



# New offshore trust rules for deemed domiciled individuals

In the consultation published on 19 August 2016, details were at last provided of the rules applicable to non-UK domiciled individuals (“non-doms”) who will become deemed domiciled in the UK due to the application of the 15/20 rule.

In the 2015 Summer Budget we were told that non-doms who set up offshore trusts before they become deemed domiciled would not be taxed on trust income and capital gains that were retained in the trust or its underlying entities and, further, trusts established by a non-dom settlor would be outside the scope of UK inheritance tax (“IHT”).

It was also suggested that for such trusts there would be a move away from looking at the underlying income and gains position of the trust and instead tax distributions and benefits received. However, it has now been confirmed that the government will not pursue the benefits charge but will instead introduce a different regime. The main elements of this regime are outlined below. Unfortunately, it appears that the ‘protections’ previously suggested will be quite limited in their application.

## Anti-avoidance rules

### 1. Settlor and Capital Gains Tax (“CGT”)

The current rules tax an individual who is resident and domiciled in the UK and who has settled assets into a non-resident trust on the gains arising in the trust, if they (or a family member) retain an interest in the trust.

The government now intends to extend these rules to apply to all those who are deemed domiciled. This will ensure that those who are deemed domiciled pay tax on gains arising in a non-resident trust in the same way as an individual who is domiciled in the UK.

#### *The protection*

The government will ensure that the legislation does not extend to the settlor of a non-resident trust who is deemed domiciled where the trust was set up before they became deemed domiciled and no additions of property have been made since that date.

However, if the settlor, their spouse or their minor children and/or stepchildren receive any actual benefits from the trust then the protection will not apply.

### 2. Beneficiary and CGT

Current anti-avoidance rules provide that any UK-resident individual receiving capital payments from an offshore trust will be subject to CGT to the extent that there are chargeable gains arising in that trust. Where the individual is a remittance basis user such capital payments have only been taxable if they were remitted to or received in the UK.

Following the introduction of the new deemed domicile rule, UK resident individuals who receive capital payments or benefits from a non-resident trust or underlying entity, and who are deemed domiciled, will be subject to CGT regardless of where the benefits are received.

Settlors who become deemed domiciled will not be taxed under these rules. Their trusts will either not be protected, in which case they would be liable for all gains as set out in 1 above, or if the trust is protected, it will lose its protection once a benefit is paid out to them, their spouse or minor children, resulting in the settlor being taxed on all gains arising.

### 3. Settlor and income tax

Anti-avoidance rules currently state that where a settlor (or their spouse) can benefit under a trust they will be subject to tax on the income of the trust. The rules also tax the settlor on income paid to unmarried minor children. Where the settlor is non-domiciled, they have been able to claim the remittance basis in relation to non-UK source income received by an offshore trust. UK tax only arose where that income was remitted to the UK.



Following the introduction of the new deemed domicile rules, those settlors who are deemed domiciled will no longer be able to claim the remittance basis, so the settlements legislation will apply to all income.

### *The protection*

The legislation will be amended so that these rules do not apply to a deemed domiciled settlor on foreign income arising to a non-resident trust that they had set up before becoming deemed domiciled, if the income is retained within the trust. UK source income arising to a non-resident trust will continue to be taxed on a deemed domiciled settlor as it is now.

However, if the settlor, their spouse, minor children or other relevant person receives a distribution of relevant foreign income arising in a year when the settlor was non-domiciled and the trust was protected, that distribution will be taxed on the settlor. This will be to the extent that it can be matched against relevant foreign income arising in that year and in any other years when the settlement is protected and the settlor is a long-term resident non-dom.

### **Additions to settlements**

The protections outlined above will only apply where assets were held by the trust before the settlor became deemed domiciled

under the new rules. Where property has been added to a protected settlement since the date on which the settlor became deemed domiciled, the settlement will lose its protection.

In effect, any addition after that date will taint the whole settlement so that it will lose its protection for that tax year and all future years. Where the settlement was created before 6 April 2017, only additions made on or after that date can taint the settlement because that is the earliest date on which the settlor can become a long-term deemed domicile.

### **Individuals born in the UK with a UK domicile of origin**

None of the protections mentioned above will be available to those born in the UK with a UK domicile of origin. Additionally, trusts created by such individuals whilst they were non-dom will be within the scope of inheritance tax with effect from 6 April 2017.

### **Conclusion**

Any non-dom settlor of an offshore trust who will become deemed domiciled under the 15/20 rule will need to take advice, in conjunction with the Trustees of the settlement in relation to how these changes will impact their specific circumstances.

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If you wish to discuss the new provisions, please speak to your usual contact at Blick Rothenberg or:

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