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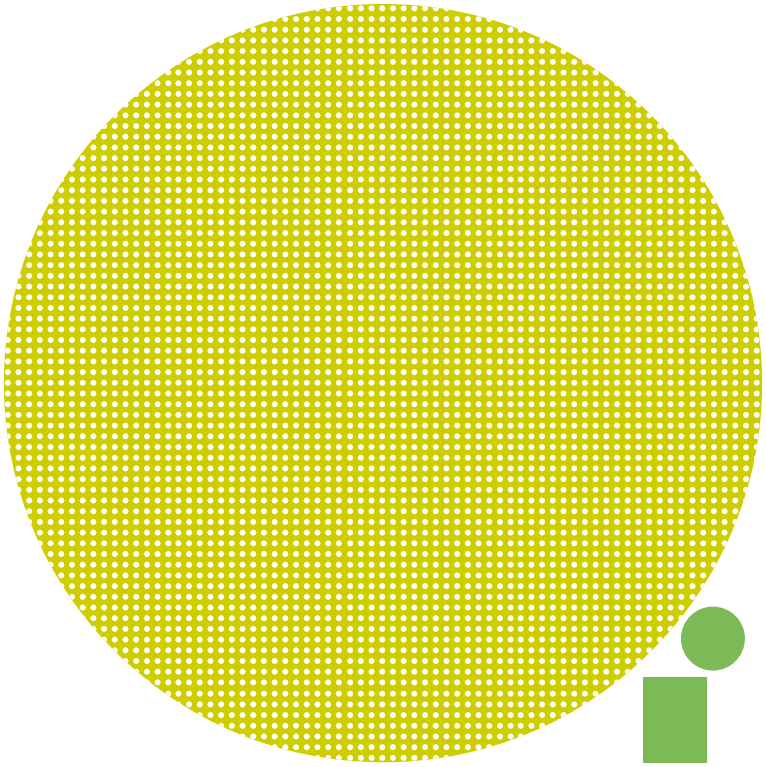

Significant changes for non-doms from April 2017

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

If you have a foreign domicile - particularly if you are already resident in the UK but in one respect even if you have never even set foot in this country - you need to be aware of and plan for a series of changes that are due to come into effect from 6 April 2017.

Draft legislation was published on 5 December 2016, with the proposals previously set out in consultation documents subject to some amendment. Anyone entering into planning should be aware that the measures will remain draft until the Finance Bill is enacted as Finance Act 2017 (scheduled for late July).

DEEMED UK DOMICILE FOR LONG-TERM RESIDENTS

The principle is a simple one. It is intended that 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 will be 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 will no longer be able to claim the remittance basis and your foreign assets will be 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 will be 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 will apply regardless of whether you became UK resident before or after 5 April 2017.

For IHT purposes only, a 'grace period' will apply 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.

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

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 will be subject to the grace period referred to above.

RELIEFS

The proposals include a number of relieving measures:

1. If you become deemed domiciled on 6 April 2017, have previously paid the remittance basis charge and hold foreign assets that are chargeable to Capital Gains Tax (CGT) and that have not been UK assets since 16 March 2016, you will 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.

2. For two tax years from 6 April 2017, non-doms with mixed funds in bank accounts will be able to re-arrange these and separate out the different parts, meaning that you will be able to 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. The original plan to assess a deemed domiciled individual on the income and gains of a non-resident trust of which he/she is the settlor has been dropped. 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 will not be 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 will remain excluded property for IHT purposes.

UK RESIDENTIAL PROPERTY AND INHERITANCE TAX

Non-dom individuals, whether resident in the UK or elsewhere, are currently liable to IHT only in respect of property situated in the UK. Holding UK assets via an offshore company has until now had 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.

The intention is that from April 2017, UK residential property owned indirectly via offshore structures will be removed from the definition of excluded property and will be chargeable to IHT. This change will apply 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.

> Before acting, it is important to seek detailed advice that is specific to your circumstances.

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

- 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; or
- 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, will follow the approach used for the non-resident CGT regime.

A deduction will be 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 will be regarded as within the scope of IHT. Assets used as collateral for such loans will also be brought within the IHT net.

Where after 5 April 2017 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.

Despite strong representations in response to the initial consultation, the Government has no plans to introduce a relief for those who intend to dismantle offshore structures ('de-envelope') before April 2017.

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 are to be extended as follows:

- A new "hybrid" category will be 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 will be increased from two years to five.
- The acquisition of existing shares will be allowed (in addition to new issues).
- The grace period for removing or reinvesting funds will be increased from two years to five in some circumstances and the extraction of value rules will be changed to ensure that only benefits which are attributable to the investment will lead to funds being treated as remitted.

FURTHER CHANGES

There was no mention in the consultation documents of wider changes to the taxation of non-resident trusts. Buried in the draft legislation, however, is an announcement that from 6 April 2017 capital payments to a non-resident beneficiary will no longer be matched with a trust's pool of gains (regardless of the domicile of the settlor). This will ensure that gains cannot be "washed out" by making distributions to non-residents.

The draft 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 will have been resident in the UK in at least 15 of the previous 20 tax years as at 5 April 2017 (note that, because it is residence in a tax year that counts, you could be caught having spent just over 13 calendar years in the UK; note also that the old rather vague residence rules apply to determine residence for years prior to April 2013). If in doubt, we strongly recommend you seek professional advice.
- 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 after 5 April 2017.
- you are a non-domiciled individual with significant overseas assets, whether held directly or via a trust, who may become UK resident after 5 April 2017.
- 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).

Given the relatively short timescale before these changes take effect, that review needs to be carried out quickly and any action points agreed and progressed.

This briefing note is necessarily 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/those of any related entity.

For further information on how the reforms discussed in this publication may affect you, please speak to your usual UHY adviser or contact one of our specialists at your nearest location using our contact form on our website at www.uhy-uk.com/contact-us.

Alternatively, read more about our services for non-doms on our website at www.uhy-uk.com.