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Choice of residence

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1. Introduction

Although wealthy clients have always shown a higher inclination towards international mobility than other taxpayers,[1] in recent years we have been witnessing a steady increase in this phenomenon. In fact, in a globalised world, it is becoming even more crucial for wealthy clients to choose the country in which to place their residence. Surveys confirm that, when choosing their residence, wealthy clients tend to adopt a holistic approach, taking into account several factors relating to business and professional opportunities, quality of life and quality of services.

The intensification of the mobility of wealthy clients has been confirmed by recently published statistics,[2] according to which approximately 108,000 wealthy clients migrated to another jurisdiction in 2018, compared to 95,000 in 2017, 82,000 in 2016 and 65,000 in 2015.

The data suggests that in 2018 the most attractive countries for the relocation of wealthy clients were Australia, the US and Canada, which recorded respectively a net inflow of wealthy clients of around 12,000, 10,000 and 4,000.[3] This information on wealthy client inflow highlights a stable trend across the last four-year period. Indeed, since 2015 Australia has been the country with the highest wealthy client net inflow, followed by the US and Canada. The most significant factors encouraging wealthy clients to move to Australia include its high level of services, top-quality healthcare and education, growing economy, language (ie, English-speaking),

1 OECD, *Engaging with High Net Worth Individuals on Tax Compliance: Joint Study of the Forum on Tax Administration and Working Party No. 8 on Tax Avoidance and Evasion*, May 2009.

2 New World Wealth (NWW), *Research and Markets*, 2018. This report covers individuals who have overall net assets of at least US$1 million.

3 NWW, *Research and Markets*.

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wide availability of space and good quality environment, as well as the absence of inheritance taxes.

Conversely, in 2018 the countries with the largest loss of wealthy clients were China, which recorded a net outflow of 15,000 wealthy clients, followed by Russia, which suffered a loss of 7,000 wealthy clients, India with a loss of 5,000, Turkey with a loss of 4,000 and France and the UK with a loss of 3,000 wealthy clients each. It is noteworthy that the number of wealthy clients migrating from India and China was broadly counterbalanced by the new wealthy clients that the same countries produced. On the other hand, the data shows a loss of appeal in jurisdictions such as the UK and France which have traditionally been attractive for wealthy individuals.[4] Indeed, while over 80,000 wealthy clients have moved to the UK since 1990, over the past two years the UK has lost approximately 7,000 wealthy clients (ie, 4,000 in 2017 and 3,000 in 2018). The potential reasons explaining this trend include the political instability connected with Brexit and the 2017 changes to the resident non-domiciled regime, whereby such a regime became unavailable after 15 years of UK residence. The high level of taxation seems to have been the trigger for the outflow of wealthy clients from France.

The intensification of the mobility of wealthy clients led to several countries introducing new regimes meant to attract wealthy clients, thus creating competition among jurisdictions. In particular, Europe has witnessed a proliferation of favourable tax schemes in recent years, aimed at attracting wealthy individuals as well as highly skilled professionals. While some countries, such as the UK, Switzerland, Malta and Ireland, have been accustomed to this practice for many years, other countries, such as France, Spain and Portugal, have only begun to experience this phenomenon since the early 2000s (and these three particular jurisdictions amended their regimes in just the last two years). Moreover, at the end of 2016 Italy introduced a lump sum tax regime for wealthy individuals moving to Italy. Subject to the condition that the individual has been a non-resident for at least nine of the last 10 years, the regime applies a €100,000 flat rate annual tax on foreign-sourced income and gains and exempts foreign assets from any wealth tax and inheritance and gift taxes. The Italian regime, albeit introduced recently, has reportedly been highly successful. However, detailed reliable statistics on its success are not yet available. The number of jurisdictions implementing further favourable tax

4 NWW, *Research and Markets*.

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schemes is likely to grow. For example, Greece has recently introduced a tax regime that is similar to the Italian lump sum regime.

2. Criteria for choosing a country of residence

As mentioned, wealthy clients consider a variety of factors when deciding on a new location. Even if economic factors, such as the level of taxation and business opportunities, remain fundamental, social, political and environmental factors are important too. They seek, for themselves and for their family, a good balance between economic efficiency and lifestyle choices. Furthermore, empirical evidence shows that the factors attracting wealthy clients to certain jurisdictions are the same factors that encourage these wealthy individuals to leave their home countries.

In particular, the main driving criteria influencing the choice of residence amongst wealthy clients include the following:

- *Quality of life and high standard of services*. According to a survey by *The Economist*,[5] improvement in quality of life is the most widespread reason pushing wealthy clients to relocate abroad. In fact, 75% of the wealthy clients that participated in the survey cited this as the main driver for deciding to leave. The same survey demonstrates that quality of life is also a crucial criterion in selecting the new country of residence. In particular, 73% of the respondents who moved or planned to move declared that the expectation of finding a better quality of life was a very important factor that they had taken into account. A high standard of services is also an important criterion for choosing a place of residence.
- *Personal safety*. Data highlights that there is a strong correlation between the level of safety of a country – especially women and children's safety – and the inflow of wealthy clients. In that regard, Australia, which has recorded the highest inflow rate of wealthy clients over the last few years, is also a top-ranking country in a list of safest places in the world[6] and in 2019 was ranked as the safest country in the world in annual ratings of women's safety.[7] This correlation between the safety

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5 Aviva Freudmann, "The Wealthy Migrants", *The Economist*, 8 October 2015, https://eiuperspectives.economist.com/financial-services/wealthy-migrant/white-paper/wealthy-migrant.

6 *Global Peace Index 2019*, http://visionofhumanity.org/app/uploads/2019/06/GPI-2019web003.pdf.

7 NWW, *Research and Markets*.

of a country and its appeal for wealthy people is supported by the survey conducted by *The Economist*,[8] which found the expectation of obtaining a safer physical environment was the second factor pushing wealthy clients to move outside of their country (64% of the people interviewed declared that the lack of safety was the main reason why they moved outside the country).

- *Education opportunities for children*.
- *Work and business opportunities*. Business reasons and professional opportunities tend to rank higher than other factors for triggering the relocation of wealthy clients to another country. In particular, according to *The Economist*'s survey,[9] 81% of respondents who relocated to another country stated that business opportunities in the country of destination were a significant factor to consider upon relocation.
- *Favourable tax treatment*. According to a survey conducted by Citi Private Bank and Knight Frank in 2008,[10] 29% of the wealthy clients interviewed declared that taxation was the most important factor influencing the location of their residence.
- *Political stability*.
- *Protection of wealth and property rights*.
- *Top-standard healthcare system*.

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3. The emigration/immigration checklist

When a wealthy client moves from one jurisdiction to another, a number of legal and tax issues have to be addressed. This paragraph aims at setting out some of the main legal and tax issues that need to be addressed, in the state of departure and/or in the state of arrival, with a particular focus on the tax issues.[11] The list is general (ie, not related to specific jurisdictions) and not exhaustive.

3.1 Tax issues

First, it needs to be ascertained whether the wealthy client effectively loses the tax residence status of the state of departure.

8 Freudmann, "The Wealthy Migrants".
9 Freudmann, "The Wealthy Migrants".
10 Knight Frank/Citi Private Bank, *Wealth Report 2009*, https://content.knightfrank.com/research/83/documents/en/2009-2.pdf.
11 This paragraph is based on the checklist reported in N Saccardo, "The Immigration/Emigration Checklist", *STEP Journal*, July 2018, p41.

Different countries apply different criteria for determining whether an individual remains resident or not for tax purposes in their territory. For example, in the UK, under the so-called Statutory Residence Test, the residence of individuals for income tax purposes is based on the number of days that they spend in the UK during any given tax year. The number of days that an individual can spend in the UK without qualifying as a UK tax resident depends on the number of ties that he or she has with the country (for example, whether he or she has a home in the UK, whether his or her spouse and/or minor children are resident in the UK, etc). Other countries apply more general criteria that require a case-by-case analysis of all relevant facts and circumstances. For example, in Italy, individuals are considered to be non-resident if their habitual abode and their main centre of business and personal interests are outside Italy and if they are not registered as resident for the majority of the tax year. While the last of these criteria is merely formal, the others require a careful analysis of all the facts and circumstances, as, in effect, their ties with Italy need to be weighed up against their ties with the state of arrival. If a client's state of departure applies general criteria, such as in Italy, his or her personal circumstances must be carefully reviewed to make sure that he or she actually loses tax residence in the state of departure and accurate evidence must be gathered for possible future reference.

While worldwide income taxation is usually based on tax residence, worldwide exposure to other taxes may be based on other criteria or on a different notion of residence. For example, in the UK, exposure to inheritance tax on worldwide assets is triggered by a domicile (or a deemed domicile; see below) in the UK. An individual may well be non-resident in the UK for UK income tax purposes but still be domiciled in the UK and, therefore, exposed to UK inheritance tax on all of his or her estate. In Italy, an individual is resident for inheritance and gift tax purposes – and therefore subject to such tax in relation to all his assets – if his or her habitual abode is in Italy. The individual should check which conditions need to be met, after the transfer, in order to cease exposure to such other taxes.

Certain countries feature deemed residence (or domicile) rules for individuals who move abroad. Sometimes these rules apply only if the individual moves to a low tax jurisdiction. For example, French nationals that move to Monaco are deemed to be resident in France. Italian nationals that move to certain low tax jurisdictions (such as Switzerland or Monaco) are deemed to be resident in Italy unless

proof of the contrary is provided. Similar rules provide for extended liability for a certain period after the individual has moved abroad (eg, German extended liability rules apply for a 10-year period for nationals ceasing to be resident in Germany and moving to a low tax jurisdiction). Another example is the UK, where an individual is deemed to be domiciled in the UK for all tax purposes if he has been resident in the UK for income tax purposes for 15 of the previous 20 tax years. Because of this rule, an individual is exposed to UK inheritance tax on all his or her assets for a certain number of years after losing UK income tax residence. The impact of these deeming rules should be checked and it may be worth planning in order to protect the individual from potential adverse consequences in the country of departure (for example, an insurance policy against the risk of exposure to UK inheritance tax in the period of UK-deemed domicile).

The timing of the loss of income tax residence and that of the acquisition of income tax residence in the state of arrival may not necessarily match. These mismatches in the timing of loss versus acquisition of tax residence must be determined and taken care of. They may lead to double taxation or sometimes double non-taxation. The mismatch may be due to the fact that the state of departure and the state of arrival have different tax years or due to the different split-year rules. For example, in the UK, the income tax year for individuals runs from 6 April to 5 April of the following year; in Australia it runs from 1 July to 30 June of the following year, while in the states of continental Europe (such as Italy, Spain and France) it corresponds to the calendar year. An individual who moves his or her tax residence from the UK to Italy at the end of the UK tax year may be considered a dual resident of the UK and of Italy in the period from 1 January to 5 April of that year. This may have material adverse consequences as any income or gains realised in such timeframe may be exposed to double taxation if the transfer is not carefully planned. On the other hand, such mismatches may also result in periods of non-residence in both the state of departure and the state of arrival. For example, an individual transferring to Italy from Australia after the end of the Australian tax year may be considered non-resident in Australia from the day of transfer to 31 December of such year and also non-resident in Italy in the same period. This is because Italy has no split-year residence rules and an individual is either resident or non-resident for a whole tax year. The individual should check whether such mismatches may arise and should carefully plan his or her transfer in light of them. If

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the mismatch triggers a period of dual residence, relief from double taxation may be obtained through treaty or domestic provisions in either of the two states. If there is a period of dual non-residence, it may be useful for the individual, from a tax perspective, to use such period in order to trigger the realisation of income or gains.

In certain countries, it is the residence of persons other than the individual that triggers worldwide tax exposure. For example, in France and Germany, the entire estate of an individual is exposed to inheritance tax if the heir is a resident of such countries regardless of the residence of the deceased at the time of demise. In these cases, it is worth checking whether there is an inheritance tax treaty between the state of arrival and the country of residence of the heir that may limit such exposure to inheritance tax.

The loss of tax residence in the state of departure may trigger certain adverse tax consequences that an individual should take into account. The most notable example is the exit tax that is levied by certain countries. For example, individuals who lose French tax residence and who hold certain substantial shareholdings (eg, a shareholding entitling the shareholder to receive at least 50% of the company's profits) may be exposed to an exit tax on the unrealised gain relating to such shareholding. If an individual was benefitting from a deferral of the payment of certain taxes in the state of departure, the loss of tax residence in such a state may trigger the termination of the deferral regime. Furthermore, in some jurisdictions the loss of tax residence may imply the clawback of prior deductions or the obligation to settle all outstanding tax liabilities.

It is worth checking whether a strategy to accelerate or defer income, gains, losses or gifts should be pursued. The individual should also be aware of differences in the tax treatment of income, gains or gifts in the state of departure as compared with the state of arrival (this is the case, in particular, if the individual is planning to benefit from a favourable regime in the state of arrival). For instance, if the state of arrival provides for a taxation of capital gains that is generally more favourable than the taxation in the state of departure, it may be advantageous to delay the realisation of any gains until he or she has lost tax residence in the state of departure. A case-by-case analysis must be made. Indeed, for example, even if taxation in the state of arrival on capital gains were to be more favourable, it could be more advantageous for the individual to realise a gain while he or she is a tax resident in the state of departure if such gain could be offset against capital losses realised during the same year or by capital losses carried forward from previous years

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that the individual would no longer be able to use after departure. One could also consider accelerating a capital loss in the state of departure if, for example, it could be used to offset a capital gain therein and could not be used after departure (eg, due to a step down to fair market values in the state of departure).

Moreover, timing mismatches in the determination of the date of a taxable event must be monitored. Indeed, the state of departure and the state of arrival may apply different criteria in determining in which tax year a certain income or gain has been realised and so should be subject to tax. Mismatches in such criteria, if not properly managed, may lead to cases of double taxation. Assume that the state of departure considers that a gain on an asset is taxable in the year when the asset is sold while the state of arrival considers a gain as taxable in the year in which the proceeds are cashed. If the individual sells the asset while a tax resident of the state of departure but receives the payment of the proceeds while a tax resident in the state of arrival (this is the case, for example, where the individual has agreed to receive the payment in instalments), he or she may be subject to tax in both states.

The loss of the individual's tax residence in the state of departure may also impact on the tax residence of companies or other entities, if the management and control of such entities is viewed as being transferred abroad and, therefore, the entity loses tax residence in the state of departure. This may have adverse income tax consequences if the state of departure levies an exit tax on entities. Likewise, it is important to check whether the entities may become tax resident in the state of arrival of the individual and, if so, what the consequences would be.

Other areas of analysis may include reviewing the future expected income, gains and assets in the state of departure in order to identify strategies to minimise local source/*situs* taxation after the change to non-resident status and advising on potential temporary non-residence rules that may apply if the individual moves back within a certain timeframe (such as those that exist in the UK).

From the perspective of taxation in the state of arrival, one has to determine the tax basis of assets owned by the individual, in particular whether the acquisition of residence triggers a step up of the tax basis up to the fair market value of the assets upon the change of residence and whether and to what extent such step up depends on the levy of an exit tax by the state of departure. In the absence of a step up, it must be checked whether the tax basis as determined in the state of departure would be recognised in the state of arrival

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or whether it is possible to obtain a step up of the tax basis in the state of arrival by entering, prior to the change of residence, into a transaction that is tax neutral in the state of departure.

If the individual moves to a jurisdiction offering a favourable tax regime (such as a lump sum tax regime), it should be checked whether the application of the regime may have consequences in terms of treaty protection in the countries where the individual is likely to generate income or hold assets. In this respect, there may be specific treaty provisions that exclude the application of the treaty if a person is subject to a favourable regime in one of the contracting states. For example, under Article 4(5) of the income tax treaty between Switzerland and the US, individuals who are residents of Switzerland under the lump sum tax regime are not treated as residents of Switzerland for the purposes of the treaty and, therefore, are denied treaty benefits.

It is also important to check whether the state of arrival has relevant anti-avoidance provisions (eg, controlled foreign companies legislation), to review the existing ownership structures to understand whether they should be amended upon the change of residence, and to assess to what extent the legislation of the state of arrival will allow tax benefits to be achieved by using, for instance, trusts, insurance policies, usufruct and other estate planning tools.

Finally, it is imperative to check whether the transfer of residence of the individual to the state of arrival may trigger rules regarding the importation of valuable assets. Such circumstance may have adverse indirect tax consequences. It may be the case, for example, that the transfer of the habitual abode of the individual to the state of arrival may trigger the importation of assets such as works of art, yachts and jets. Specific exemptions for privately used assets may apply.

3.2 Other issues

In addition to tax issues, other areas of work, when advising a wealthy client moving to another jurisdiction, include the following:

- Checking the entry visa requirements;
- Checking whether the individual needs to carry out certain formalities upon the transfer of residence from one country to another (eg, de-registrations or registrations);
- Checking the social security ramifications from the transfer;
- Checking whether the transfer may impact on the applicable law to the succession of the individual, which would be the consequences of such change and whether a choice of law, the

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execution of a will or the execution of succession agreements are available/recommended;

- Checking whether the transfer may impact on the applicable law to the matrimonial regime with the spouse, which would be the consequences of such change and whether a choice of law or the execution of a postnuptial agreement are available/ recommended;
- Checking whether works of art are to be imported into the state of arrival and, if so, checking whether they will become subject to any limits, laid down by the State of arrival, as to their export or disposal (for example, ban on export or right of first refusal); and
- Checking the conditions for obtaining permanent residence or nationality in the state of arrival.

4. Concluding remarks

As discussed in the introduction, we are witnessing an increasing mobility among the very wealthy. This has triggered competition, with states offering favourable tax regimes to attract wealthy clients to their jurisdiction (such regimes possibly further increasing the mobility of wealthy clients). It is worth trying to foresee what these trends may lead to. It is expected that jurisdictions suffering from a significant outflow of wealthy clients might wish to introduce provisions aimed at preventing or limiting such outflow or at least the negative financial consequences from such outflow. Such provisions may include exit taxes, rules meant to make the loss of residence more difficult (such as deemed residence rules), exchange controls meant to prevent the outflow of assets so that the state of departure may still levy tax as the source state, or even taxation based on criteria other than residence (eg, citizenship). The application of some of these rules may be problematic in the light of the existing tax treaty network. However, this may simply lead to these states negotiating amendments to their tax treaties (see, for instance, the recent decision of Finland to renegotiate the income tax treaty with Portugal in order to be able to levy taxes on Finnish pensions paid to individuals who benefit from the Portuguese 10-year exemption on foreign income), or lead them to interpret existing tax treaties as not applying to individuals who are residents of a foreign country and subject therein to a favourable tax regime.

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