

## NON-DOMS TAX REFORMS: WHAT NOW?

Following the Royal Assent of the 2017 Finance Act Number 2 in November 2017, the new rules for long-term UK residents are now in force with retroactive effect from 6 April 2017. As previously discussed there have been no significant changes to the legislation from the last drafts and statements in July 2017, however HMRC has updated their guidance and examples [here](#) and clarified the trust protections on 1 February 2018.

These changes have implications for any non-UK domiciled individual who has either claimed the Remittance Basis or has offshore trust structures.

Please find below an outline of the issues raised with these changes, please see [here](#) for our previous detailed summary of the key provisions. Due to the far reaching changes being introduced, your next steps will be highly dependent on your personal circumstances. Now is the time to review your current situation, whether to take the limited time opportunity to un-mix offshore funds, rebase offshore assets or review offshore structures and arrangements.

In particular existing offshore trusts should be reviewed before April 2018 to unwind any tainting arrangements such as low interest loans.

### **Deemed Domicile for Long-Term Residents:**

From 6 April 2017 onwards individuals currently non-domiciled will acquire a deemed UK domicile if they have been resident in the UK for more than 15 out of the past 20 tax years. This affects Inheritance Tax, Income Tax and Capital Gains Tax

Individuals who were born in the UK with a UK domicile of origin and who are resident in the UK will be treated as if UK domiciled and will not be able to rebase or un-mix funds and will not benefit from any trust protections.

### **Inheritance Tax (“IHT”):**

After 5 April 2017 IHT will be charged on all UK residential property whether or not held within an overseas structure such as a close company, trust or overseas partnership. Where held indirectly, the chargeable value of the estate will be the value of the holding structure to the extent that the value relates to the underlying UK property.

### **Mixed Funds:**

This measure will allow a non-UK domicile who has a mixed bank account to analyse the account to establish its component parts, and then to segregate the income and gains from the original capital so that the “cleansed” capital may be accessed in priority. Un-mixing must be done in cash and from one offshore account to another. Transfers must be completed and HMRC notified before April 2019, this can be performed once between each specified account.

Please note that there may be significant work involved to trace through the history of an account to determine its constituent parts, accurate information will also be required of the original source of the funds and transactions occurring within an account or portfolio.

### **Rebasing of Assets:**

Directly held foreign assets may be rebased to their market value as at 5 April 2017 for CGT purposes for individuals who have become deemed domiciled in the UK on 6 April 2017 and have paid the remittance basis charge in an earlier year. The assets must have been non UK situs assets in the period from 16 March 2016 until disposal or from the date acquired, if later. Rebasing applies automatically however where there are losses on an asset it may be more preferable to specifically waive the rebasing on that asset.

### **Capital Losses:**

Offshore losses arising after an individual becomes deemed UK domiciled will be allowable to offset capital gains in the same or later years.

**Non-Resident Trusts:**

Non-UK domiciles who create trusts before they become deemed domiciled under the 15/20 test will not be taxed on trust income or gains retained within the trust structure, provided no benefits are taken from the trust by themselves or close family. UK source trust income remains taxable as before.

Protection for offshore trusts will be lost if the trust is “tainted”. Tainting can occur by adding capital funds to the trust (by the settlor or related trust), and splitting or re-settling the trust. There are a limited number of specified exemptions to tainting such as; where transactions are on arm’s length terms, where a non-arm’s length loan is varied to arm’s length terms, and where a fixed term loan cannot be varied.

Low interest loans which are made to the trust are understood to taint the trust, as is the capitalisation of interest, the failure to pay interest in accordance with the terms of the loan and an uncommercial variation to the terms of the loan.

Where a trust is tainted the trust income and gains will be assessable directly on the UK resident, deemed domicile, settlor.

The taxable benefit of loans and lent assets to beneficiaries will be calculated in accordance with the official rate of interest, less interest actually paid and/or costs paid directly by the beneficiary.

There is a grace period until April 2018 to unwind any tainting arrangements. Any loan arrangements in particular should be urgently reviewed.

**Onward Gifting:**

From 6 April 2018 UK taxable individuals who receive indirect payment from an offshore trust will be taxed on that payment. This would occur where the transfer is made within 3 years from an untaxed trust payment, due to a non-UK resident beneficiary or a beneficiary who is taxed on the remittance basis.

**Offshore Companies:**

Where assets have been transferred to an offshore company on a non-commercial basis, it is likely the Transfer of Assets Abroad legislation will apply to tax the income on the transferor.

**Business Investment Relief:**

The government has expanded the role of Business Investment relief (“BIR”) to make it easier for taxpayers to invest unremitted income and gains in UK businesses. The ‘extraction of value’ rules have been relaxed and there is a 2 year window to mitigate a breach. Previously for equity investments BIR only applied to newly issued company shares and now additionally an investment for existing company shares can now qualify.

BIR remains useful investment tool and can be used in combination with other reliefs such as EIS/SEIS and Entrepreneurs Relief.

*Please note that this publication is intended as a general overview of the proposed changes. It is important that professional advice is sought on specific issues relevant to your personal circumstances and the legislation in force before any action is taken.*

Read our full summary on the tax changes for long-term non-UK domiciles [here](#). If you need any further clarification please do not hesitate to contact your Tax Manager or **Robert Kern** at [robertk@sopherco.com](mailto:robertk@sopherco.com)