

This Taxflash provides a summary of actions that may be needed by non-domiciled UK residents claiming the remittance basis. To discuss the implications of these proposals on your individual situation, please contact your usual UHY Hacker Young partner.



Action needed by non-domiciled UK residents claiming the remittance basis

From 6th April 2008 significant changes have been made to the way non-domiciled UK residents are taxed.

Previously, all non-doms were free to claim the 'remittance basis' of tax without charge which meant that their non-UK income and capital gains were only taxed when and if they were remitted to the UK. Now, however, if you are a non-dom and have been a UK resident for seven or more of the last nine years, you will need to pay a 'remittance basis charge' (RBC) of £30,000 for each tax year in which you wish to claim the remittance basis.

Claiming the remittance basis is not obligatory and not claiming it will not affect your domicile status per se, but if it is not claimed, you will be subject to tax on your worldwide income and capital gains in the same way as a UK domiciled UK resident.

In short, as a non-domiciled UK resident you need to make a choice between paying UK tax in full on your worldwide income, or paying the annual £30,000 charge so that you are only taxed on overseas income that is remitted to the UK.

If the remittance basis is claimed, you must nominate an amount of non-UK income and/ or capital gains to which the £30,000 tax will be allocated. In theory, if all of your non-UK income and capital gains are remitted to the UK, the £30,000 will be treated as tax paid in advance on the last portion of income and gains remitted.

Potential pitfalls

Under the new rules, the nominated income and/ or gains must be remitted last. If any part of the nominated income and/ or gains are remitted before any unnominated income and/ or gains, punitive rules are triggered resulting in all of your non-UK income and gains being treated as a single mixed fund, with amounts taxable at the highest rates deemed to be remitted first. It has been argued that this treatment will apply not only for the tax year in question, but for all subsequent tax years, but the legislation is unclear on this point.

These rules are triggered even if £1 of nominated income or gains are remitted out of sequence. This could result in remittances of capital gains, which would otherwise be taxed at 18% or foreign income that would otherwise be taxed at a reduced rate because it was taxed abroad, being treated as income taxable at the highest rate of tax. This would apply

even if the actual remittance was made from an account holding only capital gains or foreign income taxed abroad.

Safeguarding your funds

In order to guard against triggering this adverse tax treatment, our recommendation to most non-doms is that you place enough money in a stand alone non-UK bank account to generate at least £1 of interest during the tax year. This interest income will form your nominated income and should on no account be remitted to the UK. Ring-fencing nominated income in this way should prevent it being inadvertently remitted, with potentially disastrous consequences.

Further points to consider

1. It is important that sufficient funds are placed in the account to generate at least £1 of interest and that the interest is credited before the end of the tax year. Alternatively, the bank could be directed to pay interest from a designated source (eg. another bank account or investment) directly into the nominated account to minimise the funds tied up in the nominated account. **Note that if the remittance basis is to be claimed for the current tax year (year ending 5th April 2009), this account will need to be established as a matter of urgency.**
2. In most cases it should be sufficient to nominate a small amount of income (minimum £1), as this will minimise the funds that need to be ring-fenced in the nominated bank account. However, if you have non-UK income or gains taxable in another jurisdiction, it may be advisable to nominate a larger amount in order to allow tax relief to be claimed in the other jurisdiction for the £30,000 RBC.

This tax flash is necessarily a broad overview of a complex topic. If you have any queries, please do not hesitate to contact your usual UHY Hacker Young partner contact.

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