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Non Domiciled Individuals

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This factsheet summarises the rules which deal with the UK tax position for individuals who are not UK domiciled.

The Issue

UK residents are taxed on their worldwide income and gains. An individual who is resident in the UK but is not UK domiciled (referred to as 'non-dom') may opt to be taxed on the 'Remittance Basis' in respect of income and capital gains arising outside the UK. This means that instead of being taxed on their overseas income/gains arising in the year, they are taxed on the amount brought/"remitted to" the UK in the tax year.

UK Resident Non-Doms must give careful consideration to their UK tax position and take extreme care in how they structure and use their overseas income and capital gains.

Individuals who have lived in the UK for 15 of the last 20 years are deemed to be a UK Domicile and cannot claim the Remittance Basis.

Claiming the Remittance Basis

Non-Doms can claim for the Remittance Basis to apply, if they make this claim, they may forfeit their personal allowance for income tax purposes and their annual exemption for CGT. Unless they have a Dual Tax Residence status and the Double Taxation Treaty provides otherwise.

Automatic Remittance Basis (ARB)

The Remittance Basis is given automatically if the following are satisfied:

- Unremitted income and gains to not exceed £2,000
- Is under 18 years, has no UK income and does not make any remittances
- Has been a UK resident fir less that six of the last nine years, has no UK income and does not make any remittances .

It does not apply to Deemed Domiciles.

Example

Jan, who is domiciled in Poland but who has been living in the UK for a number of years, has rental income arising from the letting of property in Poland. Let's pose two different scenarios for 2018/19 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.

Long Term Residents

What is a long term resident?

Non-Doms who have been long term residents of the UK can still claim the Remittance Basis however, in order to do so they must pay the Remittance Basis Charge (RBC). The amount of the charge is determined by the duration of residence.

- 7 our of 9 years £30,000
- 12 out of 14 years £60,000

The Remittance Basis Charge (RBC)

The rules surrounding the RBC 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

Example

Let us assume that Jan is a long term resident. He can only secure the remittance basis for 2018/19 if he pays the RBC. Clearly it would be nonsensical for him to pay that charge to avoid tax on say £4,000 of income which was unremitted. He will therefore not elect for the remittance basis and will pay UK tax on the full £5,000 of income arising in Poland. If that income has been subject to tax in Poland he may be entitled to set any Polish 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 2018/19 he has income of £150,000 arising in Spain and also makes a capital gain of £300,000 on the sale of a Spanish property. He remits none of this to the UK in 2018/19.

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 £107,143 of the capital gain which, taxed at 28%, would represent a liability of £30,000.

That would satisfy the RBC and would mean that £107,143 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.

A remittance arises, when property, money, or consideration for a service, is brought into the UK for the benefit of a relevant person, the funds for that property etc must be derived from the overseas income and gains.

Relevant person

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.

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.

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.

Business Investment Relief

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 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
- 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
- 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.

Take care

As can be seen from this brief review, the rules are wide ranging and complex. The Non-Dom now needs to take great care in how they organise their overseas assets and in particular cash funds. Ideally pure capital funds should be kept clear of any income so that they can still be used as a means of tax free remittance. Where remittances are made from mixed funds, untraced incomes and gains are derived to be remitted in preference to clean capital and taxed funds.

Deemed Domiciles

Since April 2017:

- for individuals who are non-UK domiciled but who have been resident for 15 of the previous 20 tax years or

- an individual was born in the UK with a UK domicile of origin and resumes UK residence having obtained a domicile of choice elsewhere.

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

A deemed UK 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.

Legislation allow certain Non-UK domiciled individual who have been taxed on the remittance basis to cleanse overseas mixed fund bank accounts. 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 legislation also provides that the market value of non-UK situated assets 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. The tax payer can elect for the rebasing not to apply.

UK residential property

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 your tax exposure.