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Remittance basis taxpayers and loans which are used in the UK

HM Revenue & Customs (HMRC) have updated their manuals to seemingly reflect a change of view on the UK tax treatment of loans that have been made to individuals who are or who have been on the remittance basis of taxation.

The change affects non-UK domiciled individuals who have claimed the remittance basis and have borrowed money which has been brought to or used in the UK ('a relevant debt').

The difficulty with the change in guidance is that it creates further uncertainty about how to report the affected loans in a taxpayer's tax return and the level of disclosure which should be made. There also appears to be no 'grandfathering' and so there could be compliance issues in respect of how the loans have been reported in earlier tax returns and, if a new position is taken, how this affects future remittances of the same income/gains.

Background

The legislation states that where unremitted foreign income and/or gains are 'used' in respect of the relevant debt, they are treated as remitted to the UK.

It is clear that unremitted income/gains will be treated as remitted to the UK if they are used to repay the principal or pay interest in respect of a relevant debt. However, it is less clear how and when unremitted foreign income/gains would be regarded as 'used' if they are offered as security or collateral in respect of the relevant debt.

History

Originally, when the current remittance rules were enacted in 2008, HMRC's published practice was that unremitted foreign income/gains would not be treated as remitted if they were provided as security or collateral, provided that principal and interest were paid appropriately.

However, in 2014, HMRC changed their guidance to say that any unremitted foreign income/gains provided as security or collateral would be treated as remitted but, importantly, only up to the value of the relevant debt or (if less) the amount brought to the UK.

It was not clear when unremitted foreign income/gains would be considered as 'provided' in this way and whether a formal pledge was required or whether it was sufficient that the lender had recourse to all unremitted foreign income/gains under a general right of set off or an all monies pledge.

It was also acknowledged that the same unremitted foreign income/gains could therefore be potentially remitted twice: once when offered as security and a second time if used to repay the principal or interest.

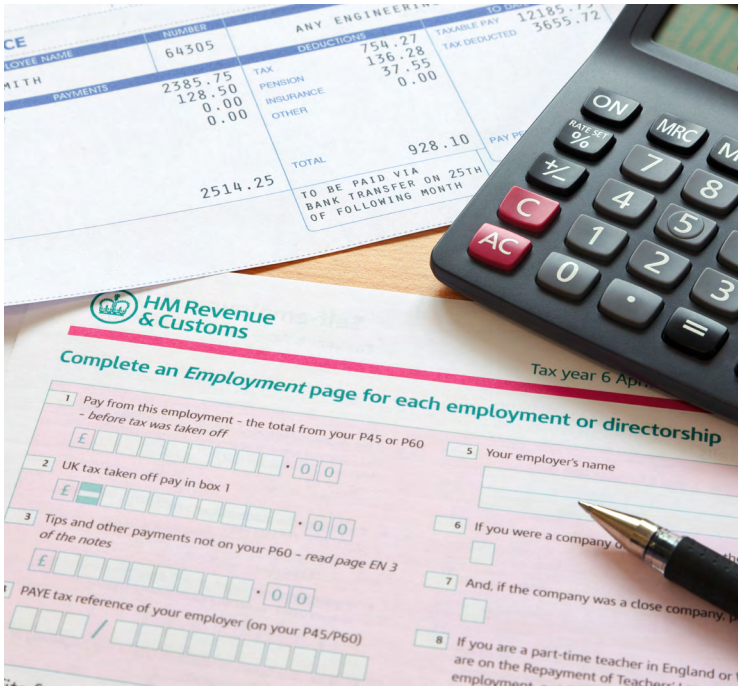
HMRC's latest view

Over the course of 2020/21 HMRC have again updated their manuals to suggest that all unremitted foreign income/gains provided as security or collateral should be regarded as remitted if all of the borrowed money is brought to the UK. This means that potentially the taxable remittance could exceed the value of the loan.

Interestingly, if only some of the borrowed money is brought to the UK, the unremitted foreign income/gains that are remitted to the UK still seems to be limited to the actual amount brought to the UK.

Taxpayers who may be affected by these changes, or indeed are considering taking out new borrowings, should discuss the issue with their advisors.

If you would like to discuss your specific circumstances or how you may be impacted by these changes, please get in touch with your usual Blick Rothenberg contact or a member of our Private Client team by clicking here.



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