

US Year-End Tax Planning 2009

Whilst our clients are addressing the implications of recent and prospective new changes to the taxing rules which may fundamentally affect them, it is also important to remember things which haven't changed, such as the fact that the US continues to impose individual tax on the basis of the calendar year, and the attendant possibility of tax savings through year-end planning. Set out below are some of the planning opportunities that should be considered and where appropriate implemented before the end of 2009. If your particular circumstances suggest other possibilities that you would like to explore, you should discuss them with your advisor at Frank Hirth as soon as possible.

Tax Payments and Foreign Tax Credits

Taxpayers who are on the paid basis (as opposed to the accrued basis) for the purposes of claiming a foreign tax credit may want to accelerate any UK tax payments due by 31 January 2010 and pay them in 2009 instead. This is generally of most interest to those people who are self-employed or members of a partnership, and so do not have UK tax withheld from their pay, or will be subject to arising basis of taxation in the UK for the first time in 2009/10.

Although the non-domicile changes in the UK became effective from 6 April 2008, the Internal Revenue Service (IRS) is still to comment on the availability of the £30,000 remittance basis charge as a foreign tax credit for US tax purposes. There is no expectation that further guidance will be received in the coming weeks, but if this charge is the right answer for 2008/09 delaying the payment until 2010, (but prior to 31 January 2010) may be the advisable route to keep options open.

When paying US tax it is usually sufficient that the cheque is posted by the due date in order to be regarded as timely settled. However, this is not the case for "paid" basis foreign tax credit claims. As such, any payments would need to be received by HM Revenue & Customs (HMRC) by 31 December 2009 to ensure they are available on the 2009 US return.

Excess foreign tax credits can only be carried back for one year, although they can be carried forward for future use for up to ten years. Therefore a taxpayer who had a US tax liability for 2008, due to a shortfall of foreign tax credits, may want to accelerate UK tax payments to ensure that there are sufficient foreign tax credits to set off against the 2009 US tax liability, and also carry back to 2008 to claim any available US tax refunds. If you wait until January 2010 to make the UK tax payment, the opportunity to carry back excess foreign tax credits to 2008 will be lost. If a foreign tax credit carry back is available from 2009 to 2008 it would be advisable to prepare, and submit, the 2009 US tax return as early in 2010 as possible so that the amended 2008 return, including the carry back claim can be made. We have been experiencing long delays in receiving any refunds from such claims so you should ensure that all required filings are submitted as early as possible.

2009/10 will be the second year that some individuals will need to report worldwide income in the US and UK. If anything unusual has happened during 2009, i.e. realised capital gains, new source of income created, significant remittance to the UK etc., then it may be necessary to make UK tax payments in excess of any accelerated payments for 2008/09 to ensure that credit is available in the US at the earliest opportunity. If this is the case or you would like confirmation of your current foreign tax credit position, then please inform your advisor at Frank Hirth as soon as possible.

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Planning for Deductions

Expenses are only deductible for a cash method taxpayer if they are actually paid in the year. Adjusted Gross Income (AGI) limits on itemised deductions have an impact on deduction planning. Typically, itemised deductions are limited if the AGI is over \$166,800 if married filing jointly or, \$83,400 if filing separately.

For 2009, the standard deduction is \$11,400 for married filing jointly, \$5,700 for single taxpayers and those married filing separately. If your deductions, which you might otherwise itemise are close to standard deduction amounts, you might consider the timing of payments so that you enhance the payments in one year versus the other, for example 2009 quarter four estimated State tax payments.

Other expenses that may qualify for deduction include charitable contributions (to US registered charities), medical expenses and also tax preparation fees.

Additional relief may also be available against earned income for foreign housing expenses incurred during 2009. Again, such expenses, including rent, council tax etc., are accounted for on a "paid" basis so possible acceleration into 2009 should be considered.

Capital Gains Planning

You may wish to consider the timing of the sale of assets to maximise the opportunity to offset capital losses and gains. Losses may be fully deducted against gains including short-term gains (taxed at ordinary income rates) and the net losses against ordinary income up to \$3,000 (\$1,500 for married filing separately). Capital losses not relieved in 2009 can be carried forward indefinitely for offset against future gains. Although, compared to 2008, the £/\$ exchange rate has remained stable during 2009, exchange rate fluctuations over the holding period of an asset can create unexpected positions (i.e. a sterling loss can produce a dollar gain and vice versa).

Retirement Savings Provision

For taxpayers who are not participants in employer pension plans, deductible contributions to a traditional Individual Retirement Accounts (IRA) for 2009 may be made up to \$5,000 (\$6,000 if age 50 or older). If you are a participant in an employer plan, AGI phase-out applies to eliminate any deductibility above \$109,000 of modified AGI for a married filing joint taxpayer, \$65,000 for a single taxpayer.

Roth IRA contributions of up to \$5,000 (\$6,000 if age 50 or older) may be made. Whilst these are non-deductible; tax free growth and distributions are possible subject to certain rules. Again, phase-out rates apply with contributions not being allowed if modified AGI is in excess of \$176,000 for joint filers and \$120,000 for single filers.

The 401K elective deferral is \$16,500 for 2009. (If over 50 and certain other conditions are met a further \$5,500 catch up may be made in 2009.)

Should you pay contributions into a foreign qualifying plan, a combination of tax treaty reliefs and available foreign tax credits may make it beneficial to uplift contributions in 2009 but consultation on a case by case basis is necessary.

Gift Taxes

You may consider making annual exclusion gifts of up to \$13,000 each (married couples (both US citizens) can combine amounts of up to \$26,000 to each recipient) to an unlimited number of recipients without impact on the lifetime gift exclusion remaining at \$1m.

Gifts made to a US citizen spouse are excluded from gift tax. Gifts made to a non-US citizen spouse are not excludable from a gift tax charge, but are subject to an extended annual exclusion amount of \$133,000. Gifts in excess of this amount will reduce any available lifetime exemption.

If any issues require further clarity, or if you have any specific questions, please do not hesitate to contact your advisor at Frank Hirth for further assistance.