

## RESIDENCE AND DOMICILE

### UPDATE TO PROPOSED AMENDMENTS TO THE TAX RULES

Since our first paper on 6 February 2008 HM Revenue & Customs have reacted to significant pressure and on 13 February 2008 the acting chairman of HM Revenue & Customs published an open letter making four points as follows, and this is what he said:

“I want to make clear that the Government’s intention – which will be set out in the legislation to be brought forward – has always been in to ensure that:

- Those using the remittance basis will not be required to make any additional disclosures about their income and gains arising abroad. So long as they declare their remittances to the UK and pay UK tax on them, they will not be required to disclose information on the source of the remittances;
- There will be no retrospect in the treatment of trusts and the tax charges will not apply to gains accrued or realised prior to the changes coming into affect;
- Money brought into the UK to pay the £30,000 charge will not itself be taxable; and
- It will continue to be possible to bring artworks into the UK for public display without incurring a charge to tax.

In addition, we will continue to discuss with the US Authorities how the £30,000 charge can become creditable against US tax.”

Since then a number of meetings have been held with HM Revenue & Customs and tax professionals. The principles set out in the HM Revenue & Customs letter quoted above have been expanded, and this is my current understanding of the situation. The problem is that the letter is not binding on the Revenue and amended draft legislation has still not been published. This means that what follows can not be relied upon to reflect the Revenue’s current intentions. This is a strange situation which does the Government no credit.

Subject to my comments above some further details follow:

*For further information please contact Robert John on 020 7022 0050 or [rj@clarksonhyde.com](mailto:rj@clarksonhyde.com)*

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### **Residence - Day Counting**

- Transit passengers passing through UK customs to get connecting transport will not be regarded as having spent a day in the UK for the purposes of tax residence, provided they do no non-airside work during the day.

### **The £30,000 Charge after Seven Years of Residence**

- The additional charge will not be taxed upon remittance to the UK provided that the payment is made directly to HM Revenue & Customs from a non-UK bank account, by electronic transfer or by cheque.
- Taxpayers who are regarded as resident in another country by virtue of a double taxation agreement may not be subject to the charge, and this could be made to apply to US citizens
- HM Revenue & Customs are looking into the position of dual resident taxpayers where the other country does not have a tax treaty with the UK.
- In order to pay the charge, taxpayers must submit a self-assessment tax return for the relevant year, even if no tax liability arises.

### **Remittance Basis**

- Taxpayers who elect for the remittance basis will not enjoy the benefit of the personal allowance and the annual exemption for CGT.
- Assets brought into the UK after 5 April 2008 will give rise to a tax charge if purchased with non UK income or gains.

### **Attribution of Gains to Settlers Of Settlor-Interested Non-Resident Trusts**

- Capital distributions remitted to the UK may be subject to capital gains tax only to the extent that the trust has realised gains after 5 April 2008, or perhaps taper relief will apply.
- UK resident and non-domiciled beneficiaries will not be taxed on distributions not remitted to the UK.

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### **Attribution Of Gains To Members of Non-UK Resident Companies**

- Capital gains realised by a non-resident company prior to 6 April 2008 will not be taxed on non-domiciled shareholders, or perhaps taper relief will apply.

### **Ownership of UK Residences**

- Gains on the disposal of UK residences not owned directly by the owner will be subject to capital gains tax, but it is unclear if or how pre 6 April 2008 increases in value will be brought into account.
- Using non UK income or gains to service interest in respect of non-resident loans used to purchase UK residences will constitute a taxable remittance. The banking sector is making strong representations on this point.

### **Planning Opportunities and Traps**

The only good news is that the retrospective taxation in the original proposals may be watered down and my updated suggestions are as follows:

- Any non-resident investment income whose source was closed in the tax year ended 5 April 2007 or earlier tax years can be remitted tax-free if remitted before 6 April 2008.
- Spouses/civil partners could consider amalgamating assets so that only one of them pays the £30,000 charge.
- It is still possible to remit pure capital to the UK with no tax charge, by proper segregation of income and capital.
- By electing to be taxed on the arising basis for income in 2007/08 it is possible before 6 April 2008 to remit accumulated income earned before 6 April 2007 without incurring a tax liability or losing allowances. This is the last opportunity to do this.
- An individual who has foreign income or gains should consider making gifts to his family outside the UK which they can remit as clean capital to the UK before 6 April 2008. The benefit of these funds should not be shared with the individual.

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- Alternatively, individuals with non UK assets standing at a gain, who are not domiciled or deemed domiciled for IHT purposes, might consider transferring them into trust, and for the trustees to make a distribution to the individual before 6 April 2008.
- Individuals with offshore accounts containing capital gains should consider remitting a proportion of the funds to the UK before 6 April 2008 to take advantage of the current pro rata'd treatment of the gain and capital element of the funds. This needs to be balanced against the new lower rate of CGT at 18% from 6 April 2008.
- Consideration should be given to rebasing assets held by companies and trusts so that the gain on their eventual disposal is reduced.
- In some cases offshore bonds or similar investments which accumulate income may be attractive to enable tax deferral without the £30,000 charge. The gain on the disposal of this type of investment is however charged to income tax at 40%.
- Other steps may be appropriate depending on personal circumstances.

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3 March 2008

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