

Changes to tax for non domiciliaries

After spending many years reviewing the tax treatment of non domiciled individuals, the government appear to have decided that the advantageous treatment afforded to non domiciled individuals, which helps to attract them to the UK, is beneficial to the UK economy and should continue. However, they have also decided that the time is right to introduce a charge for this benefit.

The basics

The principal features of the new proposals are as follows:

- The introduction of an additional tax charge for individuals using the remittance basis, to be set at £30,000 per annum.
- The withdrawal of personal allowances for individuals claiming the remittance basis, which is likely to cost at least £2,000 per annum.
- Ending traditional methods of capitalising income, such that funds could be remitted without a tax liability arising, and to extend the scope of certain anti-avoidance provisions.
- For individuals claiming non residence, the number of days spent in the UK is to now include both the days of arrival and departure.

Only limited information is available in respect of these new proposals, and action should not therefore be taken on the basis of this brief synopsis. Draft legislation is promised for later in the year, and the changes apparently do not take effect until 6 April 2008. There may, therefore, be a window of opportunity to make some rearrangements prior to 5 April 2008.

The additional tax levy

UK resident non domiciliaries can currently use the remittance basis of taxation. While this is optional, it is generally favourable. It means that offshore investment income and capital gains (and in some cases offshore earned income) is only taxed if and when remitted to the UK.

It is proposed that non domiciliaries can continue to claim the benefit of the remittance basis until they have been resident here for seven years. However, non domiciliaries who

have been resident for more than seven years out of the previous ten years can only continue to claim the benefit of the remittance basis if they pay an additional levy of £30,000 for the privilege.

From the announcement it appears that the additional £30,000 tax charge applies after seven years of residence, i.e. in the eighth and subsequent years. For example, for an individual for whom 2007/08 is the fourth year of residence, 2011/12 will be the eighth year of residence and the first year in which the £30,000 levy could be payable.

The remittance basis also applies to individuals who are resident but not ordinarily resident in the UK (irrespective of their domicile status). It appears from the details provided so far that such individuals can continue to claim the benefit of the remittance basis whilst not ordinarily resident, without having to pay the additional £30,000 levy.

Personal allowances

An individual who is resident in the UK is entitled to a personal allowance. However, it is proposed that anyone claiming the benefit of the remittance basis (because they are not UK domiciled or not ordinarily resident) will be unable to claim the personal allowance as well.

Personal allowances reduce an individual's tax liability by about £2,000 per annum (for a top rate/40% tax payer). Hence, for the non domiciliary who has been resident for seven years or more the additional tax charge, including the new levy, is some £32,000 per annum.

There is a de minimis limit, which allows an individual claiming the remittance basis to retain the benefit of the personal allowance without paying the £30,000 levy, if their unremitted foreign income is less than £1,000 per annum.



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It is proposed that from 6 April 2008, the days of arrival and departure will be regarded as days of presence.

Anti-avoidance measures

Other changes affecting the remittance basis include:

- Although unusual, it is possible for an individual who is entitled to use the remittance basis to do so some years, but not others (in which he is assessed on the normal arising basis for world wide income). It is proposed that this will be prevented in future.
- At present, offshore investment income, which is taxed on the remittance basis, is taxable in the year of remittance, but only if the source of that income is in existence in the tax year in which the remittance arose. Hence, by closing a bank deposit account one tax year, the accumulated interest from that account could be remitted in a subsequent tax year, without being subject to UK tax. This 'source ceased' principle is to be abolished.
- There are proposals to extend what is to be regarded as a remittance or constructive remittance. These may include provisions for tracing non UK income and gains subsequently enjoyed in the UK, via offshore company or trust structures.
- Certain anti-avoidance measures which currently do not apply to individuals using the remittance basis may be amended, so that in future they can apply.

Residence

An individual who is present in the UK for 183 days or more in a tax year is regarded as resident. Alternatively an individual can be resident if visits to the UK amount to an average of more than 90 days per annum. It has been normal practice to treat the day of arrival in and day of departure from the UK as being days of absence for this purpose.

It is proposed that from 6 April 2008, the days of arrival and departure will be regarded as days of presence. For visitors who come for one or two relatively lengthy visits in the UK, this change has minimal impact. However, for visitors with multiple visits to the UK, the change is of major significance.

Consultation

The above is only a summary of the proposals. Draft legislation, which should provide further details will be published later in the year, following which there will be a period of consultation. One of the matters up for consultation is whether individuals who have been in the UK for more than ten years should pay a greater levy.

For further information or to find out how you will be affected, contact your normal Moore Stephens adviser.

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