

## NON-DOM TAX CHANGES DROPPED FROM FINANCE ACT

In the rush to conclude parliamentary business in advance of the snap general election on 8 June 2017, the reforms to non-dom taxation intended to take effect from 6 April 2017 have been dropped from the Finance Act 2017.

Excluded from the Finance Act are the provisions on:

- deemed domicile for non-doms who have been resident in the UK for 15 of the previous 20 tax years
- rebasing of assets held by long-term resident non-doms at 5 April 2017
- deemed domicile for 'formerly domiciled residents' or 'returning non-doms'
- cleansing of mixed funds
- changes to the taxation of offshore trusts
- the introduction of Inheritance Tax (IHT) on indirectly held UK residential property.

### What is the impact for individuals?

This could make it extremely difficult for affected individuals to plan in relation to their ongoing UK tax affairs at the current time.

The dropping of these provisions could open a window of opportunity for non-doms who were unable to undertake any planning by 5 April 2017. However if a Conservative Government is returned to power it seems that the provisions will remain policy and they will be included in a new Finance Bill, expected to be introduced later in the year. We also expect that the new Finance Bill will backdate the introduction of the new provisions to 6 April 2017, as originally intended.

However we cannot be sure that the provisions will be enacted as originally proposed, or from what date they will take effect, particularly if the general election results in a change of Government.

This brings unwelcome uncertainty for clients who have undertaken detailed planning in advance of 5 April 2017 in anticipation of the changes and for those who are looking to take advantage of rebasing or to cleanse mixed funds.

### What are the current areas of uncertainty?

There are a number of uncertain scenarios at present, some of which are summarised below:

- If a non-dom dies today, is the UK residential property they hold in an offshore structure liable to IHT?
- If there is a 10 year anniversary on an offshore trust holding a UK residential property today, is there an IHT charge?
- Where an individual has deferred gifting or disposing of foreign assets until after 5 April 2017, in order to take advantage of rebasing to wipe out any capital gain on a disposal shortly after that date, should that disposal still happen in anticipation of the rebasing provisions taking effect from 5 April 2017?
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- Alternatively should it be delayed until there is a greater certainty, but risk an increase in the value of the asset in the meantime?
- Where a foreign asset standing at a gain has been sold since 5 April 2017, on the assumption that rebasing would apply, and the proceeds have been remitted, is there a taxable remittance of the gain? If so, will there be any new transitional relief to allow the funds to be exported so as to avoid the remittance?
- If an individual is looking to take advantage of the cleansing of mixed funds and has not already commenced the cleansing exercise, they may wish to defer doing so until there is greater certainty. The draft law offered a two year window from 6 April 2017, within which to separate the mixed funds in an account. Will the original two year window to 5 April 2019 remain or will this be extended?
- Where a mixed fund cleansing exercise has already been undertaken in the period from 6 April 2017, should the individual wait until the position is confirmed before remitting any of the cleansed funds to the UK?

### In summary

Our general advice in the absence of further guidance from HMRC or the Treasury is, where possible, take no action until we have greater clarity on the way forward. If action has already been taken in anticipation of the changes becoming law on 6 April 2017, or if advice already received is part way through being implemented, individuals should seek further guidance immediately.

### Update 13 July 2017

An announcement was made on 13 July 2017 that all of the non-dom changes dropped from the Finance Bill 2017 will be included in the second Finance Bill 2017 in the Autumn and will be back dated to 6 April 2017.

If you would like to know more then please contact

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