

Tax



Summer Budget 2015 ~ Proposed changes to taxation of non-UK domiciliaries

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On 8th July 2015, the Chancellor proposed changes to the tax treatment of non-domiciliaries for inclusion, after consultation, in the Finance Bill 2016. The changes are intended to affect individuals who have been resident in the UK for lengthy periods, broadly, 15 out of 20 years. Aparna Nathan summarises.

Current position for non-UK domiciliaries

At present a non-UK domiciliary:

- Pays income tax and capital gains tax on the “remittance basis” (upon payment, as appropriate, of the remittance basis charge) rather than on an arising basis- in effect, such an individual is chargeable on the foreign income or foreign gains he (or another “relevant person”) brings to, uses in or enjoys in the UK;
- Pays UK Inheritance Tax in respect of UK situate property only – a method often used in relation to non-settled property is for such a person to hold the UK situate property through a non-UK resident company. Such planning is also available for non-UK resident settlements settled by a non-UK domiciliary.

Proposed changes

Deemed UK domicile for all UK tax purposes

It is proposed that from April 2017, individuals who have been resident in the UK for 15 out of the preceding 20 years will be deemed to be UK domiciled for all UK tax purposes. The existing 17 out of 20 year deemed domiciled rule which applies for the purposes of Inheritance Tax only will be aligned, it seems, to take effect from the same point i.e. 15 out of 20 years.

As a consequence of this proposed change, deemed domiciled individuals will no longer be able to benefit from the remittance basis of taxation. Such individuals will instead pay income tax and capital gains tax in respect of their worldwide income and gains.

It is expressly stated that the proposed deemed domicile rule will not affect the individual's actual domicile status under general legal principles. Nor will it affect the domicile status of the deemed domiciled individual's children (the children's domicile status will be determined independently).

It will, it appears, be possible to stop the clock running when determining whether the 15 out of 20 year test has been met by leaving the UK for the requisite period. The consultation will need to consider carefully how this re-set of the clock will operate with the current IHT deemed domiciled re-set provisions.

Proposals affecting individuals with a UK domicile of origin

The Chancellor has announced that those individuals who, under general law, have a UK domicile of origin but who later acquire a domicile of choice in a territory outside the UK will be subject to the following rules:

1. the current rule that applies for inheritance tax which requires an absence of more than three years in order to shed UK domicile will be amended so that a five year absence will be required;
2. such individuals returning to the UK will be treated as UK domiciled upon their return to the UK to reside (it is not clear whether there will be split-year provisions etc);
3. such individuals will not benefit from favourable tax treatment in respect of income or gains arising to any trusts set up during their period of non-UK residence once they acquired a foreign domicile – in effect, it is likely that such an individual will be chargeable on trust income and gains on an arising basis;
4. there is a “domicile re-set” provision for such individuals who later leave the UK.

Proposals affecting excluded property status for UK residential property

In a proposal that affects only UK residential property, the Chancellor has announced that:

“8. The government intends to amend the rules on excluded property so that trusts or individuals owning UK residential property through an offshore company, partnership or other opaque vehicle, will pay IHT on the value of such UK property in the same way as UK domiciled individuals. The measure will apply to all UK residential property whether it is occupied or let and of whatever value.

9. The government does not intend to change the IHT position for non doms or exclude[d] property trusts in relation to UK assets other than residential property, or for non-UK assets. Nor will these reforms affect people who are domiciled in the UK.”

In broad terms, the effect of these proposals will be to remove excluded property status in relation to UK residential property. This will include removing excluded property status in respect of shares in offshore companies which hold UK residential property. There are, clearly, complications associated with valuing shares of such companies that hold assets other than UK residential property.

Conclusion

As is apparent, this Budget includes several important changes to the tax treatment of non-UK domiciliaries. Careful consultation will be required in order to ensure that the legislation which gives effect to such proposals as survive the consultation process achieves the proposals' stated purpose and does not itself give rise to unintended consequences.

Aparna Nathan specialises in revenue law with an emphasis on litigation at all levels, tax planning using offshore structures for high net worth individuals, non-residents and non-domiciliaries; corporate reconstructions and reorganisations; tax planning for entrepreneurs. For more information on her recent case highlights, please visit the 'Barristers' section on devereuxchambers.co.uk, call 0207353 7534 or email clerks@devchambers.co.uk.