



**Tax aspects of UK resident and domiciled individual buying a Monaco flat**

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*Please note that tax law is a complex subject and you should not rely on this article without professional advice on the facts of your case.*

The purchase of a Monaco flat as an investment is attractive to investors looking for long term capital growth and willing to accept a low income return. The demand for rental property in the principality remains strong and the increasing tax rates in the UK are likely to lead to more high earners in the UK relocating to Monaco. The traditional low income return is not as poor as it might appear as for cash rich investors this return is free of tax in Monaco and can also be structured so that there is no liability to UK income tax either on the rents received for a UK resident investor.

### **UK Tax**

UK residents are liable for income which arises from overseas property which they own. This is on the basis of a property business and an annual return is required setting out the taxable income. Certain income expenses would be deductible for these purposes, most notably interest repayments and management agents' fees. Any capital i.e. one-off expenditure such as estate agency fees paid on a purchase or sale would be deductible but only for capital gains purposes and not for income tax.

Properties located in countries which have a double tax treaty with the UK allow the owners to claim a credit for foreign tax paid. There is no treaty with Monaco and so, if any tax was paid at source, this would not be deductible in UK. In any case there is no income tax payable in Monaco.

### **Taxation of the Monegasque SCI**

In Monaco many properties are purchased using a company called a Monegasque SCI which in Monaco is treated as tax transparent i.e. the shareholders, are treated as being entitled to the underlying income deriving from the rental and are therefore viewed as the taxable person rather than the SCI itself.

However, when it comes to the classification of foreign entities, the UK position is not always consistent with that of the local law. HMRC publishes a

list of foreign entities on its website which show how these are treated for tax purposes. Although there is no provision on the HMRC website for Monaco SCI classification, French SCIs are viewed by the UK Revenue as opaque. This means that shareholders are not considered as entitled to the underlying income of the SCI. This income is viewed as belonging to the SCI, much in the same way as a UK company is treated for tax purposes. The shareholders are only treated as receiving income when a dividend is paid to them. Monegasque SCI's will almost certainly be viewed in the same way.

If all income is retained in the SCI's account and no distribution is ever made to the shareholders, the shareholders will not be considered as having received any income for UK tax purposes. This means no liability to UK income tax.

Although the shareholders have not received any actual income from the rental, it would still be possible for them to be in receipt of a deemed income under the UK's anti avoidance legislation. However these laws do not apply for the reasons set out below.

### **Controlled Foreign Companies**

Under section 747 Income and Corporation Taxes Act 1988, where there is:

- a non UK company;
- controlled by UK resident persons;
- in which a corporate shareholder has an interest of at least 25%;
- and the foreign company is resident in a territory in which the tax on its profits is less than 75% of the tax that will be payable in the UK, and this territory is not listed on the HMRC 'white list',

then there may be a controlled foreign company scenario.

Where this is the case, there is an attribution of the foreign company's income onto the UK corporate shareholder. Provided there is no UK corporate shareholder, and the shareholders own the shares in the SCI in their own names direct, the rules should not apply.

In any case, if the chargeable profit of the SCI is less than £50,000 per annum this also dis-applies these rules (section 748(1)(d) Income and Corporation Taxes Act 1988). There is, therefore, under the current structure unlikely to be an issue with this piece of legislation in most cases.

### **Attribution of Foreign Company's gains to UK Resident Shareholders**

Under Section 13 of the Taxation of Chargeable Gains Act 1992, where a company:

- is not resident in the UK;
- has less than 5 shareholders, or is controlled by all of its shareholders;
- realises a gain,

this gain will be attributed to the UK resident shareholders. This will be on the basis of the share in which they hold in the company.

This provision relates only to Capital Gains rather than income so does not apply until the property is sold by the SCI. In those circumstances, a UK resident shareholder in the SCI will be directly taxable to UK Capital Gains Tax even if he does not receive the capital sum from the SCI. Of course by the time the property is sold the shareholder may no longer be UK resident. If the individual shareholder was Monegasque resident by that time then as the SCI is deemed transparent in Monaco there would be no issue with the company as only Monegasque law would be applicable and that views the shareholder as the owner anyway for tax purposes.

### **Transfer of Assets Abroad**

If a UK resident individual:

- transfers assets abroad;
- then as a direct result of this transfer, income becomes payable to a non resident person; and
- the transferor has the power to enjoy any of this income or will receive a capital sum connected with the transfer,

there may be an issue with Section 739 of the Income and Corporation Taxes Act 1988. In these circumstances, income which is payable to the non resident person is attributed to the UK resident person who is, therefore, liable to UK Income Tax on the income.

Even if the taxpayer is brought within this type of legislation, there is an absolute defence to this anti avoidance provision if it can be shown that avoiding UK tax was not the purpose or one of the purposes of the transfer of assets or if the transfer was for commercial reasons. In most cases there will be genuine reasons other than tax motivation, which can be put forward for structuring the purchase in the way most deals are done in Monaco.

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