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A LESPERANCE & ASSOCIATES  
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## Canada as a Tax Haven

And how Meghan and Harry may benefit  
from their choice to relocate.



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## Meghan and Harry's Future tax issues are complicated... But they just might have stumbled upon an unlikely tax haven...Canada!

I was recently asked by The Times (UK) for my opinion on the tax and immigration issues surrounding the decision by Meghan and Harry Sussex to relocate to Canada. Having previously practised as a Canadian lawyer for over 25 years focusing on Canadian immigration and tax I can understand why I was contacted!

I also have three decades of experience dealing with the tax and citizenship issues of several hundred wealthy Americans who live outside the US. Many of these clients had renounced their US citizenship for tax purposes. Also, since being called to the bar in 1990, I had moved a number of UHNW clients both in and out of the UK. My job was to deal with the tax and immigration issues surrounding such moves.... indeed I had personally moved to the UK as the spouse of a British national and lived there as a 'Non-Dom' (i.e. Remittance Basis taxpayer).

### Sorting out the fact from the fiction

My initial interest in the Sussex situation was sparked by a Daily Mail article. They reported that Harry had been told by *The Firm's* courtiers that their decision could result in double taxation. The advice that **"he could face a 'double tax' on commercial income and bills running into the millions from multiple authorities..."** was supported by citing discussions with HMRC and its Canadian counterpart CRA.

Seeking tax advice from tax authorities is like seeking criminal defence advice from the police! Within the report there was absolutely no mention of a long-standing tax treaty between Canada and the UK. The very title of this treaty clearly states it is an agreement **"For the Avoidance of Double Taxation"**.

After writing a short blog and being contacted by various journalists for my views, I thought that was the end of this story. However, I started to see articles that speculated that the Sussex's revenue earning potential could be in the hundreds of millions of pounds. Clearly it was time for a deeper dive... not only to satisfy those curious about the activities of this couple, but also to pass on some surprising lessons that might be useful to other High Net Worth UK citizens and tax residents. One such valuable lesson is that, with good planning, Canada can offer tax haven opportunities.

Not surprisingly, my legal training and many years of practice have informed me that the best way to understand such a complex situation and its planning opportunities is to look at each relevant jurisdiction in turn...and then synthesize the results.

## Let's first look at US tax issues...

### Meghan and Archie are:

#### US Citizens:

Her by birth in the US and by US parents; him by birth to a US parent who had previously met the US residence requirements to pass on American citizenship;

#### US Taxpayers:

The technical term is "US Persons for Tax Purposes". As citizens both Meghan and Archie are US taxpayers. That means that annually:

1. if either of them meet the minimum worldwide income levels, they are required to file US tax returns and pay appropriate US taxes; and
2. if either of them have signing authority over non-US bank/brokerage accounts that have over 10K USD, they have financial disclosure requirements called FBAR

If they are US taxpayers, they are subject to the same worldwide taxation as if they had never left the US. However, they have foreign tax homes in taxing jurisdictions (Canada/UK). This means they may meet the requirements to offset that global tax liability . They would do this with Foreign Earned Income Exclusion or Foreign Tax Credit (given under US tax treaties with Canada and the UK).

## Severing US tax liability by renouncing US citizenship

In order to renounce US citizenship one must have another citizenship so that one does not render one-self stateless. Meghan is a few years away from citizenship in either the UK or Canada. You must also have mental capacity to make the decision. Archie *has* another citizenship but needs to wait till he is 18 to qualify for capacity. Once they are able, the question will be whether it is worthwhile. Before one ponders the soft issues of affinity to the US etc, the numbers need to make sense.

## Harry

Harry has neither a US resident alien (aka '**Green Card**') status nor spends enough time in the US to trigger the substantial presence test. Therefore unless he has US source income or US situs property he has no US tax or account reporting liability. Meghan could sponsor Harry for US status but has obviously been advised not to do so.

Next let's look at the UK...

## Tax Issues

### Harry and Archie

They clearly each have a UK "domicile of origin" through fathers Charles and Harry respectively. Unless they take the required steps to acquire a new "domicile of choice" in another jurisdiction such as Canada, this means:

1. Their estates will be subject to UK estate tax on world-wide assets. Their heirs will inherit bequests net of the UK estate tax their estate pays; AND
2. While they are "resident in the UK for tax purposes" (which is a physical presence and connections test), then they will be subject to normal UK income and capital gains tax on their world-wide income. (Note: Below we will look at whether they are also resident in Canada for tax purposes);

They can each inherit or receive gifts from Charles or Queen Elizabeth without being subject to UK income tax. Any gift or estate tax liability falls on the giver not the recipient.

### Meghan

Meghan has a domicile of origin in the US. She may have acquired a domicile of choice in Canada during her previous time there. Either way, she is not domiciled in the UK. This means that:

1. Her estate is only subject to UK estate tax on UK situs assets;
2. If she is resident in the UK for tax purposes, then she can take advantage of the Remittance Basis of taxation. This means that she only pays UK income tax on UK source income AND any non-UK current year source income which she remits into her hands in the UK. This is commonly referred to as the '**Non-Dom System**'.

## Frogmore Cottage

Frogmore Cottage is part of the Crown Estate with Meghan, Harry and Archie being merely tenants. Any tax liability for capital gains (such as those which may have resulted from the £2.4M recent improvements) or property tax are the problem of the landlord...not the tenants. Its significance relates more to whether any or all will continue to be resident for UK tax purposes; as a factor in tax treaty tie-breaker rules; or whether Harry and Archie are able to claim a new domicile.

## UK Immigration and Citizenship Issues for Meghan

Meghan acquired a '**Leave to Remain**' under the spousal category for 2 ½ years. We assume that this status was granted at the time of their marriage in May 2018. This means she would need to renew this status in November 2020. Since 2012, a spouse is only able to apply for an '**Indefinite Leave to Remain**' after 5 years. However, UK Immigration laws allow for the Home Office to exercise discretion in both renewing the initial Leave to Remain and granting an Indefinite Leave to Remain.

Furthermore, the normal naturalization rules under the British Nationality Act require 5 years of **Leave to Remain**. The normal additional requirement of at least one year being "without time restriction" is waived in the case of spouses. As a result, they can apply to naturalize at the 5 year mark. However,

there is discretion over these requirements. In short, any issues that arise in either Meghan's immigration or naturalization can be overcome by the appropriate government officials exercising their discretion.

And finally, let's look at Canada...

### Canadian Immigration Issues

Neither US nor UK citizens require a visa to visit Canada. If any family member wants to stay longer than six months or engage in activities beyond mere tourism, they can apply for a temporary status such as a **Work** or **Student Permit**. In order to stay permanently in Canada, the family must secure Permanent Residence (aka '**Landed Immigrant**') status.

There are many paths to permanent status but the most obviously applicable in this situation would be the Self-Employed Category. Under this category either Meghan (as an actor) or Harry (as the founder of the Invictus Games) could be the principal applicant. The other family members (i.e. Archie and the non-principal applicant spouse) would be added as accompanying dependents. Furthermore, intervention by the Canadian Prime Minister or Immigration Minister could eliminate any processing delays in their application as well as eliminate the need for a bridging **Work** or **Student Permit**.

### Canadian Citizenship Issues

Canada does have physical presence requirements of 3 years out of 5 years. However, if these are not met then there is the discretion of the government to waive them.

## Canadian Tax Issues

A person is a Canadian taxpayer by either spending more than 6 months in Canada or having close connections to Canada. Canada has income and capital gains tax applied against worldwide taxation. However, it is possible to greatly reduce or even eliminate Canadian taxation of non-Canadian income and capital gains. This would require careful legal pre-immigration tax planning.

Canada does NOT have an estate gift or wealth tax. Therefore, at a minimum it is attractive as a place to acquire a '*domicile of choice*' for anyone who wishes to avoid UK estate tax.

## What are the implications and planning opportunities?

Obviously the Sussexes - or any HNW UK national, domiciliary or resident - need expert advice regarding Canadian and UK immigration, citizenship and tax planning. Meghan will also need advice on UK tax issues if she remains a UK tax resident. She should continue with the US tax advice she is already receiving as a non-resident in the US.

Presumably if the Sussexes become Canadian tax residents they'd organize their lives so the treaty tie-breaker rules favour Canada. This means that any attempt by the UK or US to double-tax their income or capital gains will be blocked by the standing tax treaties between Canada and those countries. Likewise, any double-tax issues for Meghan and Archie between the US and the UK will be settled by that tax treaty.

## Planning Opportunity #1

A first planning opportunity exists for dealing with any non-Canadian, American or British source income. This income could be from speaking fees, image rights (e.g. selling the *The Archie Sussex* clothing line) or through lending their 'brand' to any number of ventures. With proper planning **none** of this income would be subject to tax by any of these three countries.

## Planning Opportunity #2

Another planning opportunity exists for Harry to acquire a new domicile of choice. This would allow him to pass on his estate free of UK estate tax. UK situs assets would be included in UK estate tax. However, they could be mortgaged and the proceeds put into an appropriate structure. This way future UK estate tax liability could be effectively eliminated.

## Planning Opportunity #3

The final future planning opportunity would be for Meghan (and in the future Archie) to expatriate from the US by renouncing their citizenship. As previously mentioned, US tax savings must be weighed against possible adverse public reaction to their '**brand**'. This could have a disastrous impact on their income generating ability.

## Lessons for UK Non-Royals

The Sussexes plan could prove to be a wise one. Having a tax home in Canada whilst visiting prior homes in the UK/US can be a viable lifestyle alternative. Moreover, if properly organized and managed this arrangement can result in a substantial reduction in the total amount of annual and estate taxes that one

will pay to various governments. There are continual changes in the rules governing taxation of wealthy UK residents by both the Tories and Labour. Therefore it is worth the time and effort for the wealthy in the UK to develop a '*fire escape plan*'. You never know when various '*Tax the Rich*' policies might catch fire in the future. Perhaps, like it has proven for the Sussexes, Canada may prove to be a popular destination.