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## REMITTANCE BASIS CHANGES FROM 6 APRIL 2008

**Individuals who are non-domiciled or not-ordinarily resident in the UK should review their tax position urgently — there is little time to take action before 6 April to minimise the tax cost of the changes in future years.**

In the 2007 Pre-Budget Report, the Government announced changes to the residence and domicile tax rules that will restrict the tax advantages available to individuals who are resident in the UK but not domiciled there. The largest impact is likely to be felt by shareholders in offshore companies and those with offshore trusts. This News Release outlines how the new tax rules, included in the recently published draft legislation, could affect you.

### Remittance Basis

Individuals who are resident, ordinarily resident and domiciled in the UK are taxable on their worldwide income and gains arising in a tax year. However, individuals who are resident but not domiciled, or not ordinarily resident, in the UK can currently claim for an alternative “remittance basis” to be applied to tax their foreign income so that it is only taxable in the UK when they remit it in some form.

Under the draft legislation, individuals who are resident but not domiciled, or not ordinarily resident, in the UK will still be able claim the remittance basis of taxation for foreign income and chargeable gains. However, if their unremitted foreign income and gains are less than £1,000 for a year, the remittance basis will apply automatically.

From April 2008, individuals who have a larger foreign income and claim benefit of the remittance basis for a tax year will lose their entitlement to UK personal allowances and the capital gains tax annual exempt amount for that year. Where such individuals have been in the UK for longer than seven out of the past nine years (at April 2008), they will also have to pay an annual charge of £30,000 to use the remittance basis.

### What is a remittance?

The draft legislation significantly broadens the

definition of a remittance, so much so that virtually any funds brought into the UK by non-domiciled individuals will need to be considered. For example, the value of any service provided in the UK that is financed in any way “directly or indirectly” from overseas assets is likely to be treated as a remittance: offshore loans financed by foreign income are likely to trigger remittances in future years.

Extensive tracking rules are proposed to match remittances from mixed funds with past income or gains. These rules have a retrospective impact and, in some circumstances, unremitted foreign income earned many years ago may fall to be matched with remittances made after 6 April 2008. Income could be matched even where the original source of the income has ceased and that income has been used as the “capital” of a new bank account or to buy a new asset.

There are other provisions that are specifically designed to close down past planning opportunities. For example, bringing a physical asset (a car or antique) into the UK that was originally acquired using overseas income will be taxed as a remittance.

### Offshore Structures

The Government is keen to look through offshore structures owned by non-domiciled individuals resident in the UK and the draft rules will effectively tax income and gains on the individual as if he or she owned the underlying assets personally. The draft rules state that non-domiciled individuals who have offshore companies or interests in offshore trusts will be subject to UK tax on income or gains from UK investments made by those entities in the year the income arises or gains are made. Income from foreign assets and disposals of foreign assets by the company or trust will be subject to the remittance basis.

The new rules for offshore trusts also mean that past accumulated gains on any assets are likely to be taxed where there are capital distributions from a trust to its beneficiaries after 6 April 2008.

## Overseas Earnings

There are many changes affecting overseas earnings of non-domiciled individuals. For example, individuals who are not domiciled in the UK and work for international employers often have separate or "dual" contracts for their UK employment and their overseas work so that the salary for overseas work does not need to be brought into the UK. In the future, such contracts will only be tax-effective if the individual claims the benefit of the remittance basis and pays the £30,000 fee.

## Temporary Visitors

Along with the domicile changes, new rules on tax residence have been published. From 2008/09, HMRC will be counting a visitor's days of arrival and departure in the UK as days towards the statutory 183 day residence test (and the non-statutory 91 day test).

## What to do?

The draft legislation is to be put before Parliament in the 2008 Finance Bill so there could yet be a number of changes. Further amendments may be made before the end of the consultation period which runs to 28 February 2008. However, the new rules are intended to take effect from 6 April 2008 and non-domiciled individuals and their families should now review their financial arrangements so that potential future tax liabilities can be identified and remedial action taken where appropriate.

As fundamental changes to asset holding arrangements may be required, any review should consider your long-term intentions and objectives so that future investment and tax strategies can be tailored to your expected income and capital needs.

## Pre-6 April 2008 Planning

Individual client circumstances will need to be reviewed to determine necessary planning steps. Some general planning steps may include:

- Rebasing inherent capital gains prior to 6 April 2008, either by arranging actual or deemed disposals.
- Winding-up trust and company structures to not only rebase the assets but also to wash out any stockpiled offshore capital gains.
- Clients may wish to consider resettling or settling new trusts so that the offshore wealth

enters the new regime free of any stored-up history of capital gains and payments.

- Clients with offshore income and gains should consider alienation of such income and gains by gifting ahead of 6 April 2008.

## Planning Steps after 6 April 2008

Planning opportunities will remain for non-domiciled individuals. For example:

- Proper segregation of income and capital still appears to allow the safe remittance of pure capital to the UK tax-free.
- The £30,000 charge is assessed on a year by year basis and so it might be possible to pay the charge only when significant gains are realised.
- Offshore life assurance bonds may prove to be attractive tax deferral solutions without the need to pay the £30,000 charge. The tax deferral can become permanent if the beneficial owner is able to become non-UK resident before encashing the bond.
- Offshore trusts which are not settlor-interested i.e. where the settlor is not a beneficiary (or alive), will still retain tax deferral advantages, and capital payments to non-resident beneficiaries will continue to wash out trust gains free of tax.
- Solutions involving offshore companies (but without an offshore trust) may become popular.

## Conclusion

With just over two months until 6 April 2008, non-domiciled individuals need to urgently review their affairs in the light of these changes.

We will be contacting clients in the next few days to discuss these changes, however in the meantime please contact your Client Engagement Director on +44 (0) 1481 737600.

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