

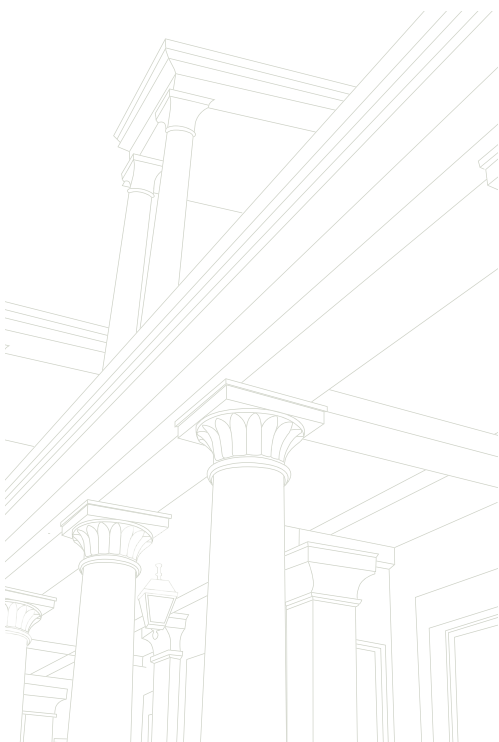
What Now For Non-Doms?

THE LAST SEVEN MONTHS HAVE BEEN SOMETHING OF A ROLLERCOASTER FOR UK RESIDENT NON-DOMICILED INDIVIDUALS (“NON-DOMS”) AND THEIR ADVISERS. THERE WAS A SENSE OF FOREBODING AFTER THE PRE-BUDGET ANNOUNCEMENT LAST OCTOBER, INTENSE CONCERN AFTER THE FIRST DRAFT LEGISLATION WAS RELEASED IN JANUARY, SOME RELIEF WHEN THE FIRST CONCESSIONS WERE MADE IN FEBRUARY AND A LITTLE MORE RELIEF AFTER FURTHER CONCESSIONS IN THE BUDGET IN MARCH.

THE NET RESULT IS THAT THE INCOME TAX AND CAPITAL GAINS TAX LANDSCAPE FOR NON-DOMS HAS CHANGED SIGNIFICANTLY.

What are the changes?

- The rules for determining the number of days that a person spends in the UK and therefore whether he is “resident” or not for UK tax purposes have been altered. The Finance Bill provides that if you are present in the UK at midnight (and are not “in transit”) that day counts towards the “183 day” test, whether or not that day is one of arrival and departure. It is possible that the Revenue will try to apply these criteria to the “91 day” non-statutory test.
- If you have been UK tax resident for seven of the previous nine tax years you may only claim the “remittance basis” in relation to foreign source income and gains if you pay a £30,000 levy. The levy has been characterised as an advance payment of tax on unremitted income and gains and so, can be credited against UK tax on remitted foreign income and gains. This characterisation should also help in obtaining credit for the levy under any relevant double tax treaty.
- Any non-dom claiming the remittance basis and paying the £30,000 levy may not benefit from the personal allowance for either income tax or CGT.
- The “remittance basis” itself has been radically altered.
- There is a much wider definition of what constitutes a “remittance”. In general terms the old practice



that offshore income and gains could be remitted tax free in non-cash form has been swept away. There is now a very wide definition which is subject to some limited exceptions which were conceded in the face of lobbying. The exceptions provide that personal assets (such as clothing and jewellery), assets costing less than £1,000, assets brought to the UK for repair or restoration and assets brought to the UK for nine months or less will not constitute a remittance.

- The old rule that income remitted in a tax year after the tax year in which the source of that income had ceased was not a taxable remittance has been abolished.
- New anti-avoidance provisions will apply to gifts by a non-dom to members of his family which are derived directly or indirectly from foreign income and or gains. In the past, "alienation" was a well established method of making provision for family members whilst avoiding any UK tax charge on the cash or assets brought by the recipient family member to the UK. From 6 April onwards any gifts to a "relevant person" followed by importation of cash or other assets representing the subject matter of the gift will be deemed to involve a remittance by the original donor and trigger a tax charge in his hands.
- Interest payments on offshore loans will be treated as remittances subject to "grandfathering" arrangements for certain loans taken out before 12 March 2008.
- Capital gains made by foreign resident companies in which the non-dom is a shareholder (and which would be "close" companies if UK

resident) are chargeable with effect from 6 April 2008. If the non-dom is entitled to the remittance basis that would apply to company gains in relation to non-UK assets.

- Chargeable gains made or deemed to be made by trustees of offshore trusts will be chargeable in the hands of a non-dom to the extent that he receives benefits from the trust or underlying company which are not chargeable to income tax. This significant change is subject to the ability of the trustees of the offshore settlement to elect (for the purpose only of computing CGT payable by non-domiciled beneficiaries) that the assets of the trust and any assets owned by underlying companies should be rebased to their market value at 6 April 2008 with a view to excluding any CGT charge by reference to any capital gain that had accrued prior to that date.

Is it all doom and gloom?

The rules have certainly become a lot tougher for non-doms but the game is by no means over.

Non-doms should consider their residence position in any given year very carefully. If an individual turns out to be non-resident he should be beyond the scope of UK income tax and CGT. The non-dom's residence status is also relevant to whether the £30,000 levy for use of the "remittance basis" is applicable.

Similarly, pre-residence planning for non-domiciled individuals thinking of coming to the UK is of greater importance in the new environment.

With careful planning there may be

scope for alienating pre 6 April 2008 income without triggering a tax charge against the donor.

Non-doms should consider the use of offshore trusts. They still provide benefits. Apart from succession and other advantages offshore trusts offer the potential for income tax and CGT deferral and even avoidance. Importantly, offshore trusts can provide a means of deferring or avoiding CGT in relation to UK situated assets as well as foreign assets.

Trustees of existing offshore trusts should review their positions in the light of the new rules.

One of the issues that non-doms and their trustees need to consider carefully is whether or not those trustees should elect to rebase assets to their 6 April 2008 values. The argument for rebasing appears compelling but there might be circumstances in which it is not beneficial to rebase. There is a time limit for a rebasing election and it is crucial that the trustees do not miss the opportunity if it is advantageous.

If any individual or trustee thinks that these issues are relevant to them we would be delighted to assist.



John Goodchild
Partner
Direct dial: 020 7591 3384