSM can advise on the potential use, and creation, of a UK company or trust to hold your assets. The structures you could adopt will have differing tax benefits, as shown below.

	Individual	Company	Trust
Income	Dividends taxed at up to 39.35 per cent Other income taxed at up to an effective rate of over 60 per cent.	Dividends usually taxed at 0 per cent. Other income taxed at 19 per cent (or up to 25 per cent from 1 April 2023).	Dividends taxed at up to 39.35 per cent. Other income taxed at 45 per cent.
Gains	Capital gains tax up to 20 per cent (up to 28 per cent for residential property and carried interest). Annual exemption available.	Corporation tax at 19 per cent (or up to 25 per cent from 1 April 2023). Indexation allowance frozen at 31 December 2017.	Capital gains tax at 20 per cent (28 per cent for residential property and carried interest). Annual exemption available (up to half the individual's amount).
Rental profits/losses	Rental losses can only be offset against rental profits.	Rental losses can be offset against rental and other income.	Rental losses can only be offset against rental profits.
Investment management fees	Not tax deductible.	Tax deductible.	Not fully tax deductible.
Pension	Not pensionable income.	Pension contributions can be made by company or employee.	Not pensionable income.

Bitcoin and other cryptocurrencies

The rapid increase in the value of digital assets, and Bitcoin in particular, has encouraged greater investment in this area.

For almost all individuals, gains or losses on Bitcoin or other cryptocurrencies are dealt with under the capital gains tax regime and treated as arising in the individual's country of residence. The gain or loss is calculated as the proceeds in £ sterling minus the cost in £ sterling.

In exceptional circumstances receipts from cryptomining, transaction confirmations, staking and airdrops are taxable as trading or miscellaneous income. Where a large number of transactions are entered into, in a sophisticated and organised manner, this may be treated as trading and subject to income tax and National Insurance contributions.

Some transactions in digital assets are carried out through futures contracts, rather than by direct purchase and sale of the cryptocurrency. In these circumstances, the gains can be subject to either income tax as trading profits, capital gains tax or miscellaneous income, depending on the exact circumstances.

When considering investment in cryptoassets there are many non-tax issues to consider including, security (of the asset, password and private keys), and transactions record keeping. Although the UK taxation of cryptocurrency gains is relatively straightforward other countries may tax cryptocurrency gains differently to the UK which may be an important consideration for those with a non-UK residence or domicile position.

Supporting children or grandchildren

The increasing cost of funding children through university or private school, or just trying to give them a head start in life, can be significant for families.

If you're paying for tuition fees, accommodation and living expenses, from income which has been subject to tax and national insurance, a significant amount of gross income is needed to meet such costs. Many opportunities are available to help reduce these costs by giving children an income to utilise their own personal allowances and basic rate tax bands.

Additional opportunities, not available to parents, can provide tax advantages for grandparents funding grandchildren under the age of 18. Structuring gifts in the correct way can also benefit your own inheritance tax planning.

Where there is doubt over whether your child is ready for the responsibility of direct ownership of income producing assets such as shares, trusts can be used to hold the assets, over which the parent, as trustee, can retain control.

The potential tax savings make it worth exploring what might help you to support your children and grandchildren get the head start they need. RSM can help you identify the right options, specific to your family circumstances and implement your chosen arrangement (eg a family trust for future generations).

UK residence status

Individuals coming to or leaving the UK need to be aware of how tax residence is determined. This includes those moving for short term reasons, such as work, or longer term reasons, such as those entering under the UK investor and entrepreneur visa programme.

If you carry out work or business in the UK, have connections to the UK through family or property, or visit the UK regularly you should seek advice to determine your tax residence status. Individuals should not simply rely on being in the UK for fewer than 90 days a year as, in some cases, spending as few as 16 days in the UK can lead to the individual being UK tax resident, potentially causing worldwide income and gains to be taxable in the UK. Conversely, with careful planning, it is possible in some circumstances to spend 182 days in the UK (or possibly more) without becoming UK tax resident. RSM can help you evaluate your residence status and ensure you are not left exposed to paying UK tax unnecessarily.

An individual's residence status can also impact on exposure to tax for companies and trusts they are associated with. The interplay between the individual's exposure to tax in the UK and in any other country should be considered, and planning undertaken to ensure any exposure is appropriately managed and opportunities are not missed.

Residential property owned by individuals

Non-UK resident investors should evaluate the pros and cons of how they own UK residential property in conjunction with their broader plans.

Non-UK residents who dispose of UK residential property are within the UK capital gains tax (CGT) regime. Only gains attributable to the post 5 April 2015 period are taxed, calculated either through time apportionment or by reference to open market valuation at 5 April 2015. Care needs to be taken when filing returns and making tax payments to ensure appropriate apportionment and that HMRC deadlines are met.

If you own multiple properties, main residence relief from CGT also frequently needs to be restricted. A person is only eligible for the relief for a tax year where they are resident in the same jurisdiction as the property or have spent at least 90 days (midnights) in that or other properties they own in that jurisdiction.

For married couples and civil partnerships, occupation of a residence by one spouse or partner will be regarded as occupation by the other. However, the spending of more than 90 days in a UK property may increase the likelihood of an individual becoming UK tax resident. Where this might be an issue, meticulous records should be maintained as to the person's movements.

Stamp taxes charged when purchasing property in the UK will generally be 3 per cent higher if the non-UK resident owns a home anywhere else in the world. This is likely to impact most non-resident individuals buying homes in the UK.

Residential property owned by corporates

The Government has targeted properties held by corporate structures as a means of increasing tax revenue.

Where a company owns a residential property it may be within the annual tax on enveloped dwellings (ATED) regime. The ATED charge depends on the property value. All such properties worth more than £500,000 at the relevant valuation date (in most cases 1 April 2022) are subject to the charge, although certain reliefs are available. For disposals up to 5 April 2019 capital gains tax (CGT) was also chargeable on the disposal of such residential property at a rate of 28 per cent on unrelieved gains apportioned to the period of ownership when ATED is chargeable (ATED related gains). ATED related CGT no longer applies for disposals on or after 6 April 2019 and any gain arising is chargeable to corporation tax (CT).

From 6 April 2019 non-UK resident companies are liable to pay CT (rather than CGT) on gains arising on the disposal of UK residential property. Only gains attributable to the post 1 April 2015 period are taxed, calculated either through time apportionment or by reference to open market valuation at 1 April 2015.

Care needs to be taken when filing returns and making tax payments to ensure appropriate apportionments are made and that HMRC deadlines are met.

When acquiring a residential property, it is important to balance the above charges against the inheritance tax (IHT) exposure from other ownership structures. If you own properties in a corporate structure, you may now wish to reconsider your options. RSM can assist in reviewing your property ownership to ensure it is structured tax efficiently and, where necessary, support you in complying with the ATED regime.

From April 2017 it is no longer possible to shelter the value of UK residential property from IHT using an overseas company and shareholders should therefore give careful consideration to their IHT exposure.

Tax issues for landlords of residential property

Whether you are already a landlord, or considering purchasing a buy to let property, it is important you understand the relevant complex tax rules so that you can make informed decisions on how to structure and finance your property.

Since April 2017, where a mortgage has been used to fund a buy to let property, there is a restriction on the tax relief that can be claimed on the interest. If you receive higher or additional rate tax relief on your mortgage interest, this will be reduced to basic rate tax relief only, over a four year period. This rule does not apply to companies which are subject to UK corporation tax.

Deductions for loan interest and other finance costs are now restricted in computing taxable property income. Higher or additional rate tax relief on your mortgage interest has been phased out, and all finance costs will be relieved at basic rate only from 2020/21 onwards.

Landlords also need to understand how to correctly claim expenses which are wholly and exclusively related to the rental property, including the costs of refurbishing or refitting a property, to arrive at the taxable rental profits. Deductible expenditure includes the actual costs of replacing furnishings and other directly attributable costs but, from April 2017, landlords can use fixed rate deductions for business mileage instead of actual expenses incurred.

RSM can help you to evaluate the pros and cons of how you own your property portfolio and advise on the most tax efficient arrangements, taking into account the above issues.

Other recent property tax changes

Gains made by non UK residents on disposals of all types of immovable property in the UK, realised after 5 April 2019 will be taxable. The part of any gain that relates to the period prior to 6 April 2019 will not be taxed, either through rebasing the value of the property at 6 April 2019 or by time apportionment.

Chargeable gains on the disposal of UK residential property by a non-UK resident company are charged to corporation tax instead of capital gains tax with effect from April 2019. From April 2020, non-resident companies have been subject to UK corporation tax rather than income tax. Whilst the headline rate of corporation tax is currently lower than the basic rate of income tax, the corporation tax regime is more complex and contains more obligations and anti-avoidance measures than the income tax rules that previously applied.

These measures mark a fundamental shift in the taxation of UK property held by overseas investors and may influence how properties are held by non-residents. RSM can assist in ensuring that your UK property investments are held in an appropriate structure for your needs.

From 6 April 2020, disposals of UK property by both UK and non-UK residents must be reported to HMRC within 60 days of sale (30 days for disposals prior to 27 October 2021).

There are no current proposals that IHT be extended to UK commercial properties held in offshore companies.

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International tax planning

RSM is a wide international network of firms, operating in over 120 countries. Within those firms, we have a dedicated section of the business focused on individuals and their families, who regularly provide advice on multinational issues.

We recognise that families are becoming increasingly mobile and that family members often settle in different locations around the world or the family acquire assets and investments outside of their home country. As a result, there are likely to be tax issues to consider as the interaction of taxes between countries can be complex.

Typical scenarios where we provide advice include:

- Understanding the tax regime of another country before a family member moves there or travels there on a regular basis. They may either become a non-UK resident, a resident in the other location, or a resident in both the UK and the other jurisdiction, for tax purposes.
- Moving to the UK. We provide advice on organising which investment assets should be taken before becoming a UK resident due to the possibility of the remittance basis regime applying to those moving to the UK.
- The interaction of the UK and the other country's tax regime. Investing in assets outside of the UK can have income, capital gains and estate tax issues in both the UK and the other jurisdiction, and it will be important to understand the interaction between these.
- Transferring overseas assets within the family, which can result in both UK and foreign tax issues.
- Annual tax compliance services in multiple countries.

We can ensure that advice on tax issues in multiple countries is delivered from one location, without having to engage with different RSM firms in different countries.

Domicile status and remittance basis

The tax regime for non-UK domiciliaries (non-doms) changed significantly on 6 April 2017. A summary of the current regime is discussed below.

If you are non-UK domiciled and live in the UK, you will be able to claim the remittance basis of taxation for a period of 15 out of 20 years of tax residence (once you have been UK resident for at least 15 of the previous 20 tax years you are regarded as deemed domiciled in the UK). Under the remittance basis, while UK income and gains are taxable in the UK, foreign income and gains are only taxable in the UK to the extent they are brought (remitted) into the UK. Claiming the remittance basis means that the individual loses their UK personal allowance for income tax purposes and their annual exemption for capital gains tax purposes.

Once you have been resident in the UK for at least seven of the previous nine tax years, an annual remittance basis charge will be due in order for you to continue to claim the remittance basis. When using the remittance basis, it is important to ensure that you are clear on exactly what you are remitting to the UK to avoid being taxed unnecessarily. The rules and administration surrounding the taxation of non-doms are complex, but there are plenty of planning opportunities available.

There may be an opportunity for non-doms to rebase the value of their overseas assets as at 5 April 2017 or, for those who will no longer be able to claim the remittance because of the change in tax rules, to transfer personal assets to an appropriate 'wrapper' vehicle.

RSM can advise on your domicile status and how this impacts your tax position. We can also assist you with identifying and quantifying remittances, to ensure you know what tax is applicable when you bring funds to the UK, and help you consider, and implement tax efficient planning options.

Business investment relief

To encourage non-UK domiciliaries and offshore trustees to invest in the UK, the Government introduced provisions allowing investments into qualifying companies to be made from overseas income or gains without triggering a UK taxable remittance.

Where a remittance basis user (or a related offshore trust structure) wishes to invest in a UK business, provided certain conditions are met, they can claim business investment relief (BIR) and make the investment from otherwise taxable offshore income or gains without generating an immediate UK tax charge.

The investment must be into a qualifying unlisted trading company and the funds need to be invested in shares or by way of loans. The rules are widely drawn, with no minimum or maximum investment criteria; property letting and development companies are also able to qualify. Furthermore, individuals can also set up their own companies to be funded with offshore monies free of UK tax, although anti-avoidance provisions may apply.

BIR can be combined with the enterprise investment scheme (EIS) or the seed enterprise investment scheme (SEIS), potentially allowing a doubling up of reliefs on a single investment. These are complex areas, where planning is essential and care is required, particularly where there is a risk that the company may cease to qualify for relief at some point in time.

RSM can advise you on the availability and mechanics of BIR as well as other reliefs that may be available to you.

Offshore trusts

The receipt of benefits or distributions from an offshore trust by a UK resident beneficiary can result in a UK tax charge. Trustees should also be aware of exposure to UK taxes on UK assets.

Distributions or benefits provided to UK resident beneficiaries of offshore trusts who are UK domiciled or, from 6 April 2017, those deemed to be, are likely to be fully taxable in the UK. Overseas trustees holding UK assets should review their exposure to UK taxes.

Trustees should also remember that remittance to the UK of monies in a trust where the settlor retains an interest and is UK resident, can result in a tax liability for the settlor.

The rules that apply from 6 April 2017 mean that trustees will need to be more aware of the domicile position of the settlor(s), in particular if that changes. They will need to watch additions to the trust, the greater impact of UK inheritance tax (IHT) on the entire trust fund and the timing of gains, which could now be matched to UK resident settlors, where distributions have been made.

The taxation of offshore trusts is now more complicated than ever, but opportunities to protect wealth for future generations remain. All trustees should be undertaking a review of the trust's affairs.

RSM can advise from a tax and legal perspective on the set-up of an overseas trust, review existing arrangements, advise on the tax impact of making distributions to UK resident beneficiaries and help evaluate exposure to IHT. To ensure trustees and beneficiaries do not suffer unnecessary UK taxes, RSM can also advise on a range of related matters, including record keeping, management of accounts, the way in which distributions are made, UK tax elections and remittances of monies to the UK.

Deemed domicile

If you are non-UK domiciled but resident in the UK for a sufficiently long period of time, you will be treated as deemed UK domiciled. As a result, all of your assets, income and gains outside the UK will fall within the scope of UK tax.

From 6 April 2017, individuals who do not have a UK domicile of origin but were resident in the UK for at least 15 out of the previous 20 tax years will acquire a deemed UK domicile – impacting inheritance tax (IHT), income tax and capital gains tax.

Given the full exposure to UK tax on worldwide assets, those who are deemed UK domiciled for all tax purposes from 6 April 2017, or who will become deemed domiciled in the near future, should consider their tax and succession / estate planning options. Holding overseas assets in a trust or company may provide a range of wealth planning solutions. It is possible, with careful planning, to re-start the deemed domicile clock by becoming non-UK resident for at least six consecutive tax years.

For IHT purposes, those who are not domiciled in the UK can elect to be treated as UK domiciled, where they have a UK domiciled spouse or civil partner.

RSM can help you with all aspects of planning (including implementation) prior to becoming deemed domiciled for UK tax purposes.

Mixed domiciles – inheritance tax pitfall

Many spouses and civil partners are under the impression that anything they gift to the other, whether during their lifetime or on death, is fully exempt from inheritance tax (IHT). However, there is an anomaly which can have serious IHT consequences for some couples.

For brevity, spouses and civil partners are referred to as 'spouses' and 'married couples'.

The full IHT exemption is not available where assets pass from a spouse that is UK domiciled to a spouse that is not UK domiciled. It is only in this mixed domicile case where assets pass from a UK domiciled spouse that the problem arises.

What does this mean in practice?

Where a UK domiciled spouse leaves or passes assets to a non-UK domiciled spouse, there is a fixed exemption of £325,000 available in addition to the IHT nil rate band of £325,000 (assuming this has not been used for other gifts), the balance of the estate generally being subject to IHT at 40 per cent.

As a result, the current combined maximum relief for mixed domiciled couples in these specific circumstances is £650,000. This allowance covers gifts between the spouses during their lifetime and on death.

In the absence of a full spouse exemption, unless a mixed domiciled couple's joint estates are relatively modest in size, the couple is likely to have an unexpected IHT bill.

Forward planning

If you think this anomaly could apply to you, forward planning is recommended. RSM can advise you on your mixed domicile status and how this impacts on your tax position during your lifetime, on death and on your estate planning.

We can also advise on a range of related matters including implementing legal structures associated with succession and estate planning, ensuring the transition of wealth from one generation to the next, preparing new wills, etc.

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Business profits

There are plenty of anti-avoidance measures that prevent unincorporated businesses from altering the timing of profits. However, it may still be possible to change the timing of business expenses to achieve cash flow advantages.

The annual investment allowance provides a 100 per cent deduction on capital expenditure on plant and machinery in the relevant accounting period. If this allowance has not been fully utilised for a particular accounting period, it will be lost. It may therefore be appropriate in some cases to bring forward expenditure to maximise this relief. However, business owners who expect to pay tax at a higher marginal rate in later years may wish to delay expenditure to deduct against profits arising in those later years.

Businesses should also consider options other than buying assets outright. It may be possible to acquire assets under a hire purchase contract (which has similar tax treatment to an outright purchase) or otherwise through a lease, although the tax treatment will differ. In evaluating whether to buy or lease, account should be taken of the time value of money; for example, purchasing an asset outright may require borrowing. The cost of that, net of tax relief, should be compared with the cost of leasing rentals or hire purchase charges.

RSM can help ensure your business profits are effectively managed to achieve the most appropriate cash flow for your business.

Cash extraction

Where shareholders can control dividend payments from their own companies, consideration should be given to how surplus cash can be extracted, by bonus or dividends, and also to the timing of such dividends.

Dividends are generally a more tax efficient way of extracting surplus cash when compared to additional salary or bonus. This is because the overall tax payable (by the company and the individual) on a dividend is generally lower than the tax and national insurance contributions (NICs) on a salary or bonus.

In some cases, the directors' individual shareholdings do not make it commercially viable to replace bonuses with dividends. It is possible to introduce multiple classes of shares, or for shareholders to waive their dividend entitlements, but such measures could be caught by anti-avoidance rules.

Dividends can also be advantageous from a cash flow viewpoint: tax and NICs on a bonus are payable immediately, whereas tax on a dividend can be payable up to 21 months later. This can be extended (potentially by up to 42 months) through the making of a loan to a shareholder that may then be cleared by a dividend paid less than nine months after the end of the company's accounting period in which the loan was made.

RSM can help ensure you are extracting cash using the most appropriate methods and can advise on changes to improve the post-tax value you receive.

Business asset disposal relief

This valuable relief reduces the rate of capital gains tax (CGT) on a qualifying disposal of all or part of a business (eg by way of sale, gift or on some liquidations or similar).

Business asset disposal relief can apply to the disposal of shares in personal companies, interests in limited liability partnerships and unincorporated businesses, as well as assets used in such a business if their disposal is associated with the disposal of all or part of that business.

To qualify for relief, you must meet certain personal conditions and the business must qualify as a trading business. Owners often assume that this relief will apply to them and are unaware of the various pitfalls which can catch them out in the absence of forward planning. With a lifetime limit of £1m (£10m prior to 11 March 2020) of gains that can qualify for relief, this can be a costly mistake with potentially up to £100,000 in tax at stake. In some circumstances taking advantage of the exemptions for inter-spouse transfers could double the gains that qualify to £2m.

Anti-avoidance rules have been introduced that could result in the receipts from certain types of share transactions (eg those involving capital reductions or members' voluntary liquidations) being subject to income tax. In light of this, and the fact that some of the conditions for relief need to be met throughout the 24 months prior to disposal (12 months for disposals prior to April 2019), advance planning is essential.

RSM can undertake a review to establish if there are issues impeding access to this relief and advise on what steps may be available to rectify the position prior to the disposal, to minimise the tax due.

Investors' relief

Investors' relief provides for a reduced 10 per cent rate of capital gains tax (CGT) on up to £10m of gains from investments in qualifying shares.

This is an expansion of business asset disposal relief, aimed at investors who are not office holders or employees of the company concerned. Although the enterprise investment scheme (EIS) and the seed enterprise investment scheme (SEIS) are more generous tax reliefs than investors' relief, the appeal of investors' relief is broader because the qualifying criteria are not as tight and asset-backed trades (eg hotels, farming and property development) are not excluded.

Investors' relief can apply only to gains on the disposal of shares subscribed for in cash on or after 17 March 2016 by the investor (or by their spouse/ civil partner) in a trading company or the holding company of a trading group. The investor must not usually be an officer or employee of the company in question (and neither can any person connected with them). To benefit from investors' relief, the shares must be unlisted when they are acquired and must be held for at least three years.

This relief is particularly attractive to those who have exhausted their business asset disposal relief lifetime allowance (or expect to do so), but there are fundamental differences and care is needed.

RSM can advise on the detailed provisions and the issues surrounding qualifying shares, the shareholding period and the ease with which the entitlement to relief can be lost, even after the third anniversary of the share issue.

LLP and partnership structures

Where an LLP or partnership has both individual and company partners (a mixed partnership) legislation has been introduced that seeks to tax the shareholders of the company partner on the income allocated to it – even if they have received no dividends from the company.

Mixed partnerships have been used in the past to minimise the tax payable on income retained in the business as working capital and/or defer the payment of tax until the income is actually distributed to the owners. In most cases, this strategy is no longer viable and many LLPs and partnerships have therefore decided that operating their business through a company is a more suitable way of achieving similar tax deferral objectives.

Transferring an LLP or partnership business to a company requires careful consideration, but in most cases can be achieved without crystallising any tax liabilities. It can often result in deferring more tax than a mixed partnership, because no personal tax is payable unless or until cash is withdrawn from the company. Full incorporation also provides an opportunity to consider the ownership of the business, succession planning and the involvement of senior employees who are not yet partners.

Another possibility is partial incorporation, whereby an LLP or partnership conducts part of its business within a company that is a wholly-owned subsidiary. If the partners are all individuals, the mixed partnership rules do not apply. Income can then be retained within the subsidiary and will be subject only to corporation tax (at a lower rate than the income tax that would otherwise be charged) until cash is distributed to the partners.

RSM can review (from both a tax and legal perspective) your current business structure and evaluate what impact any changes will have on your business and tax position. RSM can implement any recommended changes to ensure tax efficiency (including full or partial incorporation of your partnership or LLP into a company or simply restructuring your partnership or LLP's profit sharing arrangements). RSM can also advise you on changes to the law applicable to partnerships and LLPs to ensure that you remain legally compliant.

How can we help

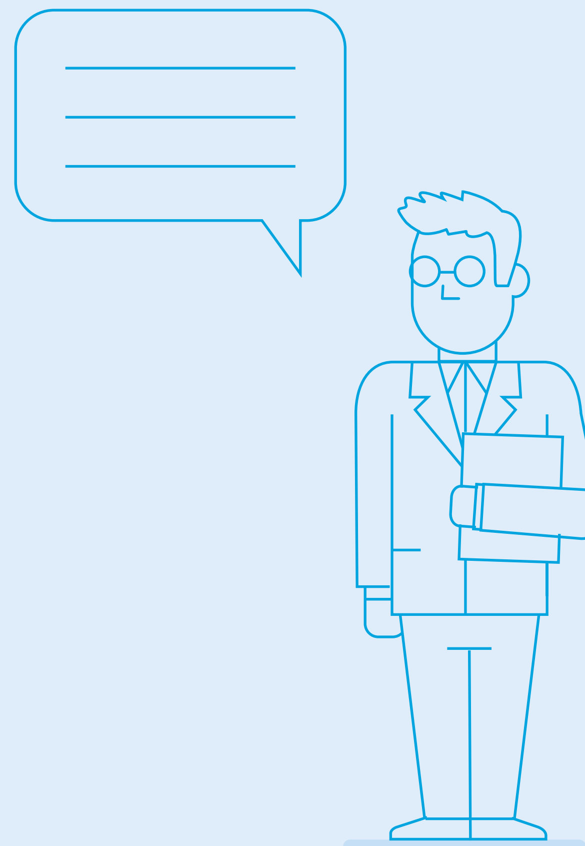
If a planning idea interests you, RSM's specialist private client tax and legal advisers can help.

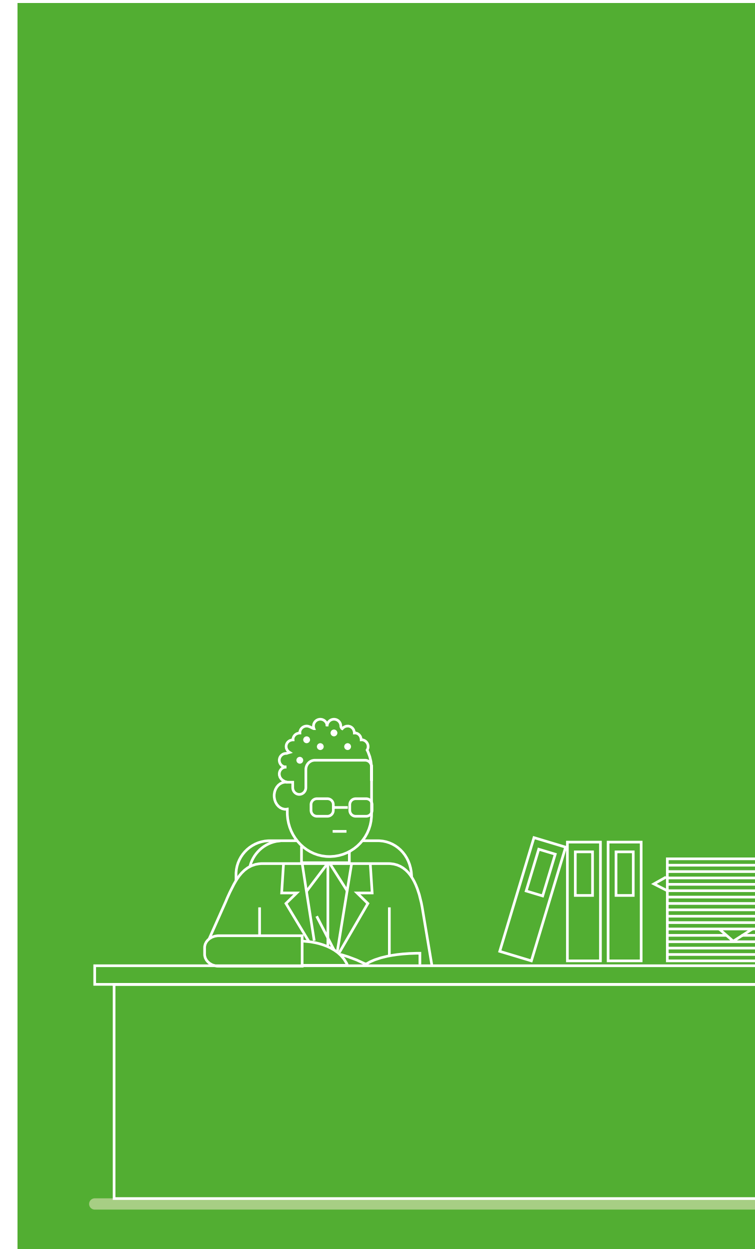
Our team of experienced and committed tax and legal experts understand the particular demands and challenges faced by private individuals and their families, and their broader circumstances, whether that includes your business, investments, estate, trusts or other wealth holding structures.

Based across the UK, our advisers provide personalised and practical solutions on all aspects of taxation and associated planning. We offer tailored advice to meet your needs and these are just some of the options available to you. We would be pleased to talk to you about other ideas that can help optimise your tax and legal position.

For further information, please contact your usual RSM adviser or visit our website to be referred to an adviser local to you.

www.rsmuk.com/compass





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