

Summer Budget 2015

Non-Dom Regime

The proposals delivered by George Osborne bore remarkable similarity to those put forward by Ed Miliband in the run up to the General Election and whilst some changes were anticipated, the scope is much wider than envisaged.

The government is proposing two changes, to be legislated in Finance Bill 2016 and effective from 6 April 2017, which will restrict non-doms from being able to claim non-dom status for an indefinite period of time. These two rules are respectively referred to as:

- a. The deemed domicile rule for long term resident non-doms ("15 year rule") and
- b. The returning UK dom rule.

Long term resident non doms – the 15 year rule.

This introduces a "deemed-domicile" rule for long-term residents who nevertheless remain foreign domiciled under general law. The 15 year rule will not affect their domicile position under general law, only the UK tax treatment.

Individuals who have been UK resident for more than 15 of the past 20 tax years but are foreign domiciled under general law will be deemed domiciled for all tax purposes in the UK. The government will consult on whether split years of UK residence count towards the 15 years for this purpose or whether complete tax years of UK residence are required.

This will mean that from their 16th tax year of UK residence long term residents will no longer be able to access the

remittance basis and will be subject to tax on an arising basis on their worldwide personal income and gains.

At this point inheritance tax will also be paid on worldwide personal assets which is slightly more stringent than the position under the current regime whereby individuals are treated as deemed domiciled if they are UK resident in 17 out of the previous 20 tax years.

The new rules will be effective from 6 April 2017 irrespective of when someone arrived in the UK.

There will be no special grandfathering rules for those already in the UK. For those who leave the UK before 6 April 2017 but would nevertheless be deemed domiciled under the 15 year rule on 6 April 2017 the present rules will apply.

Once the non-dom who has become deemed domiciled under the 15 year rule leaves the UK and spends more than five tax years outside the UK they will at that point lose their deemed tax domicile ("the five year rule"). In practice once they cease to be UK resident, their deemed tax domicile is likely only to be relevant for inheritance tax purposes.

There will therefore be a slightly longer "run-off" period for non-doms who leave the UK than at present for IHT purposes. Currently an individual will be treated as deemed domiciled in the UK for 3 years after ceasing to be UK domiciled under general law. In addition, IHT deemed domicile under the current 17-year residence rule ceases to have effect at the start of the 4th year of non-residence, whereas under the new rules deemed domicile status won't be lost until 5 full tax years of non-residence have been completed.

UK doms who leave after 5 April 2017 having been here for over 15 years will also be subject to the five year rule even if they intend to emigrate permanently and settle in a particular place on the day of their departure. The government will consult on the detail of the various interactions between the new five year rule and the existing rules as outlined above.

If at a later date (having spent more than five tax years abroad) the non-dom returns to the UK for a period but still intends eventually to leave the UK and therefore remains foreign domiciled under general law they will be able restart the 15 year clock before becoming deemed domiciled again.

The deemed domicile of the long term resident non-dom has no effect on the domicile status of the children, whose actual and deemed domicile position is looked at independently. Thus they will take their father's domicile under general law at the date of their birth and if they are long term residents within the new rules will become deemed domiciled here. But they do not become deemed domiciled here simply because either parent is deemed domiciled here nor do they lose deemed domicile just because a parent does.

Implications for offshore trust structures

Non doms who have set up an offshore trust before they become deemed domiciled here under the 15 year rule will not be taxed on trust income and gains that are retained in the trust and such excluded property trusts will have the same IHT treatment as at present (subject to the announcement made at Budget 2015 on UK residential property held through offshore companies and similar vehicles).

However, such long term residents will, from April 2017 be taxed on any benefits, capital or income received from any trusts on a worldwide basis.

The government will consult on the necessary changes to the transfer of assets regime and capital gains tax trust provisions. Clearly, this is a significant change to the current rules and given the complexity of the rules for the taxation of offshore trust structures, the position will need to be considered carefully.

Certain transitional provisions relating to trusts were introduced for non-doms in 2008 (in particular rebasing). The interaction of these rules with the new regime after the non-dom becomes deemed domiciled here will be subject to consultation.

The UK domiciliary ("the returning UK dom")

Individuals who have a UK domicile of origin and later emigrate may successfully be able to show that under

general law they have acquired a domicile of choice overseas as they intend to settle in the foreign country. Under current rules, they will remain UK deemed domiciled for IHT purposes for at least 3 years after they have formed the intention to settle permanently (and do settle) in the foreign country even if they have been non-UK resident for many years before reaching that decision.

Once they have lost their UK domicile and deemed domicile for IHT purposes they can set up trusts and obtain favourable treatment for excluded property trusts and their worldwide estate will fall outside IHT. These rules will not change except that UK doms who leave after 5 April 2017 will also be subject to the five year rule as detailed above.

The proposed changes are aimed at such individuals who later return to the UK for some years and still maintain they have a foreign domicile of choice. In these circumstances, the new rules will mean that they are taxed as UK domiciled for tax purposes on their return irrespective of their domicile status under general law.

Irrespective of their actual intentions, such an individual (the returning UK dom) will become UK domiciled for tax purposes once they become UK resident.

In addition, in the period of UK residence following their return, the UK domiciliary will not be able to benefit from any favourable tax treatment in respect of trusts set up while not domiciled here (whether for inheritance tax treatment or otherwise). The government will consult on the detail of these proposals.

On a subsequent departure the returning UK dom can lose their UK tax domicile in the tax year after departure but only if both the following conditions are satisfied:

- (a) They have not spent more than 15 tax years in the UK and
- (b) They have not acquired an actual domicile in the UK under general law during their return.

If (a) applies but not (b) they are subject to the five year rule above which requires five years' non-UK residence.

If (b) applies but not (a) they are subject to the three year rule outlined above and will remain UK domiciled for IHT purposes until more than three years after they have acquired (or reacquired) a foreign domicile of choice as a matter of law.

If neither (a) nor (b) apply they are subject to both the five year and three year rules and can lose UK tax domicile only on the later of those events.

This measure will affect all returning UK doms from 6 April 2017, including those who returned prior to April 2017. The five year rule will affect UK doms leaving after 5 April 2017.

Offshore trust structures

These measures will also affect trusts set up while such individuals were not UK domiciled if they are UK resident on or after 6 April 2017. In these circumstances, an individual will be taxed on all income and gains arising in such trusts under the same rules as any other UK domiciliary. The IHT treatment of such trusts will also be the same as for UK tax payers who have never lost a UK domicile.

The government intends to consult further on the interaction of the various deemed domicile rules for both UK doms and non doms and also in relation to the tax treatment of trusts.

Interaction with previous reforms and proposed changes

These reforms mean that the recently introduced £90,000 remittance basis charge payable by those who have been resident for 17 out of 20 years will be redundant as such persons will be taxable on an arising basis after 15 years. The £30,000 and £60,000 remittance basis charges remain unchanged.

The government will consult on the need to retain a de minimis exemption beyond 15 years where total unremitted foreign income and gains are less than £2,000 pa

As a result of the proposed changes, the government will not be introducing a minimum claim period for the remittance basis charge which was subject to previous consultation.

For further advice please contact us on +44 (0) 1481 726034 or email:

Simon Graham CTA
Managing Director, Legis Tax Services Limited

Tel: +44 (0)1481 732169
Fax: +44 (0)1481 726029
E-mail: simon.graham@legisgroup.com

Paul O'Neill CTA
Director, Legis Tax Services Limited

Tel: +44 (0)1481 732178
Fax: +44 (0)1481 726029
E-mail: paul.o'neill@legisgroup.com

Francis Snoding CTA
Director, Legis Tax Services Limited

Tel: +44 (0)1481 732150
Fax: +44 (0)1481 726029
E-mail: fran.snoding@legisgroup.com