

## Tax changes for non-domiciled and non-ordinarily resident individuals from 6 April 2008

Following the summary of 20 March these notes give some details of the type of information that non-UK domiciled and non-ordinarily resident individuals will need to provide in order to complete UK tax returns from 6 April 2008 onwards and to consider whether or not to elect to be taxed on the basis of income and gains remitted to the UK.

### Remittance basis

From 6 April 2008 individuals over the age of 18 who are not ordinarily resident or not domiciled in the UK, but have been resident in the UK in 7 out of the previous 10 years will be able to elect to be taxed only on their overseas income and gains that are remitted here, but only on payment of an annual charge of £30,000. If they do not make this election they will be taxable on all their overseas income and gains when they arise, irrespective of whether or not they are remitted.

Full details of overseas income and gains arising must now be available in order to decide whether or not a claim for this remittance basis should be made for each year.

If overseas income is paid into an overseas account which contains other sources of income or capital gains before being remitted to the UK remittances will be need to be matched against the component parts of the fund in a particular order. Therefore, details of the types of income and gains paid into such an account must be kept.

Alternatively, if overseas income or gains are not to be remitted directly to the UK separate overseas accounts could be opened to receive them so that they can be specifically identified if subsequently remitted.

### Transfer of income or gains

From 6 April 2008 if gifts are made abroad to certain 'relevant' persons, those amounts are subsequently remitted to the UK and the donor benefits from them they will count as remittances by the donor.

Relevant persons are defined as an individual's immediate family (being spouses/civil partners, individuals living together as spouses/civil partners and their children and grandchildren under 18). The definition also covers companies in which the donor holds shares and which are under the control of five or fewer persons or shareholders who are directors.

Therefore, if gifts of overseas income or gains are made to such persons it will be necessary to confirm whether any part has been subsequently remitted to the UK.

### Non-resident trusts

From 6 April 2008 onwards a beneficiary of an overseas trust who is UK resident but non-UK domiciled and who receives a capital payment from the non-resident trust will be taxable in respect of the accumulated gains of the trust up to the amount of the capital payment received. However, if a non-domiciled beneficiary has claimed to be taxed on the remittance basis then only the amount of the capital payment brought into the UK will be taxable.

Therefore details of all capital payments received must be kept and the trustees must maintain a record of all capital gains realised.

Trustees of overseas trusts are able to make an election that the element of gains which accrued before 6 April 2008 in respect of all its own assets and assets owned through certain companies will not be taxable if the gain is attributed to a resident but non-domiciled beneficiary.

It will therefore be necessary to have details of all such capital payments received and also details of the dates and amounts of capital payments made to other beneficiaries so that the taxable element in each case can be identified.

### **Non-resident companies**

From 6 April 2008 certain capital gains realised by non-resident companies will be attributed to UK resident shareholders if they own more than 10% of the shares, whether or not they are domiciled in the UK. However, if the shareholders are not domiciled in the UK the remittance basis will apply in respect of gains on non-UK assets.

Non-domiciled shareholders must therefore be able to ascertain the amount of gains realised by the non-resident company and the division of those gains between UK and non-UK assets in order to consider the application for the remittance basis.

Because all gains realised by non-resident companies will be attributed to UK resident but non-domiciled shareholders whether they are in respect of UK or non-UK sited assets and whether or not they are remitted to the UK consideration should be given instead to holding assets through a non-resident trust as gains would then only be taxable on the remittance basis following receipt of a capital payment.

### **Overseas capital losses**

Until 6 April 2008 non-domiciled individuals could not claim capital gains tax relief for losses on sales of overseas assets. From 6 April 2008 relief for overseas losses will be given to those who are non-domiciled but who do not claim to be taxed on the remittance basis.

Therefore full details of the acquisition and sale of overseas assets will be required.

### **Residence**

Most clients will be resident in the UK for tax purposes but if you are not you will need to be aware of the revised residence rules.

You will be resident in the UK if you are present here at midnight. However, if you are only passing through the UK a day of presence here will not be counted if you depart the next day and you do not engage in any activities that are to a substantial effect unrelated to your passage through the UK, such as business meetings.

You should therefore keep a diary of arrivals in and departures from the UK and retain flight tickets and boarding passes together with a note of whether you were involved in any business activities while you were here.

### **Temporary non-residence**

Non UK-domiciliaries who leave the UK having been resident for at least four out of the previous seven tax years will be taxable on remittances to the UK after leaving if they are non-resident for less than five complete tax years. Therefore details of all amounts remitted to the UK after leaving must be kept in the event that such a charge arises at a later date.

The above provisions are based on the current Finance Bill proposals. Any changes when the Finance Act becomes law will be notified at that time.

16 June 2008