



# KPMG in the Channel Islands

GAT Newsletter: August 2016

## **UK releases further consultation on the taxation of non-domiciled individuals and inheritance tax on UK residential property**

HM Treasury has provided more detail on the likely direction of the rules including reaffirming a commitment to introduce these proposals with effect from April 2017.

### **UK residential property**

- UK residential properties owned by non-dom's indirectly through offshore structures will be within the charge of inheritance tax ("IHT") for all chargeable events (e.g. death, ten-year charge, exit charge etc.) which take place after 5 April 2017.
- There will not be any minimum value threshold, nor is the intention to exclude residential properties which are let out on arm's length terms to a third party.
- The IHT will be calculated by reference to the open market value of the property at the time of the relevant chargeable event and take account of any relevant debt (excluding any borrowing from connected parties).
- Targeted anti-avoidance rules to disregard any arrangements where their whole or main purpose is to avoid or mitigate a charge to IHT on UK residential property.
- Expanded power will be given to ensure a property cannot be sold until any outstanding IHT has been paid.
- A new liability will be imposed on any person who has legal ownership of the property, including any directors of the company which holds that property.
- There will be no "de-enveloping relief" for winding down of structures.



## Deemed UK domicile for long-term residents

### *Determining residence*

- Long-term residents will be deemed UK domiciled for tax purposes once they have been resident in the UK for 15 of the past 20 years.
- Residence status will be determined using the rules that were in place for the relevant year rather than the statutory residence test.

### *Rebasing overseas assets*

- Individuals who have previously paid the remittance basis charge and become deemed-domiciled in April 2017 because they have been resident for 15 of the past 20 years will be able, if they wish, to rebase directly held overseas assets to the market value of the asset at 5 April 2017.
- Rebasing will apply on an asset by asset basis.
- Where the "rebased" asset was originally purchased with clean capital, the entire proceeds from the disposal can be brought to the UK without triggering a remittance. However, where it was purchased wholly or partly with foreign income and gains, an element of the disposal proceeds will still relate to those income and gains and so will be taxable in the normal way when the proceeds are brought to the UK.
- Those individuals who become deemed-domiciled in years after April 2017, and those who become deemed-domiciled because they were born in the UK with a UK domicile of origin will not be able to rebase their foreign assets.

### *Cleansing Foreign Mixed Funds*

- A temporary one year window from April 2017 will be introduced in which individuals will be able to rearrange their foreign mixed funds, by separating them into their constituent parts (i.e. clean capital in one account, and foreign income and gains in another).
- The treatment will only apply to mixed funds deposited in bank and similar accounts. However, an individual will be able to sell any overseas asset during the window and separate the sale proceeds.
- Cleansing will not be available where an individual is unable to determine the component parts of their mixed fund.
- The treatment will be available to any non-dom who was not born in the UK with a UK domicile of origin.

### *Offshore trusts and CGT*

- Where a trust was set up by an individual prior to becoming deemed domiciled in the UK, the settlor will be protected from the CGT settlor charge provisions. However, if the settlor (including spouse and minor children) receive any benefits from the trust then the protection will not apply.
- UK resident beneficiaries who receive capital payments or benefits from a non-resident trust or underlying entity, and who are deemed-domiciled, will be subject to CGT under the beneficiary charge, regardless of where the benefits are received.
- Settlers who become deemed-domiciled will not be taxed under the beneficiary charge. Their trusts will either not be protected, in which case they would be liable for all gains or, if the trust is protected, it will lose its protection once a benefit is paid out to them, their spouse or minor children resulting in the settlor being taxed on all gains arising.



### *Offshore trusts and income tax*

- The income tax settlements legislation will not apply to a deemed-domiciled settlor on foreign income arising to a non-resident trust which was set up before the settlor became deemed-domiciled. However, if the settlor receives a distribution of relevant foreign income arising in a year when the settlor was non-domiciled and the trust was protected that distribution will be taxed on the settlor to the extent that it can be matched against relevant foreign income.
- Similar changes will be necessary to partially dis-apply the part of the Transfer of Assets abroad legislation. Foreign source income will be not assessable on an arising basis, but instead the transferor will be liable to income tax on any worldwide benefits received. If the settlor, their spouse, minor children or other relevant person receive any benefits, the trust will still be protected but the distribution will be taxed on the settlor to the extent that it can be matched against relevant foreign income arising in that year.
- UK income will continue to be taxable on the settlor where the settlor has an interest in the structure.
- The protections detailed above will be lost if property is added once the settlor becomes deemed domiciled.
- The transitional rules introduced in 2008 (rebasement and exemption of pre 2008 capital gains or capital payments) will continue to apply to where the individual receiving the capital payment is deemed-domiciled but not where he was born in the UK, with a UK domicile of origin.

### *Born in the UK with a UK domicile of origin*

- The proposed reforms previously set out will not be amended therefore, amongst other things, the excluded property status of trusts set up by such individuals will be lost in years of UK residence. The one year grace period for IHT will not apply to the remittance basis generally.

It is anticipated that further details will be included in the draft finance bill. More detailed analysis of these documents will be released in due course but please get in touch with your usual KPMG contact should you wish to discuss the above.



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