



## Further consultation for non-domiciled individuals (“non-doms”) finally published

After many months of waiting HM Revenue & Customs (“HMRC”) has finally published a further consultation on the reforms to the taxation of non-doms on 19 August 2016. The further consultation will run for a period of nine weeks and will close on 20 October 2016.

Despite the speculation following the EU referendum that the reforms might be dropped the consultation document confirms that the government will proceed with the previously announced reforms.

### Headlines

- As expected, non-doms resident for 15 of the past 20 tax years will be treated as being deemed domiciled for all taxes
- The rules for the taxation of offshore trusts will be changed
- Inheritance tax (“IHT”) on residential property owned by non-doms through offshore structures will be introduced with effect from 6 April 2017
- The ability for a non-dom becoming deemed domiciled on 6 April 2017 to rebase assets has been confirmed
- A significant and helpful relief will be given for remittances from mixed funds (where the component elements can be identified)

### Deemed UK domicile for long-term residents

Non-doms will be deemed to be domiciled in the UK for all tax purposes once they have been resident in the UK for 15 of the past 20 years (the “15/20 rule”).

Part years of UK residency will be counted as a year for the purposes of determining the application of this rule, as will years spent in the UK before the age of 18.

It will be possible to break this “deemed domiciled” status for income and capital gains tax (“CGT”) purposes if an individual leaves the UK for six consecutive tax years. The rules are slightly

different for IHT purposes. Although individuals become deemed domiciled under the 15/20 rule, that status will fall away for IHT purposes once they have been non-resident for more than four consecutive tax years.

### Rebasing

The 2016 Budget announced that those who become deemed-domiciled due to the 15/20 rule on 6 April 2017 will be able to rebase directly held foreign assets to their market value on 5 April 2017. The effect of such rebasing will be that any gain which accrued before April 2017 will not be charged to CGT in the UK. However, any further increase in the value of an asset between April 2017 and the date of disposal will be charged to CGT in the normal way.

Rebasing will apply on an asset-by-asset basis. There will be no requirement that any part of the sales proceeds relating to the part of the gain which arose before April 2017 should be left outside the UK, which is hugely beneficial. However, rebasing will be limited to those assets which were foreign situs at the date of the Summer Budget 2015.

Please note that the ability to rebase will be limited to those non-doms who have paid the remittance basis charge in any year before April 2017. It will not be available to those born in the UK with a UK domicile of origin or those who become deemed domiciled at a later date.

### Mixed funds relief

There will be a window of opportunity for one year from April 2017 for non-doms to rearrange their mixed funds overseas to enable them to separate those funds into their constituent parts.

The relief is available to any non-dom (who was not born in the UK with a UK domicile of origin) and not just those impacted by the 15/20 rule.

During this time, non-doms with mixed funds will be able to rearrange their mixed funds and separate out the different parts. This means a non-dom will be able to move their clean capital, foreign income and foreign gains into separate accounts, and will then be able to remit from their accounts as they wish and pay the appropriate amount of tax. This is an extremely helpful concession from the government and one which will be invaluable to many non-doms.

However, the relief only applies to mixed funds held in bank accounts (i.e. where cash can be physically separated to represent the component elements). Where mixed funds have been used to acquire an asset the treatment will not apply. However, it should be possible to sell such an asset between 6 April 2017 and 5 April 2018 and then separate the component elements of the sale proceeds.

This relief will not be available where the non-dom is unable to determine the component parts of their mixed fund.

#### Use of offshore trusts

There has been much discussion on the likely taxation of offshore trusts for those becoming deemed domiciled. This consultation sets out a new regime for the taxation of offshore trusts.

The new rules are complex. Details of what we know so far can be found by following this link: [New offshore trust rules for deemed domiciled individuals](#)

#### The £2,000 de-minimis rule

Currently any non-dom who has less than £2,000 of unremitted income or gains does not have to elect to use the remittance basis and need not report the amounts in the UK or pay tax

on them. They do not forfeit the personal allowance (as all other remittance basis users do), nor do they have to pay the remittance basis charge.

The consultation confirms that the £2,000 de-minimis rule will continue to be available for non-doms even after they have become deemed domiciled.

#### Foreign capital losses

Losses realised on the disposal of foreign assets will be available to offset capital gains once a non-dom becomes deemed domiciled for all tax purposes.

#### IHT on residential property

The consultation at last provides some additional information on the application of IHT to UK residential property held within an offshore structure by a non-dom.

Further details of these rules can be found by following this link: [Inheritance Tax \("IHT"\) on UK residential property](#)

#### Born in the UK with a UK domicile of origin

As previously announced, an individual will be treated as being deemed-domiciled in the UK when they are living in the UK if they were born in the UK and had a UK domicile of origin.

However, for those returning to the UK there will be a grace period. The individual will not be treated as being domiciled in the UK for IHT purposes unless they have been resident for at least one of the two tax years prior to the year in question.

This consultation confirms that offshore trusts set up by non-doms born in the UK with a UK domicile of origin will be within the UK IHT charging regime as originally indicated and the income tax and CGT protections available to other non-doms will not be available where the settlor originated from the UK.

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