Considering UK-Swiss dual tax residence

Dual residency has its advantages for UK citizens looking to protect and grow their wealth

Jamie Favell
partner,
Tax Advisory
Partnership

Many high net worth individuals have mobile lives which require their advisors to consider the implications of them spending significant time in more than one jurisdiction. Commonly we see clients with a presence in both the UK and Switzerland which is sufficient to make them tax resident in both countries under domestic rules. As such, it is necessary to consider which country has the taxing rights over the income and gains of a "dual resident" of the UK and Switzerland.

The UK and Switzerland have a Treaty for the Avoidance of Double Taxation (a DTT). The purpose of a treaty is to dictate which country has the taxing rights over different income or gains.

In the event that a client leaves the UK for Switzerland, but does not do quite enough to lose UK tax residency status, it may to be possible to claim that whilst they are resident in the UK and Switzerland, they are treaty resident in Switzerland. Given the relatively high rates of income tax in the UK, as well as the complexity of the UK tax laws, in particular for non-doms, it can often be beneficial to be treated as not UK tax resident. If they are treaty resident in Switzerland, the UK will treat them as a non-resident.

Knowing a client's treaty residence position is absolutely essential to any planning and structuring you may undertake for a client, even if you are not a tax advisor.

So, how do we determine treaty residence?

The UK/Switzerland DTT contains a tie-breaker clause which determines an individual's country of tax residence for this purpose. Through the application of this series of "tie-breaker" tests, the treaty determines an individual's treaty residence position.

In order, those test are:

- permanent home,
- personal and economic relations,
- habitual abode and
- nationality or domicile.

As soon as treaty residence is determined under one test there is no need to consider the subsequent tests, so if an individual has a permanent home available to him only in the UK or only in Switzerland, he will be treaty resident in that country. The later ties can be ignored even if they indicate a different analysis. If an individual has a permanent home in both countries, we must then look at to where his personal and economic relations are closest (also known as the "centre of vital interests" test). If an individual's centre of vital interests cannot be identified, the next step is to consider where he has an "habitual abode" in one but not the other country. If the individual has a habitual abode in both countries (or neither), he will be treaty resident in the jurisdiction in which he is a "national". If the individual is a national of both states, his treaty residence position will have to be determined by mutual agreement between the UK and the Swiss tax authorities.

It is preferable to satisfy treaty residence at the earliest hurdle possible. If clients can determine treaty residence with reference to their permanent home this will often prove to be the most robust treaty residence position.

So, what constitutes a permanent home?

Whether an individual has a permanent home in the UK will depend on where they stay when they visit the UK.

The following paragraph from the OECD Model Tax Treaty defines the concept of a permanent home:

"*As regards the concept of home, it should be observed that any form of home may be taken into account (house or apartment belonging to or rented by the individual, rented furnished room). But the permanence of the home is essential; this means that the individual has arranged to have the dwelling available to him at all times continuously...*"

Common advice to a client seeking to ensure they are not treaty resident in the UK is to stay in hotels when visiting the UK to avoid having a UK home. However, often it isn't viable or desirable to avoid having a home in the UK. Of course, a permanent home in Switzerland would also be required.

So, what if there's a permanent home in both countries?

We then need to consider where the individual has their "centre of vital interests".

OECD commentary states:

"... regard will be had to his family and social relations, his occupations, his political, cultural or other activities, his place of business, the place from which he administers his property, etc. The circumstances must be examined as a whole, but it is nevertheless obvious that considerations based on the personal acts of the individual must receive special attention. If a person who has a home in one State sets up a second in the other State while retaining the first, the fact that he retains the first in the environment where he has always lived, where he has worked, and where he has his family and possessions, can, together with other elements, go to demonstrate that he has retained his centre of vital interests in the first State."

The UK tax authorities place a strong emphasis on whether an individual's family also live in the country in which they are claiming to be treaty resident. It is often this issue which results in this tie-breaker clause being indeterminable and means that we must consider habitual abode.

So, how do we determine "habitual abode"?

To determine what is an "habitual abode", OECD commentary states:

"In the first situation, the case where the individual has a permanent home available to him in both States, the fact of having an habitual abode in one State rather than in the other appears therefore as the circumstance which, in case of doubt as to where the individual has his centre of vital interests, tips the balance towards the State where he stays more frequently. For this purpose, regard must be had to stays made by the individual not only at the permanent home in the State in question but also at any other place in the same State."

In considering an individual's habitual abode, the DTT does not specify any length of time over which the comparison must be made, but OECD commentary makes it clear that it must be over a sufficient length of time for it to be possible to determine whether the residence in each of the two states is habitual.

The UK however tests a 4-year period and it is therefore important a client establishes a routine of spending more time in Switzerland than the UK if relying on this test.

In the event it is still not possible determine the tax treaty residence under any of the above rules, UK and Swiss domiciled taxpayers will be treaty resident in their country of domicile. Anyone else will need to seek agreement between the UK and Swiss tax authorities on the matter.

In practice, if your client's tax residence position is in question, they should seek tax advice. If an individual is expected to be dual resident in the UK and Switzerland but Swiss treaty resident, it will be necessary for them to complete a UK tax return and treaty relief claim setting out the treaty residence position and how they have reached their conclusion. This will need to be supported by a Swiss Certificate of Residency which makes reference to the UK/Swiss DTT.

Bank Staff by Gender (Domestic and Foreign)

	Male	Female	Total
2010	132,010	82,012	214,022
2011	132,540	82,142	214,682
2012	128,904	80,116	209,020
2013	127,133	78,863	205,996
2014	125,289	77,592	202,881
2015	123,890	76,581	200,471
2016	120,845	74,352	195,197
2017	67,384	43,031	110,415

Source: Swiss National Bank