RAWLINSON & HUNTER

TAX PULSE

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RAWLINSON & HUNTER

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WELCOME

Welcome to the Autumn 2021 edition of *Tax Pulse*, our regular update on tax related matters. The leaves may be beginning to think about falling from the trees, but people are also returning to their desks. Our offices in London and Leatherhead are open and active and we would be pleased to meet in person with those comfortable to do so.

In this edition of *Tax Pulse*, we look at the tax aspects of crypto-assets, capital loss elections and the tax advantages of cycling to work. We are also delighted to include an article by Melanie Griffiths of Equiom, which contains some excellent practical guidance on the topic of cross-generational wealth.

As many readers will know, R&H has a long (and, we like to think, glorious) history and our managing partner, Andrew Shilling, has recently published a history of the Firm entitled *Taking The Road Less Travelled*. This edition of *Tax Pulse* contains an extract from Chapter 3: 'The Evacuation'. Copies of the full history are available so please contact Andrew Shilling (Andrew.Shilling@rawlinson-hunter.com) if you would like a copy.

The Partners

TO BE OR NOT TO BE - THAT IS THE 2% NON-RESIDENT SDLT SURCHARGE QUESTION

Read this if you are non-resident and buying a property in the UK

From 1 April 2021, purchases of residential property in England and Northern Ireland by non-residents are subject to a 2% stamp duty land tax ('SDLT') surcharge. This is in addition to the standard SDLT rates (up to 12%), the 3% surcharge which applies to additional residential property purchases, and the 15% flat rate that applies to purchases of residential property by 'non-natural persons' such as companies. As a result, the top rate of SDLT is now 17%.

You might expect that it would be a simple matter to identify non-residents. However, the rules for determining whether a person is non-resident for SDLT purposes are not the same as those for income tax and corporation tax, and also differ between individuals and other entities.

An individual is UK resident (and so not subject to the 2% surcharge) if they are present in the UK on at least 183 days in a continuous 365-day period, beginning with the day 364 days before the effective date of the transaction (generally the completion date), and ending 365 days after the effective date. An individual can therefore become UK resident after a residential property purchase by moving to the UK (say, to live in the property), and they can then claim a refund of the 2% surcharge, which must be made within two years.

A company is UK resident (and so not subject to the 2% surcharge) if it is incorporated in the UK, or its central management and control is in the UK. It must be UK resident for at least 183 days in the 364 days prior to the effective date, so there is no opportunity for a company to recover the 2% surcharge by becoming UK resident after the purchase. Furthermore, the SDLT rules on attribution of rights which apply to close companies (broadly controlled by five or fewer persons) mean that rights held by connected persons are attributed to a shareholder in determining control. This can lead to unexpected results.

Unexpected results

Consider a family owned property development company, incorporated and managed in the UK, with mother and father owning 35% each of the shares, and three adult children owning 10% each. The directors are the mother and father, and the eldest child. All the family members are UK tax resident except the youngest child, who is at university in the US.

Since the company is both incorporated and managed and controlled in the UK, you may expect that the purchase of a residential property for development by the company would not be subject to the 2% SDLT surcharge.

However, the SDLT rules on attribution of rights mean that the rights of the parents and siblings are attributed to the child who is resident in the US (because family members are connected for these purposes), and hence the family company will be treated as non-resident for the purposes of applying the 2% surcharge. The purchase would therefore be subject to the 2% surcharge – a perhaps surprising result.

The 2% surcharge applies unless all the purchasers are UK resident. However, it does not apply to non-residential and 'mixed' property purchases. It also does not apply where one spouse / civil partner is UK resident and the other is not, provided it is a joint purchase.

The application of the 2% surcharge can be far from straightforward, and can affect residential property purchases in unexpected circumstances. It is therefore important that professional advice is obtained before a purchase is made.

GEARING UP

Read this if you cycle to work, or think you should!

As we move to a new normal after the pandemic, some of us will be thinking about working in the office on a more frequent basis. Reluctance to use public transport, or a resolve to exercise more, might make cycling an attractive proposition.

Modest tax incentives are available. Cycle to work schemes are one of the few arrangements still securing income tax and national insurance benefits when offered in exchange for a salary sacrifice (the others being employer pension contributions and advice, employer-provided childcare, and ultra-low emission cars).

There is no tax liability if an employer provides a cycle or safety equipment – for example a helmet, high visibility clothing and lights – provided certain conditions are met. These include the employer retaining ownership of the cycle, and the cycle to work scheme being available to all employees generally. It is acceptable for the employee to purchase the cycle later at a depreciated value; for example HMRC accept that the cycle will usually be worth only 2% of its original cost after five years.

Cycle to work conditions

The cycle to work conditions include a requirement that the cycle be used mainly for 'qualifying' journeys to or from work. Reflecting the prevalence of homeworking during the pandemic, this requirement was removed until 5 April 2022, for employees provided with a cycle or safety equipment on or before 20 December 2020. From that date, the travel to work requirement will need to be satisfied.

The tax savings can be illustrated with a simple example. For an employee who is a 40% taxpayer, and would like to use a cycle costing £1,000, additional salary of £1,724 would be required to give this amount of net salary, after tax and national insurance deductions. Employer's national insurance would be a further £238, making the total cost to the employer £1,962. However, if the employer buys the cycle and lends it to the employee, the cost to the employer is just the £1,000, provided the conditions described above are met. A salary sacrifice can be arranged to reflect the cost of the cycle and savings in employer national Insurance.

DOMICILE AND HMRC ENQUIRIES

Read this if you are resident but not domiciled in the UK

Domicile can be an important factor in determining tax liabilities. Foreign domicile may give access to the beneficial remittance basis of taxation and, in certain circumstances, it could also secure valuable trust protections, which shelter income and gains in a trust unless and until distributed, and give rebasing at 5 April 2017 for capital gains tax purposes.

However, the formation of an intention to remain in the UK permanently or indefinitely will result in a foreign domicile of origin being replaced by a UK domicile of choice, and the loss of these benefits.

Following changes to the rules from 6 April 2017, long-term UK residents here for 15 out of the last 20 tax years, and those born in the UK with a UK domicile of origin and returning here, will be deemed UK domiciled, and therefore not able to access the remittance basis.

Despite these deeming rules, HMRC enquiries into domicile continue at a rate not previously seen. The HMRC approach now is to make extensive (and often repetitive) information requests, including details of foreign income and gains, which would not be taxable on the remittance basis, with a view to demonstrating that the taxpayer has adopted a UK domicile of choice.

Cases recently decided in the tax tribunals have confirmed that HMRC are entitled to request details of unremitted foreign income and gains, in advance of making a decision on the domicile position. Unfortunately, this means that taxpayers can be put to the trouble and expense of gathering information which will not be relevant, should their claim to be foreign domiciled be upheld. This principle is due to be reviewed when an appeal in one of these cases, *HMRC v Embiricos*, is heard in the Court of Appeal. This hearing is expected to take place in February 2022.

In the meantime, it is important that foreign domiciled individuals continue to review their status with their tax advisers, ideally on an annual basis. In appropriate cases, consideration should be given to the preparation of a domicile statement.

IT'S A LOTTERY ROLLOVER

Read this if you are thinking of selling your company or wish to know more about CGT rollover relief

Despite, or perhaps because of, Covid it appears that there is increasing activity around the sale of private companies. Where such a sale is for cash this will normally trigger a capital gains tax (CGT) liability at 20%, with the possibility of entrepreneurs' relief where the qualifying criteria are satisfied.

However, the sale transaction might be structured such that the vendor does not receive cash (or only partly cash), but instead exchanges his/her shares for shares or loan notes (in effect, an IOU) issued by the purchaser. This 'paper for paper' exchange enables the vendor to defer his/her CGT bill until such time as the vendor disposes of the shares/loan notes acquired on the sale. In effect, this is a form of rollover – any capital gain can be deferred.

However, this rollover relief is not available where the exchange formed part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to CGT.

In short, HMRC will seek to deny the CGT free 'swap' where it considers tax planning to be afoot. The classic example of this was the case of Snell, where HMRC persuaded the Court that Mr Snell had only swapped the shares in his company for securities in the purchaser in order that he could later emigrate from the UK and redeem the loan notes tax free while non-UK resident.

It is possible to apply to HMRC for advance clearance that it will not challenge the share exchange on these grounds, but HMRC appears to be becoming increasingly reluctant to grant clearances. In addition, a clearance can be challenged later by HMRC if it can show it was not based on a complete factual picture.

Understanding the circumstances surrounding the deal

It is therefore important for vendors and their tax advisers to form their own view ahead of the sale and seek to structure it in such a way as to maximise the chance of a CGT free rollover. This requires tax advisers to understand not only the case law, but also the detailed circumstances surrounding the deal. Potential vendors should be sure to speak to their tax advisers before Heads of Terms are signed.

The 2021 case of Euromoney Institutional Investor plc v HMRC illustrates the need for care. Although the case related to corporation tax, it is of equal relevance to individual shareholders and CGT.

Euromoney swapped its shares in a company called Diamond TopCo Ltd for ordinary and preference shares in the purchaser. The vast majority of the transaction value (and focus of the parties) related to the ordinary shares and originally cash was offered instead of the preference shares.

Euromoney did not hide the reason for restructuring the deal to replace the cash consideration with preference shares:

"The preference shares are the mechanism to avoid paying tax on the capital gain for the cash element of the transaction. In 18 months we convert the preference shares into cash and avoid paying 20% tax on the gain."

This looks like tax avoidance and the idea of changing tax deferral into tax avoidance would have been recognised by Mr Snell. Perhaps not surprisingly, therefore, HMRC challenged the transaction. This was potentially disastrous for Euromoney as, if HMRC had been successful, it would have triggered a corporation tax bill not only on the value of the preference shares, but also the ordinary shares it received on the sale (which ordinary shares everybody, including HMRC, accepted were driven purely by commercial factors).

Perhaps to the surprise of Mr Snell and many tax advisers (and certainly to the surprise of HMRC) the Court found in favour of Euromoney and held that no tax charge was triggered by the exchange. It did so on the basis that while one has to look at the sale arrangements as a whole, and that there was manifestly a tax avoidance motive this was not a "main purpose" of the arrangements. The Judge decided that "whether a tax purpose is one of the main purposes of the arrangements is a matter of subjective intention, involving a careful analysis of all the reasons the taxpayer had for carrying them out" and found that Euromoney was "focused on the commercial purpose, which was a main purpose, and the company considered the tax advantage to be no more than a bonus and not important in the context of the transaction as a whole". As there was, according to the facts, no main purpose to avoid tax, there was no CGT on the exchange.

HMRC may appeal the decision and many may feel that the availability of CGT rollover is now something of a lottery. Moreover, the intent of the taxpayer and the need for the commercial deal to be carefully recorded become of critical importance. Those seeking to sell a company often appoint a corporate finance adviser; they should also ensure that their tax adviser is present at the initial meeting.

CRYPTO-ASSETS: THE TAX POSITION

Read this to find out about the tax implications of holding Crypto-Assets

At the time of writing, the value of crypto-currencies have risen significantly this year. Dogecoin has risen 4,918%, Maker 599%, Ethereum 468%, Dash 255%, Bitcoin 160% and Litecoin a mere 137%. While many investment managers think this is a bubble which will inevitably burst, it is hard to ignore the potential of crypto-currency and that some shrewd investors are clearly making significant profits in this investment space. Digital currencies may be the future.

On the flip side, crypto-assets sometimes get a bad press. Crypto-currencies are criticised for their negative environmental impact due to the huge amount of energy (and use of fossil fuels) required for crypto-mining. This is the process whereby miners earn crypto-currency by using computers to solve complex mathematical equations and to add data to a public ledger known as a digital blockchain. Others associate crypto-currencies with criminal activity and money laundering. However, HMRC make it absolutely clear that it is not illegal to hold crypto-assets. What is illegal is not declaring the profits or investment gains from crypto-assets.

With the advent of crypto exchanges such as Binance and Coinbase and digital crypto-asset funds the holding of crypto-assets is no longer the preserve of criminals or the wealthy. Crypto has become commonplace. Consumer research published by the Financial Conduct Authority estimates that 2.3 million people now hold crypto-assets.

How are crypto-assets taxed?

Crypto-currency, if held as an investment is liable to Capital Gains Tax. HMRC believes that crypto-assets are similar to other types of shares and securities which cannot easily be identified, so the 'simplified' share matching rules and pooling requirements need to be applied. In practice, this means that investors need to keep records of each time they acquire or dispose of crypto-assets (in Sterling terms) and details of the pooled costs of each type of crypto-asset e.g. Bitcoin, Ethereum, Litecoin etc. This is so investors can calculate the gain/(loss) arising each time they dispose of a crypto-asset.

What matters is the nature of the activity being undertaken

Interestingly, HMRC's published view is that crypto-asset tokens (such as exchange tokens which have an economic value that can be used for payment), which are distinct intangible assets in their own right, are located where the individual crypto-asset holder is resident. So, UK residents will be liable to Capital Gains Tax on gains arising from these types of crypto-assets, including, according to HMRC, non-UK domiciled individuals claiming the remittance basis, who might think that they would not be taxable on assets which they ostensibly hold offshore.

Moreover, if UK resident non-UK domiciled individuals claiming the remittance basis use their untaxed foreign income or capital gains to acquire crypto-assets this might be considered to be a taxable remittance. HMRC's guidance appears expedient but it is not law and these points are yet to be tested in the courts. Still, in light of HMRC's published guidance, UK resident non-domiciled individuals claiming the remittance basis, in particular, should be wary of the potential tax consequences of investing in crypto-assets.

On the basis that crypto-assets are chargeable assets, it may be possible for investors to claim capital losses if they incur losses on crypto-asset transactions. If crypto-assets become worthless or are lost or destroyed it may be possible to make a negligible value claim. Disposals include not only where an investor sells one crypto-currency for cash, but also where one crypto-currency is sold or exchanged for another, for example, Bitcoin for Ethereum. A gift of crypto-assets would also be a disposal at market value for Capital Gains Tax purposes. If crypto-assets are not held directly, for example, if one invests in crypto-assets through a digital asset fund, then one would need to consider how the digital asset fund is itself taxed.

Employees receiving crypto-assets or crypto-currency from their employers will be liable to Income Tax and National Insurance

As with other financial products, HMRC are generally reluctant to accept that individuals are trading in crypto-currency, perhaps because if such individuals made significant losses HMRC would need to be open to accepting claims for significant trading losses which could, potentially, be offset against the individual's other income in the form of 'sideways' loss relief. However, certain individuals may well be trading in crypto-assets, meaning that profits from the business will be taxable as income and potentially liable to VAT. For example, this might be the case for 'miners' who receive digital tokens for verifying transactions in the digital blockchain.

To determine whether or not an individual's crypto activity is trading (rather than say one of investment) one needs to consider the 'badges of trade'. Factors to consider include: the nature of the asset, whether there is a profit-seeking motive, the number and frequency of transactions, whether supplementary work is carried out on the property being sold and the reason the property is being sold. Each case is likely to be fact specific and detailed advice should be taken.

Self-employed individuals receiving crypto-currency for services, or paying expenses with crypto-currency, will need to think about accounting for such income and expenses and the VAT implications of any such transactions. PayPal last year introduced a feature to allow its US customers to buy, hold and sell certain crypto-currencies, and earlier this year went further by enabling users to pay merchants using their crypto-currency holdings.

Gifts of crypto-assets or crypto-assets held on death will need to be taken into account for Inheritance Tax purposes. While on the basis that crypto-assets, at least in English law, are considered to be defined as property, they will also need to be taken into account, along with other assets, in divorce proceedings.

HMRC is serious about crypto-assets

HMRC is clearly taking crypto-assets seriously. They recently published a manual setting out their views on how crypto-assets should be taxed for individuals and businesses. They also explain what records they expect taxpayers to retain in the event of an enquiry. HMRC appear to be investing in technology to obtain the digital records of crypto-currency transactions and have added crypto-assets to the list of assets they routinely ask about in the context of tax return enquiries: investors and taxpayers beware.

Following a Freedom of Information request by a London-based law firm, HMRC confirmed that it is using its powers conferred by Parliament and exercising its rights under international treaties to request and gather data from crypto exchanges both in the UK and abroad. This includes information on the name, address and values of crypto-assets belonging to clients. HMRC has requested and received information from exchanges for 2017/18 to 2019/20. Future HMRC enquiries are surely only a matter of time. HMRC will, on enquiry, expect taxpayers to retain and produce records of crypto transactions relating to their individual and business tax affairs, particularly where crypto-asset exchanges are themselves short-lived.

HMRC is not alone in its increased scrutiny of crypto-assets. Elsewhere, for example in the US, tax authorities are stepping up their law enforcement operations in the area of taxation of worldwide crypto-currency holdings. Prosecutions for tax evasion and for its facilitation are expected to follow. As in the US, UK individuals and businesses alike should expect greater scrutiny of their crypto-currency transactions and need to be aware of the tax and other risks (and not just the potential rewards) of engaging in such transactions. Being compliant in this area is key.

If you hold, receive or are thinking of investing in crypto-assets in any form, or if your business activity involves crypto-assets, please speak to your usual R&H adviser for appropriate tax advice.

CHALLENGES TO WEALTH & SUCCESSION AND WAYS TO MITIGATE

In this article Melanie Griffiths and Roddy Balfour of Equiom provide some thoughts on the human side of wealth, behind the structures and legal arrangements. In particular how, in their view, it affects one's sense of identity and impacts on relationships.

Between them, Roddy and Melanie have six decades of experience looking after international UHNW families, working alongside many individuals who have come into wealth, either through large liquidity events or inheritance. Whilst Melanie has focused more on entrepreneurial wealth, Roddy has worked with several generations of many families, seeing children and grandchildren being born into a number of the families he has worked with over the years.

The article below is based on their personal observations dealing with UHNW families, rather than absolute truth or generalisation about all UHNW families.

Challenges of Wealth – Identity and Relationships

The wealth-maker

It is important to acknowledge that the very characteristics that have enabled clients to make wealth – determination, commitment, grit – continue to dominate their lives after they have experienced a liquidity event. Many are challenged to channel the skills that made them so successful once they have sold the business, they struggle with 'the idleness of wealth'. There can be a reducing margin of satisfaction with life post liquidity event. Some clients throw themselves into other entrepreneurial ventures, including philanthropy, while others struggle to find a purpose.

Many clients seek to remain in control, because they have always been in control. This can make succession planning a challenge, with many entrepreneurs setting things up in their lifetime to attempt to continue ruling after their demise. Often the wealth creator feels the children don't have the same determination, commitment and grit and are therefore not worthy / able to manage the family's legacy, when they are, in fact, clearly capable.

The NextGen

From the children's perspective it is a natural human ambition to want to do better than one's parents. It can be very challenging to find ways to build one's identity when one's parents have been incredibly successful – how do the children better that? Even when the children are successful in their own right, there is always the perception that it is only thanks to the doors their parents' success opened.

Whilst some families manage better than others to nourish their children's natural craving to succeed, many UHNW children are deprived of the sense of achievement that comes with being able to afford something for the first time or overcoming odds / adversity.

Some miss out on 'the power of hope' – there can be a sense that it does not get better than where one is, and yet one is not quite as happy as someone looking from the outside might think they would be.

As per Maslow's hierarchy of needs, with all primary needs taken care of, children of very wealthy individuals can spend a lot of time exploring emotional issues, which may seem inconsequential to outsiders but to them are fundamental – it is where their pyramid starts.

The family unit

The creation of wealth typically places huge demands on the wealth-maker's time – which significantly impacts on family relationships. The family members can feel that the wealth-maker is more devoted to the family business than the family. This can result in a lack of interest for the family business, later resulting in demands for asset sale or break-up.

Many marriages do not survive the journey. This often results in new family members being brought into the family as new relationships are formed. Family cohesion then needs to be achieved with new family members positioning themselves on top of existing fractures. It often becomes difficult to find family harmony, especially where the wealth-maker's decisions in later life do not match the expectations the children had growing up.

Society

All levels of the family need to interact with the outside world, which can be an intimidating place. Wealthy individuals can become weary of other human beings because many will try to make a 'quick buck' out of them – their wealth leaves them exposed to all sorts of unauthentic relationships, litigations, safety concerns, violations of privacy etc. In this respect the concerns are intensifying – developments in technology, including social media, drones etc., mean it is incredibly difficult to remain private. Any lack of judgement can quickly be magnified and scrutinised on a global scale.

There is a particular challenge for the 'NextGen' to reconcile the conflicts of wealth. Through globalisation, mass media and travel, the upcoming wealth holders have become more aware of social justice and glaring inequalities. Some feel uneasy about being wealthy – there have recently been instances of next generation wealth holders proactively seeking to pay additional tax, over and above what is required.

For many it will be difficult however to reconcile the mantra of ESG with the realities of their lifestyles and financial requirements. The press and social media users will be very quick to pick up any apparent misalignment or discrepancy between discourse and lifestyle.

The Governance of Wealth

Wealth in itself does not make one happy, one has to manoeuvre it, to stop it making one unhappy. There must be robust governance to withstand the conflicts that commonly arise in UHNW families. Whilst the patriarch / matriarch is at the helm, the family holds together but, upon their passing, if the governance is not strong it can quickly fall apart. The patriarch / matriarch often controls so much in their lifetime, they do not prepare for their passing; in particular, thought is rarely given to who is going to smooth over the family relationships.

Whilst governance framework and structure can assist, ultimately the family members must be united by common vision, respect and values in order for multi-generational families to thrive. In this respect there are a number of characteristics common to harmonious UHNW family relationships:

- An attentive and hands-on upbringing where the children are not spoilt and are taught life's important principles, often with the help of religious education, which extends into home life. They need to learn who to trust and how to treat people.

- Avenues for the children to succeed through hard work, resilience, determination, ambition – for instance through sports, music, art or philanthropy.

- Establishing family ethos and framework, maybe through family councils, formal or informal. The key is that there is a lot of communication within the family to promote a common understanding of aspirations and expectations.

- Strong succession and asset protection mechanisms, such as trusts and pre-nups. There is a lot of value in having certain requirements and benefits of family membership dictated by these mechanisms. It is so much easier if all children are informed that, in order to continue being a beneficiary of a family trust, one must enter into a pre-nup, rather than suddenly request one when a child announces his / her engagement to an individual the family has reservations about.

- Seeking professional guidance. Whilst there are many specialist advisors on the tax, investment, legal, capital advisory front etc., it is important to ensure nothing falls through the gaps. Advice can be fragmented, especially when it is cross-jurisdictional, and UHNW families should seek advisors able to step outside their own speciality to consider how different areas of advice fit together.

Whilst each family is unique, these steps are often common foundations to instil a sense of the responsibilities that come with wealth and the notion that one is the custodian of wealth for future generations.

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YOU WIN SOME, YOU LOSE SOME

Read this if you own an asset standing at a loss

It is finally yours: the new house in the Hamptons, the three-carat diamond ring, the lovely 19th century sculpture that would look awesome in the garden of the said house, the ambitious tech start-up in Denmark, the 50-foot-long yacht moored in Malta (delete as appropriate). A worthwhile investment, obviously, but then… the property bubble bursts, financial markets collapse, COVID-19 hits and you and your whole sailing crew need daily PCR tests to navigate the Mediterranean, and that not-really-a-proper-vintage Cartier is three carats, but of diamond dust of very questionable quality, which was overpriced to start with.

What is next then? Unless you really believe in those super-enthusiastic Danish entrepreneurs, or buy property, art or jewellery because you want it to pass through the generations, or for purely sentimental reasons, chances are the ongoing ownership of your prized possession becomes somewhat burdensome, shall we say. You make up your mind and want out, happy to get even a small proportion of your money back, so you make arrangements to sell. The weight will soon be off your shoulders, but you feel like you should be compensated for the loss – will you though?

All UK tax residents are within the scope of UK capital gains tax on the disposal of assets. A disposal is essentially any action that results in you not owning what you bought in the first place – a sale, a gift, an actual loss, destruction or even theft – or in certain cases, where what you bought becomes valueless.

Making a loss claim

If you are British born and bred, the answer to 'will you, won't you' is 'yes, absolutely'. Subject to certain (and very limited) exceptions, if something you acquired is no longer readily available for your use and enjoyment, you can make a loss claim. The loss will be equal to the difference between your original acquisition cost (and any incidental costs you may have incurred to 'seal the deal' e.g. lawyers' fees) and the market value of the asset on the (deemed or actual) disposal date (as well as incidental costs of disposal). This loss can then be offset against any gains you may have realised in the tax year of the loss, or be carried forward for use against capital losses of the future (some investments do prove to be lucrative, eventually!). This gives you a tax saving of up to 28% (currently, depending on the type of the asset sold); of course, this may even become more valuable in the future, should the capital gains tax rates go up, as they have been hotly anticipated to do in the last year or so.

If, however, you are a non-UK domiciled individual and so have the privilege and the desire to use or have used the remittance basis of taxation, whereby you are only taxed on your foreign income and gains to the extent that these are remitted to the UK, it is not quite so simple.

Anything you own and sell or otherwise dispose of that is, or is deemed to be, located in the UK, is fair game, meaning that you will be subject to the 'normal' rules with the loss relief being fully available, as described above. When it comes to non-UK assets, however, relief will not necessarily be readily available.

Foreign capital losses

Since 6 April 2008, foreign capital losses realised by UK resident non-UK domiciled individuals can only be relieved against gains made in the same or subsequent tax years if a foreign capital loss election is made. This election must be made within four years of the end of the tax year in which the remittance basis is first claimed (so a claim in 2008/09 would mean the cut-off date for making the election was 5 April 2013). Note that if the remittance basis applies to you automatically by virtue of you having less than £2,000 of unremitted income and/or gains in the tax year in question, the election 'clock' does not start. Of course, if you never have and definitely never will claim the remittance basis, the election is not the point.

Once the election is made, the way losses – both UK and non-UK – are relieved against capital gains happens in a predetermined order, specifically:

- Against foreign gains that are remitted in the year;
- Against foreign gains that are not remitted in the year; and finally
- Against UK gains arising in the year.

It is worth noting that we are talking about personal losses here and the above rules do not apply to gains/losses arising in a trust context.

The election is irrevocable, unlike the remittance basis itself, which can be opted in and out of year-on-year; it will only cease to have effect once you become UK domiciled (actual, by choice or deemed, through long-term residence in the UK). You will then be back within 'normal' loss relief rules.

As a result of its irrevocability, whether an election is worthwhile is, therefore, not always straightforward and careful consideration is required to assess this. If, for example, you anticipate your losses being realised on your UK assets but there are no foreign losses on the horizon, or you know that you will never remit gains to the UK, the election is generally not recommended. The contrary is also true, i.e. if you only have foreign assets or anticipate only foreign losses, you should seriously think about making the election to get relief which, otherwise, will not be available. If you anticipate a mixture of both UK and non-UK gains, it is certainly worth running some numbers before making the decision. A critical point to consider in this context is also your marital status! If you are lucky enough (from a tax perspective) to have a UK domiciled (or deemed domiciled) spouse, it may be they who can take advantage of the loss relief, as transferring assets between spouses can be done on a no gain, no loss basis for capital gains tax purposes (but, naturally, other taxes and non-tax issues should also be taken into account).

Keep an audit trail

If an election is made, needless to say it is critical to keep an audit trail and accurate computations of losses and records of when these arise and how they are relieved, to ensure there is no doubling of the relief and that foreign gains that have been offset by the losses, but are remitted in a later year, are not taxed. Furthermore, it will likely be necessary to provide these computations and records annually to HMRC to enable it to check that the losses have been claimed correctly. This is, of course, another issue to factor into the cost/benefit analysis, as this is an ongoing administrative burden as well and will, in most cases, lead to additional disclosure one may not be comfortable with for privacy concerns.

The bottom line is, as with most tax issues, there are a few variables to consider and there is no one answer that fits all. Think carefully and consult widely: your usual R&H contact will help you navigate through the complexities. An important point: if the foreign capital loss election is not made within the required time limit (of four years), the ability to claim losses is lost until there is a change in domicile status, or you leave the UK for long enough to reset the clock for making it. Don't ponder too long!

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AND FINALLY...

Attached to the back of this edition of *Tax Pulse* is an extract from a recently published history of the Firm. We hope it will encourage you to learn more about us!

Rawlinson & Hunter 1919 – 2019 *Taking The Road Less Travelled* was written and compiled by current Managing Partner Andrew Shilling, using archive material from a variety of sources, including the autobiography of the founder, Robert Hunter, a previous history written by senior partner Bob Spooner 40 years ago, and interviews conducted with a number of partners and other staff members past and present.

In his Foreword Andrew Shilling summed up the project: "This book is a comprehensive history of a unique firm of Chartered Accountants, Rawlinson & Hunter, covering the century from 1919 to 2019. It tells the story of how the Firm came into existence and then thrived, how it changed over time, how key decisions were reached, and how it adopted its unusual traditions and philosophies that continue to this day. It also features events where conflicts arose that tested the character of the partners and staff of the time, and explains how those conflicts were overcome."

CHAPTER 3

The Evacuation

The Second World War was a difficult time for the Firm, its partners and staff. This is Robert Hunter's account of the early years of the war, taken from his autobiography.

In 1938, the ominous war clouds were thickening, and I became more and more sure that, unless Britain checked Hitler early on in his mad lust and rush for power, we would end in another, perhaps even more disastrous, war. In my own small way, I was a convinced and passionate believer in all the views and warnings that Churchill expounded.

Like him, I found myself at odds with all my friends, even Rawlinson. One day he remarked to me, quite gently, that he thought we ought not to bother ourselves with this political discussion and dispute, but concentrate on our business. I replied, somewhat sadly, that, unfortunately, I thought that our business would soon be engulfed in the storm, and what we were doing then from day-to-day had little importance compared with what we would soon have to face.

I recalled that my mother's younger brother was conscripted in the First World War, and was one of the unfortunates gassed by the Germans. My wife also had an uncle who was gassed, and she had a vivid and painful recollection of a young relative who visited just before leaving for France in 1917, and soon being so horribly gassed that he died shortly afterwards. My wife's uncle was not so badly affected and lived to an old age in Canada.

My uncle was more unfortunate and, in fact, died as a result a few years after the war. I went to see him in hospital. I was terribly distressed to hear him gasping, and to realise that he knew he was dying. He referred to the First World War and the gassing with great bitterness.

The ability and willingness of people to be apparently ostrich-like has always surprised me. It may well be that it is a more sensible and philosophic attitude than mine, not to meet troubles halfway. But so often it is lack of perception, as in the case of one of my assistants, afterwards a senior partner in my Firm, who took a holiday in Germany in 1938, and who heatedly told me on his return that the prevailing doubts in Britain about the Nazis were nonsense, and all part of a Jewish conspiracy. He had a wife whose grandparents were German.

There were others of considerable intelligence, who seemed more than willing to follow Chamberlain until Prague, and who could not understand the folly of Britain causing Czechoslovakia to surrender, but afterwards giving a futile guarantee to an even more 'far off' Poland, in much more adverse and impossible circumstances.

I suppose these misgivings helped me to take the shock of the war when it came with more preparation and equanimity than many others. Rawlinson, for example, who had endured some of the horrors of the preceding war in France, was almost certainly devastated when its full force burst.

***Above:** Battery Quartermaster Sergeant Robert ('Bob') Spooner in 1941, age 21. He left his role at the Firm as a trainee accounting clerk at the outset of the war in 1939 when he was called up to serve in The Royal Artillery. During the Blitz in 1940 and 1941 he was stationed at gun battery sites on the Isle of Dogs, Hackney Marshes and Primrose Hill, with the task of shooting down German bombers at night. He returned to the Firm after the war in 1946, and in 1975 became Senior Partner.*

After Chamberlain came back from Munich waving Hitler's guarantee of 'Peace In Our Time' in September 1938, I called our staff together. All of them were younger than I, and some of them around 18 to 22 years of age. I told them that I thought that the Munich affair had made it more or less certain that we would soon have a war with Germany and Italy. And that, unfortunately, most if not all of those present, they numbered about 30 or 40, would soon be conscripted into one of the Armed Forces.

I strongly recommended them to think immediately about which Service they would prefer, then to volunteer for that Service because, when conscripted, they might then have no choice. I added that we would pay them a special bonus to sweeten the pill, but remarked that it might be the last they would get for some time.

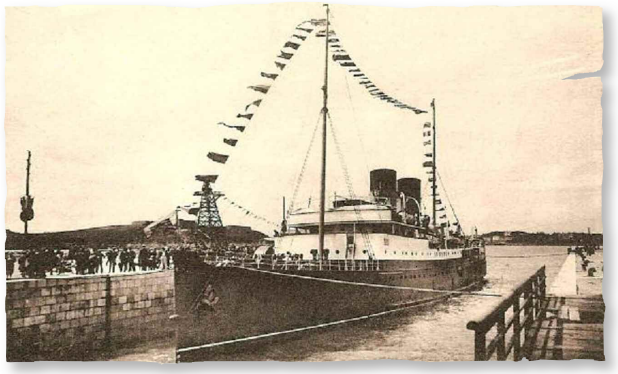
It has always remained in my memory that perhaps the three most intelligent of these young men volunteered for the Medical Corps. This was not out of fear for themselves, but an evident horror of participating in the killing, which war is.

The Firm continued to grow at a very rapid rate, with new members of staff being recruited, until the outbreak of war in September 1939. The Firm was then decimated virtually overnight, as most of the young male employees were called up for National Service, including 20-year-old clerk, Bob Spooner, who nearly 40 years later was to become the firm's Senior Partner. Spooner was called up to serve in the Royal Artillery for the entire six years of the war, and spent most of his service overseas in places such as Madagascar, India and Burma.

The war had the appearance of being 'phoney' until the spring of 1940, so there was nothing to prevent me going to Vevey in Switzerland to perform the Nestlé audit. But as almost all our staff had been called up, we were left with only a skeleton force, and with little or no possibility of obtaining replacements.

After the Nestlé audit was completed, my wife and I then proceeded to Genoa by train, and took the Italian liner, the Conte di Savoia*, to New York; this ship was later sunk by the Allies, although Italy was then still neutral. The ship was forced to stop in Gibraltar by the British for a*

***Left:** The Italian ocean liner, the* Conte di Savoia*, in which Robert and Ruth Hunter sailed from Genoa to New York in Spring 1940. One of the largest civilian ships of its time, it accommodated 2,200 passengers and took seven days to cross the Atlantic. When Italy joined the war on the German side in June 1940, she was sent to Venice where she was laid up in the lagoon with a view to being converted into an aircraft carrier. However, this never happened and, in September 1943, a British aircraft bombed and sank her in the shallow lagoon waters.*



***Right:** The* SS Lorina *operated the regular ferry service from Saint Malo to Southampton until 1940. It is likely that Robert and Ruth Hunter sailed on the* Lorina *when they escaped the German invasion of France in May 1940. A few days later the* Lorina *was sequestered by the British Navy and transferred to Dover to aid the evacuation of the defeated British Army from Dunkirk. However, on 29 May, she was dive-bombed and sunk by Luftwaffe aircraft off Dunkirk with the loss of eight crew.*

vigorous search and survey of the ship's papers and cargo. It was a great comfort and pride to see and feel the British naval presence in Gibraltar.

After the German invasion of the Low Countries and France in May 1940 the very serious problem presented itself of how my wife and I should get back to Britain from America. My wife was naturally very anxious to return to our two young boys as soon as possible. And so she was persuaded, and I agreed, though reluctantly because I thought a ship to Britain might be safer, that we should fly back in the Boeing flying boat, called the Clipper, *to Lisbon in Portugal.*

It had alternatively been suggested that we should remain in the USA and instead send for our children. But I had no wish to abandon Britain and all our families and friends at this time, so we flew to Lisbon, as there was no flight directly to the warring countries like Britain.

In Lisbon, we learned from a fellow passenger, who was an American journalist and also taking the train north through Spain to France, that the news was worse. The Germans had just attacked the French and had apparently broken through. Before we left America, Nestlé had asked me to go on to Switzerland, if I could, after arrival in Paris, to report to them what was being done in Stamford. But as we travelled slowly north through France that obviously became out of the question.

Although news was difficult to obtain, it became evident from the crowds of French people fleeing south in the trains from the north, the opposite direction from the one we were taking, that things were becoming worse and worse.

In Paris, I contacted the Farman brothers, the famous aeroplane pioneers, who were clients. Maurice Farman, the youngest of three, was on the board of Air France. He promised to get us on the plane to London the next morning. But this plane never took off because the Germans had just bombed Abbeville Airport, and it was too dangerous to fly to London.

The assistant to the Farmans, also like them of British descent, nevertheless promised to get us back to London somehow on the first plane to leave. Paris became quieter each day, as more people left, like a dying city. The news got still worse in the next day or two, and finally I learned that the Germans had arrived in Amiens, a very short distance north of Paris.

I thought we would soon have to go south before the Germans arrived, and even that we might buy a tandem bicycle for that purpose, which I had seen in a shop adjacent to the Air France office, where we usually waited for news from Maurice Farman. But Farman's man arrived the next morning and said we must collect our baggage: he would take us to Montparnasse station and buy us food on the way.

Then we would take the train west to Saint Malo in Brittany, where the British authorities had arranged for a ferry to take the British refugees to England.

The train was crowded with British people from France, Switzerland, Italy and other countries. Few, if any, had food as we had, and none was available on the train. We shared ours with the passengers in our compartment, and the train proceeded very slowly westwards and arrived at Saint Malo after dark.

There was one Frenchman on duty to examine and stamp passports, which took some hours as the train was packed with people. It was not until 3am that we boarded the ferry because I preferred to wait in the train until the queue had disappeared into the boat.

All next day the boat remained in harbour, but the British crew somehow managed miraculously to feed us all, although it meant practically lining up for the next meal as soon as the last one was over. The ship then sailed at night in total darkness. My wife refused to go below until we entered Southampton Water, and had the blessed sight of the British Navy there.

Again there was an interminable wait to pass through passport and other security controls. Newspapers were brought on board, and the headlines were that the British Army was cut off in Dunkirk. Unlike the troops, we were safely home.

It was a Saturday as we travelled on the train to London, and people could be seen playing cricket and tennis. We were astonished after seeing and being part of the chaos and panic in France. I was rather critical in my comments to my wife, wondering when the British would wake up. But I suppose they merely had that kind of calm that Sir Francis Drake is reputed to have had when told of the approach of the Spanish Armada.

I soon learned in the office on the Monday that the British were taking the situation seriously. The few older assistants who were left were either already drilling with wooden rifles in the Home Guard, or training in the Fire Service. And, of course, in June 1940, the British achieved that amazing rescue of most of the troops from Dunkirk, with every improvised resource possible.

***Above:** Masons Farm in the village of Marsh Gibbon in Oxfordshire. This was the Firm's wartime home from 1940 to 1945. Most of the ground floor rooms were used as offices; Robert and Ruth Hunter and their two children lived upstairs.*

We all carried on with our affairs in the next few months as best we could, but waited for the expected attempt at invasion by the Germans. Their invasion was fortunately stillborn by the Battle of Britain, but then the Germans turned to bombing and set fire to the centre of London. Conditions in the office became nearly impossible. We had hardly any staff left, and those few we had were all arriving late and leaving early because of the threat of bombing. For us, also the destruction of our clients' records, either from fire or bombing, could be crippling.

So I set out to find a refuge on the north west side of London, the opposite side from Calais, where the Germans were. Many were doing likewise, but at last I found an old house, Masons Farm, with 13 rooms in a small but beautiful village, Marsh Gibbon, near Bicester in Oxfordshire. My family

***Above:** A scene of devastation as rescue workers attend to bombed buildings outside Chancery Lane station on High Holborn, close to the junction with Gray's Inn Road, looking east, on Tuesday 8 October 1940. The German bombers attacked the area at around 9am during the morning rush hour, killing 32 people.*

were installed there, and part of the house was used as offices. Rawlinson, and those of the staff who were not absolutely needed in London, took lodgings in the village and adjacent farms.

Hunter was wise to relocate the Firm to Oxfordshire to escape the murderous German bombing campaign against London, known as the Blitz, which lasted from September 1940 to May 1941. Over this eight-month period, vast swathes of office buildings in central London were destroyed, including those at the location of the Firm's current London offices in New Street Square, and many office workers were killed or injured. George Duncan and three employees, who were not medically fit for service, however remained in the Firm's London offices at Aldwych House, to provide a contact point for clients.

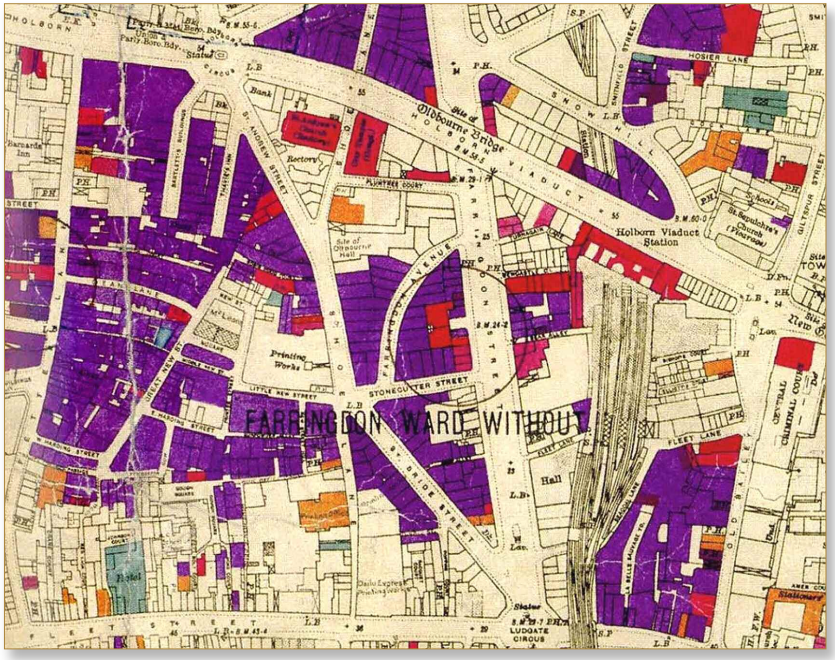
At Masons Farm in Oxfordshire, Hunter and Felix Chivers, together with general office staff, occupied ground floor rooms in the house, while George Mackay and an unqualified clerk occupied a ground floor room in an adjoining farmhouse. Rawlinson, Fisher and Munns set out their desks in two rooms in the blacksmith's house down the street, and typists were located in another farmhouse.

We had no telephone and no prospect of getting one, so we installed one of the staff in a farmer's house nearby that had one, and she bicycled back and forth with messages. The management of the Nestlé business in London was also evacuated to a factory in Aylesbury not very far away: this was convenient for us all.

The staff at Masons Farm numbered about 20 people. Very few clients visited the offices and their books and records were despatched to the office by rail or post. However, this movement of records was not without its hazards – one of Nestlé's audit working paper files fell under a train and was reduced to minute pieces. Stationery supplies were also extremely difficult. Envelopes were re-used with the help of economy labels and Felix Chivers guarded pencils with his life by keeping them under lock and key in his desk.

Dictating machines used wax cylinders at that time. One dictated into a trumpet-like mouthpiece, and the resultant dictation was recorded onto wax cylinders, and then given to a secretary to play back and type onto paper. After use, the cylinders were shaved before they could be put into use once more. They therefore, had a very limited life, and as the war years progressed, it became increasingly difficult to acquire new cylinders.

In the peace and quiet of the country, as it remained throughout the war, without telephones constantly bothering us, and with regular visits to London on the train from Bicester, we managed to survive. A few clients became irate at their inability to contact us whenever they pleased, but we lost none who mattered.



***Above:** The Second World War bomb damage map from 1946 showing the destruction of the New Street Square area, the location of the Firm's current London offices, by German bombers during the Blitz in 1940 and 1941. Buildings shaded in purple were 'damaged beyond repair'. The circles are the location of V-1 flying bomb strikes in 1944.*