The Non-Dom conundrum?

Inheritance tax and trusts | Tax voice

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Edward Emblem addresses the question: How does one go about long-term tax planning when a tax change has been announced but the details are yet to materialise?

We only currently know some of the measures affecting non-doms due to be introduced from April 2017, but some individuals are keen to know **now** how they should plan for the new regime in the long term.

What has been produced to date still represents only fragments of the necessary legislation. We are far from having answers to a whole number of questions around how the affairs of many individuals will be affected from next April. What, then, can be done in the meantime to protect family wealth and secure the best position in light of the little we know?

Areas of reasonable certainty

Draft legislation has been published detailing the new deemed domicile rules for income tax and capital gains tax that will now appear in Finance Bill 2017 rather than 2016, potentially giving scope for amendments in the interim. The clauses as currently drafted mean that individuals born in the UK with a domicile of origin in the UK who return to the UK will be deemed domiciled, and therefore unable to access

the remittance basis from the year of return. All individuals will be deemed domiciled once they have been resident in the UK for more than 15 out of the previous 20 years.

The 15 year rule will also apply for IHT deemed domicile, in some cases, significantly accelerating the point at which individuals will become IHT deemed domiciled. Take as an example, Henrik, a non-domiciled individual who was tax resident in the UK for twenty years before recently having spent a period of five years overseas. He has now returned and thinks he will not have to worry about his overseas assets coming within the scope of UK IHT for years. Clearly, it may well be that he will now only have a year before his worldwide estate becomes potentially exposed.

Many of the usual planning tools will still be available for those due to become deemed domiciled, with excluded property structures still expected to retain their merits for IHT purposes other than for UK residential property. Whilst there is still uncertainty around the taxation of offshore trusts under the new rules, UK resident excluded property settlements may be of interest to some. Pensions, offshore bonds and family investment companies will all still be worth considering and, may offer not only IHT protection, but also help counter income tax and CGT disadvantages where the remittance basis is no longer available from 2017.

Some of those who will become deemed domiciled from April 2017 may be able to arrange for foreign income to be received prior to that date whilst they are still taxed on the remittance basis. Taking dividends from non UK companies, terminating offshore deposits, selling offshore deep discount securities or bonds heavy with accrued interest may all be on the list of possible options. Every case will need to be judged on its merits.

It is worth noting that individuals such as Henrik, who recently spent five tax years abroad, may have a limited period in which they can spend only a single year overseas and in doing so, effectively restart their domicile clock for tax purposes.

Less certain areas

We have multiple assurances that there will be some form of rebasing for those who find themselves deemed domiciled from April 2017. This should give comfort for many, depending on exactly how the measure works. Some will find themselves in a position where the IHT advantage of settling assets into trust prior to April 2017 will

have to be weighed against the potential loss of CGT uplift. Other countries' taxes may, as ever, need to be considered.

Assurances have also been given that protection will be available where an offshore trust has been settled before the point of becoming deemed domiciled, with the effect that income and gains within the trust will remain untaxed unless paid out to a UK resident beneficiary. Such trusts could theoretically be a useful vehicle for the future tax-efficient accumulation of wealth if the individual or their family intend to be non-UK resident at the point they receive a future benefit or if a benefit is taken later in life, which may allow for the deferral of tax. It may also be possible for the first time for UK resident settlors not to have to be excluded from benefit without s.624 ITTOIA (settlor interested trust) or s.720 ITA 2007 (transfer of assets abroad) coming into play, but we will need to wait to see the mechanics of the proposed regime first.

What is also unknown is how distributions from offshore trusts will be treated. This will be an important factor for many wishing to settle assets prior to becoming deemed domiciled, at least to the extent they wish UK resident individuals to benefit.

General Law

Finally, the new landscape may make it more important to assess taxpayers' actual domicile under general law, before undertaking any planning on the basis they are non-deemed domiciled for tax purposes. This is not to say that the 15 year point will automatically become some sort of flag for HMRC to indicate a possible actual UK domicile.

Interestingly, the perception amongst some of the general public seems to be that it will be one's non-domicile status as such that will cease after 15 years of UK residence. Whilst advisers know this is not strictly true, we need to ensure we do not focus so much on the forthcoming tax provisions that we lose sight of the general law that will continue to underlie it.