



The Double British

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The individual with an income from investments who feels he is paying too much tax has of course one simple option – to go and live somewhere else. As we all know, changing residence doesn't help Americans, because the United States taxes its citizens wherever they live. But for residents of other countries, a change of residence can make a significant difference to the tax bill, though there can be a waiting period or a revaluation of assets to produce taxable gains or some other kind of "exit-tax".

I said a "simple" option. The concept is simple, but the practicalities can be quite intimidating, and the move doesn't always work out as planned. I remember a British couple who went to live in Monte Carlo – which is excellent tax planning, and Monaco is a civilised place with good drains and good communications. But they knew no-one and spoke no French and weren't wealthy enough to have a yacht in the harbour, and for five years they were homesick, miserable and drank too much, and eventually came back to the United Kingdom, happy to pay the tax! And I can think of another client, who wanted to expand his business in North America, and with that in view decided to base himself in Bermuda. Well, life in Bermuda turned out to be so agreeable and charming, that he decided to retire from business and devote himself happily to his collection of butterflies.

The individual in the low tax or zero tax environment still has to invest his money, and on the whole his investments are going to be in places which have serious tax regimes. Generally speaking, a portfolio investor does not suffer capital gains tax but will

suffer income tax – collected by withholding. In a case where the dividend income is substantial, it may be worth looking at ways of reducing or eliminating the withholding tax on the income. Here we may think of using two UK companies – one beneficially entitled to the dividends and the other holding the capital as co-trustee of a trust of which the non-resident is the settlor. The structure could look like this.

The circle on the left of the diagram is the individual resident and domiciled outside the United Kingdom. He owns an offshore company, represented here by the rectangle marked blue, which in turn owns a UK resident company – the rectangle marked red. The individual has made a "Thin Trust" – which I show marked green, settling the sum to be invested on the Blue company and the Red company as trustees, on trust to hold the fund on trust to pay the income to the Red company for its own benefit and subject thereto for the Blue company. The two companies agree that trust investments will be made by the Red company as joint trustee. Dividends flowing from the UK companies and companies in treaty countries are beneficially owned by the Red company and not subject to tax in

the United Kingdom CTA 2009 Pt 9 A. But the Red company is a "resident of the United Kingdom" for treaty purpose and is entitled to receive dividends from treaty countries with no withholding tax or a lower rate of withholding tax, as prescribed by the relevant treaties. The Red company makes an onward declaration of dividend to the Blue company – there being no tax liability on the way, since the United Kingdom does not charge tax on outward-flowing dividends *ibid*. When the capital gain is ultimately realised, this accrues to the Red company as joint trustee, which can if necessary take advantage of the capital gains article in the relevant treaty.

I like to call this structure the "double British": the Red company is acting in two capacities. It receives as beneficial owner the dividends arising from the trust investments, and enjoys the UK's benign corporation tax regime for companies receiving and paying dividends. It receives the capital gains from the sale of trust investments as trustee of a settlement made by a non-resident settlor and enjoys the UK's equally benign capital gains tax regime on gains arising from the sale of the trust investments TCGA 1992 s.69. And the company has treaty protection in both capacities.

