

Non-Domiciled Individuals

This factsheet sets out the rules which deal with the taxation in the UK of income arising outside the UK, for non UK domiciled individuals. The rules changed significantly from April 2008.

What was the position?

Until 5 April 2008 an individual who was resident in the UK but was either not domiciled (referred to as 'non-dom') here or was not ordinarily resident here enjoyed what is termed the 'remittance basis' in respect of income and capital gains arising outside the UK. What this meant in practice was that instead of being taxed on the actual income/gain arising in the year they were taxed on the amount of that income/gain actually brought into the UK in the tax year.

Example

Jan, who is domiciled in Poland but who has been living in the UK for a number of years, has rental income arising from the letting of property in Poland. In 2007/08 the income amounted to £5,000 but Jan only brought £1,000 of that into the UK leaving the remainder in Poland. He was taxed in 2007/08 only on the £1,000 remitted.

The advantages of non-domiciled status were further enhanced by the very narrow definition of what constituted a remittance – essentially limited to the transmission of cash or cash equivalents. If, the overseas income/gains were converted into other assets, and those assets were then brought into the UK, they did not constitute a remittance. Other planning routes could be exploited to ensure that the UK tax liability of the non-dom was kept to a minimum.

So what has changed?

In essence two major changes have taken place with effect from 6 April 2008. Firstly, the remittance basis is no longer given automatically to those who are non-doms or not ordinarily resident and secondly, the rules which determine what constitutes a remittance have been considerably tightened. These changes mean that every non-dom must now give very careful consideration to their UK tax position and take extreme care in planning their overseas income and capital gains.

Claiming the remittance basis – all taxpayers

The starting point of liability for all non-doms is that overseas income/gains are taxable on the arising basis just as they are for any UK domiciled individual. The non-dom will have the option of making a claim for the remittance basis to apply, but if they make this claim, they will automatically forfeit their personal allowance for income tax purposes and their annual exemption for CGT. This will obviously impact on their total tax liability including any UK income/gains.

The main situation where a non-dom will be able to benefit from the remittance basis without making a claim and will therefore retain their allowances is when they remit to the UK all but a maximum of £2,000 of their income and gains arising abroad in the year.

Example

Let's take Jan again as our example and pose two different scenarios for 2011/12 assuming his overseas income is still £5,000.

Scenario 1: He remits £1,000 to the UK – he can pay tax on the full £5,000 as it arises and he will retain his personal allowance against that and any UK source income. If he claims the remittance basis he will pay tax on £1,000 but will lose his personal allowance against that and any UK source income.

Scenario 2: He remits £3,000 to the UK. He can have the benefit of the remittance basis and pay tax on only £3,000 because he has left no more than £2,000 unremitted. He will retain his personal allowance.

Claiming the remittance basis – long term residents

What is a long term resident?

Matters become more complex and serious when an individual falls within the definition of a long term UK resident. This will arise when the individual has been resident in the UK in seven out of the nine UK tax years preceding the one for which liability is being considered. For these purposes a part year of residence counts as a full year. In considering the position for 2011/12 it is necessary to look at the individual's UK residence position going back as far as 2002/03 (ie to 6 April 2002). If they have been UK resident for at least seven of those years then they will be classed as a long term resident for the purpose of the remittance basis.

Example

Jan first came to the UK in July 2004. He will be classed as resident here from 2004/05 which will mean that he meets the seven year rule and will therefore be treated as a long term resident in 2011/12. If his residence had not commenced until July 2005 he would only have six years of residence and would not become a long term resident until 2012/13.

What are the implications of being a long term resident?

Essentially the long term resident (who must be 18 years of age or over at some time in the tax year concerned) can only claim the benefit of the remittance basis if they pay an additional £30,000 in addition to the tax on any income or gains remitted. This sum is known as the 'remittance basis charge' (RBC).

The rules surrounding this charge are complex but the 'bare bones' are as follows:

- the charge effectively represents tax on unremitted income or gains
- the non-dom nominates specific income/gains to represent this charge
- the sums nominated cannot then be charged to UK tax even if they are subsequently remitted to the UK in a later year
- the nominated income/gains are deemed to be remitted only after all other unremitted income/gains have come into the UK
- tax on the sums nominated may be eligible for relief under a double tax agreement (DTA).

The RBC is not avoided where there is a failure to nominate specific income/gains and such failure may result in duplicate or higher taxation in future years.

Example

Let us assume that Jan is a long term resident. He can only secure the remittance basis for 2011/12 if he pays the RBC. Clearly it would be nonsensical for him to pay that charge to avoid tax on say £4,000 of income which was unremitted. He will therefore not elect for the remittance basis and will pay UK tax on the full £5,000 of income arising in Poland. If that income has been subject to tax in Poland he may be entitled to set any Polish tax against his UK liability.

Example

Sergio is a very wealthy Spaniard who has been living in the UK for many years. He is a higher rate UK tax payer. In 2011/12 he has income of £200,000 arising in Spain and also makes a capital gain of £150,000 on the sale of a Spanish property. He remits none of this to the UK in 2011/12.

He claims the remittance basis and obviously has no liability on remitted income because there is none. He will have to pay the RBC of £30,000 and must nominate income or gains to represent this sum. He could nominate just over £107,000 of the capital gain which, taxed at 28%, would represent a liability of £30,000.

That would satisfy the RBC and would mean that £107,000 of the gains would not be taxed if it is subsequently remitted. It would also mean, subject to the terms of the UK / Spanish DTA, that he may be eligible for relief in respect of any Spanish tax on this sum.

The charge is about to get worse

Legislation will be introduced in the Finance Bill 2012 which will increase the amount of the RBC in certain situations. Where an individual in 2012/13 onwards has been resident in the UK for 12 out of the previous 14 years, the RBC will rise to £50,000. This may mean a rethink for individuals who have until now been content to pay the RBC charge to have a greater benefit from the remittance basis.

What is a remittance?

The rules to determine a remittance have been widened and HMRC take the view that whatever method an individual may use to bring income or gains into the UK will be caught. Again these new rules are very detailed and it is only possible here to give a brief outline.

Relevant person

Essentially a remittance can be caught if it is for the benefit of any person who, in relation to the taxpayer (ie the non-dom with overseas income/gains), is within the definition of a relevant person. That list includes:

- the taxpayer
- their spouse or civil partner
- a partner with whom they are living as a spouse or civil partner
- any child or grandchild under 18 years of age
- a close company in which any relevant person is a shareholder
- a trust in which any relevant person is a beneficiary.

Basic concept of a remittance

Two conditions must be in place for a remittance to arise. Firstly property, money, or consideration for a service, must be brought into the UK for the benefit of a relevant person and secondly, the funds for that property etc must be derived directly or indirectly from the overseas income and gains. These rules are much wider than the old rules. Some examples will help to explain the scope.

Example

Alex, a wealthy Canadian lives in the UK with his wife and young children. He has a significant bank deposit in Jersey which generates a large amount of income each year. Any of the following uses of that income would constitute a remittance for UK tax purposes:

- he buys an expensive car in Germany and brings it into the UK
- he opens a bank account in the UK for each of his children with funds from Jersey
- he sends his wife on an expensive weekend at a spa and the bill for the break is sent direct to Jersey for settlement
- he uses a credit card in the UK which is settled on a monthly basis out of the Jersey income.

There are some exceptions for example clothes, watches and jewellery for personal use and other goods up to a value of £1,000.

A more indirect route is also caught

In the past it had been possible to use a route known as 'alienation' to avoid the remittance basis. This would involve an individual giving someone else their overseas income and then that individual bringing the money into the UK. In the recipient's hands it would have represented capital and the remittance would have been avoided. Now such a route is not possible. Any attempt at 'alienation' which involves the funds ultimately being brought into the UK for the benefit of a relevant person will be caught as a remittance by the taxpayer. This rule is likely to cause some difficult situations.

Example

Alex gifts some of the Jersey income to an adult son. He uses the money to pay for a UK school trip for his own son. The grandson is a relevant person as far as Alex is concerned and this payment will constitute a remittance on which Alex is taxable in the UK.

Other issues

There are a number of other issues covered by the rules such as:

- transitional arrangements to deal with property acquired before 6 April 2008
- transitional arrangements to deal with payment of interest on overseas loans used to fund the purchase of a UK property
- the identification of remittances from mixed funds
- dealing with gains arising in offshore trusts.

A new relief

Legislation in the Finance Bill 2012 will provide some relief from the remittance basis where a non-dom remits funds to the UK which are then invested in a qualifying business in the UK. In this situation those funds will not be treated as a remittance so the remittance basis may be more attractive. It should be noted, however, that a claim for the remittance basis will still involve paying the appropriate RBC which may be due.

The rules for this relief are detailed but the key elements are:

- the investment must be in shares or loans to a trading company or a company which will invest in trading companies
- the company must be unquoted
- the non-dom (or any relevant person in relation to the non-dom) must not receive any benefit from the company
- when the investment is subsequently realised the non-dom will have 45 days to either reinvest in another qualifying company or remove the funds from the UK otherwise they will be treated as a remittance in that later year.

As can be seen from this brief review, the rules are wide ranging and complex. The non-dom now needs to take great care in how they organise their overseas assets and in particular cash funds. Ideally pure capital funds should be kept clear of any income so that they can still be used as a means of tax free remittance.

Each individual's situation is going to have different problems. Please contact us if you would like to discuss how the rules impact on you and the steps you can take to mitigate their impact.

For information of users: This material is published for the information of clients. It provides only an overview of the regulations in force at the date of publication, and no action should be taken without consulting the detailed legislation or seeking professional advice. Therefore no responsibility for loss occasioned by any person acting or refraining from action as a result of the material can be accepted by the authors or the firm.