The remittance basis and non-doms

The idea of the remittance basis is catching on. But is it the right policy?

I read with interest that Italy is planning to introduce its own version of the remittance basis and the non-dom charge. The details are unclear, but the general idea seems to be that non-Italians who go to live in Italy can have tax freedom on their foreign income as long as it is not remitted to Italy, providing they pay a charge of €100,000. This sounds familiar.

I mention this for two reasons. The first is that the remittance basis in the UK has come in for some criticism in Europe, on the grounds that it provides an unfair encouragement for people from other countries to come to live and work in the UK. This seems to expose the tension at the heart of international taxation, where each country says: 'What *we* do is to provide legitimate tax incentives to stimulate our economy, but what *you* do is provide unfair tax competition.'

This is just one example of the problem facing the international tax community, and I guess it may take a while for it to be reconciled.

The second reason is that, it seems to me, the whole idea of the remittance basis is back to front. It must surely be good for the UK economy if foreign people come to the UK and bring their money with them, where of course they will spend it. We should be encouraging people to come here and spend their money. Entire national economies are built on this principle, particularly those which rely on tourism. The longer foreign people stay (for example, if they are here long enough to become UK resident), the more money they spend. The same must be true in Italy.

What is the best way to stop foreign nationals who become UK resident from bringing money into the UK to buy our goods and services? You charge them a swingeing tax. Making them pay 40% or 45% tax on any income they bring to the UK will certainly do the trick. So the message we are sending is: 'Please do not benefit our economy by bringing your money here; please keep it abroad. And, to encourage you, we will give you a special tax relief.' I am struggling to see the sense of this policy.

Would it not be better for everybody for the incentive to be the other way round? Such as: 'If you bring your money to the UK, we will not tax it.' This would seem to be a relief without any cost, because non-doms are not going to bring their money here anyway and lose half of it in tax – so we might as well get the benefit of them spending it in the UK, where they will be stimulating the economy and paying VAT. The individuals would like it and the country would benefit. Maybe I am missing something? ■

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Driving in the middle of the road

The recent employment tribunal case regarding Uber drivers was not about tax, but it is important because it sheds light on one of the age-old problems in the tax system: whether or not somebody is an employee.

As a tax adviser, why should I bother to comment on *Uber* (*Aslam and others v Uber* case no 2202551/2015)? After all, it is not a tax case – indeed, the word 'tax' doesn't appear anywhere in the judgment. It is important, though, because it sheds light on one of the age-old problems in the tax system: whether or not somebody is an employee.

I put the question in a binary way, because that is the way we have all been conditioned to think about it: is somebody employed or self-employed? Yet, as the *Uber* decision makes clear, a third category has become much more prominent in recent years, at least in part as a result of developments in EU policy: the status of worker.

A worker is, broadly, a person who is not engaged under a contract of employment (written or oral) but who provides services to another party other than by way of a business. It is quite possible to be a worker without being an employee. Establishing that in any particular circumstances is far from easy, however, and could keep an army of lawyers happy for months. But one of the key differences is that in an employee/employer relationship there is mutuality of obligation: the employer has to offer work and the employee has to do it.

Between a worker and an engager (we can't call them employers), there is no such obligation. The worker doesn't have to accept what is offered, and the engager is not compelled to offer any work at all.

Workers have a narrower range of rights than employees. They don't have rights to maternity pay, sick pay or redundancy pay, but they are entitled to be paid annual leave and the national minimum wage. It was access to those two benefits which were at the heart of the case.

The decision in *Uber* was that the two drivers who were the test cases were workers. (There is a dispute as to the extent to which the decision applies to all of the other Uber drivers.). They were providing services to Uber but were themselves in business in their own right. So, going back to my binary test, they were not employed, but neither were they self-employed!

What impact does this have on taxation? We are so used to thinking in terms of employed vs self-employed that it comes as a salutary reminder that the words 'self-employed' do not, I believe, appear anywhere in the tax legislation. There is a whole Act dealing with employments; however, unless you are an employee (subject to some exceptions that are not relevant here), you don't fall within the scope of that Act. So you fall into a separate Act which deals with other income, including income from trades and miscellaneous other income. For tax purposes, a worker would usually be treated as carrying on a trade, even though for employment law he is not in business.

This middle way doesn't really fit comfortably within the tax system. HMRC's guidance is all written on the basis of the employed vs self-employed division and doesn't really acknowledge the existence of workers as a separate category. The government website does acknowledge the distinction between worker and employee, but then is wildly inconsistent in the way that it defines those terms. (Anybody looking there for guidance would end up more confused than they started.)

This is not simply an academic point. The 'gig' economy (I've resisted using that awful phrase for as long as I can) is a reality. It needs to be tackled properly and consistently across the whole of taxation and employment law. At the moment, the outcome of the *Uber* decision appears to be that the drivers have access to some key employment rights, such as NMW and annual leave, without being subject to PAYE and NIC, and not being subject to the very limited range of expense deductions which apply to employees.

I don't want to comment on the merits or otherwise of this particular case: I can see each side's point of view. But as a matter of public policy, this whole key area of the law is in a real mess. Time for a fundamental review! ■

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