

Taxation of High Net Worth Individuals

Residency and Domicile



RESIDENCY AND DOMICILE

Rachel Saw

IBFD

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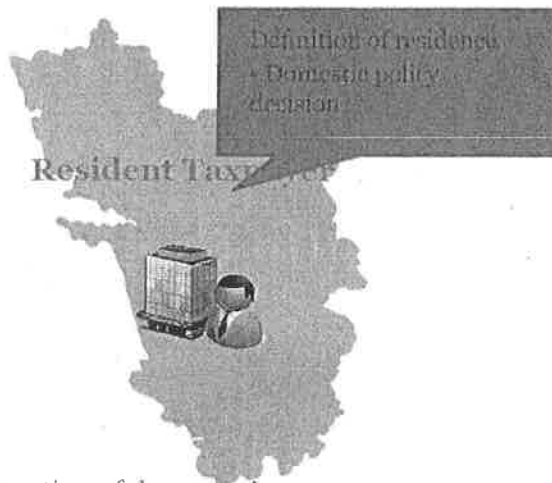


Overview

- Introduction
- Residence under Domestic Law
- Residence for Treaty Purposes
- Treaty Tiebreaker Rules
- Applying the Treaty Tiebreaker



Residence under Domestic Law



Non-resident Taxpayer



- Taxation of domestic income
- Taxation of foreign source income
- Benefits for personal circumstances
- Anti-avoidance legislation

- Taxation of domestic income
- No benefits for personal circumstances
- Different / more limited anti-avoidance legislation

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Distributive rules of OECD Model

OECD Model Tax Convention on Income and Capital

- Art. 6(1) Income **derived by a resident** of a Contracting State ...
- Art. 7(1) The profits of **an enterprise of a Contracting State** ...
- Art. 10(1) Dividends **paid ... to a resident** of the other Contracting State ...
- Art. 11(1) Interest ... **paid to a resident** of the other Contracting State ...
- Art. 12(1) Royalties ... **beneficially owned by a resident** of the other Contracting State
- Art. 13(5) Gains ... taxable only in the Contracting State of which the **alienator is a resident**
- Art. 15(1) ... remuneration **derived by a resident** of a Contracting State ...
- Art. 16 ... fees ... **derived by a resident** of a Contracting State ...
- Art 17(1) ... income **derived by a resident** of a Contracting State ...
- Art 18 ... pensions ... **paid to a resident** of a Contracting State ...
- Art 21(1) Items of income **of a resident** of a Contracting State ...
- Art. 22(4) ... capital **of a resident** of a Contracting State ...
- Art 23A(1), Art 23B(1) Where a **resident** of a Contracting State derives income...

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Importance of Residence

Why is residence so important?

OECD Model Tax Convention on Income and on Capital



Art. 1

PERSONS COVERED

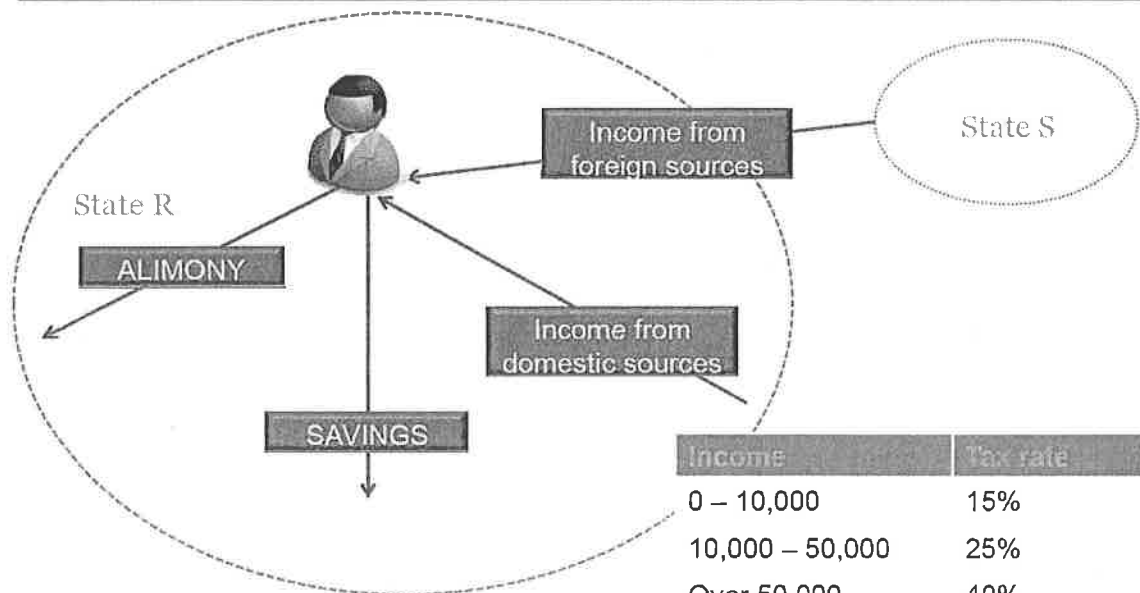
This Convention shall apply to persons who are residents of one or both of the Contracting States.



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Consequence of residence for individuals

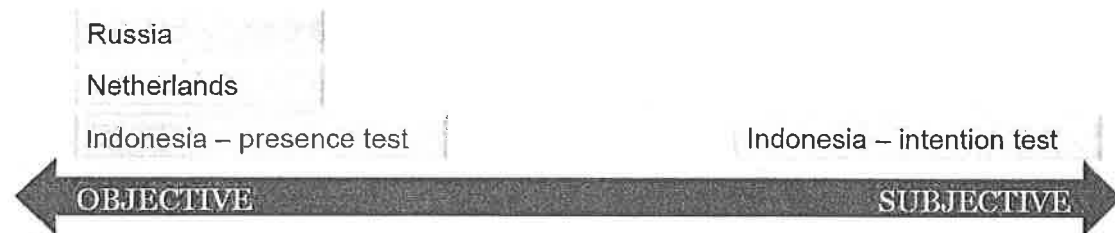


- Taxation on worldwide profit
- Deductions & benefits for personal circumstances
- Progressive tax rates

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Comparison of individual residence definitions



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Individual residence in domestic law

- Other connecting factors
 - Nationality
 - Domicile
- Time considerations
 - Part years
 - Short absences
 - Extended residence

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RESIDENCE FOR TREATY PURPOSES

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When does a treaty apply

OECD Model Tax Convention on Income and on Capital



Art. 1 PERSONS COVERED

This Convention shall apply to persons who are residents of one or both of the Contracting States.



Who is the person receiving the income?



Is that person resident in one (or both) of the contracting states?

» Identifying the person

OECD Model Tax Convention on Income and on Capital



Art. 3 GENERAL DEFINITIONS

- (1)(a) the term “person” includes an individual, a company and any other body of persons;
- (1)(b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

» Identifying the person (continued)

OECD Model Tax Convention on Income and on Capital



OECD Commentary on Art. 3(1), Para.2

- ✓ The **definition** of the term “person” given in subparagraph a) is **not exhaustive** and should be read as indicating that the term “person” is used in a very **wide sense**.
- ✓ In addition, the term “person” includes **any entity** that, **although not incorporated**, is **treated as a body corporate** for tax purposes. Thus, e.g. a **foundation** (*Stiftung*) may fall within the meaning of the term “person”.
- ✓ **Partnerships** will also be **considered to be “persons”** either because they fall within the definition of “company” or, where this is not the case, because they constitute other bodies of persons.



The OECD “view” on partnerships – Summary

- The **partnership** is entitled to treaty benefits if it is non-transparent and thus liable to tax in the State in which it is organized.
- The **partner** is entitled to treaty benefits if the partnership is treated as transparent and the partnership income is allocated to him/her.



Treaty definition of residence

OECD Model Tax Convention on Income and on Capital



Art. 4 RESIDENT

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature ...

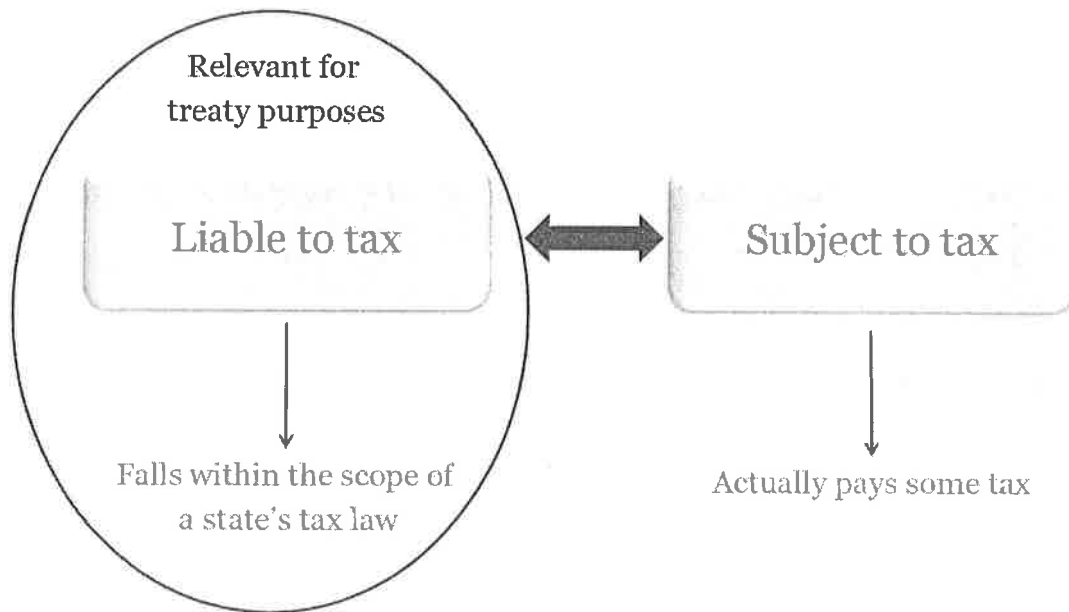
Reference to
domestic law

"Liable" to tax

Basis of liability
to tax



“Liable to tax” vs. “Subject to tax”



Treaty definition of residence – UN Model

United Nations Income and Capital Model Convention



Art. 4 RESIDENT

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature ...



Establishing residence

OECD Model Tax Convention on Income and on Capital



Art. 4 RESIDENT

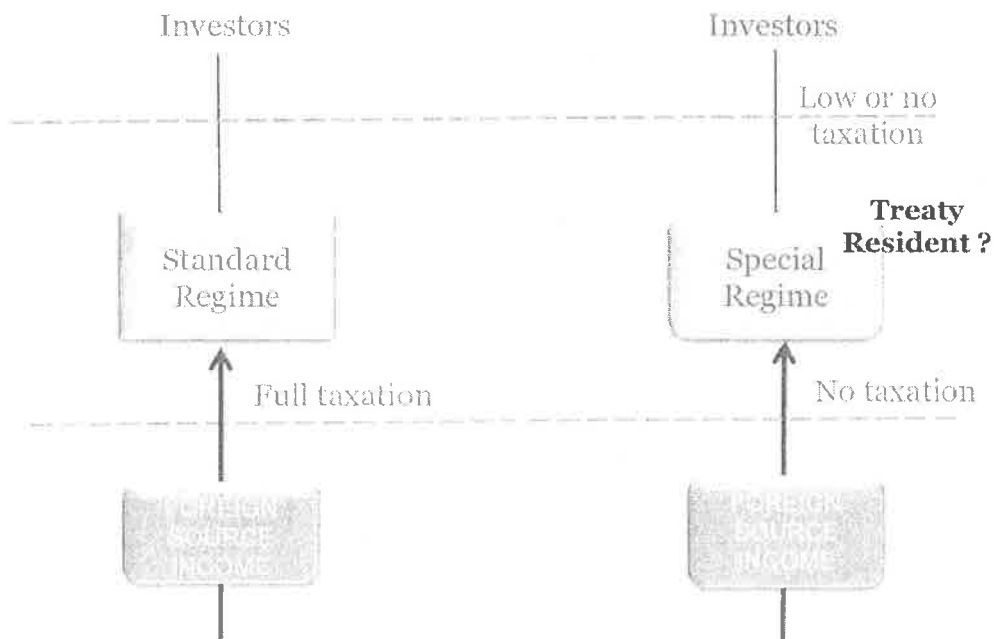
For the purposes of this Convention, the term "resident of a Contracting State" means any person who, the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature...

...This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

Negative definition:
exclusion of persons liable to
tax exclusively on a source
basis



Art. 4(1) OECD MC – Second sentence (continued)





Dual residence and treaties

OECD Model Tax Convention on Income and on Capital



Art. 1

COVERED PERSONS

This Convention shall apply to persons who are residents of one or **both** of the Contracting States.

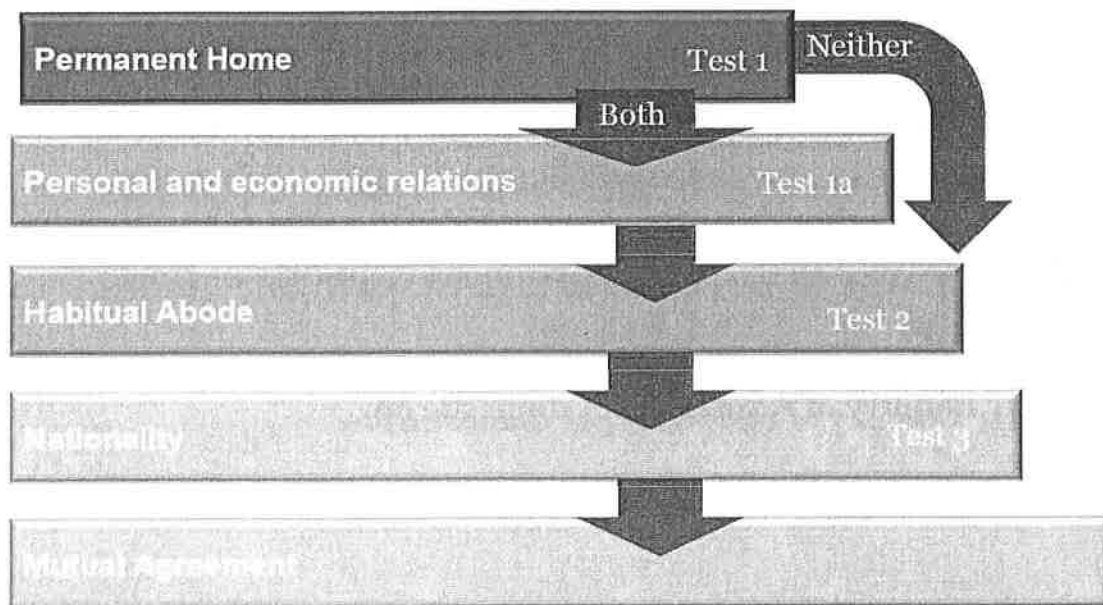
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TREATY TIEBREAKER FOR INDIVIDUALS

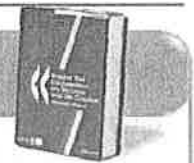
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» Tiebreaker Rule



» Tiebreaker rules for individuals

OECD Model Tax Convention on Income and on Capital



Art. 4 RESIDENT

(2) Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a **permanent home** available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his **personal and economic relations** are closer (**centre of vital interests**)
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an **habitual abode**; 習慣的居住
- (c) If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a **national**;
- (d) If he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by **mutual agreement**.



Case study

Hans lives in Bonn and works for a German bank. For many years he has had to travel to London regularly to work in the London branch of the bank; he makes these visits 6/7 times per year, and each visit lasts 2/3 weeks. The bank owns four apartments in London near the branch office, and whenever Hans visits he stays in one of these apartments.

Step 1: Country of residence per domestic law

Step 2: Treaty tiebreaker. First test – permanent home



Case study

Hans now has to spend more time in the London branch. In fact, he has to spend so much time there that he decides to rent an apartment in London. He rents out his apartment in Bonn and moves his personal possessions to his mother's house. When he is in Bonn he usually stays with his girlfriend, although he also occasionally stays with his mother. Does this change your answer?

Step 1: Country of residence per domestic law both

Step 2: Treaty tiebreaker. First test – permanent home both

Step 3: Centre of vital interests not determine

Step 4?

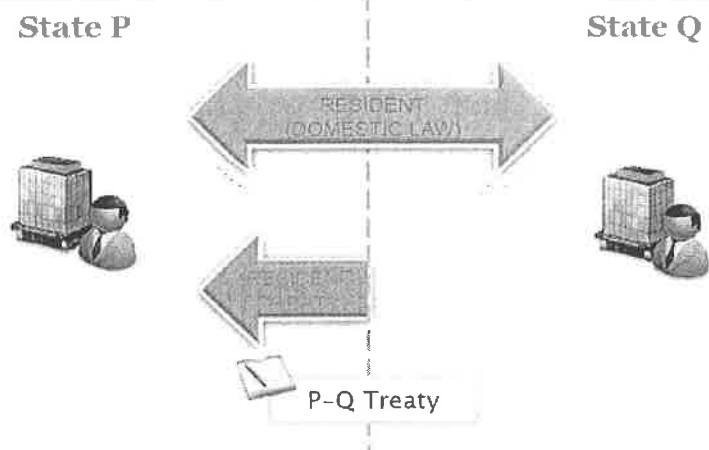


APPLYING TREATY TIEBREAKER RULES

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Applying the Treaty Tiebreaker Rule

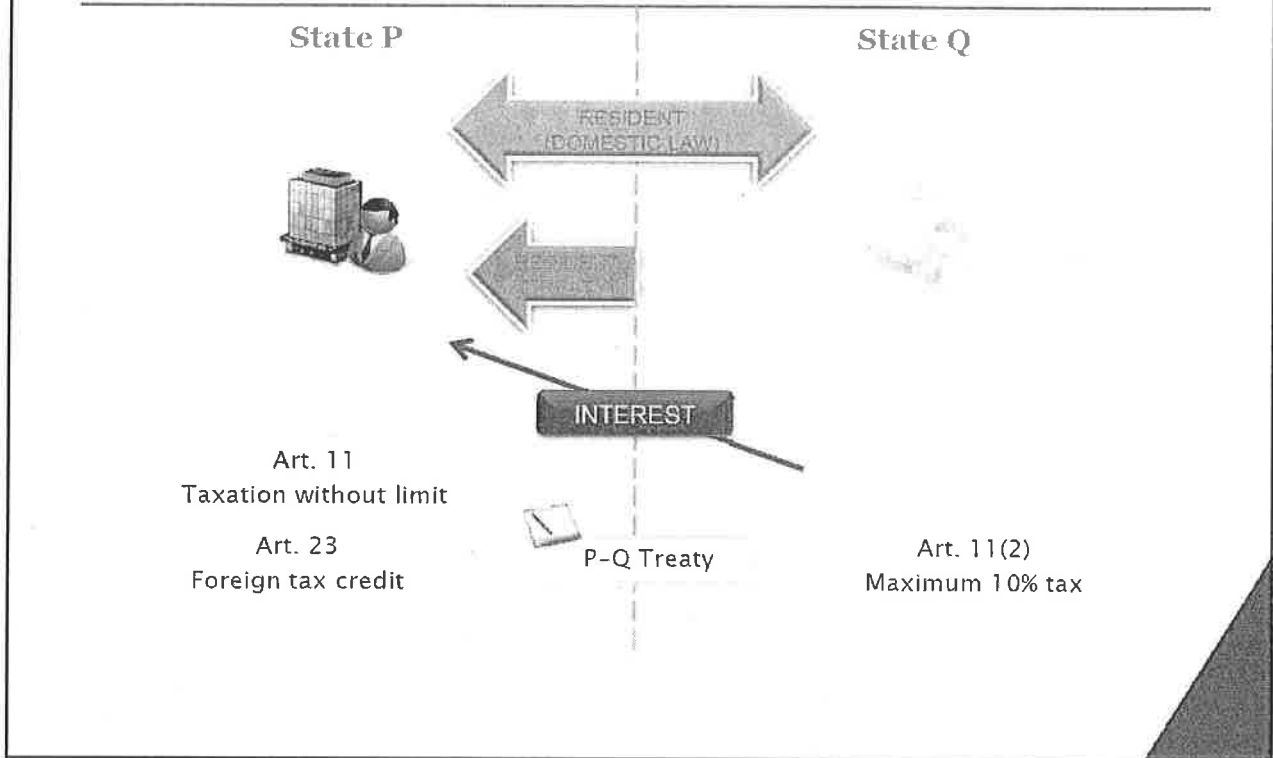


Assumptions:

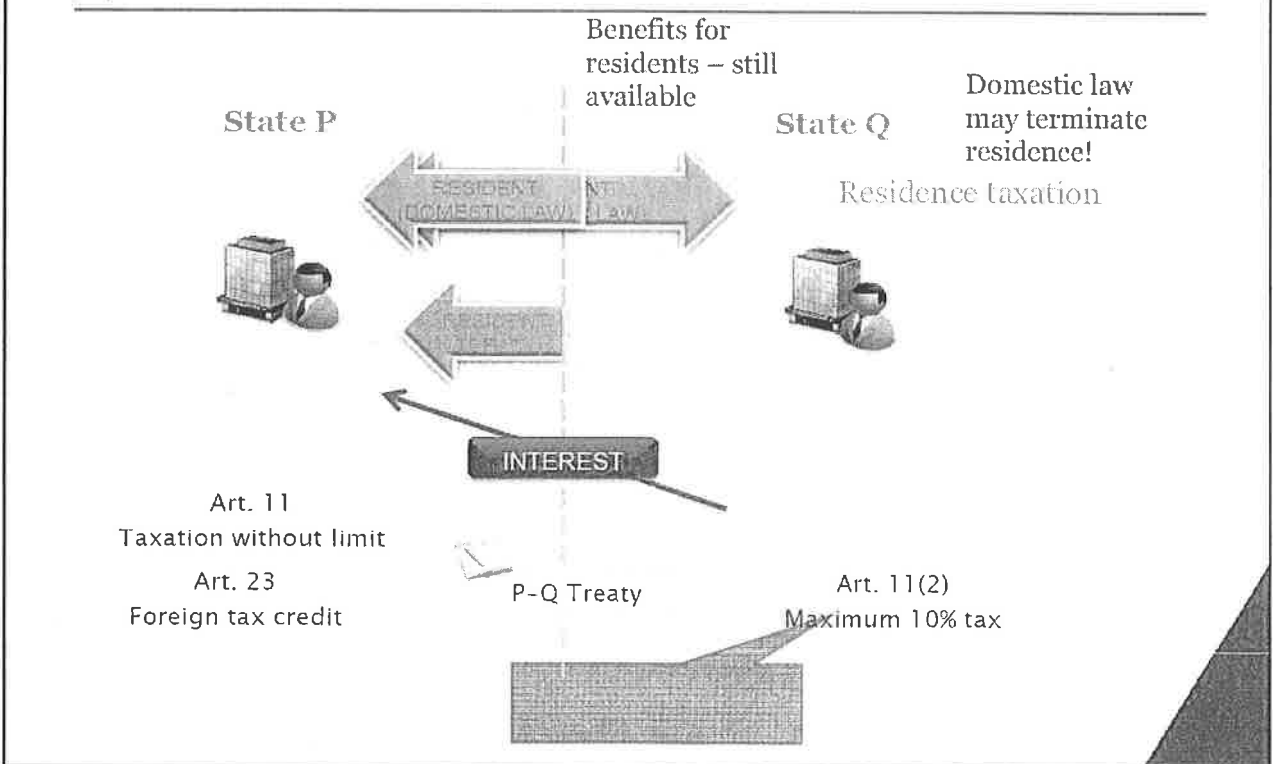
- Residents are taxable on their worldwide income
- Interest is subject to a withholding tax of 25% in the state of the payer
- Double tax relief is granted to residents in the form of a credit for foreign withholding tax on foreign-source interest



Applying the Treaty Tiebreaker Rule (continued)

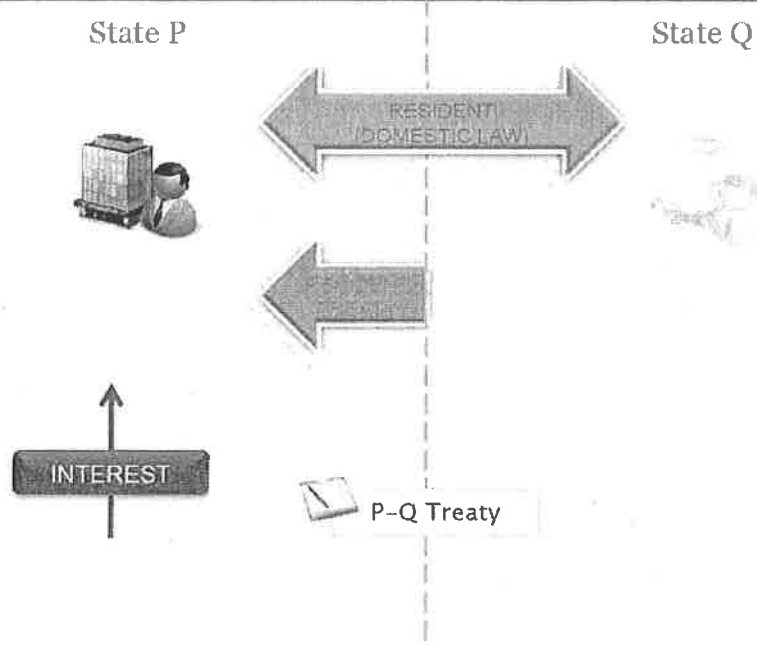


Applying the Treaty Tiebreaker Rule (continued)





Applying the Treaty Tiebreaker Rule (continued)



Article 11(1)

OECD Model Tax Convention on Income and on Capital

Art. 11
INTEREST

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State



“Other Income” - Article 21(1)

OECD Model Tax Convention on Income and on Capital



Art. 21(1)

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State (*i.e.* State of residence).

OECD Model Tax Convention on Income and on Capital



OECD Commentary on Art. 21, Para. 1

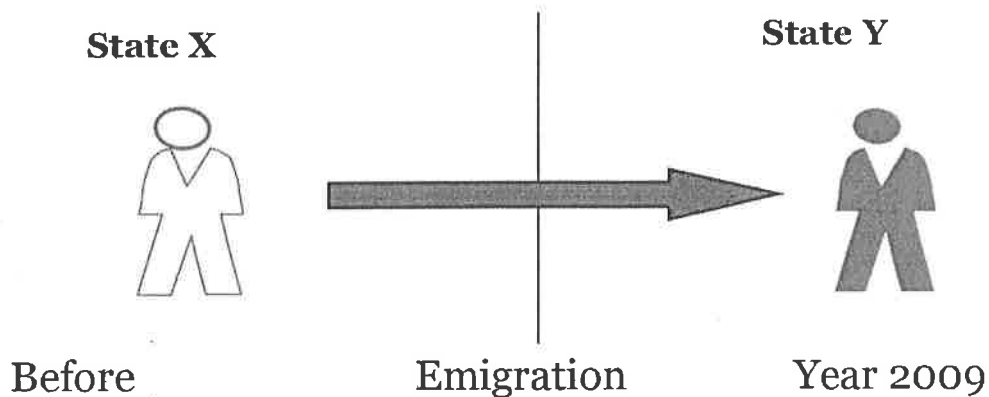
This Article provides a general rule relating to income not dealt with in the foregoing Articles of the Convention. The income concerned is not only income of a class not expressly dealt with but also income from sources not expressly mentioned.



Emigration/Immigration



Emigration and Immigration

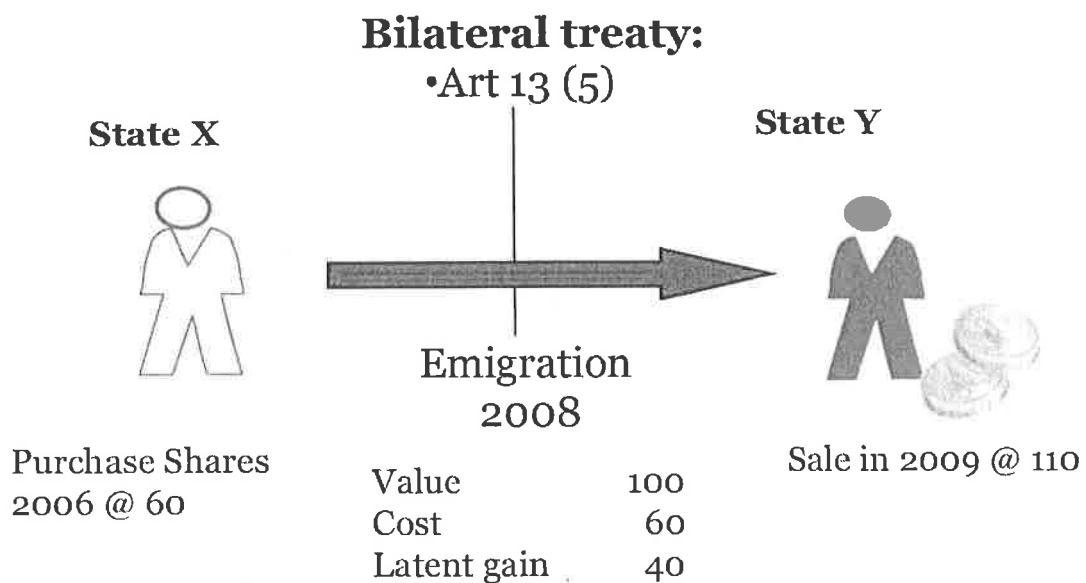


What are the tax consequences of emigration and immigration?

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Emigration and Latent Capital Gains



Which country has the right to tax capital gains on the shares?

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Exit Taxes (Latent Gains)

- State X may deem Jon to have disposed of the shares and tax Jon on the gains, unless security is posted, in which case the tax will be deferred until Jon sells the shares.
 - Applies to substantial shareholders – 1%, 25%, other?
 - Which assets?
 - Amount of gains? When?
 - Differences with trailing taxes?
- Examples: Australia, Canada, France, Germany, the Netherlands, etc.

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Emigration and Extended Residence – General

- **Assumption:** Emigrated taxpayer continues to qualify, for a certain period of time, as a deemed resident after his departure
- **Result:** tax liability covers both (i) latent income upon departure (ii) realized income after departure
- **Difference with trailing taxes:**
 - Tax liability may concern any income, from any sources (i.e. world-wide taxation)



Emigration and Extended Residence - Finland

Finland



State Y



Emigration

Year 2009

Jim, a Finnish long-term resident, became a resident of State Y in 2009. He is treated as a resident under the extended residence definition in Finland for a further 3 years. Where is Jim resident?



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DTA provisions

- **Art. 13 (5) – Finland-Netherlands (1995)**

- Limited extended liability for capital gains on shares in domestic companies

*“The provisions of paragraph 4 shall not affect the right of a Contracting State to levy according to its own law a tax on **gains from the alienation of shares or “jouissance” rights in a company**, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident thereof, derived by an individual who is a resident of the other Contracting State and has been a **resident of the first-mentioned State in the course of the last five years preceding the alienation** of the shares or “jouissance” rights.”*

- **Art. 13(7) – Finland-Canada (2006)**

- Limited extended liability for capital gains on any property

*“The provisions of paragraph 5 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on **gains** derived by an individual who is a resident of the other Contracting State, **from the alienation of any property** (other than property to which paragraph 8 applies) if the alienator: a) is a national of the first-mentioned State or was a resident of that State for ten years or more prior to the alienation of the property; and b) was a resident of that first-mentioned State at any time during the five years immediately preceding such alienation.”*



Claw-back Clause - Finland

- Art. 23(1)(c) – Finland-Argentina (1994)
 - General extended tax liability for Finnish nationals
 - “*Notwithstanding any other provision of this Agreement, an individual who is a resident of the Argentine and under Finnish taxation law with respect to the Finnish taxes referred to in Article 2 also is regarded as resident in Finland may be taxed in Finland. However, Finland shall, in accordance with the provisions of subparagraph (a), allow any Argentine tax paid on income or on capital of that individual which may be taxed in the Argentine as a deduction from the Finnish tax of that individual on the income or on the capital, as the case may be. The provisions of this subparagraph shall apply only to nationals of Finland.*”



US Savings Clause - US Model 2006

Art. 1(4)

Except to the extent provided in *paragraph 5*, this **Convention shall not affect the taxation by a Contracting State of its residents and its citizens.**

Notwithstanding the other provisions of this Convention, a former citizen or former long-term resident of a Contracting State may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of that Contracting State.

Art. 1(5)

The provisions of paragraph 4 shall not affect:

- a) the **benefits** conferred by a Contracting State under ... **Articles 23**



Extended Limited Tax Liability – The Netherlands

- Art. 3 Sw. (Inheritance tax law):
- A Dutch national that has lived in the Netherlands and that dies within 10 years after emigrating from the Netherlands or makes a donation within 10 years after emigrating from the Netherlands will be considered to be a resident at the time of death or at the time of making the donation.



Not Ordinarily Resident

- Domestic definitions and applications
- “Hybrid” classification
- Tax treatment differs from Residents and Non-residents:-
 - Exempted income (India, UK)
 - Treatment of certain income (Singapore)



Many Thanks!



CASE STUDY

“Martha”

Martha works for a German company that collates information about customer preferences and sells it in highly sophisticated tailor-made software packages for manufacturing companies. The company has a number of clients outside Germany that have found it through personal recommendation, but now it decides to see whether it can expand its activities to another country in a more structured manner.

The company chooses the UK as its target market and Martha is given responsibility for investigating and developing the market in London. She is particularly happy with this assignment, because recently she met Henry, a very attractive investment banker who lives in London. Her youngest child will soon leave home and she is not very worried about the possible implications for her marriage.

Martha starts by going to London for three weeks. She makes many visits to the offices of potential clients to make an initial presentation. If there is any interest, she visits the client as often as is necessary to talk about her company' s products and how they can be adapted to the client' s needs. She helps the client to determine what form the software should take, and then passes the contact to the company in Germany to draft the final agreement and agree on the price. During this three-week visit to London Martha books into a hotel, although she actually stays a number of nights with Henry.

It is clear that there is a great deal of interest in London, much to Martha' s and Henry' s delight. Martha returns to London on short visits on a regular basis to follow up on the contacts she has made. Again, she reserves a hotel room for these visits, but very often actually stays with Henry. She does sometimes use the hotel room, though, for discussions with clients.

After a year Martha decides that she needs a more permanent base in London, and rents a room with office facilities in a business club on a monthly basis. She also rents an apartment in the business club on a monthly basis. Although she spends some time in this apartment, in order to avoid arousing suspicion in Germany, she spends a great deal of her free time with Henry. Martha still has some responsibilities in the German office and she has to return to Germany for training about new products and software and to discuss sales strategy. She divides her time roughly equally between Germany and London to start with, although her visits to Germany do start to become further and further apart.

Q. Where is Martha resident for treaty purposes?

**GERMANY - UNITED KINGDOM
INCOME AND CAPITAL TAX TREATY 1964 as amended by protocol of 1970
(extracts)**

Article II

1. In the present Convention, unless the context otherwise requires:

(h)

(i) the terms "resident of the United Kingdom" and "resident of the Federal Republic" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and any person who is resident in the Federal Republic (subject to unlimited tax liability) for the purposes of Federal Republic tax; but

(ii) where by reason of the provisions of subparagraph (h)(i) above an individual is a resident of both territories, then this case shall be solved in accordance with the following rules:

(aa) he shall be deemed to be a resident of the territory in which he has a permanent home available to him. If he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);

(bb) if the territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;

(cc) if he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of the Contracting State of which he is a national;

(dd) if he is a national of both Contracting States or of neither of them, the taxation authorities of the Contracting States shall determine the question by mutual agreement;

(l)

(i) the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;

(ii) a permanent establishment shall include especially:

(aa) a place of management;

(bb) a branch;

(cc) an office;

(dd) a factory;

(ee) a workshop;

(ff) a mine, quarry or other place of extraction of natural resources;

(gg) a building site or construction or assembly project which exists for more than twelve months;

(iii) the term "permanent establishment" shall not be deemed to include:

(aa) the use of facilities solely for the purpose of storage, display or delivery of goods

or merchandise belonging to the enterprise;
(bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;

(iv) a person acting in a territory on behalf of an enterprise of the other territory -- other than an agent of an independent status to whom sub-paragraph (l)(v) below applies -- shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

(v) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business;

Article XI

2. Subject to the provisions of Articles IX, X and XIII salaries, wages and other similar remuneration derived by a resident of one of the territories in respect of an employment shall be subjected to tax only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

3. Notwithstanding the provisions of paragraph 2 of this Article, remuneration derived by a resident of one of the territories in respect of an employment exercised in the other territory shall be subjected to tax only in the first-mentioned territory if:

- (a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other territory, and
- (c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in the other territory.

Article XVIII

1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) Federal Republic tax payable under the laws of the Federal Republic and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Federal Republic (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Federal Republic tax is computed;

2. Tax shall be determined in the case of a resident of the Federal Republic as follows:

(a) Unless the provisions of sub-paragraph (b) below apply, there shall be excluded from the basis upon which Federal Republic tax is imposed any item of income from sources within the United Kingdom and any item of capital situated within the United Kingdom which, according to this Convention, may be taxed in the United Kingdom provided that capital gains referred to in paragraph 1 of Article VIII shall be so excluded only if they are subject to tax in the United Kingdom. The Federal Republic, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded.



HM REVENUE & CUSTOMS UK HIGH NET WORTH UNIT (HNWU)

Dealing with the UK 's wealthiest individual taxpayers

Angela C Russell
Lead Customer Relationship Manager

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What is the UK High Net Worth Unit

- Commenced 2009
- HMRC strategy & segmentation
- Dedicated Unit for 6000 wealthiest taxpayers
- 7 offices 400 staff located across the UK
- Criteria wealth £20m+
- Customer Relationship Management (CRM) approach
- My Lead CRM role
- Our Success measures



HNWU Purpose and Way

- **Our purpose is to ensure the very wealthy pay the tax that is properly due by applying a tailored relationship management approach.**
- We aim to achieve this by:
 - Building a deeper understanding of the overall tax and financial positions of our wealthy individual customers.
 - Working in a cooperative and constructive way with agents and wealthy individuals to make it as easy as possible to get things right.
 - Ensuring our approaches, actions and decisions are based on accurate and up-to-date information.
 - Developing trust through engagement to improve voluntary compliance and tackling non-compliance in an open and professional way.
 - Making what we do visible and understood by internal and external audiences.
 - Learning from others and sharing what works to raise our effectiveness, efficiency and professionalism.
 - Feeding into tax policy in an intelligent, evidence-based and timely way.
- **In doing this we will endeavour to be responsive, consistent and even-handed.**

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3



The challenges

- Maximise revenue flows – getting in the right amount of tax
- Improve the customer experience and reduce their cost of dealing with us
- Reducing our costs – shape our services so they are as low as possible
- Identification of HNWU individuals – ghosts
- Customer Behaviours – potential rule breakers, boundary pushes and tax avoidance users

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4



Risk Management & treatment UK HNWI

- Understanding the customer
- Our Resource to Risk
- High Risk – Resource to risk -Early Certainty
- Customer Engagement Tool (CET)
- Informal engagement & formal enquiry
- Rule breakers

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5



Recent Developments

- Re engineering of our internal risk process
- Customer end to end process to date of death
- Specialised teams
- Dispute & Alternative resolution
- Personal Staff Development & Professional training
- Continuous Improvement
- New Legislation
 - Annual Tax Enveloped Dwellings (ATED)
 - Disclosure of Tax Avoidance schemes
 - General Anti Abuse Rule (GAAR)
 - Accelerated payments & Failure Notices

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6

Taxation of High Net Worth Individuals

**Strategies for Dealing
with High Net Worth Individuals**



STRATEGIES FOR DEALING WITH HIGH NET WORTH INDIVIDUALS

Korea, 28 April – 3 May 2014

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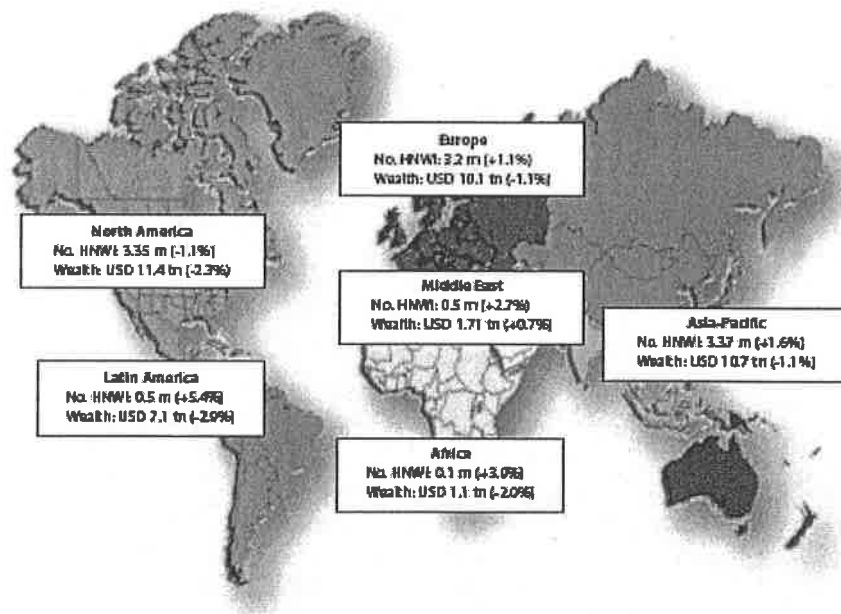


Overview

- I. Why focus on HNWI?
- II. How to improve compliance of HNWI?
- III. Segmentation of HNWI taxpayers:
- IV. Tax Risks within the HNWI segment:
- V. Aggressive Tax Planning
- VI. Co-operative strategies
- VII. Voluntary disclosure programmes



High net worth individuals – Estimated numbers and wealth in 2011



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3



Why focus on HNWI?

- HNWIs pose significant challenges to tax administrations in the developed and developing world
- Focusing resources in specialised units has paid off
- Countering Aggressive Tax Planning
- Links with offshore compliance
- EOI and joint audits



Why focus on HNWI?

- Complexity of their affairs and the large number of entities they may control.
- Amounts of tax revenue at stake.
- Opportunity to undertake aggressive tax planning.
- Impact on overall integrity of the tax system.

5



How to improve compliance of HNWI?

- Looking at the type of aggressive tax planning schemes, their suppliers and the HNWI's motivation.
- Developing a strong commercial awareness of the concerns of HNWI's.
- Building an effective capability to manage tax risks by establishing an appropriate structure and focusing resources.
- Improving international co-operation.
- Creating an appropriate legislative framework.

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Description of HNWI taxpayer segment

- International mobility
- Income and wealth
 - wealth creation and preservation
 - different tax risk profiles
 - in significant cases wealth is inherited
 - High income over a period of years result in many cases in high wealth

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Criteria applied to identify HNWIs

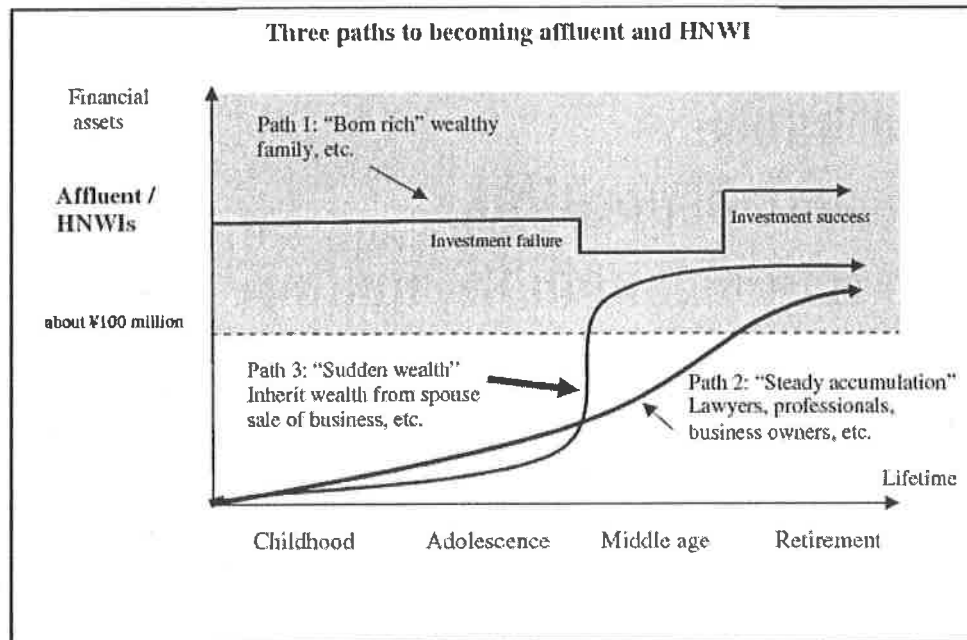
	Criteria applied to identify HNWIs	Number of taxpayers	Staff in 2011 (FTEs)
Argentina	Mix of tax assessed, tax paid, annual sales, VAT debt, economic sector and no. of employees	1 164	497 (i.e.LTU)
Australia	Residents (and any associates) who effectively control over AUD 30 m in net wealth	2 628	243/1
Brazil	Not disclosed but identification based on studies focusing on income, assets	5 000	/1
Canada	Individuals who, either alone or with related parties, control net worth over CAD 50 m grouped in 30 or more entities	550-600 (E)	/1
Japan	(Confidential)	226	76
Malaysia	Individuals with statutory income over MYR 1 m, assets over MYR 5 m or both together over MYR 5 m	4 272	152/1
New Zealand	Assets over USD 50 m (most have over 30 entities associated with them)	177	9
South Africa	Gross income >ZAR 7 m or unencumbered assets >ZAR 75 m, and connected individuals (I) and entities (E)	468 (I) 1 205 (E)	10

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Three paths to becoming a HNWI



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Tax risks within the HNWI segment

Risks by source of income or wealth

- High income individuals
- Highly paid employees and professionals
- Entrepreneurs
- Financial entrepreneurs
- Sportspersons and entertainers
- Wealthy investors

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Tax risks within the HNWI segment

Other risk considerations

- Inheritance
- Sales and disposition
- International mobility and tax residency
- Professional advisers
- Offshore structures and bank accounts

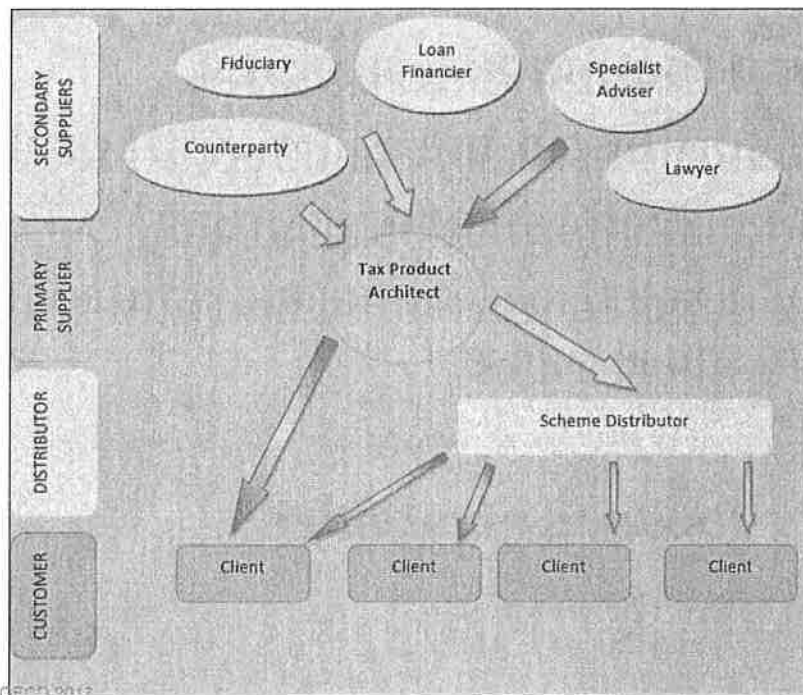


Aggressive Tax Planning

The marketplace

- Market drivers
- The supply chain
- Benefits to be obtained from better understanding the market place

The ATP supply chain



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Strategies to counter ATP by HNWIs (1)

General measures

- Gathering and using information efficiently
- Hiring staff from the private sector
- International co-operation
- Communication strategies

Demand-focused strategies

- Taxpayer penalties
- Litigation strategies

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Strategies to counter ATP by HNWIs (2)

Product-focused strategies

- Mandatory disclosure and reporting rules
- Additional information reporting
- Using targeted legislation and anti-avoidance or anti-abuse rules

Supply-focused strategies

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Responses to dealing with tax risk posed by HNWIs

Focusing resources

- regular and continued interaction
- dedicated unit

Resource organisation

- specialised teams
- support units
- national unit regional units

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Responses to dealing with tax risk posed by HNWI's

Identifying the HNWI segment

- understanding the segment

Skills of staff

- impartiality;
- proportionality;
- openness through disclosure and transparency; and
- Responsiveness
- commercial awareness:

Responses to dealing with tax risk posed by HNWI's

Commercial awareness requires understanding of:

- financial arrangements;
- structures used for investment and wealth planning;
- international tax issues including: tax residence, double taxation agreements,
- controlled foreign companies, foreign trusts and foreign investment funds;
- succession issues;
- privacy concerns; and
- the HNWI's risk position.



Responses to dealing with tax risk posed by HNWI

Commercial awareness can be achieved by:

- Development programmes such as mentoring and secondments;
- In-house training and induction;
- Partnering with business and representative bodies to deliver specific training requirements; and
- Informal networking events.

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Responses to dealing with tax risk posed by HNWI

Roles and responsibilities

- Focus is predominantly on personal taxes
- Consider also corporation taxes, payroll taxes and consumption taxes. This requires a broad tax knowledge
- Dedicated contact for HNWI
 - accountability for a consistent and timely response from the tax administration;
 - enhancing the relationship between advisers to HNWIs and the tax administration; and
 - certainty and consistency for the HNWI.

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Co-operative strategies

Prerequisites for a co-operative compliance approach

- A developed legal system
- Respecting confidentiality
- Impartiality, proportionality, responsiveness and competence



Co-operative strategies

Guidance to further develop co-operative programmes:

- Actively consult on the scope, operation and framework
- Develop and publish guidelines or otherwise communicate the operation of the Programme
- Adhere to the principle of impartiality in developing the programme

Enhancing particular aspects of co-operative compliance

- Dedicated contact point
- Individual rulings
- Product rulings
- Civil penalty protection for full disclosure



Voluntary disclosure programmes

Allows taxpayers to come forward and correct inaccurate or incomplete information not reported during previous dealings without penalty or prosecution.

A successful programme will:

- Be clear about its aims and its terms
- have a demonstrable and cost-effective increase in short term revenues
- be consistent with the generally applicable compliance and enforcement regime.
- needs to improve levels of compliance
- place the short-term boost to revenues in the context of improving compliance across the taxpayer population as a whole by complementing it with measures that improve compliance in the medium term



Voluntary disclosure programmes

Improving voluntary compliance of taxpayers - who are prepared to pay the tax but had other reasons preventing them from coming forward - by clear guidance on:

- Process for voluntary disclosure
- Incomplete records
- Confidentiality of information disclosed
- Future compliance activities
- Contacting third parties
- Penalties and Interest
- Criminal Prosecution
- No-name discussions



Voluntary disclosure programmes

Key features

- The taxpayer must pay the amount of tax owed in the absence of a voluntary disclosure
- Interest on the tax outstanding have to be paid if tax evasion is detected
- Monetary penalties if a timely and comprehensive voluntary disclosure has not been made in cases of tax evasion
- There is a risk of imprisonment if their tax evasion is detected without having made a timely and comprehensive voluntary disclosure
- Other observations



Questions?

- What tax risks do you see within your HNWI segment?
- What kind of strategies does your administration have to deal with these risks?
- Does your administration have co-operative strategies to deal with HNWIs?
- Does your country have a voluntary disclosure programme?



UK ANNUAL TAX ON ENVELOPED DWELLINGS (ATED)

ATED Compliance Team
HNWU Birmingham



What is ATED?

- An annual tax that came into effect on 1 April 2013
- Due on a UK dwelling (residential property) valued at more than £2million on 1 April 2012
- Payable by non-natural persons (Companies, Partnerships with company members and Collective Investment Schemes) who own an interest in a dwelling whether based in the UK or overseas



Why was ATED introduced?

- Stamp Duty Land Tax (SDLT) is payable by the purchaser of UK land and property.
- In recent years expensive property has been “enveloped” into a Company structure to avoid SDLT.
- Rather than selling the property the company sells its shares reducing or negating the purchaser’s tax bill e.g.
- SDLT on a £5m property (5%) = £250,000
- UK shares purchased at £5m (0.5%) = £25,000
- Shares in Overseas Company at £5m = Nil UK tax

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When was ATED introduced?

- In the 2012 budget two measures were introduced to address this type of SDLT avoidance:
 1. SDLT was increased on properties valued at more than £2m to 7% for individuals and 15% for companies
 2. ATED was proposed as a new charge effective from 1 April 2013.

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» ATED Rates

The rate of annual charge is a banding structure based on the value at 1 April 2012.

- £2 million + to £5 million - £15,000
- £5 million + to £10 million - £35,000
- £10 million + to £20 million - £70,000
- £20 million + - £140,000

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» Returns and Payment

- The charge period is 1 April to 31 March each year
- Transitional rules apply for 2013/14 as the first year
- Returns to be filed by the Company not the person living at the property
- Returns were to be filed on 1 October 2013
- Payment of the charge is due on 31 October 2013
- In future years returns and payment are due on 30 April or 30 days after acquisition of the property.

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Facts and figures

	Customers	Liability
Estimated	3800-5000	£20-40m
Actual 2013/14	6350	£105m
	No of Payments	Cash collected
At 31.03.14	3439	£100.3m



ATED Compliance Team

- Located in Birmingham HNWI
- Handle all ATED compliance issues
- Liaise with other teams in SPT
- Contact Points Rachel Davies and Julie Farrell

