



Offshore Trust Structures

The draft legislation proposes a number of fundamental changes to the taxation of offshore trusts. Some of these changes will provide good planning opportunities for new schemes, however, trustees of existing structures will have to pay careful attention to the new rules as they apply to existing settlors and beneficiaries.

Attribution of gains to beneficiaries under s.87

A number of changes will be introduced to the s.87 regime from 6 April 2017 with the aim of taxing payments which may previously have fallen out of charge as follows:

- **Capital payments to non-residents** – capital payments made from an offshore trust to a non-resident beneficiary will be disregarded and therefore will no longer “wash out” stockpiled trust gains. This provision won’t apply if the capital payment is taxable under the closely related beneficiary rule below. In addition, in the year that a trust terminates, providing capital payments are made to both non-resident and UK resident beneficiaries in the relevant tax year, the payments to the non-resident will not be disregarded.
- **Capital payments to migrating beneficiaries** – a capital payment made to a UK resident beneficiary (to the extent it has not already been matched to trust gains in an earlier tax year) will not wash out stockpiled trust gains if the beneficiary is not resident in the tax year in which the capital payment is matched to trust gains.
- **Settlor charge re closely related beneficiaries** – if a capital payment is made to a close family member (broadly spouse

or minor children) who is either non-UK resident or is not taxed under s.87 due to remittance protection, and that capital payment is matched to trust gains, the settlor will be liable to tax on the attributed gains if he is UK resident at any time in the tax year concerned. There is a right of recovery of any tax paid by the settlor from either the beneficiary or the trustees.

- **Onward gifts** – providing the closely related beneficiary rule above does not apply, a capital payment made to a non-resident beneficiary or to a UK resident beneficiary claiming the remittance basis, which is followed by an onward gift (whether directly or indirectly) to a UK resident will be treated as a capital payment made to the gift recipient at the time of the gift (or in the tax year in which the trust ceases if earlier).

This provision will apply to gifts made within three years of the date on which the original capital payment was made and to gifts made before the original capital payment if it is reasonable to assume the gift is made in anticipation of receiving the capital payment.

The amount of the capital payment treated as received by the gift recipient will generally be the lower of the amount of the gift and the amount of the original capital payment that has not been taxed on the original recipient as a result of being remitted to the UK.

This provision takes effect in relation to onward gifts made on or after 6 April 2017 even if the original capital payment was made before that date.

Attribution of gains to settlors under s.86

- The provisions of s.86 of TCGA 1992 which attribute gains of trust structures to the UK resident and domiciled settlor will not apply to settlors who are deemed domiciled under the “15 year rule” in respect of trusts settled before they became deemed domiciled.
- Potentially this avoids the immediate taxation of both UK and foreign gains for pre-existing trusts settled by individuals who will be caught by the 15 year rule going forward, although the gains may be taxed under the s.87 regime.
- The exemption from s.86 for 15 year deemed domicile settlors will be lost if any additions (or transfers from other trusts related to the settlor) are made to the trust after 5 April 2017 (or after its creation date if later) while the settlor is deemed domiciled. Arm’s length additions, additions relating to a pre April 2017 liability or additions to cover a shortfall in trust expenses will not cause the s.86 exemption to be lost.
- The s.86 provisions will however apply to all settlors who become deemed domiciled under the “returning UK dom” rule.

Attribution of income to settlors and beneficiaries

Although no legislation has yet been published, significant changes to the Transfer of Assets Abroad regime and the Settlement Provisions have been outlined in the Government’s responses to the August Consultation Document as follows:

- From 6 April 2017, instead of UK resident but non- domiciled settlors being taxable on foreign income arising in a trust or underlying company on a remittance basis, they will be taxed on the foreign “relevant income” in the structure by reference to benefits received if the benefit is received either by the settlor himself or by a close family member (broadly his spouse and minor children).
- Any foreign income arising at trust level which is not taxed under the relevant income rules (e.g. due to the motive defence applying or if the income had not arisen at the time of the benefit being provided) will be taxed on the settlor under the modified Settlement Provisions if the funds are not retained in the trust.
- UK income arising in the trust or company will continue to be taxed on an arising basis on the settlor as under current rules.
- These new provisions will apply not only to settlors that are deemed domiciled under the 15 year rule but also to settlors with a non-UK domicile of origin that are not yet caught by the 15 year rule.

- A number of transitional rules will apply.
- These provisions will enable foreign income retained in settlor-interested trust structures to remain protected until such time as benefits are conferred, without the requirement of having to pay the remittance charge for those non-dom settlors who are not yet deemed domiciled .
- Trust structures will lose the foreign income protection for the period that the settlor remains UK resident if any additions are made after the settlor has become deemed domiciled under the 15 year rule. Additions made in any period when the settlor has lost his deemed domicile status will not taint the settlement. Also additions by a person other than the deemed domiciled settlor will not cause the tainting provisions to apply.
- The protection of foreign income will only apply to trust structures. Foreign income arising in a stand-alone company will be taxed on an arising basis under the Transfer of Assets Abroad provisions in the hands of a deemed domiciled “transferor”.

Planning Opportunities

The draft legislation provides for a deferral of tax trust income and gains, in certain circumstances, until benefits are taken from the structure which is a welcome planning opportunity for UK resident non-domiciled and deemed domiciled settlors.

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