



TAX PLANNING FOR NON UK DOMICILED INDIVIDUALS (NON-DOMS)

OFFSHORE LIFE OR CAPITAL REDEMPTION PLANS MAY PROVIDE A SOLUTION FOR MEDIUM TO LONG TERM UK RESIDENT NON DOMS WHO ARE CURRENTLY PAYING, OR WHO FACE PAYING, AN ANNUAL REMITTANCE BASIS CHARGE (RBC).

INTRODUCTION

UK resident and domiciled individuals are generally liable to UK tax on their worldwide income and gains as they arise. This is known as the 'arising basis' of taxation.

However, where individuals are UK resident but not UK domiciled* ('Non-Doms'), they are able to claim an alternative tax treatment known as the 'Remittance Basis' of taxation.

THE REMITTANCE BASIS

The remittance basis of taxation means tax is paid on UK sourced income and gains but tax is only paid on foreign income/gains if these are brought ('remitted') to the UK.

A remittance is any money or other property which is or which derives from offshore income and gains which are brought, either directly or indirectly, into the UK for an individual's benefit or for the benefit of a 'relevant' person. There is also a remittance when a service provided in the UK to an individual or any other relevant person was paid for outside the UK with foreign income and/or gains.

UNREMITTED FOREIGN INCOME AND/OR GAINS

Unremitted Foreign Income and/or Gains' is a term which relates to any foreign income (and foreign gains if the individual is not domiciled in the UK) that arises (or accrues) during the tax year and

which are not remitted to the UK but remain abroad. For example, if an individual had £60,000 of foreign income and gains in the tax year and they remitted £40,000 to the UK, their 'unremitted' foreign income and gains for the tax year would be £20,000.

UNDER £2,000 OF UNREMITTED FOREIGN INCOME AND/OR GAINS

If a Non-UK domiciled individual has less than £2,000 unremitted foreign income and/or gains which arise or accrue in the relevant tax year, it is possible to use the Remittance Basis without making a claim or paying a charge.

* This excludes anyone born in the UK, who subsequently acquired a domicile of choice elsewhere and then moved back to the UK.

OVER £2,000 OF UNREMITTED FOREIGN INCOME AND/OR GAINS

If an individual has £2,000 or more unremitted foreign income and/or gains arising or accruing in the relevant tax year and want to use the remittance basis, then they must make a claim for that year. Furthermore, if that individual has been resident in the UK for at least seven out of the nine years preceding the current or relevant tax year, there is a Remittance Basis Charge (RBC) of £30,000.

For those individuals who have been UK resident for at least twelve out of the previous fourteen years, the charge is increased to £60,000. The RBC is only payable by UK residents who are aged 18 or over at the end of the tax year and it is in addition to any UK tax liability.

Once a Non-UK domiciled individual has been resident in the UK for 15 out of the last 20 tax years, he/she becomes 'deemed UK domiciled' for tax purposes. This includes income tax, capital gains tax and also inheritance tax. The remittance basis then no longer applies.

LOSS OF PERSONAL ALLOWANCES

Individuals who elect to use the remittance basis, automatically lose their entitlement to their Income Tax and Capital Gains Tax allowances.

The only exception to losing their personal allowances is for those individuals who are 'dual residents' - that is resident in the UK and also resident in another country under that country's rules. This exception does not affect all dual residents, only those who qualify for allowances under certain Double Taxation Agreements.

The fact that the charge can be offset against Income Tax or Capital Gains Tax (or a combination of the two), ensures that individuals who remit all of their foreign income and gains to the UK can receive credit for the charge against their UK liabilities. In order to obtain that relief, individuals have to make sure they make appropriate nominations of the income or gains upon which the RBC is paid.

TO PAY OR NOT TO PAY!

People with substantial foreign income/gains may be better off paying the RBC but other individuals will need to do a comparison calculation to see which way they would be better off - taking into account levels of their income and gains and the loss of their personal allowance and annual exemption for Capital Gains Tax purposes.

The table below shows the figures (in bold italics) above which it would be worth paying the RBC as opposed to settling the income tax or capital gains tax bill. It must be remembered that it is essential to take into account the fact that the personal allowance/capital gains tax allowance would still be available if the client did not pay the RBC and must therefore be taken into consideration.

INCOME TAX AND THE £30,000 CHARGE					
40% income tax payer			45% income tax payer		
Amount of income at which 40% equates to the charge	Personal allowance - 2019-20 tax year	Amount of offshore income required to make paying the charge worthwhile	Amount of income at which 45% equates to the charge	Personal allowance - 2019-20 tax year	Amount of offshore income required to make paying the charge worthwhile
£75,000	£12,500	£87,500	£66,667	£12,500	£79,167

INCOME TAX AND THE £60,000 CHARGE					
40% income tax payer			45% income tax payer		
Amount of income at which 40% equates to the charge	Personal allowance - 2019-20 tax year	Amount of offshore income required to make paying the charge worthwhile	Amount of income at which 45% equates to the charge	Personal allowance - 2019-20 tax year	Amount of offshore income required to make paying the charge worthwhile
£150,000	£12,500	£162,500	£133,000	£12,500	£145,833

CAPITAL GAINS TAX					
*28% capital gains tax/£30,000 charge			*28% capital gains tax/£60,000 charge		
Amount of income at which 28% equates to the charge	Individual annual exempt amount - 2019-20 tax year	Amount of offshore income required to make paying the charge worthwhile	Amount of income at which 28% equates to the charge	Individual annual exempt amount - 2019-20 tax year	Amount of offshore income required to make paying the charge worthwhile
£107,143	£12,000	£119,143	£214,286	£12,000	£226,286

* Assumes gain(s) include residential property.

HOW CAN AN OFFSHORE PLAN HELP?

Financial advisers dealing with 'non doms' should give serious consideration to the benefits of offshore plans.

It may be possible for an individual to hold a large proportion of their offshore wealth in an offshore plan and then opt to be taxed on an arising basis, thus avoiding the relevant RBC. On top of this, it is possible for the individual to take up to 5% of the total payments into the plan each year without incurring an immediate UK income tax liability.

However, care should be taken to ensure that any funds invested in the offshore plan do not include any previously unremitted offshore income and/or gains, as in this case, any withdrawals would be taxable when remitted back into the UK.

Furthermore, if the 'Non Dom's' eventual intent was to leave the UK, they could delay the encashment of the plan until they were non UK resident, as this would mean that any gains realised would not be liable to UK tax although of course they may be subject to tax in the new country of residence.

Offshore plans also offer benefits to non UK domiciles because plan gains are not relevant foreign income for the remittance basis of taxation. Therefore a non UK domiciled but UK resident individual only has to pay income tax whenever a chargeable event occurs on their plan and a gain is triggered.

This means that like any other UK resident investor, a non UK domicile can hold collective investments and deposits within an offshore plan and benefit from gross roll up until they incur a chargeable event gain. Provided that any other unremitted income and or capital gains total less than £2,000 in a tax year, there is no requirement to pay the RBC.

If a Non-UK domiciled individual owns an offshore plan and has been UK resident for less than 15 of the last 20 tax years, the offshore plan could be assigned into an 'Excluded Property Trust.'

This is a discretionary trust which includes the settlor as a beneficiary and enables Non-UK domiciled individuals to protect their Non-UK assets from UK inheritance tax, when they subsequently become 'deemed UK domiciled' for UK inheritance tax purposes (i.e. when they have been UK resident for 15 out of the last 20 tax years).

By assigning the offshore plan into the excluded property trust whilst being Non-UK domiciled, means that the value of the plan will then remain outside the individual's estate for UK inheritance tax.

Care needs to be taken not to add to the trust, once the individual has become 'deemed UK domiciled' for UK inheritance tax purposes.

IMPORTANT NOTES

Finally, please note that every care has been taken to ensure that the information provided is correct and in accordance with our understanding of law and Her Majesty's Revenue and Customs' (HMRC) practice as at April 2019.

You should note however, that we cannot take on the role of an individual taxation adviser and independent confirmation should be obtained before acting or refraining from acting upon the information given. The law and HMRC practice are subject to change.