

## **Update for non domiciliaries**

The draft legislation on the remittance basis of taxation which was published in January this year has been substantially revised and the form in which it now appears in the Finance Bill is not expected to have any further significant changes before being enacted into the Finance Act 2008.

What follows here is simply a brief outline of the provisions; it will be appreciated that they are detailed and contain many complex new rules, but this summary will hopefully help non domiciliaries identify those areas concerning which they should seek further advice. The points made below relate to individuals who are not domiciled in the United Kingdom, but who are resident here for tax purposes.

### **An important limit**

Those who have foreign income and gains for any tax year totalling less than £2,000 are largely unaffected by the new rules. In particular they may claim the remittance basis of taxation without any other consequences for their UK tax position. They will however need to bear in mind that many of the techniques that which could be used prior to 6 April 2008 in order to escape liability under the remittance basis are no longer available under the rules effective from that date. These techniques included:

1. Investment income retained on a foreign bank account until the fiscal year following that in which the particular source of the income ceased could be brought in to the United Kingdom free of tax.
2. If foreign investment income was used to purchase an asset overseas, such as an expensive car, that asset could be brought in to the United Kingdom without any remittance of the income being treated as taking place.
3. It was possible to make gifts of money out of foreign income or gains to a foreign bank account of a family member who could then bring the money in to the United Kingdom tax free.

There are extensive new rules under the Finance Bill provisions which are designed to prevent these techniques from achieving any tax saving.

An individual with foreign income or gains of £2,000 or more for the tax year and who has not been resident in this country for more than 7 out of the previous 9 tax years may also claim the remittance basis of taxation, but in that event he or she will not be granted the normal personal allowances against income or the annual exempt amount against capital gains.

Those who have been resident in the United Kingdom for more than 6 out of the previous 9 fiscal years and who are over the aged 18 or over during the fiscal year, having unremitted foreign income or gains of £2,000 or more, will be required to pay a charge of £30,000 in order to benefit from the remittance basis. Clearly therefore this means that after 7 out of 9 years of residence in the United Kingdom, only the very wealthy will be able to benefit from the remittance basis if they are adults.

The charge of £30,000 will represent tax due on unremitted foreign income or gains and the tax payer must identify the particular items of income or gains to which it is

to relate. If those items are remitted to the United Kingdom in a subsequent tax year, there will be no further tax payable in respect of them.

There are to be special rules relating to capital gains within non resident trusts. These gains cannot be taxed on a non- domiciled settlor of the trust, even if he or she is UK resident. Instead, the gains will be tax- free until such time as they are matched with a capital distribution out of the trust to a UK resident beneficiary. If the beneficiary concerned is not domiciled in the United Kingdom the gains matched this way will be treated as foreign chargeable gains of the beneficiary. It will be seen therefore that non resident trusts will remain effective for non domiciled settlors for capital gains tax planning. Assets within a trust may be bought and sold realising capital gains without any UK tax position arising until funds are withdrawn from the trust in favour of a UK resident beneficiary.

Existing trusts may benefit from a capital gains tax rebasing of the assets within them as at 5 April 2008. This rebasing will not be applicable to any capital gains matched with distributions to UK resident and domiciled beneficiaries, but for gains matched with distributions to resident and non-domiciled beneficiaries the element of relating to the period up to 5 April 2008 will be tax free.

A similar rebasing provision also applies in relation to closely controlled companies which are held within non resident trusts. The assets in such companies may be treated as having been sold and repurchased at close of business on 5 April 2008 so as to identify the gain up to that time which will be tax free if attributed to a non-domiciled beneficiary.

There are detailed and complex transitional rules designed to deal with foreign income and gains arising to non-domiciled individuals before 6 April 2008 and which are remitted to the United Kingdom after that date. With care, it is possible to ensure that any such remittance does not give rise to UK tax liability.

Finally, the very strict reporting regime (see article dated January 2008 entitled 'Non-domiciliaries face harsh tax regime' on this Newsdesk) which was proposed under the draft legislation in January has been entirely abandoned.

### **Parmentier Arthur Group Plc**

**90 Long Acre  
Covent Garden  
London  
WC2E 9RZ**

**7 The Waits  
St Ives  
Cambs  
PE27 5BY**

**Tel: 020 7849 3018**

**Tel: 01480 465522**

**Fax: 020 7849 3171**

**Fax: 01480 461221**

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