Coming and Going-
U.K. Tax Considerations
For Moving to Cayman, and
U.S. Tax Compliance

HOTCHKISS

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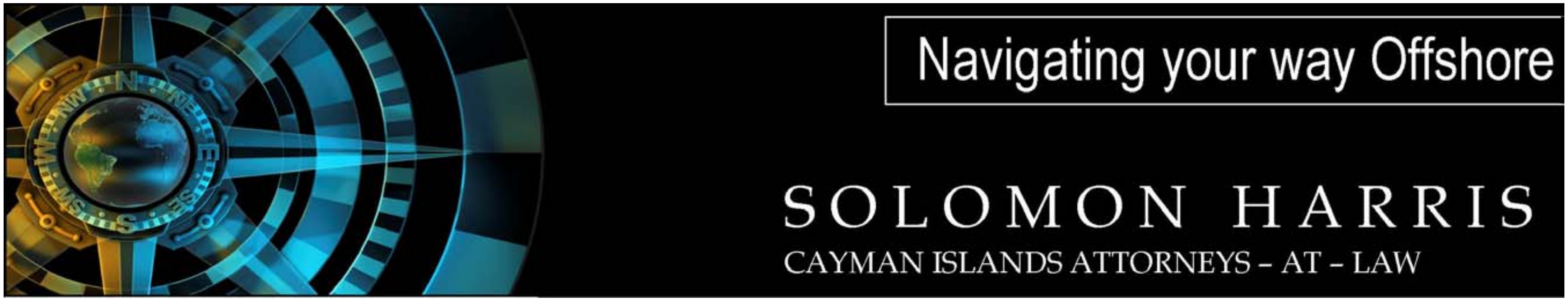

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Part 1:

- Coming and Going- U.K. Tax Considerations for Moving to Cayman
- The Cayman Perspective

Part 2:

- Tax Compliance for Cayman Companies and Residents

Coming and Going- U.K. Tax Considerations for Moving to Cayman

Paul Hotchkiss

June 30, 2010

Agenda

- How to leave the UK effectively – the law and guidance
- Taking up an employment
- Retiring to Cayman
- Starting a new business in Cayman
  - Setting up your new Cayman business?
  - What about your existing UK business?
- Issues to consider as a Caymanian resident
- Long term tax planning

Introduction

- Leaving the UK – everyone is doing it
- Important to get it right
- There are many things that require consideration before, during and after you have left
  – Tax
  – Legal
  – Lifestyle
- Once you’ve left, then you may want to think about the long term

How to leave the UK effectively
The law and guidance

Ceasing UK residence – Part 1

- The three ways to leave….
- Take up employment or self-employment
  - Statute
    - Section 830 ITA 2007
      - Trade/employment
      - Ignore accommodation
      - Trade not carried on in UK/employment – incidental duties
  - Guidance
    - HMRC 6
    - Full time contract of employment
- Leaving permanently or indefinitely
- Reed v Clark

Ceasing UK residence – Part 2

- When do you leave?
- If you have left, what will this mean?
  - ‘90 day’ rule
  - ‘183 day’ rule
  - Transit days
  - Income tax - splitting the tax year (remember it’s a concession...)
  - Capital gains tax – generally no split year

Ceasing UK residence – Part 3

- Where it goes wrong?
  - Employment contract
    - Not 'full time'
  - Didn't actually leave – no 'distinct break'
    - Gaines-Cooper
    - House and spouse left behind
    - Other assets retained
    - Visits too frequent
- Evidence required!

Taking up an employment

Taking up ‘real’ employment

Cayman

- Find somewhere to live
- Work permit
- Start work

UK

- Timing
- Retain house?
- No need to sell assets or sever ties
- Spouse and children can remain in the UK
- Inform HMRC you have left

Retiring to Cayman

Leaving permanently

Cayman

- Schooling
- Buying a house (can rent first)
- Open bank accounts
- Register with Government agencies/Doctor/Dentist

UK

- Timing
- Finalise UK affairs
- Sell house (rent on long-term basis)
- Close all bank accounts
- Tell all relevant authorities that you are leaving (TV licencing, DVLA, HMRC)
- Sever domestic ties – Doctor/Dentist etc
- Consider ownership of assets
- Family must leave UK too
- Do not visit UK regularly
- Inform HMRC

Starting a new business in Cayman

Setting up your new business in Cayman

- Commonplace to leave the UK and start up the same business in Cayman as was carried on in the UK
- You can either leave permanently or to work in new entity
- If employment what issues require consideration?
  - Full time
  - Must leave to take up the contract
- What problems can arise in the UK?

What about your existing UK business?

What problems can arise in your UK business?

- Risks
  - Disposal of assets
  - Restrictions
- Assets
  - Value of assets held (Goodwill/ customer lists/ brand name)
  - Existing contracts - what generates the profits
- Restrictions
  - Employment contracts – restrictions on set up of competing operation
- What about historic reserves – what to do with them: timing of dividends

Can you simply move your business?

- Parallel running
- Wind down UK operation slowly
- Stop trading in UK and start in Cayman

Tax issues to consider as a Caymanian resident

Tax issues
What will you need to consider?

- Tax advice
  - How will you be personally taxed in the UK?
  - How to minimise tax on business profits and personal investments
- Record keeping
  - In case of HMRC enquiry

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How will you be personally taxed in the UK?

- No Capital gains tax
- Income tax
  - Rented property
  - Bank interest
  - UK Dividends
  - Loan interest
- Inheritance tax

How to minimise tax on business profits and personal investments

- Your business
  - Corporate residence
  - Permanent establishment
  - Transfer pricing
- Personal investments
  - Corporate ownership
  - Pension transfer
  - Use of trusts (see below)

Record keeping

- Why is this important?
- What records are useful?
  - Diary
  - Airline tickets
  - Bank statements/credit card bills
  - Utility records
  - Dates of key events
  - Key documentation
- Where to keep your information?

Long term tax planning – you are never going back

What do we mean?

- Escaping UK tax altogether
- Inheritance tax
  - Planning?
  - Look at available reliefs and assets held
- Domicile
- You are never going back - Never say 'never'

Domicile

- Domicile…everyone has one.
- Acquiring a domicile of choice
- The ‘three year’ rule
- When does it all start from?
- The ‘17 out of 20 year’ rule
- Burden of proof
- What if you get it wrong and who will know?
- Hedging your bets? UK IHT friendly assets

Can you set up a trust?

- Why would you want to?
  - Succession planning
  - Asset protection
  - Children's trusts
  - Charitable trusts
- Can you?
  - Yes BUT watch your domicile!
  - 20% tax charge if you get it wrong
  - Consider a will trust?
  - IHT planning (if you do go back)

Concluding remarks

- Leaving the UK is relatively straightforward.....honestly
- Domicile = once non-UK resident – taking the next step might be more difficult
- To totally escape UK tax requires careful planning

Thank you for listening

Presented by

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Disclaimer

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Coming to the Cayman Islands

Kathryn C. Carter

June 30, 2010

Employment

- Full time (37 hours/week); "customary" terms
- One or more jobs
- At least one full tax year (April 6 to April 5)
- Accept offer from third party in Cayman Islands
- "Self-employment" situation
  - Create company, partnership, trust to carry on business

Immigration Issues

- Work permits required if non-Caymanian
  - Temporary or full
  - Must apply from outside the Cayman Islands
  - Medical exam, police clearance certificate, fees
  - Dependents – should include even if don’t move
  - Salary concerns (cost of living)
- Retired – independent means test

Carrying on Business In the Cayman Islands

- Create entity (company, partnership, trust) most suitable to objectives
- Ownership - due diligence requirements for beneficial owners, directors, general partners
- Management – directors of companies, partners
- Exempted or not?
- Fees

Business Licensing Requirements

- Business primarily outside the Cayman Islands
  - Exempted Company
  - Owned by non-Caymanians
  - Trade and Business Licence

- Business within the Cayman Islands
  - Ordinary Company
  - 60% owned by Caymanians; 60% of directors are Caymanians
  - T&B Licence, LCCL Licence

Business Licensing Requirements, continued

- Regulated businesses
  - Cayman Islands Monetary Authority ("CIMA")
  - Securities investment, funds, insurance, company managers, corporate service providers, banks, trust companies
- Staffing
  - Business staffing plan – Immigration
  - Caymanian, non-Caymanian employees

Living in the Cayman Islands

- Bank Accounts (AML requirements, credit cards)
- Accommodation
  - Rent or buy
  - Location (Grand Cayman, Cayman Brac, Little Cayman)
- Transportation
- Medical Insurance
- Pension participation

Wills and Estates

- Cayman will or non-Cayman will
- Probate or grant of administration
  - Entitlement to be personal representative
  - Domicile of deceased
- Resealed Grants
- One year rule

Other Trusts

- Revocable or irrevocable
- Discretionary or non-discretionary
- Beneficiaries or purposes
  - STAR trust
  - Trustee, Enforcer
- Perpetuities Period

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Introduction

- Who is subject to US income tax?
- How is the income earned by such persons monitored?
- What has changed recently, and what is the impact of these changes?

US Income Taxation

- Any individual is subject to US income tax on world-wide income if he is
  - A US citizen
  - A permanent resident (greencard holder), or
  - A temporary resident
    - (a) Present in the US for more than 30 days in the calendar year, and (b) Weighted sum of days in the US over a 3-year period exceeds 182 days, unless
    - Establishes that he was (a) present in the US on fewer than 183 days in the calendar year, and (b) has a tax home in a country with which he has a closer connection to the US

How does the US monitor the amount of income earned?

- US income tax largely based on self-reporting with cross-checking through matching documentation
  - Salary, dividends and interest are self-reported on the return, with information reporting required by employers, banks, brokers, etc.
- Non-US income was largely on a self-reported basis only
  - No source of information to cross-check whether income was reported
  - Foreign Bank Account Report (FBAR) required if investment accounts held outside the US exceed a threshold

→ Lower levels of tax compliance on income earned outside the US

Recent developments

- Recent developments have radically changed the tax compliance landscape for US persons with non-US source income
- Increased emphasis on FBAR compliance
- HIRE Act
  - Foreign financial institutions required to enter into an agreement to either identify US accountholders to IRS or to close the account, or else become subject to withholding tax on their US source income

Foreign Account Tax Compliance Act

- "The most important development in international information reporting in a generation"
- "We hope that all countries with developed tax systems will soon begin coming together to work on a unified information reporting system on a multi-lateral basis"
  - Comments of U.S. Internal Revenue Service Commissioner Douglas H. Shulman before the OECD, June 8, 2010

FATCA

- Foreign Account Tax Compliance Act (“FATCA”) enacted into law as part of the HIRE Act in March 2010
- Requires foreign financial institutions to agree to disclose to the IRS the identity of any US person who is an accountholder or to close the account
- Imposes withholding requirement of 30% on payments of US source income to foreign financial institutions who do not enter into the agreement
- Similar requirement imposed on payments to foreign entities that are not financial institutions
- Withholding requirement is imposed on payments made after December 31, 2012, with limited grandfathering of outstanding obligations

FATCA

- Withholding is imposed on payments of US source income
  - Payments of investment income, such as interest or dividends
  - Gross proceeds of the sale of US property that generates interest or dividends
- Intention is to force disclosure, rather than to raise revenue from the withholding tax

Disclosure agreement

- Payments to a foreign financial institution are subject to withholding tax unless the recipient has a Section 1471(b) agreement in place
- The Section 1471(b) agreement requires the disclosure to the IRS of the name, account number, and tax ID# of any US person that is an accountholder
- FATCA pressures non-US financial institutions to close the accounts of any non-compliant US accountholders

Non-financial institution

- Payments to any non-financial foreign entity are also subject to 30% withholding unless
  - The recipient certifies that no US person owns an interest greater than 10%,or
  - Discloses the name, address, and tax ID# of any US person that owns an interest greater than 10%,
- If the recipient is not a "financial institution", persons who own less than 10%, and debt holders, do not need to be disclosed

Financial institution

- Except as otherwise provided, a financial institution means any entity that –
  - Accepts deposits in the ordinary course of a banking or similar business
  - As a substantial part of its business, holds financial assets for the account of others, or
  - Is engaged (or holds itself out as engaged) primarily in the business of investing, re-investing, or trading in securities, partnership interests, commodities, or any interest in such securities, partnership interests, or commodities.

FATCA Questions

- Implementation – how will the 1471(b) agreements be implemented, monitored?
  - How will existing accounts be treated
  - How is status as a US person dis-proved?
- What is a financial institution?
  - Investment partnerships, family trusts, life insurance companies?
- Effect – will foreign funds split between FATCA compliant (no non-compliant US investors, 1471(b) agreement) and non-compliant (no US source income)?

Impact on the FFI

- Existing Financial Institutions – what should they be thinking about?
  - Will they be FATCA compliant?
  - Should they enter into a 1471(b) agreement?
  - Costs and expenses of compliance
  - How do they deal with investors / depositors who resist disclosure?
    - What happens if investment income becomes subject to withholding? Can the institution legally close the account of a non-compliant US person? Can the institution legally withhold from the account of a non-compliant US person?

FBAR

- Foreign Bank Account Report ("FBAR") required for any foreign account owned by a US person that exceeded $10,000 at any time in the prior year
- Filing is separate from the tax return
- Filing due June 30 for the prior calendar year

FBAR Requirements

- Must be filed by any US person with a financial interest in or signature authority over the account
  - Signature authority includes authority that can only be exercised together with another person
  - Exceptions for certain officers and employees of publicly traded corporations, banks
- For purposes of the FBAR requirement, “account” includes any account with a securities dealer, investment fund, private partnership, life insurance policy with cash value

→ Many persons with administrative authority over non-US assets may be subject to the FBAR filing requirement

Summary

- Until recently, the tax compliance of US persons with non-US sources of income was largely self-enforced
- Trend towards imposing the burdens of tax compliance on third parties outside the US
  - Financial institutions required to disclose under FATCA
  - Those with signature authority but no ownership interest may be subject to FBAR requirements
- Who will this impact and how?
- Future developments: is this the start of a new approach to international tax compliance?

Thank you for your kind attention.

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