

Briefing Note

More Changes for Non Doms

In the 2015 Summer Budget, the Government announced further changes to the tax regime for people domiciled outside the United Kingdom (UK). The consultation paper was published on 30th September 2015 and the consultation period closed on 11th November 2015. The changes are proposed to take effect from 6th April 2017, so it is not too soon now for anyone who may be affected to start reviewing their planning, as offshore structures can be notoriously slow to unwind or restructure.

The two main planks of the proposed reforms are:-

- The introduction of a deemed domicile rule for all purposes to be included in the Finance Act 2016, and to take effect from 6th April 2017.
- The introduction of an inheritance tax charge on all UK residential property including property held indirectly by non doms through offshore trusts and companies, which is to be included in the 2017 Finance Bill and will be the subject of a separate consultation.

This article looks at the proposed deemed domicile rule.

Long term resident non doms

The UK tax legislation already contains a deemed domicile rule for inheritance tax purposes only. Anyone who has been a UK resident for 17 out of the last 20 years, or who has been domiciled here within the last three years, is deemed to be UK domiciled for the purposes of inheritance tax only. The proposed new rule will apply from April 2017 for all tax purposes, including inheritance tax.

Under the new rule any individual who has been a resident in the UK for at least 15 out of the last 20 tax years will be treated as domiciled in the UK for all tax purposes from the 16th year of residence. The main impacts will be in relation to the ability to claim the remittance basis of tax, which will no longer apply; and in relation to inheritance tax, where the exclusion from inheritance tax for foreign assets will also cease to apply. Years of residence while under the age of 18 will count as will split years. Protections are to be included for offshore trusts and arrangements covered by the transfer of assets abroad legislation provided they were set up before the individual concerned becomes deemed domiciled in the UK under the new rules. The paper invites views on whether the existing £2,000 de minimis threshold should be preserved for those who have become deemed domiciled.

There is a measure of protection for offshore trusts and arrangements subject to the Transfer of Assets Abroad (TOAA) legislation. Settlers of trusts and transferors of TOAA arrangements are not to be taxed on the income and gains of those structures provided they were set up before they become deemed domiciled.

The approach which the Government proposes to adopt is to tax individuals deemed domiciled in the UK on the taxable value of benefits received without reference to the income and gains arising in the offshore structure. This would be a radical departure from the present system under which benefits only attract a tax liability if they can be matched with income or gains that have arisen in the structure. The Government is in fact considering extending this new regime to all resident non doms, not only those who are deemed domiciled under the new rules, although a person who is not deemed domiciled would continue to be entitled to claim the remittance basis.

The inheritance tax rules on deemed domicile will be aligned with the new rules so that an individual will be deemed domiciled here when they have been resident for at least 15 out of the last 20 tax years, rather than 17 out of the last 20 years as at present. Deemed domicile status will apply from the start of the 16th consecutive year of UK residence.

Excluded property trust status for inheritance tax will continue for trusts established by a non-domiciled individual before they become deemed domiciled in the UK. This preserves the existing treatment where excluded property status is fixed at commencement of the settlement, based on the settlor's domicile at that time (with modifications for trusts under which the settlor or his/her spouse has an initial interest in possession). The rules are also to be changed for UK domiciled individuals who leave the UK and acquire a domicile of choice in another country. Under current inheritance tax rules, individuals in this category are deemed to be domiciled in the UK for three years after they actually cease to be domiciled here, which would mean they could lose their UK domicile more quickly than someone who is deemed domiciled here under the new rules. The government is therefore considering altering the rules so that a UK domicile who acquires a domicile of choice abroad continues to be treated as domiciled here until the later of the date on which they acquire a domicile of choice in another country, or have been not UK resident for six years.

Potentially exempt transfers of excluded property made by non UK domiciles within seven years of death will not be included in the death estate even if the donor is deemed domiciled in the UK at date of death.

Currently a non-domicile who is the spouse or civil partner of a UK domicile can elect to be treated as UK domiciled for inheritance tax purposes (in the lifetime of and following the death of the UK domiciled spouse). The election ceases to apply if the person making it is non-resident for at least four consecutive tax years. The Government is proposing to extend this to six years to align with the new rules.

Non doms with UK domicile of origin

New rules are to be introduced for individuals born in the UK with a domicile of origin here who acquire a domicile of choice elsewhere. From April 2017, such individuals will be treated as having a UK domicile of origin for all tax purposes in any tax year in which they are resident in the UK. This means that in future anyone born domiciled in the UK will not be able to acquire a domicile of choice abroad and return to live in the UK while maintaining that foreign domicile. They will continue to be taxed as non doms while they are not resident in the UK. This means there will be no protection from tax liabilities on income and gains arising in offshore trusts, or for inheritance tax purposes. The excluded property trust rules will not apply while the individual is UK resident so even for trusts set up while the individual was not domiciled or resident in the UK. These trusts will switch in and out of excluded property status for inheritance tax purposes as the residence status of the settlor changes. The Government has invited views on whether short periods of UK residence (two years) should be disregarded in applying the new deemed domiciled rule.

Individuals who are treated as deemed domiciled under this rule will cease to be so treated once they become non-resident, unless they have been resident in the UK for 15 out of the last 20 tax years (assuming they have actually retained their foreign domicile of choice during this period).

These reforms will have a major impact on planning for non-domiciled individuals and their trusts and other structures. There is still much detail to be filled in but with a proposed commencement date of April 2017 the sooner these structures are reviewed the better.

This briefing note is a short summary of the Government's further changes to the tax regime for people domiciled outside the United Kingdom. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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