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In this installment of (Tax) Matters of Life and Death, part of a two-article series, Yadav, Crompton, and Cooper-Hedges explore transnational tax law, specifically pertaining to the move of Prince Harry and Meghan Markle, the Duke and Duchess of Sussex, as they become California residents. Part I focuses on income tax considerations; Part II will focus on inheritance and transfer tax aspects.

Part I — Income Tax Considerations

Much has been written about how the pandemic fundamentally disrupted the way people thought about where they live, primarily by divorcing physical presence from productivity. Locations that could offer the elusive combination of space and access to amenities during and potentially after the COVID-19 pandemic became that much more desirable, and many individuals took advantage of the shifting priorities to move across cities, states, and even countries. One such couple were the Sussexes, who in a much-publicized move, announced in January 2020 that they would no longer be "senior" or "working" members of the British monarchy.[1] After a few moves, in August 2020 the couple purchased and relocated to a property in Santa Barbara, California, as their new family home.[2] They have remained there since. Though they have retained their duke and duchess titles, other military and patronage titles reverted to Queen Elizabeth II in early 2021.[3]

Taxes are likely not top-of-mind considerations when someone decides to live in a different country. The circumstances of the Sussexes' move and subsequent media and book deals provide a particularly interesting fact pattern regarding if, when, and where they may be subject to tax. Attention has recently been focused on their foray into television production and podcasts, and the publication of Harry's memoir, *Spare*, and Meghan's children's book, *The*

[1] The Royal Household, "Statement From Her Majesty The Queen" (Jan. 18, 2020).

[2] Associated Press, "Prince Harry, Meghan Markle Move Into New California Home," Aug. 13, 2020.

[3] The Royal Household, "Buckingham Palace Statement on the Duke and Duchess of Sussex" (Feb. 19, 2021).

Bench. But what is the couple's exposure to taxation in the United States and the United Kingdom? For U.S. and U.K. practitioners, they represent the perfect case study for exploring tax issues connected with citizenship, domicile, and residency following their move across the pond.

U.S. Tax Liability

Generally, all U.S. citizens are subject to U.S. federal income tax on worldwide income. For non-U.S. citizens, U.S. federal income tax liability is based on their residence. At the state level, California also applies a residency test to determine if an individual is subject to California income tax on their worldwide income.

Federal

As a U.S. citizen, Meghan would be generally subject to U.S. federal income tax on her worldwide income. Harry, a non-U.S. citizen, may be subject to federal income tax depending on his residency. IRC section 7701(b) provides that non-U.S. citizens who are lawful permanent residents (that is, green card holders), or individuals who meet the requirements of a substantial presence test, are generally treated as resident aliens. From reports, it seems that Harry has not applied for a green card. Therefore, the critical test for him would be the substantial presence test, and if he meets those requirements, the next question is whether he can qualify under a treaty exception.

An individual satisfies the substantial presence test if:

> He or she has been present in the United States on at least 183 days during a three-year period that includes the current year. For purposes of this test, each day of presence in the current year is counted as a full day. Each day of presence in the first preceding year is counted as one-third of a day and each day of presence in the second preceding year is counted as one-sixth of a day.[4]

Some non-U.S. citizen individuals who may satisfy the substantial presence test are able to claim nonresident status under a "closer connection" exception.[5] However, this exception requires that the individual spends fewer than 183 days in the United States in the year for which the exception is claimed.[6] Based on general media coverage, it appears that Harry and Meghan spent more than 183 days in the United States every year starting in 2020.[7]

The Heritage Foundation's Oversight Project recently filed a Freedom of Information Act request and further sued the Department of Homeland Security over Harry's U.S. visa status.[8] Although this lawsuit is focused on immigration laws and procedures, Harry's legal status has a direct bearing on his tax status. This is because while the substantial presence test generally depends on counting the number of days an individual is physically present in the United States,[9] days of presence as a "foreign government-related individual" are not counted.[10] Foreign government-related individuals include those with full-time diplomatic or consular status, or full-time employees of designated organizations under the International Organizations Act.[11] This means that if Harry is present in the United States on certain types of visas (for example, certain subcategories of A or a G visa), he will not be considered a resident under the substantial presence test.[12] Conversely, if his presence is based on the spousal visa (the K visas for non-immigrant spouses) or categories available to authors, actors, etc. (for example, an O visa), he would likely have met the substantial presence threshold.

However, some types of diplomatic visas may not qualify for foreign government-related individual status for tax purposes. Treasury regulations require the individual to intend to

[4] Treas. reg. section 301.7701(b)-1(c)(1).

[5] Treas. reg. section 301.7701(b)-2(a).

[6] *Id*.

[7] The IRS also had a special exemption in 2020 for COVID-19, but that covered only up to 60 consecutive days spent in the United States starting on or after February 1, 2020, and ending on or before April 1, 2020. It could have applied to avoid resident status for Harry in 2020 but not in years since.

[8] *See, e.g.*, Brianna Herlihy, "DHS Sued for Prince Harry's Immigration Records to See if He Lied About Drug Use," Fox News, May 2, 2023.

[9] Treas. reg. section 301.7701(b)-1(c)(2).

[10] Treas. reg. section 301.7701(b)-3(b)(1).

[11] Treas. reg. section 301.7701(b)-3(b)(2).

[12] IRS, "Exempt Individuals: Foreign Government-Related Individuals" (May 23, 2023).

"engage primarily in the official activities for that foreign government while in the United States."[13] Since the Sussexes stepped down as working royals, it is unclear if they can even engage in official activities for the U.K. government, or even if they could, whether it could rise to the level of Harry's being *primarily* engaged in official activities for the U.K. government.

Harry's residence for tax purposes has critical implications for the couple — for example, any income earned worldwide after he is treated as a U.S. resident, including royalties on the publication of his memoir, *Spare*, or from Netflix, would be fully taxable in the United States, likely as trade or business income. If he were considered a nonresident, withholding tax under section 1441 would apply to payments made by U.S. payers, subject to treaty exemptions. Rev. Rul. 70-468, 1970-2 C.B. 171, considered royalty payments to nonresident alien authors by U.S. publishing companies and found that when an author was paid during a visit to the United States, or the agent who was a U.S. citizen was paid, or when payments were made to a bank in the United States, 30 percent withholding tax would apply under section 1441. The U.S.-U.K. income tax treaty, discussed later, provides exceptions that may be applicable if Harry is not considered a U.S. resident at the time of earning the royalties.

State

Like the federal government, California also taxes residents on their worldwide income.[14] Cal. Rev. & Tax. Code section 17014(a) defines an individual resident as one who (1) is in California for other than a temporary or transitory purpose, or (2) is domiciled in California, but who is outside the state for a temporary or transitory purpose. Compared with the federal tests for income tax residency, the California standard is less formulaic and very fact-dependent. Residence of a spouse and children[15] or maintaining a California home[16] generally tend to establish tax residency in the state. Given the public proclamations of Santa Barbara being home for the couple and recent news of their being asked to vacate their previous dwelling at Frogmore Cottage on the grounds of Windsor Castle,[17] it is difficult to see how the Sussexes would not qualify as California tax residents.

A peculiarity of the U.S. tax system is that state income taxes are not covered by international tax treaties. Though some states conform to federal definitions of income and therefore allow treaty exemptions, California is among a handful of nonconforming states.[18] This means that even if a treaty position may be available to exempt some income from federal taxes, that benefit is unlikely to be available for California taxation, leaving the couple subject to worldwide taxation at one of the highest state taxation rates in the country.

Appeal of Ghali[19] is one of the few cases that consider tax residency in California for a foreign individual who entered the United States on a diplomatic passport. Riad Ghali, an Egyptian government official, entered the United States in 1947 to accompany the Queen Mother for medical treatments. He married in San Francisco in 1950, purchased a home in the early 1950s in Beverly Hills, and his children were born and attended school in California. He had married a member of the Egyptian royal family against the monarch's wishes, and was dismissed from diplomatic services and his passport was canceled around the time of his marriage. He remained in the United States because of fear of retribution if he were to return to Egypt, but did not officially gain any lawful immigrant status until 1966. Notwithstanding that he entered the country on diplomatic terms, had no immigration status, was restricted from being employed or engaging in business before his status change, and continued to express a desire to return to Egypt, he was still determined to be a California resident. The Board of Equalization applied the "temporary and transitory" test to

[13] Treas. reg. section 301.7701(b)-3(b)(2)(iii)(B).

[14] Cal. Rev. & Tax. Code section 17041(a) and (e).

[15] *Appeal of Collins*, No. 80317 (Cal. State Bd. Eq. May 31, 2001).

[16] *Appeal of James*, No. 596166 (Cal. State Bd. Eq. Feb. 26, 2013).

[17] Oliver Slow, "Frogmore Cottage: Harry and Meghan 'Requested to Vacate' Property," BBC News, Mar. 1, 2023.

[18] IRS, "Federal Income Often Used by States" (2023).

[19] 71-SBE-037 (Cal. State Bd. Eq. Dec. 13, 1971).

find that because of Ghali's continued presence with minimal absences from the state, a presumption of residency would apply. Ghali was found to be a tax resident of California and subject to state tax.

Another important aspect of a move to California is the possibility of attribution of income under community property laws. In the absence of a prenuptial agreement that satisfies California standards, income from all sources earned while in California could be attributable 50 percent to Meghan, who is a U.S. citizen and California resident.[20] If this were the case, then it would operate as another mechanism by which a share of all worldwide income could be fully taxable in the United States and California.

U.K. Tax Liability

In contrast to the U.S. position, U.K. citizenship is not a connecting factor for U.K. tax purposes. Rather, it is residence and domicile that determine the Sussexes' liability to U.K. income tax and capital gains tax (CGT). U.K. resident individuals who are domiciled or deemed domiciled in the United Kingdom are taxed on the arising basis, under which they are subject to income tax and CGT on their worldwide income and gains as they arise. However, non-U.K. resident individuals, providing they are not trading in the country, are generally subject to income tax only on U.K.-source income,[21] and CGT is limited to gains realized from the disposal of U.K. real estate.[22]

There is much talk in the United Kingdom about the political hot potato of the "non-dom regime," under which U.K. resident individuals who are neither domiciled nor deemed domiciled in the United Kingdom may elect to be taxed on the remittance basis, in which case they are subject to U.K. taxation on U.K. income and gains, but foreign income and gains are only subject to U.K. taxation to the extent remitted to (that is, brought into) the United Kingdom. For U.S. citizens like Meghan, the regime is not as useful as for those who are not subject to citizenship-based taxation.

Since April 6, 2013, an individual's U.K. tax residence status is determined by considering three sets of tests, collectively referred to as the Statutory Residence Test (SRT).[23] By contrast, domicile, for general U.K. purposes, remains a facts and circumstances test, as will be discussed in Part II of this analysis. In general terms, a person may be said to be domiciled in the country where he has made his permanent home. However, a person is domiciled in a territory that is subject to one system of law, which, in a federal or composite state (for example, the United Kingdom or the United States), should be a particular country or state. No one can be without a domicile,[24] and a person has just one domicile at any given time. There are three types of domicile: (1) domicile of origin (the domicile that a person acquires at birth based on the domicile of the parents, primarily the father); (2) domicile of dependency (the domicile imposed on a person while legally dependent on someone else); and (3) domicile of choice (the domicile a person can acquire by his own acts). A person can also be "deemed domiciled" for U.K. tax purposes. Since April 6, 2017, individuals who are non-U.K. domiciled under general law and who have been resident in the United Kingdom in more than 15 of the past 20 tax years, are deemed domiciled in the country for all tax purposes.[25]

[20] California community property laws provide that an individual's marital property interest in personal property is determined by the laws of the acquiring spouse's domicile (*Schecter v. Superior Court*, 49 Cal.2d 3, 10 (1957); *Rozan v. Rozan*, 49 Cal.2d 322, 326 (1957)).

[21] A non-U.K. resident individual's exposure to U.K. income tax is, however, significantly reduced by the concept of "disregarded income" (this includes, amongst other things, U.K.-source dividends). A non-U.K. resident is subject to U.K. tax on disregarded income only regarding sums withheld from, or treated as deducted from, such income.

[22] This includes some interests in some property-rich companies. A property-rich company is an entity that derives 75 percent or more of its gross asset value from U.K. land.

[23] The SRT applies for the purposes of U.K. income tax, CGT, and, as far as residence of individuals is concerned, to inheritance tax.

[24] U.K. domicile is often used as a shorthand and is adopted here.

[25] Deemed domicile status will be lost if the individual leaves the United Kingdom and remains nonresident for more than five tax years. However, different rules apply for those who had a U.K. domicile of origin (before becoming non-U.K. domiciled), who were born in the United Kingdom, and who return to live there. These individuals are referred to as formerly domiciled residents (FDRs) and are treated as deemed domiciled from the tax year in which they return for income tax and CGT purposes, and once they have been U.K. resident in one of the two preceding years, for inheritance tax. Harry may be an FDR should he choose to resume U.K. tax residency. However, his domicile position will be discussed in Part II of this analysis.

Residency Under the SRT

The SRT sets out circumstances in which a person will be considered automatically non-U.K. resident[26] or U.K. resident[27] in a tax year.[28] If neither of these tests is satisfied, the person's status will be determined by the "sufficient ties" test. This considers how many ties she has to the United Kingdom and, depending on whether the individual is classified as a "leaver"[29] or an "arriver,"[30] the number of those ties dictates how many days[31] she needs to spend in the United Kingdom to be regarded a resident.

Residence is usually determined for entire tax years, and so, once an individual meets the conditions for residence at some point in a U.K. tax year, the individual is resident for the year as a whole. There are, however, eight scenarios in which the tax year may be split. When the conditions for one or more of these scenarios are met, the tax year is split into a U.K. part and an overseas part, and most charging provisions then operate as if the overseas part were a period of nonresidence.[32]

HM Revenue & Customs has released a handy residence checker to help individuals determine their U.K. residency status,[33] but the devil is in the details and individuals should always seek professional advice. Taking Harry as an example, the following tests are likely to require some thought.

First, could he be considered automatically a non-U.K. resident for some tax years on the basis that he now spends only a handful of days in the country?

Second, could he be considered automatically U.K. resident for some tax years, given the homes available to him (notably, Frogmore Cottage and the Santa Barbara property)? Interestingly, despite its importance as a concept, "home" is not defined comprehensively in the SRT.[34] HMRC considers that a person's home is a place that a reasonable onlooker with knowledge of the material facts would regard as that person's home. It is somewhere that an individual uses with a sufficient degree of permanence or stability to count as a home, but a place can still be a home even if an individual does not stay there continuously.

If neither of the automatic residence tests is satisfied, Harry's residency status will be determined under the sufficient ties test. For the purposes of illustrating this test for the 2023-2024 U.K. tax year, we have assumed that Harry will be classed as an arriver. There are four ties for arrivers: (1) family; (2) accommodation; (3) work; and (4) the 90-day tie.[35] We have also assumed

[26] An individual will be automatically non-U.K. resident if one of the following tests is satisfied: (1) was resident in the United Kingdom for one or more of the three preceding tax years and spends fewer than 16 days of the tax year in the United Kingdom; (2) was not resident in the United Kingdom in any of the three preceding tax years and spends fewer than 46 days of the tax year in the country; or (3) works outside the United Kingdom for a sufficient number of hours (35 or more a week on average over the tax year as long as, during that year, there are no significant breaks from overseas work), spends fewer than 91 days in the United Kingdom in the tax year, and works in the country for more than three hours on fewer than 31 days. Test (1) does not apply in the year of death.

[27] An individual will be automatically U.K. resident if one of the following tests is satisfied: (1) spends at least 183 days in the United Kingdom in the tax year; (2) has a home in the country during all or part of the tax year in which the individual spends some time on at least 30 days during that year and, while having that home, there is at least one period of 91 consecutive days (at least 30 days of which must fall in the tax year), during which either the individual has no home overseas or, if the individual has one or more homes overseas, the individual is present in each of them for fewer than 30 days in the tax year; or (3) works for a sufficient number of hours (on average 35 hours a week) in the United Kingdom over a period of 365 days or more (some or all of which fall in the tax year) without any significant breaks, more than 75 percent of the days on which the individual works for more than three hours during that period are days on which the individual works in the country, and at least one of those U.K. workdays is in the tax year. There is also a special rule for individuals who die during the year.

[28] The U.K. tax year does not follow the calendar year, but runs from April 6 to April 5 the following year.

[29] An individual who has been resident in the United Kingdom in one or more of the three preceding U.K. tax years.

[30] An individual arriving in the United Kingdom who has not been U.K. tax resident in any of the preceding three U.K. tax years. Once an individual has been resident in the U.K. during a tax year, the rules relating to "leavers" will apply unless the link to the U.K. is broken by at least three consecutive tax years of nonresidence.

[31] A day in the United Kingdom is generally counted for the purposes of these tests if the individual is present in the country at midnight.

[32] There are, however, some exceptions, most notably the "transfer of assets" antiavoidance code and the rules on taxation of "capital payments" from nonresident settlements (both of which are beyond the scope of this article). As a result, the charging provisions should always be checked if split-year treatment is being relied on.

[33] Gov.UK, "Check Your U.K. Residence Status" (2023).

[34] RDRM13010 et seq. provides information about how HMRC interprets the term "home" in the context of the SRT.

[35] Very broadly, a family tie exists when the individual's spouse, civil partner, or partner of the opposite sex or the same sex to whom the individual is not married or in a civil partnership with, is resident in the United Kingdom. The 90-day tie exists when the individual has spent more than 90 days in the U.K. in either or both preceding two tax years. A country tie exists when the individual spends a greater number of days in the country than in any other country during that year, but this tie is not relevant for arrivers.

that neither the family tie nor the 90-day tie will be in point for Harry on the basis that his wife and children are non-U.K. residents and he has not spent more than 90 days in the United Kingdom in either or both preceding two tax years. However, Harry may have the accommodation tie if he has a place to live in the United Kingdom that is available for a continuous period of 91 days or more in the tax year (ignoring gaps of fewer than 16 days) and he spends at least one night there. This would certainly have been satisfied while Frogmore Cottage was his family home, but it is questionable if this tie remains. While one might expect accommodation to be available to Harry at Buckingham Palace or one of the other royal residences, an accommodation tie does not exist when the individual stays for fewer than 16 days in a tax year at the home of close relatives such as parents or siblings. Harry may also have the work tie if he works in the United Kingdom for more than three hours a day for at least 40 days in the tax year. Harry need not be in the country at midnight on these days for them to count for SRT purposes, so he will need to take care with flying visits. Assuming Harry has two ties to the United Kingdom (accommodation plus work), he would need to limit his U.K. day counting to 120 in 2023-2024 to achieve non-U.K. residence status.

For couples who are spending time in the United Kingdom and the United States, it is advisable to understand the details of the residence rules in both countries so that they can manage their affairs to acquire and maintain non-U.K. resident status. Assuming the Sussexes remain non-U.K. residents for more than five calendar years to avoid the application of the U.K.'s "temporarily nonresident" rules,[36] their exposure to income tax and CGT will be limited to their U.K.-source income and gains relating to United Kingdom land (subject to treaty relief).

U.S.-U.K. Income Tax Treaty

While Harry and Meghan's fact pattern would elicit much opportunity for pre-U.K. emigration and pre-U.S. immigration planning strategies, these are not the focus of this article. We did, however, want to emphasize the importance of the U.S.-U.K. income tax treaty[37] for those who are potentially exposed to tax in both countries. Like most double tax treaties, the treaty generally grants primary taxing rights to the country of residence (determined under article 4), but gives primary taxing rights to the source country for permanent establishment income and income derived from real estate.[38] However, given that the United States taxes its citizens on their worldwide income and gains, the treaty, like all U.S. income tax treaties, contains a saving clause that reserves the right for the United States to tax its citizens[39] unless the treaty provides otherwise.[40] So for a U.S. citizen who is resident in the United Kingdom, it is vital to consider the foreign tax credit position, because he will be taxed first in the United Kingdom and then in the United States, with the U.S. allowing a credit for the U.K. tax paid. The rules on FTC availability in the United States mean, unfortunately, that there are possible traps for the unwary.

A particular area of difficulty in the U.S./U.K. relationship is the potentially differing tax treatment of limited liability companies and a frustrating lack of clarification from HMRC

[36] Certain individuals who have been tax resident in the United Kingdom and who leave but return and reacquire U.K. tax residence within five calendar years will be treated as having been temporarily nonresident during the period of absence. Therefore, these individuals will be subject to tax, in the U.K. tax year of return to the United Kingdom, on certain income and gains received, realized, or remitted during the period of temporary nonresidence.

[37] The U.S.-U.K. double tax convention was entered into on March 31, 2003, and was amended by signed protocol July 19, 2002. It covers, among other things: U.S. federal income tax (but not Social Security tax), U.K. income tax, U.K. CGT, and U.K. corporation tax.

[38] *Id.* at articles 5-7.

[39] The saving clause also applies to a former U.S. citizen or long-term resident, whose loss of citizenship or resident status had as one of its principal purposes the avoidance of tax, for a 10-year period after the loss (article 1(5) and (6)). A long-term resident for these purposes is someone who has been lawfully resident in at least eight of the 15 tax years ending with the tax year in which the individual ceased to be a long-term resident.

[40] Exceptions include some pension payments (article 17), some investment income of pension schemes established in the other country (article 18), and relief from double taxation through the provision of an FTC (article 24). The saving clause does not apply to some benefits conferred by one of the countries on individuals who are not citizens and have not been admitted for permanent residence in that country, for example, a U.K. citizen who is resident in the United States but has not acquired a green card. The benefits that are covered under this set of exceptions include exemption from country-of-residence tax on certain compensation for government service, certain income received by visiting students and teachers, and certain income of diplomats and consular officials.

following the *Anson* case,[41] in which the United Kingdom allowed credit for U.S. tax paid by a U.K. resident taxpayer in relation to his interest in a widely held Delaware LLC, despite that HMRC's stated practice is generally to treat U.S. LLCs as opaque for U.K. tax purposes. Another area that needs close attention is the taxation of distributions received from trusts, because tax credits are generally only available in the United Kingdom by reference to the same profits, income, or chargeable gains on which the U.S. tax is computed. When U.K. antiavoidance rules apply, HMRC takes the view that generally the U.K. tax is charged on deemed income or gains rather than the profits, income, or gains that may be subject to U.S. tax. There may also be differences in the person who is liable for the tax and the timing of the tax charge that may cause issues from an FTC availability perspective, although some issues are dealt with in the exchange of notes.[42] Good advice on the complex area of double tax treaties and FTC relief will, therefore, be invaluable.

The Sussexes may be interested in article 12, following their recent book launches and Netflix deals. This article allocates taxing rights in relation to royalties so that royalties arising in the U.K. will only be taxable in the country of residence, the United States. Should any gains be generated by Harry and Meghan after the disposal of assets, article 13 would apply, under which both countries may tax gains realized in the other country if the taxpayer were resident in the other country in the prior six tax years. Otherwise, under domestic law, gains of nonresidents are generally not taxed in the source country except regarding real estate gains. The treaty therefore provides some relief for Harry and Meghan regarding their income and gains, but it is not a get-out-of-jail-free card. Importantly, it provides no relief from California taxes.

Given the importance of the country of residence for treaty purposes, when individuals spend time in both the United States and the United Kingdom and are treated as resident in both countries under their respective domestic rules, they must consider article 4, the residence tie-breaker. This article sets out a series of tests to determine where the individual is resident for the purposes of the treaty. The tests are: (1) permanent home, (2) personal and economic relations, or "centre of vital interests" (COVI), (3) habitual abode (namely, the country in which the individual spends most of his time), and (4) nationality. The tests need to be considered in order so that if the first test points to one country and not the other, then the other tests do not need to be considered. It is only if a test does not conclusively point to one of the countries that the next test is considered.

In Harry and Meghan's case it may be unlikely that they are spending sufficient time in the United Kingdom to be U.K. resident under the SRT. However, for any years, whether in the past or the future, when they are resident under the SRT, it would be interesting to consider the tie-breaker test. When couples are splitting time between two countries, they will likely have a permanent home in both and it may be difficult to determine their COVI. The recent case of *Oppenheimer*[43] demonstrated that although a treaty requires a taxpayer's COVI to be decided objectively, it is necessary to look at the things that are of greatest importance to the taxpayer, so there is an element of subjectivity. In *Oppenheimer*, the tribunal held that, in addition to the taxpayer's wife and children, South Africa, its people, culture, politics, and its place in the world were at the forefront of the taxpayer's mind, and he was treaty resident in South Africa despite spending almost twice as much time in the United Kingdom as in South Africa. If ever Harry's COVI needed to be determined, it would be hard to imagine the level of public interest there would be in the evidence as to what is most important in his mind. The possibility of needing to go through this process, even in private, may be a good reason for him to avoid being U.K. resident under the SRT.

[41] *Revenue and Customs Commissioners v. Anson*, [2015] UKSC 44. LLCs are typically treated as passthrough (transparent) entities for U.S. federal income tax purposes but nontransparent for U.K. purposes. Although the U.K. Supreme Court held that a Delaware LLC was transparent as to a U.K. member in *Anson*, HMRC has indicated that it will only follow this case on its particular facts.

[42] United States' response to United Kingdom's note setting forth additional agreements regarding the U.S.-U.K. double taxation convention, signed July 24, 2001, London.

[43] *Oppenheimer v. HMRC*, TC 08443 (2022).

Concluding Remarks

Based on generally available facts regarding their continued and prolonged presence in California, it appears that, barring immigration status exceptions applying to Harry, both Sussexes would be considered U.S. residents for income tax purposes. They are also unlikely to be considered U.K. residents under the SRT. Further, both are likely to be fully taxable in California under the state's residency tests, federal and U.K. aspects notwithstanding. Given that they moved from one relatively high-tax jurisdiction to another, the personal impact may not be substantial, but it presents an important lesson to other globally mobile couples who should consider federal and state taxation in the United States before moving. The Sussexes are unlikely to benefit from tax exemptions available to senior members of the royal family.[44] Thus, they will likely rely on careful consideration of tax credits to ensure that the cost of sparing themselves the unsavory aspects of royal life does not come at a costly tax price.[45] ■

[44] In the United Kingdom, the monarch is not legally liable to pay income tax, CGT, or inheritance tax because the relevant enactments do not apply to the crown. The same is true for the income from the Duchy of Cornwall, which is paid to the prince of Wales. Since 1993, the monarch and the prince of Wales have paid tax voluntarily in the same way as everyone else, as set out in the "Memorandum of Understanding on Royal Taxation." Other members of the royal family are fully liable to tax as confirmed at Gov.UK, "Sovereign Grant Act 2011: Guidance," at 8 (Apr. 1, 2012).

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