

LIVING IN HONG KONG BUT THINKING OF SELLING UP AND MOVING TO THE UK?

Matt Braithwaite (Partner at Wedlake Bell) answers some common questions about the UK tax system for those considering moving to the UK. The point to bear in mind is that the UK tax system is a complex one and these answers are no substitute for formal advice on the subject. The primary taxes you need to be concerned about are income tax, capital gains tax and inheritance tax. There is a glossary of terms at the end of this document.

CAN I LIMIT HOW MUCH TAX I PAY IN THE UK?

Possibly. Your residence and domicile status are both relevant for UK tax purposes and will determine how much tax you will pay in the UK.

If you are resident in the UK for tax purposes but not domiciled in the UK (a resident 'non dom') you may be able to claim the remittance basis of taxation. As a resident non dom you only pay UK tax on UK source income or capital gains, and only on foreign source income or gains to the extent you bring (or 'remit') them into the UK.

If you can claim resident non dom status you will only be liable to inheritance tax on any assets you own in the UK but not those elsewhere, including those you continue to own in Hong Kong. If you are treated as UK domiciled or deemed domiciled, you will be subject to inheritance tax on your worldwide assets.

DO I NEED TO SET UP A TRUST?

The issues to consider when deciding whether to set up a trust include: the type of assets you are looking to put into the trust; the value of those assets; passing control of the assets to trustees; and the cost of setting up and running a trust.

Setting up a trust could also have added tax benefits if you are non-dom. This is because as a non-dom you can put non-UK assets in a trust to protect them from being liable to inheritance tax. Whether you are able to do so will depend, again, on your domicile status.

WILL THERE BE ANY UK TAX IMPLICATIONS IF I SELL MY HONG KONG PROPERTY?

Potentially. The tax you need to be aware of is capital gains tax. Whether capital gains tax is payable on the sale of your Hong Kong property will depend on a number of factors but primarily, whether you are tax resident in the UK at the time the property is sold, and whether the property was your family home before you relocated to the UK.

IF I DECIDE TO RENT OUT MY HONG KONG PROPERTY INSTEAD, WILL I BE LIABLE TO TAX IN THE UK ON THE RENTAL INCOME?

This will depend on whether you can claim the remittance basis in the UK. If you are able to then provided you do not bring the rental income into the UK you will not be subject to UK tax on it. You would need to consider your tax position in HK though.

If you are unable to claim the remittance basis then this income will be subject to UK income tax as well as tax in Hong Kong, although the tax rules should ensure that the income is not taxed twice in both countries.





IT SOUNDS LIKE IT'S REALLY IMPORTANT TO UNDERSTAND MY DOMICILE STATUS; HOW DO I GO ABOUT DOING THIS?

In short, you need to seek professional help to determine your domicile status and what steps you can possibly take to strength a non dom claim when you move to the UK. You domicile status will depend on a number of factors, including: where you were born; the domicile of your parents at the time of your birth; your reasons for moving to the UK; your immigration status in the UK; your nationality; and where you wish to live in the future. A thorough analysis of your domicile status is important as the outcome will depend what options are available to you to ensure you are able to move to the UK in the most tax efficient way possible.

I REALISE I NEED TO SEEK UK TAX ADVICE BUT CAN THIS WAIT UNTIL I HAVE MOVED TO THE UK?

No, it is important to seek advice before you come to the UK to understand your domicile position and whether you need to take any steps to improve your tax position before you leave Hong Kong. UK tax advice should be considered in conjunction with any advice you require in relation to your immigration status.

AS WELL AS PROVIDING UK IMMIGRATION AND TAX ADVICE, CAN YOU HELP ME SET MYSELF UP IN THE UK?

Yes, certainly. As a full service law firm we are able to assist you on all aspects of your life including (but not limited to) buying or investment in property and setting up a business. In addition we have an extensive network of contacts across all sectors who can help find properties and schools and assist with opening bank accounts.

GLOSSARY OF TERMS

- **Income tax:** like Hong Kong, the UK imposes tax on sources of income.
- **Capital gains tax:** unlike Hong Kong, the UK imposes a tax on the sale or other disposal of capital assets at a gain.
- **Inheritance tax:** a tax on the value of assets chargeable principally on death but also on certain events during lifetime including when assets are settled in trust.
- **Residence:** for UK tax purposes is broadly determined by a person's days spent in the UK
- **Domicile:** the country a person treats as their permanent home; this can differ to their country of residence
- **Remittance basis:** the ability to only pay tax on foreign income and gains remitted to the UK which are otherwise ringfenced from UK tax
- **Deemed domicile:** a status conferred on persons who may be non-dom but have been resident in the UK for a long period of time; means they are subject to UK tax on their worldwide assets, income and gains.
- **Trust:** an asset holding structure under the terms of which assets are legally owned by trustees for the benefit of others (the beneficiaries).



I'M RESIDENT IN HONG KONG AND CONSIDERING RELOCATING TO THE UK WITH MY FAMILY UNDER THE BN(O) IMMIGRATION ROUTE – WILL WE ALL BE ABLE TO GET BRITISH PASSPORTS?

Julia Jackson (Immigration Consultant at Wedlake Bell) responds

Q. Dear Julia,

I'm resident in Hong Kong and considering relocating to the UK with my family, including my wife and my two young children. I'm hoping I can find work as an engineer once we arrive. My wife is looking forward to visiting all of the royal palaces such as Buckingham Palace and Windsor Castle and the children – as big fans of Harry Potter – are looking forward to seeing some of the amazing locations used in the films.

We all have Hong Kong passports but when I was young my parents also obtain a BN(O) passport for me. I've still got the passport but it expired ages ago. I was thinking of renewing it but China no longer recognizes this passport as a travel document so I can't use it to leave Hong Kong.

I've heard about the new BN(O) immigration route but if I can't use my BN(O) passport how can this work? Can the route be used for all of the family even though they don't have BN(O) passports and can we all get British passports in the future?

We've got a sizeable nest egg of savings so I'm not worried about finances but the security of my family is the most important consideration.

Yours,

M

A. Dear M,

How exciting for you and your family to be planning your future life in the UK. The UK has so much to offer including amazing scenery and history; diverse culture and arts; excellent career options and some of the best schools in the world.

But it's important to do some proper planning to ensure that your move goes smoothly, your funds are secure and you keep your future tax bills as low as possible. Speaking to a good tax planning lawyer before you leave Hong Kong is going to be really important and you'll probably also want to speak to specialists who can advise on finding the right home for the family and the right schools for the children.

Top of your to-do list will be ensuring that the whole family get immigration permission to live in the UK with permission to work for you (and perhaps your wife) and permission to attend schools (state or fee-paying) for the children.

The Hong Kong BN(O) route was formally opened on Sunday 31 January and allows BN(O) status holders to come to live and work in the UK. You can apply for a permission for 5 years or (if you want to keep initial costs down a little) you could opt for a permission for 30 months which can be renewed in the UK.

The good news is that your wife and your children (provided they are under age 18 and still live with you) can also apply via this immigration route – even though they don't have BN(O) status. You'll just have to prove (with a marriage certificate and birth certificates) that they are part of your family.

It doesn't even matter that your BN(O) passport has expired – your status is still valid even if your passport isn't and you can make the applications for yourself and your family using your normal Hong Kong passports. Your BN(O) passport will be used during the application process to prove your status but will not be used for travel. (It's even possible to make an application if you have lost the original BN(O) passport.)

Applications may be made on-line, after which the family may visit the UK Visa Application Centre in Hong Kong for biometric enrolment – this is a fingerprint scan and digital photograph. The Hong Kong passports and the application documentation would then be left at the Visa Application Centre and would be available for collection once the applications have been successfully completed and the visas stuck in the passports.

If you prefer not to have any evidence of the application in your Hong Kong passports or prefer not to attend the UK Visa Application Centre then from 23 February 2021 it is possible to apply using a smart phone app. The app can be used on any smart phone to complete bio biometric enrolment. You can use the app in your own home.

The app (already in use for some applicants from Europe) is used to take a picture of the details page of the Hong Kong passports and then will automatically scan and read the electronic biometric chips in each passport. Once this is done you can use the camera in the phone to take a selfie and a biometric picture – just like the one in your passport. It's an easy process and usually only takes a few minutes for each person.

If you use the smart phone app you will be able to upload documents electronically and the decision on your application will then be sent to you by email rather than stamped into your passport.

Whichever way you apply, you'll be given permission to live and work and/or study in the UK. You won't be able to claim any public funds (like Housing Benefit) in the UK but the whole family will be able to use the National Health Service (state-funded medical and healthcare service) and the children can go to state funded schools or fee-paying schools.

Once you have been living in the UK for a continuous period of 5 years you will be able to apply for indefinite leave to remain – as the name suggests this is an indefinite permission to live and work and/or study in the UK. The status is not stamped into the passport but will be available in the form of a biometric residence card (rather like a credit card) or by email and electronic verification.

A year after obtaining indefinite leave to remain the whole family would be able to apply for passports as British Citizens if you would like to do so.

Planning an international move for your family can be both exciting and scary. Enjoy the excitement together but get help from experts to ensure that the process goes smoothly. Wedlake Bell and Hugill & Ip would love to help you turn your international plans into reality.



UPDATES ON BN(O) PASSPORT STATUS

ALFRED IP (PARTNER AT HUGILL & IP) GIVES AN UPDATE ON THE BN(O) IMMIGRATION ROUTE AND ANSWERS SOME COMMON QUESTIONS FROM A HONG KONG PERSPECTIVE

The BN(O) Passport immigration route was officially launched on 31st January 2021 online. The UK has estimated that nearly 3 million Hongkongers and their dependents will be eligible to move to the UK for five years and apply for full citizenship. A UK government report published last year put the number of people expected to take up the offer at about 300,000 in the first five years.

Two days before the official launch, the People's Republic of China stated that they will no longer recognise the BN(O) Passport as a travel document and ID document. The effects of this are that BN(O) passports cannot be used for immigration clearance and will not be recognised as any form of proof of identity in Hong Kong.

1. How does the change to the recognition of BN(O) passports affect its holders?

In reality, most Hong Kong people can use their HK Identity Cards and their HK SAR passports when leaving the territory, while they can use the BN(O) passport when they arrive in the UK to settle down and start their path to full UK citizenship. Even if they cannot use these passports when entering Hong Kong or Mainland China, they can still use them when travelling to other countries.

The UK Government recently reiterated that it will continue to issue such passports and that countries have the right to make their own rules about acceptable travel documents – this includes applications related to working holiday visas in other Asian countries, North America and Europe.

This change effectively only impacts Hong Kong residents of South Asian origin who only carry BN(O) passports and are not considered Chinese nationals, hence making them ineligible to apply for HK SAR travel documents.

2. What happens to MPF/ORSO accounts?

Those wishing to permanently leave Hong Kong are eligible to take out any MPF/ORSO scheme they may have. However, there is a requirement to provide documentary proof when doing so. The Mandatory Provident Fund Schemes Authority has said that MPF providers should not allow workers to use BN(O) as evidence to withdraw the fund early, as the Hong Kong government no longer recognizes the passport as legal travel documents.

Those with BN(O) Passports who are looking to take out their MPF may have to wait till the age of 65 until they can do so. However, if the intention is to obtain a UK visa or UK citizenship via the BN(O) Passport, the required documentary evidence might be attainable in the near future.

3. How are insurance policies taken in Hong Kong affected?

If planning to leave Hong Kong, insurance policies should be taken into consideration. First and foremost, a permanent leaver should check any current insurance policies – does your current insurance policy apply worldwide? Will fees be added for moving countries?

When it comes to life insurance policies, these do not become payable until death. When moving from Hong Kong to the UK, if the intended beneficiary is Hong Kong based, it will be worthwhile checking that such beneficiary is specifically named in the life insurance policy. This will mean the life insurance policy never has to pass through the probate process. If there is no named beneficiary, the insurance policy will form part of the deceased's estate and be subject to the UK inheritance tax.

4. Should individuals make a Will before moving from to the UK?

It is likely that individuals leaving Hong Kong permanently, will hold many Hong Kong assets. When leaving Hong Kong, individuals should consider how these assets will be dealt in the event of their death.

Drafting a Will to cover worldwide assets, will ensure a seamless process of administration in the event of death, particularly if executors are based in Hong Kong. Individuals should consider drafting a Will to cover their Hong Kong assets and any subsequent assets obtained in the UK. On death, a Grant of Probate obtained in Hong Kong can then be resealed in the UK for any UK assets.

One may wish to make separate Wills, one for Hong Kong and one for the UK. This has the benefit of allowing concurrent Grant of Probate applications. If separate Wills are to be made for different jurisdictions, it is important to expressly state the jurisdiction in which the Will is intended to cover and to state that the Will is not intended to revoke Wills made in other jurisdictions.

