



PRIVATE CLIENT

KPMG's Private Client Update

TAX

January 2010

Non-Doms – capital loss election

Given recent events, many people have significant capital losses. Non-Doms can elect to receive tax relief for capital losses on disposals of overseas assets from April 2008 but need to be aware of the implications of making the election.

What is the capital loss election?

Since April 2008, Non-Doms have had the opportunity to obtain relief for capital losses on assets situated outside the UK. Prior to April 2008, no relief was available for such losses. An election is required to obtain this loss relief if the individual claims the remittance basis of taxation. Broadly, the effect of the election is to allow overseas capital losses to be set against capital gains (overseas and UK). The election, once made, is irrevocable and applies for the year in question and all future tax years.

Are losses available without the election?

No, if the election is not made, Non-Doms claiming the remittance basis (and in some circumstances those on the arising basis) will not be able to obtain relief for capital losses on overseas assets. Losses on UK assets would still be available.

So, should all Non-Doms make the election?

Not necessarily. One effect of the election is that a statutory ordering applies to all losses (both UK and overseas). Broadly, this sets all losses against overseas gains first, even if they are not remitted to the UK. This can mean that UK gains that would otherwise be covered by UK losses are left within the charge to capital gains tax.

Overseas gains may include foreign currency gains on non-sterling denominated overseas bank accounts. Each such account is a separate asset for capital gains tax purposes and each withdrawal from the account is a part disposal.

Does the election apply to losses on assets in trust and company structures?

No, the relief provided by the election is only available in respect of disposals of assets personally owned by the Non-Dom individual. For the avoidance of doubt the capital loss election is completely separate to and in no way related to the trust 'rebasings' election.

What is the deadline for the election?

The election must be made in respect of the first tax year from 6 April 2008 in which the individual claims the remittance basis of taxation, even if no overseas losses were made during that year. For many Non-Doms, the election will need to be made in respect of 2008/09. The deadline for the election is 4 years after the tax year in question. For 2008/09 the election must be made by 5 April 2013.

A Non-Dom has already filed their return for 2008/09 without making the election, have they missed the opportunity?

The election may be made by amending the current return (if in time to do so) or as a separate stand alone election. Having made the election it may be necessary to revise the filed return, depending on the capital gains/losses in 2008/09.

A Non-Dom is not claiming the remittance basis in 2008/09. Do they need to worry about this election?

If they are taxable on the arising basis in 2008/09 they will not need to make the election in respect of that year. Overseas capital losses will be available against their UK and overseas gains without the election. However, if they are going to claim the remittance basis in respect of a future year, they will need to think about the election at that point in time.

A Non-Dom claimed the remittance basis in 2008/09. In 2009/10, they will be taxed on the arising basis and have overseas capital losses. Do they need to worry about this election?

If they made the election in respect of 2008/09, they will be able to obtain relief for the capital loss in 2009/10 against capital gains of 2009/10 and future years. However, if they do not make the election in respect of 2008/09, no relief will be available for the overseas loss accruing in 2009/10, notwithstanding that the individual is taxable on the arising basis in that year.

What's the next step?

This is an important election. It is essential that UK tax advice is taken to determine whether it is beneficial having regard to the Non-Dom's personal circumstances. No decision regarding the election should be taken based on this Update alone. KPMG has a large number of specialists who can assist. For more information, speak to one of the KPMG Private Client Advisers listed below, or your usual KPMG contact.

KPMG in the UK

Dermot Callinan

Partner – Leeds
Tel. +44 (0)113 231 3358
dermot.callinan@kpmg.co.uk

Beatrice Friar

Director – Glasgow
Tel. +44 (0)141 300 5768
beatrice.friar@kpmg.co.uk

David Kilshaw

Partner – London
Tel. +44 (0)207 311 2841
david.kilshaw@kpmg.co.uk

Greg Limb

Partner – London
Tel. +44 (0)207 694 5401
greg.limb@kpmg.co.uk

Mark Patterson

Partner – Midlands
Tel. +44 (0)115 935 3441
mark.patterson@kpmg.co.uk

Paul Spicer

Partner – Bristol
Tel. +44 (0)117 905 4040
paul.spicer@kpmg.co.uk

Mike Walker

Partner – Manchester
Tel. +44 (0)161 246 4117
mike.walker@kpmg.co.uk

KPMG in the Channel Islands

Jason Laity

Executive Director – Jersey
Tel. +44 (0) 1534 608 427
ilaity@kpmg.jersey.ie

Tony Mancini

Executive Director – Guernsey
Tel. +44 (0) 1481 721 000
amancini@kpmg.guernsey.gg

KPMG in the Isle of Man and Gibraltar

Gregory Jones

Director – Isle of Man
Tel. +44 (0) 1624 681 045
gregjones@kpmg.co.im

Director – Gibraltar
Tel. +350 20048600
gregjones@kpmg.gi

KPMG in Ireland

Philip Caughey

Director – Northern Ireland
Tel. +44 (0)289 089 3716
philip.caughey@kpmg.ie



KPMG: Winners of 'Accountancy Team of the Year' at the STEP (Society of Trust and Estate Practitioners) Private Client Awards 2009/10.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.