

CASE STUDY: DISSOLUTION OF MARRIAGE

Frank Hirth can advise on the US and UK tax impacts of divorce, particularly those which affect international clients and their families. Ensuring that the parties involved reach an agreement on financial settlements can be a complex process, particularly when two or more jurisdictions are involved.

We aim to provide practical solutions tailored to our clients' particular circumstances. We have built relationships with many family and divorce lawyers and have experience of advising US and UK individuals and their lawyers on how to dissolve a marriage in the most tax efficient way possible.

WHAT WERE THE ISSUES?

Mr Z is a US citizen but lives in the UK, where he's classed as a UK resident non-domicile for tax purposes. His wife is a non-US citizen and also a UK resident non-domicile. After several years of marriage, they are divorcing and need to divide their marital property.

Mr and Mrs Z want to sell the marital home and transfer the proceeds into Mrs Z's sole name. Mrs Z will also receive a portion of her husband's investment portfolios, through either sale or transfer, and he has agreed to pay her alimony and child maintenance.

But in situations like this that straddle both UK and US tax regimes, both sets of tax authorities may consider the transfer of assets to the other spouse to be a taxable transfer – even if the assets are transferred rather than sold. Without comprehensive advice on timings and planning, there could potentially be significant liabilities.

There is also a practical issue in that if the family home takes some time to sell, the would-be recipient of the proceeds is left without a lump sum payment to put towards buying a new property.

HOW WE HELPED

Mr and Mrs Z's solicitors engaged Frank Hirth under a joint instruction.

We liaised with the couple's solicitors and provided calculations of the liability to UK and US income, and Capital Gains Tax (CGT) on the transfer of the portfolios and the sale of the marital home.

Given that the tax due on the transfer of the portfolio was likely to be significant, we were able to advise our clients on the possibility of making an election under the US

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Internal Revenue Code to reduce the US tax liability on the transfer of the portfolio to zero.

Rather than waiting for the marital home to be sold before making a transfer to Mrs Z, we suggested that Mr Z make a loan to his wife. This would later be repaid on the sale of the marital home. Since Mr Z was on the remittance basis of taxation and had access to offshore funds, we were also able to advise him on the proper timing of the loan so that it was not considered a taxable remittance for UK tax purposes.

In addition, we provided the advisors with the necessary wording to include in the divorce decree, allowing the payment of alimony to become a deductible expense to Mr Z for US tax purposes.

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