



The end of cheques and cash?

In 2006, 65% of all retail spending was on plastic cards. Quite frankly, I am a little surprised that the percentage is that low, but my expectation that this form of payment is in the ascendance is supported by the fact that expenditure on cards has trebled in the last 10 years whilst cheque volumes are declining, with only 5% of retail spending currently being settled in this way.

What I did not bargain for was the unforeseen prominence of cash transactions that make up the balance. Inevitably, the banks and payment associations have recognised this opportunity and the potential to make inroads

It's money, but not as we know it.

As a consequence, VISA has developed a product which is currently being piloted in conjunction with Oyster, based on 'Contactless' technology which is aimed at providing an alternative to cash for low value transactions. So how does it work? Well, it uses wireless communication technology to exchange payment securely between a contactless chip embedded in your credit or debit card with an acceptance terminal at a merchant outlet. The card will have a tiny transmitter that will receive a signal that in turn debits the amount from the card. For example, if you buy a newspaper, sandwich, or some other low value item, you just wave your card at the card reader and payment is made. It is something that those of us who use public transport have become accustomed to with Oyster when travelling in London of course. On the back of this familiarity, the pilot scheme is taking place in London. For all other transactions, you will use CHIP and PIN at point of sale with the same card.

I] Z WcZ>ihVgZ'i] V' ↑l' aihēZZY'j e'hZgkXZ! reduce cash handling costs and do away with the need to carry as many coins in your

pocket and notes in your wallet. You will also have a record on your bank statement as to what you have spent your money on that you] WkZ'cZkZg] WY' l' ↑] 'Xh] #6 [ZgZ↑] ZgV >nZY' number of transactions or charges in excess of a certain value, say £50, it is likely that you l' aivZ'gfj gZY'id'cej i'ndj gE:ē'id'Xdc>g' that it is still you in possession of your card. To lose the card will be the same as if you had lost your cash, except that there is an upper limit before a PIN is required and you will in addition be able to stop the card as you can now to prevent any fraudulent activity.

The Future

For social and political reasons it will be unpalatable and improbable that we can do away with cash altogether, but there are strong indications that cheques will all but have disappeared within 10 years time. A number of prominent retailers have already stopped accepting cheques and this will hasten their demise: They fail in so many respects to support our modern way of life, do not represent guaranteed payment and depend on an unreliable postal service and physical transfer of paper between banks, after which the cheque has to be examined – not very 21st century and not what is required or demanded of payment systems in the future

Peter Ostacchini
Head of Banking

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Residence and rationality

There was a time when the rules about residence were relevant only to a tiny number of wealthy people who might spend some time abroad. Seafarers, who were the only other category of Briton who

The fact of the matter is that each year more and more Britons are leaving the UK either permanently, for a few years, or for part of the year, and this trend looks likely to continue. At the same time, more foreigners are coming to the UK and this trend looks likely to continue. At the same time, more foreigners are coming to the UK and this trend looks likely to continue. At the same time, more foreigners are coming to the UK and this trend looks likely to continue.

The ease of international travel, the increase in jobs which involve working in several countries, and the availability of property in numerous countries mean that it is becoming increasingly difficult to determine where some people's real home is. As a result it is less easy to draw a line between those who are resident and those who are not. This uncertainty in the system is creating opportunities for abuse, while leaving well-meaning people who spend time abroad uncertain of their status.

Two recent cases have illustrated the uncertainty. In *Shepherd* a British Airways pilot who argued he was based in Cyprus and visited the UK for days spent in the UK, but it was found that he had only left the UK for occasional residence in Cyprus and had therefore not done enough to lose his previous UK resident status.

Mr. Gaines-Cooper claimed he was resident in Seychelles, to which he had links, but it seemed that he actually spent more time in the UK. On the generally understood '183-day rule' (he seems to have kept within limits. But limits were exceeded when the number of nights in the UK were counted. Among other things the case illustrates the importance of the '183-day rule' in determining residence in the UK.

Suppose someone travels to London on Monday and leaves on Thursday, and does this regularly. We would say that this person is essentially working full-time in the UK and therefore must be UK resident. But the generally understood '183-day rule' would say otherwise.

Wednesday) might be counted. This person would therefore spend only 90 days each year in the UK. In the *Gaines-Cooper* case he would spend 135 days each year in the UK, and therefore would be UK resident. Our advice, based on the current rules, is that clients for whom residency is an issue should ensure that they allow an adequate number of 'spare' days, to cover unforeseen eventualities such as illness, weddings and funerals when planning the number of days they will spend in the UK.

It is obvious that the rules will need to change in order to achieve more certainty. The current rules are creating opportunities for abuse, while leaving well-meaning people who spend time abroad uncertain of their status.

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ignore more uncertain factors, such as whether one is leaving the UK to work under a full-time contract of employment, or for reasons other than work. So, whatever one's reasons for visiting the UK, if limits are exceeded you would be UK resident. The US has such rules and it looks like other jurisdictions are moving in this direction.

At the moment UK law recognises three relevant concepts – residence, ordinary residence and domicile. One or two such concepts will always be relevant to tax rules, but the concept of ordinary residence is probably now obsolete. Putting it bluntly, it is

they are coming to the UK for less than three years) to avoid paying tax on the proportion of their salaries which relate to days they work outside the UK while resident here. The European concept of habitual residence is gaining in importance and it will be interesting to see how this develops.

A detailed review of the rules was done by the Government in 2003. It illustrated the lack of logic in the rules by giving examples of situations where it is possible for one person to be UK resident whilst another person's circumstances might only be marginally different, but apparently enough for their residence status to differ, even in some cases when they had actually spent more time in the UK. The review did not come up with detailed suggestions for reform, but few people advocate retaining the existing rules which have largely evolved from various cases over centuries.

Apart from inertia, it is thought that the lack of action is partly because of the perceived political risk of changing rules used by large employers. I would counter this by observing that there appears to be a case for rationalising the rules now as there has been a noticeable and well publicised increase in the number of people entering the country and to delay further will only exacerbate the problem in the long term. The complexity and uncertainty in the current rules make it advisable for anyone affected to obtain advice about their residence status as early as possible. The Duncan Lawrie Group are able to provide comprehensive advice on all aspects relating to residence and domicile.

For further information, please contact your usual account manager or Douglas Findlay on 020 7835 2000.

Douglas Findlay
Tax Manager

'Domicile' - does it affect you?

Since the acquisition of Douglas Deakin Young and Hill Martin, by the Duncan Lawrie Group, their respective clients can take advantage of the Group's wider international estate and tax planning expertise, in particular, those advantages of a non-UK domicile.

What is it?

'Domicile', a nebulous and often misunderstood concept, is a peculiar English common law product of the British Empire.

Originally it was used as a planning tool for colonies to maintain the law of England as the determining regime in all aspects of their private lives. Today the concept is perceived by some as an unfair tax-avoidance tool in international tax competition. The counter-acting of international tax competition is protecting the individual foreign legal rights of those with truly foreign connections.

Recent Revenue rumblings

HMRC are now forcing the issue of domicile status and since the beginning of the last tax year greater proactivity is required by non-domiciliaries wishing to maintain this status to ensure their self-assessment returns are completed correctly. It is essential that one makes an informed decision about one's domicile status, something which is only possible after taking the correct advice.

The myth of non-applicability

Some of us may be aware of the impact one's domicile can have on the amount of tax one pays and how domicile can determine the laws that apply to our marriage and the succession of our estates. However, whilst many clients may recognise the concept we often discover that a good proportion of those who actually fall within this special category assume that they do not.

The most common misconception about the qualifying criteria for claiming non-UK domicile is that one has to be born in another country. This is simply not true and is the single biggest reason why many people are not structuring their affairs appropriately.

How do I assess my domicile?

Depending on personal circumstances, there are three types of domicile that can apply, one of which always 'sticks' if either of the others is not present:

Domicile of Origin

We all have a domicile of origin, based, in the majority of cases, on the domicile of our father at the time of our birth. There is no

requirement, initially, to have any personal connection with the actual country of origin until we are over 16.

Domicile of Dependency

Until we reach 16 we have a domicile of dependency, which is the domicile of our father.

Domicile of Choice

One can give up one's domicile of origin by attaining a domicile of choice in another country or state. So, moving from, say, one US or Australian state to another can make a difference, but this also requires physical presence in the new jurisdiction coupled with a complete cessation of any dealings with the domicile of origin, something most UK ex-pats, or, indeed, anyone who wishes to show that their 'home' country is not a connecting factor, do not do. This is manifest themselves when trying to change domicile and its adhesive nature, are the characteristics that afford it such high importance in planning the affairs of non-UK domiciliaries. This is born out by the fact that the Revenue have lost all of the last 6 higher-education cases, the last, which sought to determine the succession and matrimonial property rights of a surviving spouse over her non-UK domiciled husband.

Lifetime Domicile

There can also be pitfalls, particularly in the context of mixed-domicile marriages/civil partnerships, where careful planning is required. Nonetheless, the non-domiciled partner can be used as a 'conduit' or platform upon which the family wealth can be structured.

The main planning possibilities include:

Remittance basis of taxation

Only UK-sourced income or capital gains of non-UK domiciliaries are taxed on the arising basis. Any non-UK sourced income or gains are only taxed once 'remitted' into the UK, thus the latter.

It is also possible to structure UK gains so they arise out of the UK through appropriate corporate and/or trust arrangements managed offshore.

Bringing money in

There are a number of procedures that, managed correctly, allow the non-UK income or gains of a non-UK domiciliary to be brought in on a tax-neutral basis. This advice and the services offered, are available to any Duncan

AM group clients who wish to explore the rules.

Inheritance Tax (IHT)

The IHT treatment of non-UK domiciliaries but arrangements can still be made to fully mitigate the incidence of what is levied on those who have not fully explored their options. Indeed, such arrangements are likely to feature as part of the much wider succession planning strategies that our consultants have put together for client families.

What to do now?

If you or your spouse/civil partner could argue that you have a non-UK domicile and I suggest you simply look to the origin of your connection, it is recommended that you contact us with a view to consulting on the matter.

Bear in mind that it is not just your tax affairs that could be affected by your domicile status. Your whole estate plan could also be an issue.

If you would like further advice, or wish to arrange an initial consultation to assess your domicile, please contact Mark Dawson or call 020 7188 8888.

Pre-Budget Update

Alasdair Darling's Pre-Budget Report included some changes to the rules regarding the taxation of non-UK domiciliaries. They do not change any of the law relating to the status of non-domiciliaries and the need to consider the applicability of foreign succession laws, wills and matrimonial/property law rights in their planning.

The remittance basis of taxation may now be less attractive but will only become clear after careful consideration of one's affairs.

Moreover, until these proposals make their way into formal law, we cannot be certain as to the extent or, indeed, impact that they may have on our clients' affairs. We therefore counsel caution in the interim and, to the extent they may be affected, recommend clients to contact us for a consultation.

Your pension options at retirement

Like many of our clients, you may have accumulated substantial pension funds over the years and it is important that you make the best possible use of these assets in retirement.

Historically there was only one option: to use your entire pension fund – less up to 25% used to provide tax-free cash – to buy an annuity, which means using your pension fund to buy the guarantee of an income for life.

More alternatives have appeared. Under the option of 'Unsecured Pension' you can still take up to 25% of your fund as a tax-free cash lump sum but instead of buying an annuity with the remainder of the fund, the money remains invested, normally within a Self-Invested Personal Pension (SIPP) managed by an investment manager to create an income producing investment portfolio and draw the income as your pension in retirement.

Since the legislation was introduced in 1997 and their chief executive, Andrew Meiklejohn, makes the following comments:

"Compulsory annuitisation dictated a

more cautious investment strategy as one approached retirement, which rarely maximized returns. If Unsecured Pension is the likely option at retirement this allows one to take a longer term view, accepting greater short-term risk and achieving potentially better returns. Upon entering Unsecured Pension we can align our investment policy to suit individual circumstances and generate the level of income required."

Annuity Purchase or Unsecured Pension?

The choice between annuity purchase and Unsecured Pension is an investment decision. Like all decisions of this nature, there will be a balance between risk and reward and the investor must consider their own situation including their attitude to risk.

Enough, it is complicated by what Donald Rumsfeld would have called the "known unknowns", i.e.:

- How long you and your spouse will each live

- What will the rate of investment return be over those periods?
- What will the rate of investment return be over those periods?

Since the answers to any of these questions cannot be known until the period concerned (more) we believe it is crucially important to receive professional advice on this issue.

Whilst a detailed explanation would require several more pages we are pleased to provide you with the advantages and disadvantages of Unsecured Pension as some food for thought!

If you are currently considering your options at retirement, or indeed any other aspect of your financial affairs, please contact our executive or Michael Fairweather on:

020 7591 2200
fairweatherm@hill-martin.co.uk

Michael Fairweather

Advantages	Disadvantages
Annuities are guaranteed but an Unsecured Pension never is. There is no guarantee that any ultimate annuity purchased from Unsecured Pension plans will match one that could have been purchased earlier.	Annuities are guaranteed but an Unsecured Pension never is. There is no guarantee that any ultimate annuity purchased from Unsecured Pension plans will match one that could have been purchased earlier.
A careful investment allocation and portfolio needs to be formulated which will involve some investment risk and reliance upon investment management.	A careful investment allocation and portfolio needs to be formulated which will involve some investment risk and reliance upon investment management.
You do not receive a set income but are able to vary it to suit your personal circumstances between pre-determined limits to supplement other sources of income.	Withdrawing too much income in early years may have an adverse effect on preserving your pension purchasing power or preserving the capital value of your fund.

Thirty years at Duncan Lawrie

We are pleased to announce that as of 3rd October 2007, Mark Dawson will have been with Duncan Lawrie for 30 years. Having thus completed his probation period with the group whose philosophy engenders a long-term view towards personnel and business objectives, we are hopeful that he will now give us the commitment he promised.

Turbulence from sub-prime fall-out

This past month has been dominated by the raised in March; the market fell by some 5% but quickly recovered its poise and carried on upwards. Throughout the rest of the spring and either matched or beat expectations and the world's equity indices moved higher. The Dow Jones index hit an all time high in July of announced that many American homeowners institutions needed to make provisions. HSBC had made their shareholders aware of such Huge provisions were made to cover the bad and doubtful debts and the management of their North American division, formerly Household Finance, was changed. Nothing new then, but it has highlighted the fact that many US mortgage businesses have chased volume with comparative disregard to the quality and pricing of the risk.

Some commentators regard sub-prime borrowers as 'the lowest of the low' and many argue that the risk of lending to them should never have been considered. But whilst times are good and interest rates are low, prudence is often forgotten. As history has a habit of repeating itself, one would have thought somebody would remember the lessons that should have been learnt last time something of this nature happened, like the tech. stock bubble in the late nineties. But maybe that somebody retired in the meantime.

Although many US homeowners have been badly hit, the US consumer has continued to spend in the shopping mall and industry has

expanded. The US economy, having grown by distinct signs of slowing, is certainly not entering a recession but we do seem to have a two-part economy. However, along with poor householder borrowing came the poor corporate borrower. Repackaged debt sold to pension and insurance funds and in some cases to highly leveraged institutions are now being is not as good as initially thought. All well and of a collapsing pack of cards comes to mind

...nobody is really sure where the ultimate risk lies and this has troubled the UK banking sector.

and many investors thought that they were buying a hedge fund or a high yield income fund!

Only in the last month, Bear Stearns have had to close two funds as they are virtually valueless, BNP have closed three funds, claiming they cannot price the assets correctly and Macquarie, the Australian investment bankers have announced problems in a couple of funds. Even the highly respected Harvard University, the producers of many leading a former graduate in a so called hedge fund only to loose billions of dollars.

The trouble is, nobody is really sure where the ultimate risk lies and this has troubled the UK banking sector. Banks became reluctant to lend to each other and this drove up short- Rate has remained at 5.75%) which gave rise to the troubles at Northern Rock. It not only took the guarantee from the Treasury that all depositors were safe, it also required the Bank of England to pump billions of pounds into the system to calm nerves. The Federal Reserve and the European Central Bank reacted similarly and we are certainly not out of the woods yet as the inevitable speculation continues. The knock on effect of this will be increased rates for new mortgages and mortgages as banks factor in the increased cost of funding to borrowers. So what is the answer in this quick moving global economy where decision time is becoming ever shorter?

As investment managers we need at times to step back from the fray and look at long- dividend cover and the management. In time, the buying of stocks when they are out of fashion can bring rewards. Ensuring that assets are well spread: not just between property, bonds, equities, commodities and cash, but geographically and industrially remains a cornerstone to a long term risk averse strategy. L same piston at once, long term steady growth in relatively safety may be assured.

David Howell
Investment Director

New EU rules on cash movements

Since 15th June 2007 new controls have been in force across the EU, controlling cash entering or leaving the Community. They are which was introduced with the objective of combating crime, terrorism and money laundering. It requires a person carrying (equivalent) in or out of the EU to declare it to the appropriate national authority. In the case of the UK that appropriate national authority

Cash movements between EU Member States are of course exempt from the Regulation, so for most clients the requirements will have little effect. However, the Channel Islands and the Isle of Man are

not EU members, so the Regulation will apply to anyone travelling to or from those Islands.

Declaration forms will be available at most ports and airports and, in the case of the downloaded from the HMRC website.

Whilst clients need only declare cash sums (equivalent) Z' X' might be endorsed without restriction, made in such form that title thereto passes upon delivery, e.g. where no payee name has been entered).

Under new UK Treasury enforcement regulations HMRC have the power to seize any cash being carried in breach of the limit, and can impose a penalty of up to £5,000 – deductible from the amount seized. The regulations also allow for persons subject to such penalties to request a review of the decision and for appeals to be made to the VAT and Duties Tribunal. However, HMRC do have the discretion to impose a lesser penalty or issue a warning letter and we expect that number of occasions a person has been found to be in breach of the new rules) will have an impact on the actual penalty applied.

Nigel Gautrey
Banking Director – Isle of Man

What if...?

Many people dislike considering what would happen if they had an accident or a serious illness. Indeed, these are not pleasant subjects but most people carry life assurance in the event of emergency. However, what if the accident or illness didn't kill you but left you incapacitated? Say a road accident left you in a coma for a substantial period or a stroke left you incapable of movement on one side of your body or perhaps even of speech. You might not be able to write or sign your name again.

Numbers of people carry permanent health insurance. This would be used to considerable effect in managing their affairs, often with their consent when they became old, but sometimes without if they had lost capacity.

Some people would say "but my assets are joint with my partner so he or she could manage them for me". This is true to a point, but some joint assets require the signature of both parties especially if they are to be sold,

with older people who would often give an EPA to one or more of their children. This would be used to considerable effect in managing their affairs, often with their consent when they became old, but sometimes without if they had lost capacity.

If a person has lost mental capacity, an EPA (power of attorney), but it would require registration with the Court of Protection.

However, if there is no EPA, the affairs of the person concerned have to be placed under the care of the Court of Protection. This is a lengthy process given the concern of the Court is to protect the interests of the person who has suffered the accident or illness. A substantial amount of fees and delay can be incurred and a solicitor will probably have to be used.

An EPA is not expensive to set up and indeed the form of the power of attorney is interesting structure which enabled lay people to take these steps themselves. There has been abuse of EPAs by unscrupulous individuals and it has been an area about which many solicitors have expressed concern for some time.

However, from October this year, although existing EPAs will still be valid, it will not be possible to make a new one. Instead, from that date, it will be possible to make a lasting power of attorney (LPA) which is a more complicated and probably expensive procedure. LPAs will be more sophisticated and will allow for the delegation of separate powers of attorney.

and welfare, for example. As a safeguard, an LPA would need registration in advance with the Court of Protection. Many lawyers consider that costs may be two or three times those previously applicable to an EPA and therefore, those who are considering putting an EPA in place are urged to act without delay.

On the other hand, those who want to utilise a separate health and welfare power of attorney (often called "living wills") may be advised to wait until after October when they will be able to do this. Such a power enables them to specify in advance the level of medical treatment that they would require if they become incapacitated. It has to be said, however, that doctors will always have to continue to act in the best interests of the patient as they see them, as they are bound by their professional ethics.

It is all very well thinking that these things won't happen to you but The Stroke Society estimates that of 130,000 new stroke sufferers annually, 10,000 are in relation to people under the age of 65 at the time.

We hope that this article gives you food for thought and indeed that if you have not taken out an EPA before October, you should do so. In many circumstances, you could then consider what if...?"

Peter Smith
Regional Director, Hill Martin

... from October this year, although existing EPAs will still be valid, it will not be possible to make a new one.

and this is essential in the case of real property such as a house. How can such a signature be obtained if you are unable to write or are in a coma?

The simple answer, of course, is that it cannot. That is why you should make an enduring power of attorney (EPA) while you have mental capacity, either mentally or physically, the appointed attorney could manage your affairs. This type of power of attorney was introduced in 1985.

Employer pension contributions

Employers, Controlling Directors and Owners of businesses now have a clearer picture from the Revenue on tax relief for employer funded pension contributions.

This issue was recently raised over lunch with a client and, given that a large number of our clients own 20% or more of the company they work for, we believe the following information should be of interest.

As part of those changes, HMRC deemed that any employer pension contribution would only receive corporation tax relief if it were “wholly and exclusively” for the purposes of the business.

Unsurprisingly, this caused widespread confusion amongst company executives but with the following statement:

“Controlling directors are often the driving force behind the company. Where the controlling director is also the person whose work generates the company's income then the level of the remuneration package is a commercial decision and it is unlikely

that there will be a non-business purpose for the level of the remuneration package.”

This further explanation relates to payments that if a controlling director or owner takes a remuneration package up to the level of an individual. That remuneration package can be any combination of pension or salary.

It is therefore very likely that, for controlling directors and owners of companies, employer pension contributions will qualify for corporation tax relief.

The point is illustrated by the undernoted example, which is obviously an extreme case: company directors normally need to take some salary or dividend out of the company. However, increasing employer pension contributions as part of a director's overall remuneration package has just become much more attractive.

If you would like to discuss the tax contact your usual relationship manager.

Alternatively, you can email Michael Fairweather, one of our pension specialists, at fairweatherm@hill-martin.co.uk or call him on 020 7245 7805

Where any reference in this communication is made to tax, it should be noted that tax reliefs or rates assumed are those currently applying, whereas their value will depend on the individual circumstances of the investor. Levels and bases of, and reliefs from taxation, are subject to change.

Our advice is intended to be used as a basis for further discussion and recommendations should not be implemented before that takes place.

Example: A controlling director receives £100,000 (please note this example is subject to the caveats within the main article)

Option 1

Director's remuneration = £50,000 salary
+ £50,000 dividend

Tax Bill

Company pays:

- £ 5,000 Employer National Insurance on £50,000 salary
- £10,000 Corporation Tax on £50,000 dividend

Director Pays:

- £10,000 Income Tax on £50,000 salary
- £10,000 Income Tax on £50,000 dividend
- £16,250 on his dividend income

Total tax to pay is £46,810

Option 2

Director receives £100,000 employer pension contribution

Total tax to pay is £0

