

Reform of the non-dom regime – October 2017

16 October 2017

HEADLINE POINTS

- The main package of changes to the taxation of non-doms is still expected to take effect from 6 April 2017.
- Unless there are any political surprises, these changes will be passed into law in November this year as part of Finance Bill 2017.
- Further changes tightening up the anti-avoidance rules for non-UK trusts are intended to take effect from 6 April 2018.
- The draft legislation for these changes was published in September and will be included in a separate 'Winter' Finance Bill.

KEY CHANGES TO BE EFFECTIVE FROM 6 APRIL 2017

The main reforms to the tax regime for individuals who are UK resident but not UK domiciled ("non-doms") are summarised below. These changes will apply from 6 April 2017, once the new legislation has passed into law.

THE 15 / 20 YEAR DEEMED DOMICILE RULE

Non-doms who have been UK resident for 15 out of the previous 20 tax years will be treated as though they are deemed domiciled in the UK for all tax purposes, meaning that they will:

- lose access to the remittance basis (exposing worldwide income and gains to UK tax); and
- be liable for inheritance tax on worldwide assets (not just assets situated in the UK).

It is important for non-doms to take advice before reaching the 15 year residence threshold for deemed domicile.

FORMERLY DOMICILED UK RESIDENTS

Individuals born in the UK with a UK domicile of origin will also be deemed domiciled in the UK if they are UK resident at any time on or after 6 April 2017, even if they have acquired a non-UK domicile under general law.

CAPITAL GAINS TAX REBASING

Individuals who became deemed domiciled on 6 April 2017 (only) and have paid the remittance basis charge previously will be relieved from tax on gains that arose before 6 April 2017 on personally held non-UK assets.

CLEANSING OF MIXED FUNDS

All non-doms with mixed fund accounts will be able to separate those funds into their constituent parts until 5 April 2019. This is an important opportunity to access clean capital for use in the UK free of tax.

A note explaining the cleansing and rebasing opportunities in more detail can be found [here](#).

PROTECTIONS FOR NON-UK TRUSTS

Broadly, no income tax, capital gains tax or inheritance tax is payable in respect of non-UK income / non-UK assets settled into trust by a non-dom before they become deemed domiciled *unless* an individual receives a benefit from the trust (in which case the value of the benefit may then be taxable if it represents trust income or gains).

The protections are lost if any additions are made to the trust by the settlor, or a trust of which the settlor is the settlor or beneficiary, after the settlor has become deemed domiciled.

NEW RULES FOR VALUING TRUST BENEFITS

Statutory rules will determine the value of certain trust benefits, including beneficial loans, the use of trust property and the enjoyment of art and other moveable assets.

The new rules are relevant for income tax and capital gains tax and they apply to all trusts, not only those with non-dom beneficiaries.

INHERITANCE TAX "LOOK THROUGH" PROVISIONS FOR UK RESIDENTIAL PROPERTY

UK residential property (and related loans) will be within the scope of UK inheritance tax, even if owned via a non-UK structure.

Specifically, interests in non-UK companies deriving their value from UK residential property will no longer be exempt from inheritance tax.

Individuals with interests in such non-UK companies may be liable to tax charges on death or when certain lifetime transfers are made. Trusts may be liable to periodic (10-year) charges and exit charges (on distributions of trust assets).

BUSINESS INVESTMENT RELIEF

Where certain conditions are met, Business Investment Relief allows non-doms to remit their non-UK income and gains to

the UK for the purpose of investing in a UK business without triggering a taxable remittance. The rules have now been widened, so that the relief will apply in more situations than before.

KEY CHANGES TO BE EFFECTIVE FROM 6 APRIL 2018

The following anti-avoidance measures are intended to tighten up the existing rules for non-UK trusts from 6 April 2018 onwards.

CAPITAL PAYMENTS TO NON-RESIDENTS

After 5 April 2018, benefits conferred to non-UK resident beneficiaries by a non-UK trust will no longer reduce stockpiled trust gains that can be taxed when capital payments are made to UK resident beneficiaries.

Trustees should consider whether payments ought to be made to non-UK resident beneficiaries before 6 April 2018 in order to “wash out” trust gains. This may improve the UK tax position for UK resident beneficiaries going forward.

ONWARD PAYMENTS

A distribution from a non-UK trust intended for a UK resident individual will potentially be subject to UK tax if the distribution is made via someone who is not taxable on the distribution, e.g. a non-UK resident individual or a remittance basis user.

Where the new onward payment rules apply, the ultimate recipient will be treated as if they had received a trust distribution directly. The rules will need to be considered for onward gifts made after 5 April 2018, even if the original trust distribution took place before that date.

The rules will apply to all non-UK trusts for capital gains tax purposes. However, for income tax purposes, the rules only apply if the settlor is non-UK domiciled or deemed domiciled in the UK, or has been previously.

Exemptions may apply where it can be shown that:

- there was no intention to make an onward gift at the time of the original trust distribution being made; or
- the onward gift is unconnected to (or cannot be traced back to) the original trust distribution.

Non-doms and non-UK residents who have received trust distributions and may be contemplating gifts to a UK resident individual should consider whether it is better to make those gifts before 6 April 2018.

CLOSE FAMILY MEMBERS

Trust distributions made to a ‘close family member’ of the settlor may be treated as made to the settlor directly if the

family member is not taxable on the distribution, e.g. because they are non-UK resident or a remittance basis user.

For these purposes, a close family member includes the settlor’s spouse or civil partner (including unmarried equivalents) or a minor child. However, if the settlor is a remittance basis user, the distribution may be protected from UK tax by the remittance basis if it is not remitted to (or received in) the UK.

Tax liabilities for UK resident settlors of non-UK trusts may, in some cases, be reduced by making trust distributions to close family members before 6 April 2018, rather than afterwards. However, the rules are complex and professional advice is essential.

ACTION POINTS

- Non-doms approaching 15 years of UK residence should review how their assets and investments are structured. It is important to plan for the loss of the remittance basis, and the exposure of their non-UK assets to inheritance tax.
- Individuals who became deemed domiciled on 6 April 2017 should ensure that they maximise the benefits of capital gains tax rebasing for their non-UK assets.
- Non-doms who have used the remittance basis and have mixed fund accounts should make the most of the opportunity to split out mixed funds into their constituent parts before 6 April 2019, to facilitate tax efficient remittances to the UK.
- It will be sensible in many cases to review existing structures for non-doms to ensure that the new rules are taken into consideration; particularly where UK residential property is held or a trust has protected status.
- Settlor, beneficiaries and trustees of non-UK trusts should consider what action may need to be taken before 6 April 2018.

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