

Tax Compliance: Possible action required before 6 April 2009

Background

The Finance Act 2008 ('FA 2008'), which took effect from 6 April 2008, introduced changes to the taxation of individuals who are resident but not domiciled in the UK ('non-dom'). The changes were intended to cast a wider net of tax liabilities on the non-dom, whilst considerably restricting the old planning tools.

The rules are complex and vary depending on the length of UK residence and the amount of overseas income and gains involved. Many non-doms will now be required to submit UK returns for perhaps the first time, and need to understand the basis on which the return should be prepared.

It should be noted that if a non-dom's unremitted overseas income and gains for the relevant tax year to 5 April are below £2,000, the remittance basis applies automatically without a need for a claim and without the loss of the personal allowance and capital gains annual exemption. In order to check that the income and gains are below £2,000, these need to be calculated using the UK rules. Tax will however have to be paid if any remittances are made. This calculation may also need to include income and gains held within certain structures such as trusts and overseas companies.

Remittance Basis – UK Resident Non-Domiciled for 7+ tax years

Unless the overseas unremitted income and gains for the year are below £2,000, non-doms over the age of 18 who have been resident in the UK for 7 or more out of the previous 9 tax years will have to make a claim on their tax return and pay the new £30,000 Remittance Basis Charge ('RBC') if they want to be taxed on the remittance basis for any year from 2008/09 onwards. If a claim is not made they will automatically be taxable on their worldwide income and gains on the arising basis. Claiming the remittance basis will result in the loss of the personal allowance and capital gains tax annual exemption.

The decision whether or not to claim the remittance basis for 2008/09 will need to be made no later than 31 January 2010 (the deadline for submission of the Self Assessment tax return for tax year 2008/09). This is also the date on which the RBC needs to be paid. Payments on account may also be required in respect of the following tax year. Affected taxpayers should discuss the best method of payment with their tax advisers.

Nominated account – urgent action may be required before 6 April 2009

Non-doms who have been resident in the UK for 7+ tax years and who intend to claim the remittance basis should now consult their professional advisers without delay if they have not already done so.

In particular, as the RBC is described as a tax, it is necessary to nominate what overseas income or gains the RBC is to relate to. A minimum amount of £1 of actual income or gains must be nominated for these purposes and it is very important that the nominated income is kept segregated and that no remittances are made to the UK at any time from this account.

A remittance from the nominated income or gains at a time when there is any other unremitted foreign income or gains will cause actual remittances to be ignored, and will have the result that remittances are instead treated as taking place in a specific statutory order, taking the most expensive source of money first. This could have disastrous consequences not just for the year in question but also for future years. It is therefore very important to ensure that at least £1 of actual income can be identified and nominated for this purpose, and not remitted in any way. In many cases, remittance basis users will be best advised to set up a specific account for this purpose, in order to ensure that no inadvertent remittances can be made from the nominated income account. Anyone who does not yet have a suitable account in place will need to discuss this with their tax advisers and their bank as a matter of urgency.

Remittance Basis – UK Resident for less than 7 out of the previous 9 tax years

Those non-doms who have not yet been resident in the UK for 7 out of the previous 9 tax years do not have to pay the RBC. However, unless their unremitted overseas income and gains are below £2,000, if they want to be taxed on the remittance basis they must make a claim for this on their tax return. This will result in the loss of UK tax allowances. If no such claim is made they must pay tax in the UK on their worldwide income and gains as they arise. They will also have to pay tax on future remittances if they remit any income or gains which arose in previous years when they used the remittance basis.

Overseas Workday Relief – Statement of Practice 5/84

In previous years, HMRC have operated by a Statement of Practice which allowed overseas workday relief and remittances to be calculated on the basis of a full year, rather than requiring a full analysis of each individual remittance to the UK. The new remittance basis rules from 6 April 2008 mean that this process is now being reviewed. HMRC have confirmed that they will continue their previous practice on a concessionary basis for tax year 2008/09, but not where the earnings are paid into an overseas joint account. The position in relation to tax years 2009/10 and later is not yet clear. Those who are claiming overseas workday relief in the UK should contact their professional advisers without delay to ensure that overseas salary payments are handled in the most efficient manner.

Should you have any queries regarding the above please do not hesitate to get in touch with our Tax Team either by telephone or email.

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