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Introduction

On 17 June 2011 the Treasury released a consultation paper outlining the government's proposals to reform the UK taxation of non domiciled individuals.

The objectives of the proposals are to encourage non-domiciliaries to invest in UK businesses, to increase the tax contribution from longer term residents and to simplify the rules that determine when offshore income and gains are brought to and taxed in the UK. Draft legislation was released on 6 December 2011 which sets out the detailed rules which will apply from 6 April 2012, subject to any further amendments.

Increased Remittance Basis Charge ("RBC")

From 6 April 2012, the existing £30,000 annual charge will increase to £50,000 for non domiciled individuals who claim the remittance basis and have been UK resident in 12 or more of the 14 years prior to the year of claim.

The £50,000 charge will work in exactly the same way as the current £30,000 charge with the same exemptions being available for those

with unremitted foreign income and capital gains of less than £2,000 or those under 18 years of age. It will also be possible to fund the RBC from offshore income and gains without giving rise to a taxable remittance.

Encouraging business investment

As part of the Government's intention to encourage non-domiciliaries to invest in UK businesses, a remittance of offshore income or gains to invest in qualifying companies will not be liable to tax. The definition of qualifying company is complex and, as expected, there are a number of exclusions.

The new rules will only apply to investments, in the form of shares in or loans to companies which are "substantially trading". This definition specifically excludes letting residential property. However, the relief will apply to businesses developing or letting commercial property.

The relief will not apply to listed companies other than those which are quoted on an exchange regulated market such as AIM.

Although investments in partnerships will not qualify for the relief, the government will consider

widening the relief to extend to investments in partnerships in Finance Bill 2013.

There is no upper or lower limit to the relief and there is no restriction on individuals remitting funds through relevant persons such as offshore investment companies or trusts.

In addition, a claim for relief under this incentive will not affect entitlement to other UK reliefs such as EIS or VCT relief, if the conditions for such reliefs are met.

The legislation includes anti-avoidance provisions to ensure that where the investment is realised (or if trading does not commence), the proceeds are taken outside the UK within 45 days in order to avoid a tax charge on the income or gains originally invested.

Given the extent of the anti-avoidance provisions that have been included in the draft legislation, there could be some level of uncertainty as to whether the relief applies. With this mind, the Government has agreed that it would be beneficial to provide a voluntary pre-clearance procedure.

Simplifying the existing remittance basis rules

Even where an individual's affairs are relatively straightforward, the current remittance basis rules can be complicated to operate in practice and the Government has introduced some changes to simplify their operation from 6 April 2012.

Nominated income

Under the current rules, if an individual remits their nominated income to the UK, it triggers draconian reordering rules to their UK remittances, usually resulting in higher tax charges. As a result, many individuals have set up a separate 'nominated income' account which generates a small amount of income each year and which can be nominated and retained separately to avoid an inadvertent remittance.

From 6 April 2012, the Government will allow individuals to remit up to £10 of nominated income free of tax, meaning that those who only nominate up to £10 will not need to set up separate accounts and even where this sum is inadvertently remitted, the reordering rules cannot be triggered.

Foreign currency bank accounts

Movements in non sterling bank accounts can give rise to foreign capital gains and losses and the compliance cost associated with calculating the gains is often disproportionate to the amounts involved.

From 6 April 2012, the Government will remove foreign currency from the scope of capital gains tax for individuals and trustees.

Taxation of assets sold in the UK

Assets purchased overseas using foreign income or capital gains are liable to tax when they are brought to the UK. There are certain existing exemptions to these rules:-

- Works of art or antiques brought to the UK for public display;
- Items of personal clothing, footwear or jewellery;
- Certain items brought to the UK temporarily (up to 275 days) or for repair; and
- Items worth less than £1,000.

However, where these assets are sold with the proceeds being retained in the UK, tax is charged on income or gains included in the initial cost of the asset remitted.

From 6 April 2012, there will be a window of 45 days in which the proceeds of sale can be taken out of the UK in order to avoid a deemed remittance on disposal. Where the proceeds of sale are received in instalments, this time limit will only apply from the date on which the final instalment is received (subject to the instalments being paid within 95 days of the date of sale).

In addition, any gain realised on the disposal of the asset will be treated as a foreign chargeable gain subject to the remittance basis for capital gains tax purposes.

Employees with duties in the UK and overseas

HMRC's Statement of Practice 1/09 applies to individuals who are resident in the UK but not ordinarily resident and not domiciled in the UK who receive employment income in a foreign bank account which contains a mixture of income taxable in the UK and income taxed on the remittance basis.

The statement removes the obligation on such individuals to operate the strict mixed fund rules in respect of the account receiving their remuneration.

The Government is proposing to put this practice on a statutory footing but has confirmed for the time being, SP 1/09 will continue for 2012/13.

Conclusions

The increase in the RBC to £50,000 for long term residents will mean that those who have until now paid the remittance basis charge and escaped tax on their offshore income and gains unless remitted should consider whether it remains appropriate for them to pay the RBC rather than to be taxed on a worldwide basis.

However, the simplification of the current remittances basis rules are a welcome change and should reduce the compliance burden for a number of taxpayers.

The proposals to remove the remittance charge on commercial investment are also welcome but it is important for advice to be taken in order to ensure that the relief will apply.



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