

Making life easier for non-UK doms?

HM Revenue & Customs and HM Treasury have recently issued two consultation documents. The first includes a welcome simplification of some of the complex rules relating to the taxation of non-UK domiciled individuals and what could be a very useful proposal to prevent a taxable remittance on certain investments in the UK. The second is the long awaited statutory definition of UK tax residence.

COMMERCIAL INVESTMENT IN THE UK

The first consultation document focuses on reforms to the rules regarding the taxation of non-UK domiciled individuals. These include a new exemption for commercial investment in qualifying businesses in the UK, which is open to trustees of offshore trusts.

Under the current rules, any investment of funds in the UK which includes overseas income or chargeable gains will be a "remittance" and give rise to UK tax implications. This includes, in certain circumstances, investment by a non-UK resident company or by the trustees of a settlor-interested offshore trust directly or through an underlying company. Although a taxable remittance, by an offshore trust, will only apply to post 5 April 2008 income and gains, in practice it is often difficult for trustees to identify which funds are tainted by this income and gains.

The proposed exemption will allow investment of overseas funds in a "qualifying business" in the UK without giving rise to a taxable remittance of the invested funds. The definition of a "qualifying business" at this stage only includes a limited company, which carries on a "trading activity". The development or letting of commercial property would qualify although, as these types of property investments often involve a partnership or fund, without an extension of the provisions an alternative holding structure may be required.

As the proposed exemption is also available to offshore trustees, there may be considerable capital gains tax advantages to invest in the UK via an offshore trust rather than individually; as a non-UK domiciled settlor is not subject to capital gains tax even on the disposal of a UK asset by the trustees. Depending on the residence and domicile status of the beneficiaries of an offshore trust, there may be opportunities to defer or extinguish the tax altogether.

Whilst this appears to be a welcome opportunity for both individuals and offshore trustees to invest funds into the UK without a taxable remittance, limiting the rules to investment in companies is not ideal. Furthermore, there are restrictions included in the consultation document. In particular, the income and gains originally invested will be taxed if the investment is disposed of and the proceeds are not removed from the UK or reinvested within two weeks of the disposal. This seems a somewhat unrealistic restriction and it is hoped that this will be revised during the consultation process, which continues until 9 September 2011.

PROPOSED STATUTORY RESIDENCE TEST

A new statutory residence test has been proposed with effect from 6 April 2012. It is clear that the new rules will not simply be a day count test but will look to "connection factors" as well. These factors are: family in the UK; availability of accommodation in the UK; substantive (but not full time) work in the UK; presence in the UK for more than 90 days in either of the previous two tax years; and more time spent in the UK than in any other single country.

It will be vital for individuals, including settlors and beneficiaries of offshore trusts to identify their residence status each year and notify the trustees of their status to prevent untoward tax implications.

CONCLUSION

Although the rules outlined above are still subject to consultation, any simplification of the current rules is welcome. The exemption for investment in UK companies is particularly useful for settlor-interested offshore trusts which would like to invest in the UK but are currently concerned about the risk



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of causing a remittance taxable on the settlor. This concern may become a thing of the past, making future investments in the UK a more straightforward exercise for trustees. Following the enactment of these proposals; there will be no further substantial changes to the taxation of non-domiciled individuals during this Parliament.

