

Proposed 'Non - Dom' changes

with

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- Planning for leaving the UK
- HM Revenue & Customs negotiations
- Trusts
- Inheritance tax
- Capital gains tax
- Business structuring
- Taxation of owner managed businesses
- Property taxation
- Social Security planning

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- Review launched in 2003
- The Chancellor's Pre-budget report on 9th October 2007 announced proposals for sweeping changes to the residence and domicile rules
- Consultation document issued on 7th December 2007
- Draft legislation published 18th January 2008
- IHT changes to follow?

- Current rules allow taxpayers who are resident but not domiciled in the UK to use the remittance basis of taxation
- Non-remitted overseas investment income and gains are currently not taxed (subject to exclusions and anti-avoidance provisions)
- A claim is required

- An additional annual charge of £30,000 is proposed for those Non-Doms who have been resident in the UK for 7 out of the previous 9 years, if they wish to claim the remittance basis
- This is in addition to the tax due on any remittances
- The proposed charge is per person - £60,000 for couples if both claim remittance basis
- Additional cost through loss of Personal Allowances

- Need to review amount of overseas income – if not worth paying for the remittance basis worldwide income needs to be included on the UK tax returns
- Failure to declare worldwide income would leave taxpayer exposed to interest, penalties and possible prosecution
- HMRC have extensive powers to obtain information from third parties both in and outside the UK
- General attack on offshore planning – dual contracts, overseas workdays

- In working out if someone is resident in the UK, days of arrival and departure will now be counted
- For those who have left the UK, the day count is only relevant if they have actually left the UK – necessary to establish a new pattern of life
- The test is subjective taking into account intention and lifestyle

- Many of the proposed changes are likely to affect those who have been in the UK for less than 7 years (e.g. loss of Personal Allowances will cost over £2,000 per annum)
- Consultation process under way, but new rules expected to come in from 6th April 2008
- Now time to gather together information to review assets and structures – likely to be very little time for action before 6th April 2008 once final wording of the legislation is clear.

- Proposed changes to the remittance basis:
 - Removal of the source ceasing rules
 - Extending anti-avoidance rules which currently do not apply to the remittance basis
 - Extending the definition of remittance
 - Reducing the scope for income and gains planning through offshore trusts and companies
 - Consultation on higher charges for those who have been resident for more than 10 years

- Window of opportunity before 6th April 2008 – e.g. making changes to structures
- Structures which may no longer be effective for income and capital gains purposes may still provide considerable inheritance tax benefits

- Planning through offshore trusts – Sections 86 and 87 Taxation of Chargeable Gains Act (TCGA) 1992
 - “Settlor interested” trusts (settlor, spouse, children or grandchildren may benefit) – apportionment of gains to settlor
 - Where trust is not “settlor interested” gains are stockpiled and matched with capital payments to UK resident (and currently only UK domiciled) beneficiaries
 - Notional interest can currently increase rate the CGT rate from 40% to 64% (in future from 18% to 28.8%)
- Current proposals mean gains on disposals of UK assets will be taxed on the arising basis

- Remittance of ‘asset in specie’, e.g. paintings etc.
- Gifts completed abroad and remittance by spouse, or “other relevant person”
- Offshore mortgages
- Specific rules to identify remittances from mixed funds
- Temporary non-residence rule
- Possible to “opt in and opt out”, but income and gains from years when the remittance basis was claimed remain taxable if remitted in a year when no claim is made



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