

FOCUS ON

Changes to the taxation of non domiciliaries from 6 April 2017

Mr Osborne's seventh budget on 8 July 2015 included two significant announcements for those not domiciled in the United Kingdom. The first dealt with proposed changes to how certain non-domiciled individuals are taxed. The second one seeks to charge IHT on UK residential property, irrespective of how it is held, and however long the structure has been in place. Consultations on the changes are being made before detailed legislation is included in Finance Act 2016 with the new rules taking effect on 6 April 2017.

The change means that from that point they will no longer be able to claim the remittance basis of taxation for income and capital gains tax and will therefore be subject to tax on an arising basis on their worldwide income and gains.

It also brings forward the date on which a UK resident non-domiciliary is subject to Inheritance Tax on their worldwide assets (currently seventeen out of the last twenty tax years). The non dom can lose this deemed domicile status only once they have been non UK resident for up to six years (currently the IHT rule is three years).

UK born non doms

There are a number of non resident individuals who may have been born with a UK domicile but whose subsequent actions and intentions have established a domicile of choice in a different state. If they then return to the UK ("the returning non-dom"), the new rule for them will be that the moment they become UK resident they will acquire a UK domicile for all tax purposes. Any trust structure that they may have set up while they were non resident and non domiciled will not benefit from any favourable tax

Overseas born non doms

Those non domiciled individuals who have been resident for fifteen out of the past twenty tax years will be deemed domiciled in the UK for all tax purposes, irrespective of when they came to the UK.

“ *The long term resident non domiciliary will need to seriously consider the costs and other issues associated with moving onto the worldwide arising basis of taxation.* ”



treatment. This rule also applies for any returning non-dom who may have returned to the UK at any time before 6 April 2017.

On departure from the UK, and providing the individual had retained their non-UK domicile under general law, the returning non-domiciliary would lose their deemed UK domicile, unless they had been UK resident for fifteen out of the last twenty tax years, in which case an absence of six years will be required.

UK residential property to be subject to IHT for the non-domiciliary, however held

The second change affects non domiciled individuals who hold UK residential property through an intermediary (e.g an offshore Trust holding shares in a non resident Company which in turn owns UK residential property). Currently such structures would usually be regarded as “excluded property” and not subject to IHT. From 6 April 2017, such property will be within the scope of IHT. There is no exemption if the property is let out and no monetary threshold so all such property is included.

Furthermore:

- IHT will therefore be imposed on the value of UK residential property owned by an offshore company on the occasion of any chargeable event, including:
 - the death of the individual wherever resident who owns the company shares;
 - a gift of the company shares into trust;
 - the 10 year anniversary of the trust;
 - distribution of the company shares out of trust;
- the death of the donor within 7 years of having given the company that holds the UK property away to an individual; and

- the death of the donor or settlor where he benefits from the gifted UK property or shares within 7 years prior to his death - the reservation of benefit rules will apply to the shares of a company owning UK property in the same way as the rules currently apply to UK property held by foreign doms and generally to UK doms.

What does it mean?

The long term resident non domiciliary will need to seriously consider the costs and other issues associated with moving onto the worldwide arising basis of taxation. Some may leave in anticipation of the 15/20 year rule applying to them, either for six years to “reset the clock”, or for good.

The “returning non dom” will need to think carefully about resuming UK residence, as if they do so, this removes any ability to claim the remittance basis from the day they return to the UK and nullifies any trust structure they may have established while they were non-UK domiciled.

Excluded property arrangements should still work for IHT purposes for most non- domiciliaries, but will have to be considered earlier than now, and different arrangements will need to be thought about for residential properties.

Those with existing structures protecting the value of residential property from IHT may wish to unravel the arrangements, which could be costly.

Individuals with a domicile of origin in certain countries with which the UK has a Double Tax Agreement covering estate taxes and which include a reference to domicile, may still be able to benefit from the advantages conferred in relation to their IHT position.

Contact us

For further information on the changes to the taxation of non domiciliaries from 6 April 2017, speak to your usual MHA MacIntyre Hudson tax advisor or Matt Coward.



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