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Non-Domiciled Individuals

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Non-Domiciled Individuals

This factsheet sets out the rules which deal with the taxation in the UK of income arising outside the UK, for non UK domiciled individuals.

The issue

An individual who is resident in the UK but is not domiciled (referred to as 'non-dom') may opt to be taxed on what is termed the 'remittance basis' in respect of income and capital gains arising outside the UK. What this means is that instead of being taxed on their actual income/gain arising in the year, they are taxed on the amount of that income/gain actually brought into the UK in the tax year.

Every non-dom must give very careful consideration to their UK tax position and take extreme care in planning their overseas income and capital gains.

Claiming the remittance basis

The starting point of liability for all non-doms is that overseas income/gains are taxable on the arising basis just as they are for any UK domiciled individual. The non-dom will have the option of making a claim for the remittance basis to apply, but if they make this claim, they will automatically forfeit their personal allowance for income tax purposes and their annual exemption for CGT. This will obviously impact on their total tax liability including any UK income/gains.

The main situation where a non-dom will be able to benefit from the remittance basis without making a claim and will therefore retain their allowances is when they remit to the UK all but a maximum of £2,000 of their income and gains arising abroad in the year.

Example

Jan, who is domiciled in Poland but who has been living in the UK for five years, has rental income arising from the letting of property in Poland. Let's pose two different scenarios for 2017/18 assuming his overseas income is £5,000.

Scenario 1: He remits £1,000 to the UK – he can pay tax on the full £5,000 as it arises and he will retain his personal allowance against that and any UK source income. If he claims the remittance basis he will pay tax on £1,000 but will lose his personal allowance against that and any UK source income.

Scenario 2: He remits £3,000 to the UK. He can have the benefit of the remittance basis and pay tax on only £3,000 because he has left no more than £2,000 unremitted. He will retain his personal allowance.

Claiming the remittance basis - long term residents

What is a long term resident?

Matters become more complex and serious when an individual falls within the definition of a long term UK resident. This will arise when the individual has been resident in the UK for at least seven out of the nine UK tax years preceding the one for which liability is being considered. For these purposes a part year of residence counts as a full year. In considering the position for 2017/18 it is necessary to look at the individual’s UK residence position going back as far as 2008/09 (ie to 6 April 2008). If they have been UK resident for at least seven of those years then they will be classed as a long term resident for the purpose of the remittance basis.

Example

Sanjay first came to the UK in July 2010. He will be classed as resident here from 2010/11 which will mean that he meets the seven year rule and will therefore be treated as a long term resident in 2017/18. If his residence had not commenced until July 2011 he would only have six years of residence and would not become a long term resident until 2018/19.

What are the implications of being a long term resident?

Essentially the long term resident (who must be 18 years of age or over at some time in the tax year concerned) can only claim the benefit of the remittance basis if they pay an additional £30,000 in addition to the tax on any income or gains remitted. This sum is known as the 'remittance basis charge' (RBC).

The rules surrounding this charge are complex but the 'bare bones' are as follows:

- the charge effectively represents tax on unremitted income or gains
- the non-dom nominates specific income/ gains to represent this charge
- the sums nominated cannot then be charged to UK tax even if they are subsequently remitted to the UK in a later year
- the nominated income/gains are deemed to be remitted only after all other unremitted income/gains have come into the UK
- tax on the sums nominated may be eligible for relief under a double tax agreement (DTA).

The RBC is not avoided where there is a failure to nominate specific income/gains and such failure may result in duplicate or higher taxation in future years.

Example

Let us assume that Sanjay is then a long term resident for 2017/18 and that he has overseas income arising in India of £6,000. He can only secure the remittance basis for 2017/18 if he pays the RBC. Clearly it would be nonsensical for him to pay that charge to avoid tax on say for example £4,000 of income which was unremitted. He will therefore not elect for the remittance basis and will pay UK tax on the full £6,000 of income arising from India. If that income has been subject to tax in India he may be entitled to set any Indian tax against his UK liability. ;

Example

Sergio is a very wealthy Spaniard who has been living in the UK for seven years. He is a higher rate UK tax payer. In 2017/18 he has income of £150,000 arising in Spain and also makes a capital gain of £500,000 on the sale of a Spanish commercial property. He remits none of this to the UK in 2017/18.

He claims the remittance basis and obviously has no liability on remitted income because there is none. He will have to pay the RBC of £30,000 and must nominate income or gains to represent this sum. He could nominate £150,000 of the capital gain which, taxed at 20%, would represent a liability of £30,000.

That would satisfy the RBC and would mean that £150,000 of the gains would not be taxed if it is subsequently remitted. It would also mean, subject to the terms of the UK / Spanish DTA, that he may be eligible for relief in respect of any Spanish tax on this sum.

Higher RBC charges for some

A higher RBC charge applies for an individual that has been UK resident for 12 out of the previous 14 years. This charge is currently £60,000. A further additional RBC was introduced for those resident for 17 out of the previous 20 years of £90,000 but this is not relevant for 2017/18 onwards due to a fundamental change in the taxation of certain long term UK resident non UK doms (considered later in this briefing).

Example

If Sergio (from the previous example) has been living in the UK for say 12 years then given the same circumstances he may decide that £60,000 is too high a price to pay.

If he did decide to claim the remittance basis there is still no liability on remitted income because there is none. He would have to pay the increased RBC of £60,000 and must nominate income or gains to represent this sum. He could nominate £300,000 of the capital gain which, taxed at 20%, would represent a liability of £60,000.

That would satisfy the RBC and would mean that £300,000 of the gains would not be taxed if it is subsequently remitted. It would also mean, subject to the terms of the UK / Spanish DTA, that he may be eligible for relief in respect of any Spanish tax on this sum.

What is a remittance?

HMRC take the view that whatever method an individual uses to bring income or gains into the UK it may be treated as a remittance. The rules are very detailed and it is only possible here to give a brief outline.

Relevant person

Essentially a remittance can be caught if it is for the benefit of any person who, in relation to the taxpayer (ie the non-dom with overseas income/gains), is within the definition of a relevant person. That list includes:

- the taxpayer
- their spouse or civil partner
- a partner with whom they are living as a spouse or civil partner
- any child or grandchild under 18 years of age
- a close company in which any relevant person is a shareholder
- a trust in which any relevant person is a beneficiary.

Basic concept of a remittance

Two conditions must be in place for a remittance to arise. Firstly property, money, or consideration for a service, must be brought into the UK for the benefit of a relevant person and secondly, the funds for that property etc must be derived directly or indirectly from the overseas income and gains. These rules are much wider than the old rules. Some examples will help to explain the scope.

Example

Alex, a wealthy Canadian lives in the UK with his wife and young children. He has a significant bank deposit in Jersey which generates a large amount of income each year. Any of the following uses of that income would constitute a remittance for UK tax purposes:

- he buys an expensive car in Germany and brings it into the UK
- he opens a bank account in the UK for each of his children with funds from Jersey
- he sends his wife on an expensive weekend at a spa and the bill for the break is sent direct to Jersey for settlement
- he uses a credit card in the UK which is settled on a monthly basis out of the Jersey income.

There are some exceptions for example clothes, watches and jewellery for personal use and other goods up to a value of £1,000.

A more indirect route is also caught

In the past it had been possible to use a route known as 'alienation' to avoid the remittance basis. This would involve an individual giving someone else their overseas income and then that individual bringing the money into the UK. In the recipient's hands it would have represented capital and the remittance would have been avoided. Now such a route is not possible. Any attempt at 'alienation' which involves the funds ultimately being brought into the UK for the benefit of a relevant person will be caught as a remittance by the taxpayer. This rule is likely to cause some difficult situations.

Example

Alex gifts some of the Jersey income to an adult son. He uses the money to pay for a UK school trip for his own son. The grandson is a relevant person as far as Alex is concerned and this payment will constitute a remittance on which Alex is taxable in the UK.

Other issues

There are a number of other issues covered by the rules such as:

- transitional arrangements to deal with property acquired before 6 April 2008
- transitional arrangements to deal with payment of interest on overseas loans used to fund the purchase of a UK property
- the identification of remittances from mixed funds
- dealing with gains arising in offshore trusts.

Relief for business investment

Where a non-dom remits funds to the UK which are then invested in a qualifying business in the UK those funds are not treated as a remittance so the remittance basis may be more attractive. It should be noted, however, that a claim for the remittance basis still involves paying the appropriate RBC which may be due.

The rules for Business Investment Relief are detailed (and have been slightly improved with effect from April 2017) but the key elements are:

- the investment must be in shares or loans to a trading company or a company which will invest in trading companies,or a company which is a combination of the two
- the company must be unquoted
- the non-dom (or any relevant person in relation to the non-dom) must not receive any benefit from the company which is directly or indirectly attributable to the investment
- when the investment is subsequently realised the non-dom will have 45 days to either reinvest in another qualifying company or remove the funds from the UK otherwise they will be treated as a remittance in that later year.

Key changes for the long term resident non-UK domicile

A number of fundamental changes are to be made from 6 April 2017:

- for individuals who are non-UK domiciled but who have been resident for 15 of the previous 20 tax years or
- where an individual was born in the UK with a UK domicile of origin and resumes UK residence having obtained a domicile of choice elsewhere.

Such individuals will be classed as 'deemed' UK domiciles for income tax, CGT and IHT purposes and will be assessable on worldwide income, gains and assets. They will not be able to access the remittance basis.

IHT matters

The concept of deemed UK domicile has existed for many years but for IHT only. A UK deemed domicile is chargeable on worldwide assets for UK IHT rather than only on UK assets if non-UK domicile. The effect of these reforms is that an individual will become deemed UK domiciled for IHT at the start of their sixteenth consecutive year of UK residence, rather than at the start of their seventeenth year of residence under the rules which have applied to 5 April 2017. For IHT purposes only a deemed domicile will lose deemed domicile status at the start of the fourth year of non UK residence.

IT and CGT matters

Legislation will allow a non-UK domiciled individual who has been taxed on the remittance basis to rearrange and transfer amounts between overseas mixed fund bank accounts without being subject to the offshore transfer rules. This will allow the different elements within the accounts to be separated, thereby allowing clean capital to be remitted to the UK in priority to income and gains.

The draft legislation also provides that the market value of an asset at 5 April 2017 will be able to be used as the acquisition cost for CGT purposes when computing the gain or loss on its disposal where the asset was situated outside the UK between 16 March 2016 and 5 April 2017. This will apply to any individual who becomes deemed UK domicile in April 2017, other than one who is born in the UK with a UK domicile of origin, provided that individual has been subject to a remittance basis charge for any tax year prior to 2017/18.

UK residential property

Changes are also proposed for UK residential property. Currently all residential property in the UK is within the charge to IHT if owned by a UK or non-UK domiciled individual. It is proposed that all residential properties in the UK will be within the charge to IHT where they are held within an overseas structure. This charge will apply whether the overseas structure is held by an individual or trust.

How can we help

Each individual's situation is going to have different problems. Please contact us if you would like to discuss how these rules impact on you and the steps you can take to mitigate their impact.

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