



December 2015

## CHANGES TO THE TAXATION OF NON-DOMICILES

### Current Position

- Domicile is a concept separate and distinct to residence.
- Residence is determined by the number of days an individual spends in the UK and the number of connecting factors he has with this country (such as family, business, permanent home etc).
- Domicile is a common law concept that has UK tax implications.
- There are various type of domicile:
  - Domicile of origin;
  - Domicile of choice;
  - Domicile of dependency;
  - Deemed domicile.
- Every person has a domicile of origin for the purposes of English law which is passed from father to child.
- Domicile is a mixture of:
  - fact;
  - history;
  - background; and
  - intent.
- A non-domiciled individual will establish a domicile of choice in the UK if he forms the intention of making the UK his permanent home and spending the rest of his life there.
- Domicile is not determined by any one factor such as where a person is resident, their citizenship, where their assets or family are located or the type of passport they hold. Although these factors may be relevant, they are not in themselves decisive.
- So far as a person's intention is concerned, HMRC will look at whether such intention is evidenced by the client's personal, economic and social ties.
- An individual who is UK resident but not UK domiciled is taxed on the remittance basis:
  - UK source income and gains are liable to UK tax;
  - Non-UK source income and gains are taxed only if remitted to the UK
- The benefits of the remittance basis are eroded over time:
  - IHT: An individual who has been resident in the UK for 17/20 tax years is Deemed Domiciled for UK IHT purposes, meaning that his worldwide estate is brought into charge. An individual will also be considered Deemed Domiciled for three calendar years after loss of actual UK domicile.
  - IT & CGT: From 6 April 2008 long term non-domiciled residents of the UK have had to elect into and pay to benefit from the remittance basis of taxation. The amount payable depends on the time the individual has resided in the UK as follows:

Years Resident	RBC Payable (£)
17 out of 20 tax years	90,000
12 out of 14 tax years	50,000
7 out of 9 tax years	30,000



- The present IHT position on UK residential property:
  - If UK residential property is held in a trust it will be subject to the relevant property regime of 6% every 10 years and will be subject to a gift with reservation charge upon the settlor's death.
  - If UK residential property is held in a foreign registered company, there will be no IHT if it is owned personally by an individual neither domiciled nor Deemed Domiciled in the UK, or is owned in a trust and the settlor was neither domiciled nor Deemed Domiciled when he made the settlement.
  - Note: the ATED and NRCGT rules will need to be considered.

### Changes Effective April 2017

- From 6 April 2017 an individual who is domiciled abroad will, from the first day of his 16th year of residence (i.e. having been UK tax resident in 15 of the 20 preceding tax years) be deemed to be UK domiciled for IT & CGT purposes, bringing the non-dom rules in line with the rules for IHT. Deemed Domiciled status can be lost once being non-resident for 6 years.
- From 6 April 2017 an individual who is now domiciled abroad, previously had a UK domicile of origin / UK Deemed Domicile and was born in the UK will be treated as UK Deemed Domiciled for all tax purposes upon his return to the UK.
- This means he will be liable to worldwide taxation for income tax, capital gains tax and inheritance tax purposes.
- Relief is extended to non-domiciled individuals who, before becoming deemed domiciled, establish offshore trusts (or other suitable structures) that might otherwise come within the transfer of assets abroad provisions whereby income arising in the structure could be taxed to the settlor.
- Income arising within such a structure will not be taxed to the settlor on an arising basis (unless it arises from a UK source) but tax will be payable on benefits actually received from the offshore trust, whether or not remitted to the UK.
- The tax due will not be calculated by reference to income and gains that have arisen in the trust (a departure from the current rules). We await details of the new method of calculating the tax due.
- In addition, it should be noted that foreign assets settled into foreign trusts before an individual becomes deemed domiciled will continue to remain outside the scope of UK IHT even when the individual becomes deemed domiciled.
- In relation to UK residential property, it has been proposed that from 6 April 2017 that shares in offshore companies will not be excluded property for IHT purposes if their value is directly or indirectly derived from UK residential property.
- Residential property will include both owner occupied property and let property.



## Action Needed

- Target: Individuals that have spent several years in the UK already and own foreign assets (shares, cash, real estate) personally.
- Such individuals should take steps to establish an offshore trust into which such foreign property is transferred. This should be done before the changes take place in April 2017 or before they are UK Deemed Domiciled.
- The trust should be irrevocable and discretionary.
- If structured correctly the trust will allow:
  - non-UK assets to remain outside the scope of UK IHT; and
  - non-UK income and gains to be sheltered from UK tax on a deferred basis; and
  - benefits and capital payments will be taxed without reference to income and gains arising in the offshore structure (although unclear whether this will apply to non-settlers).
- For the changes to IHT on UK residential property outlined above, more information and draft legislation is needed before we can advise on the action needed. Relief for de-enveloping is under consideration and we will provide an update when more information is publicised.