

## **UK taxation of non domiciled individuals**

You may be aware from considerable media publicity of the controversial proposals to amend the UK taxation policy in respect of individuals who are not domiciled in the UK (the so-called non-doms). The proposals first announced in the Pre-Budget statement in October 2007 have now been published in a considerably revised form in the Finance Bill. They may still not be in their final form but it is a little clearer how they are likely to apply.

### **What is a non-dom?**

Domicile is a very particular status for tax purposes. It is not the same as residence which is determined simply by reference to presence in the country. Domicile is a much more complex affair. Essentially everyone has what is known as a domicile of origin which is determined by the place in which their father was domiciled at the time of their birth. This may not necessarily be the same as the actual country in which they were born. For example, a child born in the UK to a father who was domiciled in India would have an Indian domicile of origin. Similarly a child born in France with a father who was domiciled in the UK would have a UK domicile of origin.

Where someone moves to a new country and decides to reside there indefinitely with no intention of ever leaving, then it may be argued that they have acquired a 'domicile of choice' in that country. Every situation must be looked at by reference to the specific facts and it is important to note that the onus of proving a change of domicile always rests on the person who alleges the change.

If you consider that you are not domiciled in the UK we can advise on the strength of your case and what you may need to do to successfully establish a non UK domicile.

### **What was the tax advantage of being a non-dom?**

A non domiciled individual who is resident in the UK for tax purposes has been able to enjoy a considerable tax advantage over the resident and domiciled individual. The advantage rests with the tax treatment of income and capital gains arising outside the UK. The domiciled individual is taxed here on the income and gains as they arise in each tax year but the non domiciled individual has only been taxed on those sums to the extent that they have actually brought them into this country. This is referred to as the 'remittance basis'.

So if as a non domiciled individual you had investment income of £20,000 arising outside the UK in a tax year and you only transferred £1,000 of that into the UK you could only be taxed on the £1,000.

There were a number of planning routes open which allowed the nature of remittances to be planned so as to minimise the impact still further.

### **What is the change?**

The fundamental change is that from 6 April 2008 all UK resident individuals will be taxed on their worldwide income as it arises irrespective of their domicile unless they claim to be treated under the remittance basis.

### **Who can make the claim?**

The opportunity to make the claim to the remittance basis is open to any individual who is not domiciled in the UK or is not ordinarily resident in the UK. If the claim is made they will pay tax only on the income and gains which they actually remit to the UK in the tax year concerned. There is a downside in that they will lose entitlement to personal allowance for income tax purposes and the annual capital gains tax exemption. The decision whether or not to claim the remittance basis can be made each year and so it is possible to move in and out of the basis to secure the best tax position.

### **What about this £30,000 charge?**

The £30,000 remittance basis charge will be levied in addition to any tax on remittances in situations where the person making the claim for remittance basis has been resident in the UK for at least seven out of the nine years preceding the year of claim. It will not be applied where the individual is under 18 years of age throughout the relevant tax year. Years of residence before 6 April 2008 will be counted and any year where an individual was resident for just part of a year will count as a full year. Anyone who has been continually resident since 6 April 2001 will have to pay the remittance basis charge from the outset.

Where the £30,000 charge has to be paid, the individual must nominate part of their overseas income and gains on which the sum will represent the tax due. If and when that particular income or gain is remitted to the UK it will not be chargeable to tax. The charge will also be available for relief under most double tax treaties that the UK has with other countries.

### **What if I actually remit nearly all my overseas income?**

If you remit to the UK all the income that arises in a year, or only leave no more than £2,000 unremitted, then you may have the benefit of the remittance basis without having to make a claim and without having to lose personal allowances or pay the £30,000 charge.

### **How do I calculate remittances?**

The rules on identifying and calculating remittances are being overhauled and all the old planning routes appear to have been successfully blocked off. At the most basic level, there will now be a remittance if you use overseas income to purchase an asset such as a car and then bring the asset into the UK for your own use. Previous practice of using remittances from ceased sources and the practice of making gifts outside the UK to individuals who then remit are also being blocked off.

The changes in this area represent the most significant overhaul of the taxation of non domiciled individuals for decades and very careful planning is now going to be needed on an individual basis to ensure the most efficient approach is taken. We are able to help you with this process and would be happy to discuss your position with you further.