UHY Hacker Young
Chartered Accountants

SIGNIFICANT CHANGES FOR NON-DOMS

We can help you to get to grips with the non-dom reforms.

If you have a foreign domicile you need to be aware of a series of changes that came into effect from 6 April 2017. This is particularly true if you are already resident in the UK but also, in one respect, even if you have never even set foot in this country.

DEEMED UK DOMICILE FOR LONG-TERM RESIDENTS

The principle is a simple one. From 6 April 2017 any foreign domiciliary ('non-dom') who is resident in the UK and has been so in at least 15 of the previous 20 tax years is deemed to be UK domiciled for the purposes of all taxes (note the reference to 'resident in' rather than 'resident for' a tax year – being resident for only part of a year counts). Once deemed domiciled you are no longer able to claim the remittance basis and your foreign assets are within the scope of Inheritance Tax (IHT).

If you become deemed domiciled under these new rules you will have to be non-resident for six complete tax years to lose this status, at which point the clock starts again. However, you will cease to be treated as deemed domiciled for IHT purposes at the start of your fourth consecutive tax year of non-residence.

THOSE BORN IN THE UK WITH A UK DOMICILE OF ORIGIN

Again, the principle is a simple one – if you were born in the UK with a UK domicile of origin but have subsequently acquired a foreign domicile of choice, you are treated as having a UK domicile in any tax year in which you are resident in the UK. If you become non-resident again, assuming you have retained your foreign domicile under general law, you will again be treated as non-dom unless you have reached 15 out of 20 years' residence (see above).

This rule applies regardless of whether you became UK resident before or after 5 April 2017.

For IHT purposes only, a 'grace period' applies such that an individual who is not caught by the 15 years out of 20 provision is deemed domiciled only if resident in the UK for one of the two preceding tax years.

Where such an individual has set up a non-resident trust while not domiciled or deemed domiciled in the UK, the tax regime applying to the income and gains of that trust will vary with the residence of the settlor. Chargeability to IHT is subject to the grace period referred to above.

RELIEFS

The changes include a number of relieving measures:

1. If you became deemed domiciled on 6 April 2017, had previously paid the remittance basis charge and held foreign assets that are chargeable to Capital Gains Tax (CGT) and that had not been UK assets since 16 March 2016, you have the option when you sell those assets of rebasing to the market value at 5 April 2017 such that it is only the gain arising after this date that is taxable. This is a significant concession – you should take full advantage of it if you are eligible.

   Note that rebasing is not available if you become deemed domiciled after 6 April 2017, if you were born in the UK with a UK domicile of origin or if you have benefited from the remittance basis without ever paying the remittance basis charge. Re-basing is also not available to trustees.

   If the asset in question was not bought with clean capital, any previously unremitted income or gains used to fund its purchase will still be taxable if remitted to the UK.

UK residential property that was not previously within the scope of Inheritance Tax may be charged.

2. For two tax years from 6 April 2017, non-doms with mixed funds in bank accounts are able to rearrange these and separate out the different parts, meaning that you can remit from clean capital or, in some cases, post-April 2017 income or gains without a tax charge.

   The separate parts of the mixed funds must be capable of identification and separation. This relief is available to most non-doms, with the exception of those with a UK domicile of origin.

3. Provided that a trust enjoys 'protected' status – essentially that it was settled by any non-dom before 6 April 2017 or by a non-dom who had yet to become deemed domiciled after that date and had not become 'tainted' through the addition of further assets – a deemed domiciled settlor is not taxed in respect of non-UK income or gains unless they or a close family member (defined as spouse, co-habitee or minor child) receives a benefit.

   Note that this provision does not apply to non-doms with a UK domicile of origin.

   The non-UK assets of a trust settled by a non-dom individual prior to his becoming deemed domiciled remain excluded property for IHT purposes.

UK RESIDENTIAL PROPERTY AND INHERITANCE TAX

Holding UK assets via an offshore company used to have the effect of taking them outside of the tax, since the asset that the non-dom holds is shares in the offshore company; putting the shares of such a company into a trust before becoming deemed domiciled had ensured that this 'excluded property' status was maintained.

From April 2017, UK residential property owned indirectly via offshore structures is removed from the definition of excluded property and is chargeable to IHT. This change applies to offshore close companies (generally those owned and controlled by five or fewer individuals) and similar entities and to overseas partnerships, in each case restricted to the extent that the value is derived from UK residential property.

As a result, UK residential property that was not previously within the scope of IHT may be charged under the following circumstances:

- If you die holding shares in an overseas close company that owns UK residential property
- If you die within seven years of making a gift of such shares
- If you die having retained a benefit in a UK residential property following a gift of shares
- On the ten year anniversary of a trust holding UK residential property via a company
- On the death of a life tenant with a qualifying interest in possession in a trust that holds UK residential property via a company.

The definition of residential property, for the purpose of this change, follows the approach used for the non-resident CGT regime.

A deduction is allowed for debts that relate to the property, including connected party debts. However, any loans made to an individual, trustees or a partnership to acquire or maintain a UK dwelling are regarded as within the scope of IHT. Assets used as collateral for such loans are also brought within the IHT net.

From 5 April 2017, if assets which would otherwise be caught are disposed of, or a loan that would have been caught is repaid, the proceeds of sale/repayment will remain within the scope of IHT for two years.

BUSINESS INVESTMENT RELIEF

Business Investment Relief (BIR) provides a route via which non-doms can invest in the UK without making a taxable remittance.

The provisions have been extended as follows:

- A new 'hybrid' category is added to the qualifying investment definitions to allow investment into companies which are both carrying on a trade and holding investments
- The time limit for investing into a company before it starts to trade is increased from two years to five
- The acquisition of existing shares is allowed (in addition to new issues)
- The extraction of value rule is changed to ensure that only benefits which are attributable to the investment will lead to funds being treated as remitted.

OTHER CHANGES

From 6 April 2018 capital payments to a non-resident beneficiary are no longer matched with a trust's pool of gains (regardless of the domicile of the settlor). This ensures that gains cannot be 'washed out' by making distributions to non-residents.

The legislation also sets out anti-avoidance rules to catch the 'recycling' of trust distributions among family members and new methods for valuing benefits received from offshore trusts.

REVIEW, PLAN, ACT

There are some significant planning opportunities here, particularly in the transitional period. Your position needs to be reviewed if:

- You are a non-domiciled individual who has become deemed domiciled by virtue of residence in at least 15 out of the previous 20 tax years.
- You are a non-domiciled individual with significant overseas assets, whether held directly or via a trust, who is currently resident in the UK and is likely to remain so
- You are a non-domiciled individual with significant overseas assets, whether held directly or via a trust, who may become UK resident
- You are a non-domiciled individual who holds UK residential property via a company or a trust/company structure (regardless of current or future residence).

This review needs to be carried out quickly and any action points agreed and progressed.

This briefing note is primarily a summary and some points have had to be simplified. It should not be relied upon as a basis for any planning. We highly recommend that you seek detailed advice that is specific to your circumstances.

A review is needed if you are: a non-domiciled individual who has become deemed domiciled by virtue of residence in at least 15 out of the previous 20 tax years, have significant overseas assets as a resident in the UK or hold UK residential property via a company.

We highly recommend that you seek detailed advice that is specific to your circumstances.

THE NEXT STEP

If you would like further information on how the reforms discussed in this publication may affect you, please speak to your usual UHY contact or one of our specialists:

Mark Giddens
Partner
e: m.giddens@uhy-uk.com
t: +44 20 7216 4651

Derek Levy
Partner
e: d.levy@uhy-uk.com
t: +44 20 7216 4600

Alternatively, read more about us on our website at www.uhy-uk.com.

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