

KPMG's Private Client update –changes affecting the tax treatment of Non-Doms

Possible changes affecting the taxation of non-UK domiciled individuals (Non-Doms) – issue of consultation documents by HMRC

In the Budget on 23 March 2011, the Government announced the following reforms:

1. removal of the tax charge when Non-Doms remit foreign income or capital gains to the UK for the purpose of commercial investment in UK businesses ;
2. simplify some aspects of the current tax rules for Non-Doms to remove undue administrative burdens; and
3. increase the existing £30,000 annual charge to £50,000 for Non-Doms who have been UK resident for 12 or more years and who wish to retain access to the beneficial tax regime (the remittance basis). The £30,000 charge will be retained for those who have been resident for at least seven of the past nine years and fewer than 12 years.

The Government said it will be consulting on the detail of these measures, with a view to implementing them from 6 April 2012. Details of the consultation were published today. Interested parties have until 9 September 2011 to respond.

In summary, the most important changes proposed are:

(1) Removal of the tax charge when Non-Doms remit foreign income or capital gains to the UK for the purpose of commercial investment in UK businesses

Qualifying conditions

- A qualifying business must be carrying out trading activities or the development/letting of commercial property.
- Investments can only be made in companies, possibly listed on a recognised stock exchange and exchange-regulated markets such as AIM
- Relief will be extended to overseas income and capital gains remitted to invest in:
 1. non-UK resident companies that have a permanent establishment in the UK; and
 2. companies that hold shares in other companies, provided the holding company only holds shares in a qualifying business
- Investments in preference shares and loans as well as ordinary shares will qualify
- There will be no restriction on individuals remitting overseas income and capital gains which are held in investment vehicles or trusts. This should allow Non-Doms to invest in the UK using funds held in offshore companies and trusts without attracting a tax charge on remittance.
- Commercial remuneration can be drawn from the qualifying business by the Non-Dom and close family without jeopardising the tax free remittance.
- No upper or lower limits are proposed to the amounts that will qualify as a tax free remittance.
- Investments in a business that involve the following activities are excluded from this new incentive:
 1. developing/letting residential property
 2. leasing tangible moveable property (yachts, cars etc)
 3. provision of personal services (nannies, cooks, chauffeurs)

Tax issues

- Income from the qualifying business and capital gains on disposal of the investment may be taxable on the arising basis.
- Non-UK income and/or capital gains remitted for investment in a qualifying business must be taken out of the UK when the investment is sold in order to preserve tax free treatment. It is proposed this must take place within 2 weeks of the Non-Dom receiving the money generated by the disposal.

(2) Simplify the existing remittance basis rules

- Non-Doms will be able to remit up to £10 of their nominated foreign income or capital gains to the UK tax free and without becoming subject to punitive identification rules. Therefore the requirement to maintain a separate nominated income account may be reduced when making a claim for the remittance basis to apply.
- All sums within an individual's foreign currency bank account will be removed from the scope of CGT. This will remove the need to do voluminous calculations to calculate the CGT due whenever foreign currency is either spent/ converted into another currency.

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- Certain assets (including art and antiques) purchased using overseas income or capital gains could be sold in the UK without triggering a taxable remittance. This is on the basis that the disposal proceeds are taken out of the UK within 2 weeks of receipt by the Non-Dom.

(3) Increasing the existing £30,000 annual charge to £50,000:

- The increased charge will apply to a Non-Dom who have been resident in at least 12 of the 14 tax years prior to the year of the remittance basis claim
- Otherwise, the £50,000 charge will work in exactly the same way as the current £30,000 charge

There will be no other substantive changes to these rules for the remainder of this Parliament. This should provide some degree of certainty so this is good news.

It is important that Non-Doms now take the opportunity to review their tax position and make informed decisions based on all available information.

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