

Non-domiciles tax changes; post Budget update.

The Government have now confirmed in the Budget delivered on 12 March 2008 that they intend to press ahead with its package of reforms of the tax rules applying to non-doms. As a result of the consultation process, various changes are being made to the draft legislation originally published on 18 January 2008. The revised proposals will then be debated before ultimately being incorporated in the Finance Act 2008. This means that although the proposals are intended to take effect from 6 April 2008, the actual wording of the legislation will not be finalised until later in the year, probably the summer.

The main proposal remains that those non-doms who have been resident in the UK for seven out of the past ten tax years will have to pay an annual charge of £30,000 if they want to continue to be taxed on the remittance basis. They will also lose various tax allowances in the UK. The alternative is to pay tax on worldwide income and gains in the UK. The £30,000 payment is now to be treated as a tax, which is helpful for double tax treaty purposes. Non-doms who have not reached the seven years will not have to pay this charge, but will be affected by the other changes to the rules and will suffer the loss of tax allowances.

Those with small amounts of income will be relieved to note that if their unremitted foreign income and gains are less than £2,000 per tax year, they will be exempt from the £30,000 charge and may also keep their tax allowances. This replaces the £1,000 limit previously proposed. It will be possible to elect in and out of the charge based on the level of income and gains in each tax year, but previously untaxed income will remain taxable in the UK even if remitted in a year when the remittance basis is not claimed.

The £30,000 charge can be paid directly to HMRC using untaxed foreign income without this being treated as a taxable remittance to the UK. For tax efficiency, the charge should be paid directly from the foreign income account. Any income or gains remitted other than to pay the charge will remain taxable. Children below the age of 18 will not be subject to the charge.

A number of changes have also been made to the proposed new rules relating to the taxation of offshore trusts with non-domiciled settlors or beneficiaries. It is intended that income and gains in such trusts will only be taxed when remitted to the UK, even if they relate to UK assets. This represents a substantial climb down from the original proposals.

It is also clear that the existing anti-avoidance provisions relating to gains in offshore close companies will be extended to cover non-domiciled participators. Shareholders of such companies should seek professional advice.

The budget confirmed that from 6 April 2008 it will no longer be possible for a non-dom taxpayer to gift overseas income to a close family member for subsequent remittance to the UK by the recipient in the form of tax free capital. The initial version of this proposed new rule was very widely drafted, and could have been unworkable in practice. The definition of "immediate family" for this purpose has now been redrafted to mean spouses, civil partners, individuals living together as spouses or civil partners and their children or grandchildren under 18, as well as certain connected companies and trusts.

Continued page 2/...

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From 6 April 2008 a non-dom who opts to be taxed on the arising basis will be subject to UK capital gains tax on worldwide gains. The legislation will now also be amended to grant relief for foreign losses if the remittance basis is not claimed in the relevant year that losses occur.

A further change will be seen with regard to offshore mortgages. Previously an individual could take out a mortgage loan from a foreign institution, remit the loan to the UK but pay the loan interest overseas using untaxed foreign income without incurring a taxable remittance. From 6 April 2008 this will no longer be possible. Existing offshore mortgages will however be "grandfathered" so that the loan interest can continue to be paid without resulting in a taxable remittance for the remaining period of the loan or until 5 April 2028, whichever is shorter. If the loan is varied or further advances are taken out from 12 March 2008, the interest payments will be treated as remittances from that point.

It is helpful to note however that the new proposed tax charge on "remittance in specie" where a tax charge will arise if an asset purchased using overseas investment income is brought to the UK will incorporate an exemption for small personal effects such as clothes, shoes, jewellery and watches and assets costing less than £1,000

It is important to note that more situations will be treated as a remittance from 6 April 2008 onwards, so it is important for those non-doms who have overseas income or gains to take professional advice to see how these proposals may affect them.

The above is intended as a general update only and does not constitute legal advice. The new rules may change further before coming into effect, and each person's individual situation will affect their tax affairs.

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