

Earlier this year, HMRC sent a letter to many UK resident but non-domiciled taxpayers to assist them in getting their tax returns right by explaining the meaning of a remittance. HMRC included a number of examples where a remittance of foreign income may arise in circumstances which perhaps might be overlooked by the taxpayer, and these have now been incorporated into the department's *Residence, Domicile and Remittance Basis Manual*. Given the complexity of the legislation, this was extremely helpful. Unfortunately, some of the examples were a bit extreme, and some were seriously doubtful. This is a pity because most of the examples were very useful, and the unnecessary inclusion of dodgy examples detracts from the obvious merit of this initiative.

I would highlight two examples to illustrate the point. HMRC says that a remittance includes the purchase overseas of a return airfare from New York to London using foreign income. The reasoning here is that the airline provides a service of flying you from New York to London where it lands and in due course takes off again. One can see that part of the service is enjoyed in the UK. However, this seems much too simple. What if, instead of the flight being from New York to London, it was from Paris to Dublin? To fly from Paris to Dublin you have to fly through UK airspace. It has been long established that the UK extends from the ground to the heavens, so the flight will partly be enjoyed in the UK. The cost of the flight, purchased out of foreign income, would therefore be a remittance.

If you think that is bonkers, try this one: 'You make a gift of some of your foreign income to your adult son or daughter who lives abroad. Three years later your child gives some of these funds to their sixteen year child (your grandchild) who spends the money during a visit to the UK.'

That is a taxable remittance. Is HMRC having a laugh? Actually, if this is a serious point it is much worse. Let us assume that the son did not give any of the money to the grandchild, but bought them some socks and a suitcase. The child travels to the UK wearing the socks and carrying the suitcase. Fortunately the money spent on the socks is not taxable because it is exempt property being 'clothes, footwear, jewellery and watches' within the terms of FA 2008 s 809X. However, the suitcase is not covered by this exemption, so the cost of the suitcase represents a taxable remittance for the grandfather. If HMRC is serious that the rules are really intended to operate in this way, I think we are all doomed.



Peter Vaines

Partner

T +44 20 7655 1780

E peter.vaines@squiresanders.com

Article first published in Tax Journal on 20 December 2013