

The draft legislation for Non Dom- UK Residents was released on 18th January 2008.

The implications of this legislation will affect Gibraltar residents who fly frequently to the UK, whether it is for business or pleasure. The clients of Gibraltar Management companies and clients of Gibraltar trust companies.

The implications of this legislation are far reaching and will have a substantial impact on offshore trusts and companies, which are owned by UK resident non - UK domicile individuals.

Non UK Residents

The legislation covers UK residence issues with regard to days of arrival and departure being counted. As expected HMRC has revised the rules they operate to include days of arrival and departure when counting the number of days in the UK when establishing UK residency. By reference to the annual 183 day test and the 91 day average over 4 years test. The former concession for medical emergencies will no longer apply.

Please note if you or your clients travel to the UK for business or pleasure the change in these rules can result in you or your client being UK tax resident. We advise that you keep detailed records of any travel to and from the UK.

UK Resident – Non Domiciles

HMRC have confirmed that an option to pay an additional £30,000 tax charge for those UK Residents/ Non domiciles that have been resident in the UK for the past 7 out of 10 years, will come into force as of April 2008. This charge is in addition to the tax, which will be due on any monies remitted to the UK. The alternative to taking this option is to be taxed on worldwide earnings. If you or your client opt to pay the additional £30,000 and not be taxed on your world - wide earnings, you will not be able to claim personal allowances or the capital gains tax annual exemption. The £30,000 cannot be used as a tax credit against other UK tax liabilities. HMRC have left it to the discretion of other jurisdictions as to whether the £30,000 will be a creditable tax.

HMRC have also widened the definition of remittance to include foreign investment income.

Please note a remittance need not be made in cash. If foreign investment income is used to purchase, say, an antique from overseas, which is then transferred to a UK residence. This will be treated as a remittance at the date the antique enters the UK.

Closing the Loopholes

HMRC have blocked the “ceased source” rule. This legislation is in effect retrospective, as it will apply to remittances any time on or after 6 April 2008 irrespective of when the source ceased.

Non Resident Close Companies

Non-resident close companies (Generally a company with less than 5 shareholders) will be taxed on gains made on UK assets if the shareholder is UK resident and non-UK domicile.

Gains on non-UK assets will only be taxed if the shareholder remits the gain into the UK.

EXAMPLE

Gibco Ltd is a Gibraltar company it is owned by two brothers Ted and Ben Smith (UK resident, non domiciled). The company is managed and controlled in Gibraltar by ABC company managers. Gibco owns a retail park in Oxford, UK. Gibco acquired the park in July 1988 for £200,000. Gibco sells the park in July 2008 for £1,200,000. The company makes a capital gain of £1,000,000. This capital gain will be apportioned between Ted and Ben who will have a tax liability of £90,000 each under the new rules. Under the current rules the tax liability would have been nil.

To reduce this liability, it would be essential that Ted and Ben took immediate action and rebased the cost of the assets prior to April 2008. This will not prevent liabilities on future gains, however if the asset is rebased at today's value, e.g. by a sale and re-purchase, this would mean the ultimate gain would be less.

Non-Resident Trusts

If a non resident trust has a UK resident, non domicile settlor and the children and grandchildren of the settlor are potential beneficiaries of the trust, under the new rules any capital gain made on UK assets made by the trust would result in a capital gains tax liability for the settlor regardless of whether the funds were remitted to the UK or not.

Example - Settlor

Mr. Martinez is UK resident but non - UK domicile, he set up a family trust 20 years ago which holds only UK properties.

In July 2008, the trust sells property A for £11,000,000. Property A was originally acquired in 1999 for £1,000,000. The sale results in a gain for the trust of £10,000,000. Under the new rules

Mr. Martinez would have a UK tax liability of £1,800,000 under the new rules. Again there would have been no tax liability under the current rules. There are ways of mitigating a proportion of this liability, however it must be noted that Mr. Martinez would need to seek advice immediately. The legislation takes effect from April 2008 and there is no time to delay.

Please note that

In the above examples the tax liability is payable on top of the £30,000 and still payable even though the funds have not been remitted to the UK.

UK resident – Non- Dom Beneficiaries

The UK resident non-dom beneficiaries have not been let off lightly in this legislation either. If the beneficiary is UK resident non-UK domicile then capital payments made from the trust, which have originated from a capital gain on a UK asset, will be taxable. Please note unremitted capital payments, which are matched to foreign asset gains, are not liable to UK tax.

Example - Beneficiary

John Doe is UK resident, non-UK domicile, he is a beneficiary of the ABC trust in Gibraltar. The ABC trust held property in the UK in 1988, which it sold in 1998 realizing a gain of £1,000,000. In July 2008 the trust made a distribution of £1,000,000 to John Doe who deposited it into his offshore bank account.

Under the new rules John Doe will have a tax liability of £180,000 plus interest on this for six years. Under the new rules the matching concept is applied and John Doe would be taxable on the capital payment as if he had received it when the gain was made, therefore interest will be charged, however this is limited to six years only. Under the current tax rules John would not have a tax liability.

The new rules are very onerous due to the retrospective aspect, action would have to be taken prior to April 2008 to “wash out” realized gains and limit the tax liability. Please note going forward that gains made by trustees of a settlement will not be taxed twice, If we have a UK resident non domiciled settler who has already paid tax on the gain, the beneficiary will not pay tax again.

New Reporting Requirements for Offshore Trusts

Existing Trusts

Trusts created between 19 March 1991 and 5 April 2008 by non- UK domiciled individuals currently resident or ordinarily resident in the UK will have to be reported to HMRC by April 2009.

Trusts created after 6 April 2008 by a person resident or ordinarily resident in the UK (regardless of their domicile) will have to be reported within 3 months of the date the trust was created.

Trusts which have been created by non-UK-domiciled individuals who become UK resident or ordinarily resident after 5 April 2008 will have to be reported within twelve months of that individual's arrival in the UK.

Conclusion

The draft legislation will have a major impact on current tax structuring and planning, due to the legislation being introduced in April 2008, it is necessary for action to be taken now in order to reduce any potential tax liabilities.

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