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Briefing document

Non-UK domiciliaries arriving in the UK

Introduction
This briefing note contains a high-level overview of the tax position of non-UK domiciled individuals who have recently moved or are moving to the UK for the first-time, having not previously been UK resident.

This note is not intended to be comprehensive and it is recommended that advice is sought when considering the matters outlined in this note.

UK residence
It is important to consider when residency is triggered for tax purposes, as this can affect your exposure to UK taxation. A statutory test applies to determine whether or not individuals are UK resident for tax purposes. The statutory residence test operates by determining UK residency based on three measures:

- The 'automatic overseas test': Where this test is met, the individual is always non-UK resident.
- The 'automatic residence test': Where this test is met, but the automatic overseas test is not, the individual is always UK resident.
- The 'sufficient ties test': If neither of the above tests are met, residence is determined based on the individual's presence in the UK in conjunction with the individual's 'ties' (or connections) to the UK.

The first two tests consider relatively straightforward matters, which are the number of days the individual is present in the UK in the tax year, location of employment, the number of UK workdays and, for the automatic residence test, availability of UK and overseas accommodation.

For individuals who have not previously been UK resident, the sufficient ties test considers family ties (broadly, the residence position of immediate family members), available UK accommodation, substantive work being undertaken in the UK and spending more than 90 days in the UK in one or both of the previous two tax years.

An individual is UK resident or non-UK resident for the entire tax year (6 April – 5 April). There is however provision for split year treatment in specified circumstances. Where this applies, the tax year is split into UK and overseas parts. Detailed rules apply to determine whether or not a tax year can be split.

Domicile
Domicile is a common law concept. Broadly, individuals are domiciled in the jurisdiction which they consider to be their permanent home. It is the jurisdiction with which an individual has the closest personal, family, social and economic ties, and the jurisdiction in which he or she has realistic plans to settle permanently in the future (e.g. on retirement). Domicile is distinct from nationality, citizenship and residence.

Domicile determines the availability of the remittance basis (see below) and the extent to which non-UK situated assets are within the scope of inheritance tax. Non-UK domiciled individuals are only within the scope of inheritance tax on UK situated assets and (broadly) certain foreign assets that derive value from UK residential property, whereas UK domiciled individuals are within the scope of inheritance tax on worldwide assets.

If you are moving to the UK for the first time, your family have not historically been based here and you do not intend to remain in the UK indefinitely, it is possible that you will remain legally non-UK domiciled.

Certain individuals are deemed to be UK domiciled for tax purposes. This includes UK resident individuals who were born in the UK and have a UK domicile of origin (formerly domiciled residents). Such individuals are only deemed UK domiciled for inheritance tax purposes if they were UK resident in one or both of the two previous tax years.

Long-term UK residents who were UK resident in at least 15 of the previous 20 tax years are also deemed UK domiciled. This point will not be relevant for new arrivals to the UK for a number of years.

The remittance basis

UK resident, non-UK domiciled individuals may be taxable on the remittance basis of taxation. Where the remittance basis applies most types of foreign income and gains are only subject to UK taxation if they are remitted to (brought into) the UK.

The remittance basis applies to non-UK domiciled individuals automatically in certain circumstances. Notably, the remittance basis applies automatically to non-UK domiciled individuals (whether or not deemed UK domiciled) who have less than £2,000 unremitted foreign income and gains in a given tax year. Personal allowances (where available) are retained if the remittance basis applies automatically.

If the remittance basis does not apply automatically it can be claimed, provided the individual is not deemed UK domiciled. Claiming the remittance basis causes personal allowances to be lost. These include the capital gains tax annual exemption (£12,000 in 2019/20) and, if available, the income tax personal allowance (£12,500 in 2019/20). Where available, the personal allowance is reduced for individuals who have income in excess of £100,000, and is nil for taxpayers with income in excess of £125,000 (in 2019/20).

Individuals who have been UK resident for a number of years must pay a remittance basis charge in order to claim the remittance basis. The remittance basis charge is £30,000 for individuals who have been UK resident in at least 7 of the 9 previous tax years, and £60,000 for individuals who were UK resident in at least 12 of the previous 14 tax years.

Remittances

Most foreign income and gains received in a tax year in which the remittance basis applies are taxable on remittance. The definition of remittance is broad. In addition to a transfer of cash to the UK, it includes, for example, settling a non-UK credit card that has been used to fund UK purchases, bringing assets into the UK that were purchased using foreign income and gains (subject to exceptions) and the purchase of flights that start or end in the UK. These rules are particularly complex, and professional advice should be sought.

Bank accounts

Whether or not a remittance is taxable will depend on what is remitted. As noted, foreign income and gains received in a tax year in which the remittance basis applied are taxable on remittance. Certain funds are not taxable on remittance. These include funds held before UK tax residence commenced, amounts which have already been subject to UK taxation (e.g. UK income and gains) and inheritances.

It is sensible to ensure that bank accounts are set-up appropriately, so that the nature of what is remitted can be determined. This will typically entail holding separate accounts in order to segregate funds which would not be taxable on remittance from funds which would be taxable on remittance. If funds are mixed they cannot be unmixed, and remittances will typically be regarded as being of whatever source of funds gives rise to the highest UK tax liability on remittance. Care should therefore be taken with regard to banking arrangements.

Business investment relief

Business investment relief enables foreign income and gains to be remitted to the UK without a tax charge arising where the remittance is made in order to invest in an eligible company(ies) carrying on a UK trade and/or which invests in companies that carry on a UK trade. Various conditions must be met and the relief must be claimed.

When the individual disposes of their interest in the company, or the business investment relief conditions otherwise cease to be met, the individual will be taxable on the remittance of the invested funds unless a new business investment relief eligible investment is made or the funds received on disposal of the interest in the company are exported from the UK within set time limits.

Interests in non-UK resident trusts and companies

In some circumstances UK resident individuals are taxable on income received and gains made by non-UK resident trusts and companies in which they have an interest, whether or not the individual receives any value from the overseas entity. There are exceptions; notably for foreign income and gains made by non-UK resident trusts that meet certain conditions. The rules in this area are complicated and advice should be sought.

Buying UK property
In practice, the need to fund living accommodation and living costs in the UK often drives non-UK domiciled individuals to make remittances to the UK. The UK tax position on acquisition, throughout ownership and on disposal of UK property should be considered.

It should also be borne in mind that UK residential property is within the scope of inheritance tax for non-UK domiciled individuals, as it is a UK situated asset. As noted above, certain non-UK situated assets that derive value from UK residential property are deemed to be UK situated for inheritance tax purposes.

Self Assessment
The UK operates a Self Assessment taxation system, whereby individuals must declare their income and gains to the UK tax authorities and pay any tax due by the deadline. Where tax returns are required, they are due by the 31 January following the tax year if the return is filed online or 31 October if the return is filed on paper. Any tax due must be paid by the 31 January following the end of the tax year.

Individuals who are required to file a tax return but who do not receive a notification to file a return from HMRC must notify HMRC of the need to file a return by the 5 October following the tax year.

From 6 April 2020, UK resident individuals will be required to disclose and pay any capital gains tax due if a chargeable gain is made on disposal of UK residential property. Broadly, non-UK residents are already required to file a return and pay any capital gains tax due within 30 days of disposal of UK land. The definition of 'land' for this purpose is broad. As this note concerns the tax position of individuals who are commencing UK residence, this point is not explained further in this note.

Find out more…
This note reflects the law in force as at 5 June 2019. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk.