

## *Non-dom tax series (Part 2)*

Significant changes to the taxation of UK resident non-doms came into force on 6 April 2017. If you have been in the UK for 15 years or more you will now be UK deemed domiciled for all tax purposes and will no longer be able to claim the remittance basis. Beneficial tax treatment will remain for offshore trusts you set up before you became deemed domiciled and there are also some transitional reliefs. Here we provide a guide to how you will be taxed under the new rules.



### UK TAXATION OF NON-UK DOMICILED INDIVIDUALS: UK DEEMED DOMICILED WITH A FOREIGN DOMICILE OF ORIGIN

Position from 6 April 2017

If you are non-UK domiciled but have been resident in the UK for 15 of the previous 20 tax years you will be deemed domiciled in the UK for all tax purposes and the remittance basis will no longer be available to you (even if you remain non-UK domiciled). You can lose your deemed domicile if you are non-UK resident for six complete tax years; you can then return to the UK and be resident for a further 15 tax years before becoming UK deemed domiciled again.

Different rules apply to non-doms who were born in the UK with a UK domicile of origin; they will be treated as if they are UK deemed domiciled in any tax year in which they are UK resident.

#### PERSONAL ASSETS

- > Once you are UK deemed domiciled:
  - you will be subject to tax on your worldwide income and gains on an arising basis; the remittance basis will not be available to you; and
  - you will be subject to inheritance tax on your worldwide assets.
- > Assets you placed in trust before your became deemed domiciled will benefit from significant protections provided no further funds are added to those trusts while you are deemed domiciled (see below for further details).

#### TRANSITIONAL RELIEFS

Two limited transitional reliefs (being "rebasings" and "segregation") have been introduced as part of the reforms to the taxation of non-doms – one is available to most non-doms but one only applies if you became UK deemed domiciled on 6 April 2017.

#### Rebasing assets

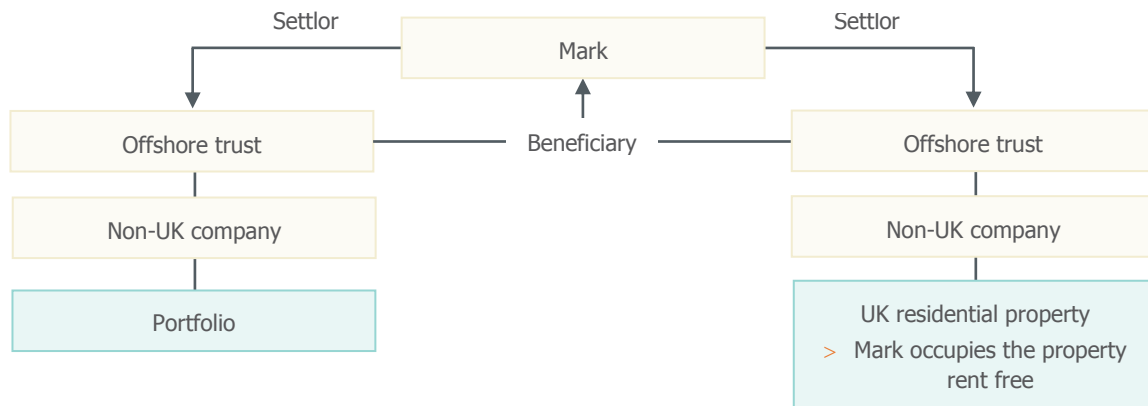
- > Once you are UK deemed domiciled you will be subject to tax on gains realised on foreign assets even if the proceeds of sale are kept outside the UK.
- > If you became UK deemed domiciled on 6 April 2017 (and you paid the remittance basis charge in any tax year since 6 April 2008), foreign assets held directly by you (i.e. not held by a non-UK company or a trust) on 5 April 2017 will automatically be rebased provided they have been foreign assets since 16 March 2016 (or the date of acquisition, if later). This means that on a disposal you will only be subject to capital gains tax on any increase in the value of the asset since 6 April 2017.
- > You can elect for rebasing not to apply to a particular disposal (e.g. if there was a loss).

#### Segregating mixed offshore bank accounts

- > Usually, non-doms who have offshore bank accounts containing mixed funds - e.g. capital, capital gains and income - can only remit the capital element to the UK (which can be remitted tax-free) once all other elements in the account have been remitted and taxed.
- > Between 6 April 2017 and 5 April 2019 all non-doms (other than those born in the UK with a UK domicile of origin) have a one-off opportunity, to 'clean up' offshore mixed bank accounts – that is, to separate the different elements and place the clean capital, gains and income in separate accounts which can then be remitted as they wish. This enables the remittance of any clean capital, tax free.

## MARK

- > Non-UK domiciled (non-UK domicile of origin)
- > UK tax resident since 2002/2003
- > Set up offshore trusts in January 2002
- > UK deemed domiciled from 6 April 2017



## TAX POSITION OF OFFSHORE TRUSTS

Provided neither Mark nor a trust of which he is the settlor or a beneficiary adds funds to the trusts at a time when he is UK deemed domiciled he:

- > will be subject to income tax on the UK-source income of the trusts on an arising basis
- > will not be subject to tax on the foreign-source income of the trusts or the gains of the trusts on an arising basis
- > will potentially be subject to tax on the foreign-source income of the trusts if:
  - he; or
  - his spouse/civil partner or minor child who is non-UK resident or a remittance basis user

receives any benefit from the trusts

- > may be subject to tax on trust gains if he receives a benefit from the trusts
- > from 6 April 2018, may be subject to tax on trust gains if his spouse/civil partner or minor child receives a benefit from the trusts
- > will not be subject to tax on his use of the UK residential property if no income or gains arise in that trust

The non-UK assets in the trusts will remain outside the scope of inheritance tax (other than indirect interests in UK

residential property and certain loans related to UK residential property).

If Mark (or a trust of which he is a beneficiary or the settlor) adds funds to the trusts when he is UK deemed domiciled he will be subject to tax on all the UK and foreign-source income, and all the gains of the trusts on an arising basis, in that tax year and all subsequent tax years in which he is UK resident and deemed domiciled. The added funds will also not be protected from UK inheritance tax. Therefore, it is critical that no additions to the trust are made.

Mark will also be subject to tax on any distributions or benefits he receives from offshore trusts of which he is not the settlor (or their underlying entities), wherever he receives those distributions/benefits, if those trusts have income and gains arising in them.

### UK residential property

- > The shares in the non-UK company which holds the UK residential property will be subject to UK inheritance tax whether or not Mark is UK deemed domiciled.
- > A charge to inheritance tax will arise:
  - on each 10 year anniversary of the trust
  - if the shares or the property are distributed out of trust; and
  - on Mark's death.

This note is a general guide only and is not a substitute for specific legal and tax advice.



### CONTACT US

Please get in contact with any of our lawyers for further information

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