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Brits livin’ in the USA

Global families are on the increase, with some looking to incorporate a move to the US. A STEP Journal roundtable, sponsored by Schroders Wealth Management US, examined the critical factors advisors need to consider when helping UK clients and their families transition to the US.

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PARTICIPANTS (L-R)

FRONT ROW

+ GIDEON ROTHSCHILD TEP
  Partner, Moses & Singer

+ JANETTE SAXER
  Portfolio Director,
  Schroders Wealth Management US

+ G WARREN WHITAKER TEP
  Partner, Day Pitney

+ JACK BRISTER TEP
  Managing Member, IWTA

+ CHRISTINA M BALTZ TEP
  Partner, Withers worldwide

+ MARTIN HEALE
  Portfolio Director,
  Schroders Wealth Management US

BACK ROW

+ GRAEME PRIVETT TEP
  Partner, Rawlinson & Hunter

+ TINA ALBRIGHT TEP (CHAIR)
  Partner, Albright Law Office

+ ANNA CHAPMAN
  Tax Principal, Deloitte Tax

+ STANLEY A BARG TEP
  Partner, Kozuko Harris Duncan

+ MARIANNE KAYAN TEP
  Principal, EY
September 2019 saw 11 private client advisors, including lawyers, accountants and wealth managers, convene in New York for a STEP Journal roundtable discussion, sponsored by Schroders Wealth Management US, to discuss how practitioners can help prepare UK clients for emigration to the US and avoid the traps that can complicate an already complex move.

Roundtable chair Tina Albright TEP, Partner at Albright Law Office, started the discussion with the number-one issue on everyone’s mind: Brexit. With the UK’s position in the EU still in flux at the time of the discussion, Albright asked whether the continued unpredictability was having an influence on client behaviour. Graeme Privett TEP, Partner at Rawlinson & Hunter, answered: ‘I think the uncertainty is the issue. It has led to Brexit fatigue: most people have had enough of the situation. This plays into a lot of political uncertainty and has made clients very nervous about making longer-term decisions in both their business and personal life.’

This reticence to commit to the UK means more are looking at the US to embark on the ‘next stage’ of their life. Anna Chapman, Tax Principal at Deloitte Tax, agreed: ‘Individuals who have a more transient lifestyle have been motivated to look to the US.’ Marianne Kayan TEP, Principal at EY, has also seen similar movement: ‘In the private client world, those who can move and have the flexibility to do so have taken a closer look at their options.’

Brexit is not the only concern for clients. Stanley A Baro TEP, Partner at Koszuk Harris Duncan, highlighted the possibility of a Jeremy Corbyn-led Labour government and higher taxes for the wealthy as another cause for consternation. Albright agreed, having had similar conversations with her clients. It seems that political uncertainty, and the allure of economic opportunities and a North American university education, has eclipsed tax as a principal motivation.

Albright asked the group whether the profile of incoming clients to the US has changed. Christina M Belz TEP, a Partner at Withersworldwide, has seen more applications by wealthy individuals for the O-1 visa based on their business activities – an immigrant US visa commonly used by artists, athletes and academicians. Those who qualify can choose whether to be a US tax resident, based on how much time they spend in the US.

Janette Saxer, Portfolio Director at Schroders Wealth Management US, has seen an increase in the younger generation moving to the US for higher education and staying on after graduating. G Warren Whitaker TEP, Partner at Day Pitney, has seen the same, and added that, although in the past those who graduated from a US university would then go back home or move elsewhere, they are now exploring staying on: ‘There is an increase in perception from Latin Americans and Europeans that the [biggest] opportunities are in the US.’

FIRST THINGS FIRST
When it comes to advising those moving from the UK to the US, where should the client’s first port of call be?’ asked Albright.

‘There is an increase in perception from Latin Americans and Europeans that the [biggest] opportunities are in the US’

- G Warren Whitaker
‘Often, the client wants to be told what to do, so they go to the advisor they trust the most, and who they think will have the right information to make decisions that are best for them,’ replied Jack Brister TEP, Managing Member at IWTA. The participants agreed, however, that this trusted advisor may not have the necessary cross-border expertise required, and this is why it is so important to have a trusted referral network and work closely with US advisors in the interests of their clients.

Barg explained: ‘They need their UK lawyer to alert them to issues that a US lawyer, or lawyers, will be able to assist them with.’ Chapman agreed, adding that ‘tax may be the last thing they want to think about, but a US tax specialist should be considered for anyone contemplating a move to the US.’ Gideon Rothchild TEP, Partner at Moses & Singer, expanded: ‘Whoever is consulted in the US must co-counsel with the UK professional; the rules are constantly changing.’ Martin Heale, Portfolio Director at Schroders Wealth Management US, pointed out that UK advisors do not need to be experts in US tax: ‘You need to know enough to introduce the client to someone who is able to help them.’

The best starting point is creating a detailed balance sheet with information about all of the client’s assets and connections – not just where they are coming from directly, but where they might own assets. Many around the table expressed the importance of viewing it as a team game: working with the right advisors and being willing and robust.

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– Martin Heale

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THE IMPORTANCE OF PRE-PLANNING

There can be many misconceptions held by those looking to move to the US. Assuming they are not already a US citizen, they should focus on their income tax and estate planning first, and this should happen even before they leave the UK.

Baltz highlighted the fact that many clients hear how their associates or friends have planned their estate before moving to the US and want to copy them. This is a dangerous approach, as every client has their own unique circumstances and there is no ‘cookie-cutter’ solution.

One important difference between the UK and the US is offshore asset reporting. In the UK, there is no requirement to report an asset that is not income-producing; this is not so in the US. The participants expressed how often this fact shocks clients, meaning that, when they are asked about their portfolio on first introduction, much is missed. ‘There could be an asset that has not produced income for years, but, upon selling that asset, a gain may be made. It may not occur [to the client] to tell the advisor, because the mindset is to only report income-producing assets,’ said Chapman.

It is just before and during their first year of migration as a US tax resident that clients engage in the most activity, including planning around their residency start date; selling assets that are not US tax-efficient; harvesting gains before coming into the US tax net; and seeing whether any restructuring should be done regarding ownership in foreign partnerships or foreign corporations. Kayan pointed out that this can cause complications for both advisors and clients, as ‘so many aspects of a client’s portfolio can end up in the foreign trust category, such as foreign pensions and the standard trusts that may have been long-established in the UK.’ She noted that penalties from
the US Internal Revenue Service for non-reporting of foreign trusts are becoming more common.

Despite many lawyers focusing on immigration and tax, securities law is often missed, warned Baltz. For example, a UK resident moving to the US is considered a US investor for US securities-law purposes, which may make them ineligible for certain investments. Saxon highlighted that, for those coming to the US on a student or working visa with assets in their own name, ‘according to the SEC [Securities and Exchange Commission], they are considered a US person from a regulatory perspective’.

In the UK, the principal private residence relief rules allow an individual to sell their home without being subject to tax as long as it has been owned and occupied as their main residence throughout; however, such profits are not wholly exempt from US tax, but can qualify for a limited exclusion. With a move from the UK to the US, where a UK resident moves to the US, they need to understand when homes held onto in the UK will become subject to US rules.

Pensions are yet another area where conflicts arise. For instance, UK Individual

![Image]

Savings Accounts can be used to save up to GBP20,000 per year, tax-free. ‘Some build these accounts up over many years to use as a retirement fund. When emigrating to the US, these accounts have no special status in the US and are often filled with PFICs [passive foreign investment companies], a fact many clients are unaware of, and to keep these investments means filling out a lot of forms,’ warned Privett.

The difference in how pensions are formed in the UK is a further challenge. ‘You would be amazed how many UK pension companies cannot answer whether a pension is structured as a trust or not,’ said Heale, due to mergers and acquisitions over the years resulting in a loss of documentation.

In his experience, this means the client will not know either: ‘It’s not a common question asked of them, and so when the UK person comes to move to the US, you can bet your bottom dollar they didn’t tell the accountant and it’s not on their US filing.’

When it comes to movement between the UK and the US, it was agreed around the table that it is simpler to leave the UK and give up one’s domicile than it is to leave the US and give up citizenship.

CULTURE CLASH

The general underappreciation of just how differently the two jurisdictions work is what the participants called ‘cultural clash’. Privett emphasised how, in the UK, the approach is ‘that’s the way we have done things for 500 years’, and UK clients expect the US to work in the same way. ‘The shared history and language misleads clients into thinking that a move will be simple.

This often results in last-minute revelations that could have been dealt with months earlier. Saxon has been ‘privy to so many conversations where advisors say, “I wish you would have told us beforehand; I wish you had let us know what you were planning to do there.”’ Clients must know when is a good time to start thinking about how [a move] is going to affect them.

The best approach is to encourage clients to tell all, says Brister: ‘If you are going to come to the US, think this: everything you own must be told, income-producing or not. Forget whatever you think you knew – if you own something, you must tell the US government, or there will be penalties.’

Attendees agreed unanimously that digging deep into new and existing clients’ motivations in moving to the US is key to successful integration. Barg’s advice is to ‘take the time to learn about your clients and their families: we can suggest all the planning in the world, but if it doesn’t fit with the client’s personal needs, the plan will not work.’

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