

Proposed changes to residence and domicile rules - main issues arising from meetings held during week beginning 11 February 2008

As part of the ongoing consultation process, representatives of the STEP UK Technical Committee and the CIOT Succession Taxes Sub-Committee attended two meetings during the week beginning 11 February: the first with HMRC and the second with HM Treasury and HMRC. At both these meetings we stressed the need for the introduction of these changes to be deferred until 6 April 2009 in order to ensure that the legislation is clear and workable.

Following the first of those meetings a statement was published on the STEP and CIOT websites on Friday 15 February. This had to be withdrawn however, as although it had been commented upon by HMRC, due to a misunderstanding it had not been formally agreed by them prior to publication. No reliance should therefore be put on that statement.

Set out below is our understanding of HMRC's intentions (as expressed at those meetings) regarding some of the matters discussed. However, it must be stressed that it is not clear at this stage what HMRC's final position on these issues will be and, as it is up to Ministers to make the final policy decisions, there can be no certainty at present about what the final rules will be. It should also be noted that HMRC have not been asked to approve this note.

References below to paragraph numbers are to paragraphs in the draft legislation.

Offshore trusts

- HMRC indicated that they intend to revise the provisions for s87 TCGA 1992 so that the remittance basis will apply.
- Sections 86 and 87 TCGA 1992 will not be mutually exclusive as regards non-domiciled settlors except that s87 will not apply in relation to remittances of foreign gains charged to tax on the settlor under s86.
- Where s87 TCGA 1992 trust gains have been realised prior to 6 April 2008, and taper relief was available on those disposals, the gains after taking into account taper relief will remain within the s87 pool. The pool will not therefore have to be recalculated to remove taper relief even though the gains are matched with capital payments made after 5 April 2008.
- Para 59: HMRC intend that offshore income gains realised by offshore trustees will be taxable on the remittance basis in relation to non-domiciled settlors both under s87 and under the transfer of assets abroad provisions.
- As regards the statement in Dave Hartnett's letter of 12 February, that there will be no retrospection in the treatment of trusts and that the changes will not apply to gains 'accrued or realised' prior to 6 April 2008:

- HMRC intend that non-domiciled beneficiaries will not be taxable on capital payments made to them before 6 April 2008 (even where gains are later realised and matched with those payments) and they will not be taxable on trust gains realised before 6 April 2008 (or presumably unrealised as at 6 April 2008) which are matched with capital payments made to them after that date.
 - HMRC appear to accept that 'accrued or realised' covers realised and unrealised gains.
 - It appears that if there is to be rebasing to market value as at 6 April 2008, this may only be available where the settlor and all the beneficiaries are non-domiciled but HMRC are considering that matter further.
 - HMRC intend that rebasing may also be available in relation to s13 TCGA 1992 companies owned either by individuals or by trusts.
- Given the statement regarding disclosure in the 12 February letter, HMRC feel that they may have to reconsider the extension of the trusts reporting requirements.

Remittance rules

- Section 809H(3)(c): as far as loan interest on offshore debts is concerned, HMRC feel that as a matter of policy the payment of loan interest out of offshore investment income (or indeed other offshore income or gains) should give rise to a remittance. They appeared willing however to consider whether to give relief in relation to existing structures.
- Para 32: the proceeds of 'source closing' can be remitted to the UK before 6 April 2008 without a tax charge. However, if those funds, or assets representing them, are later removed from the UK and subsequently brought back into the UK for example, for investment, HMRC's view is that there would be a remittance charge on this second remittance.
- The same would apply to assets in the UK at 5 April 2008 which had been purchased out of offshore investment income. If those assets remain in the UK after 5 April 2008, this will not result in a remittance charge. However, if those assets are later removed from the UK and then brought back after 6 April 2008, it is HMRC's intention that there will be a tax charge on the second remittance. Where assets have suffered (or in future suffer) a charge on remittance it seems that the intention is that no second charge will arise on a subsequent remittance of those assets.
- HMRC have indicated that they do not intend to look back without limit at source ceased income but have not indicated how far they intend to look back.
- HMRC are considering several options regarding whether non-UK losses should be allowable for non-domiciliaries who do not claim the remittance basis.
- Section 809L: only applies to disposals after 5 April 2008, see para 53. In addition, HMRC will look at how the s809L rules will apply where some consideration is actually received.

- Section 809H: in relation to income generated and gains realised in the tax year 2007/08 or earlier years, it is intended that there will only be a tax charge if this is remitted by or for the benefit of the individual and not by or for the benefit of others included in the definition of Relevant Person (para 57).
- In relation to income generated and gains realised after 5 April 2008, HMRC's view is that remittance for any purpose by a Relevant Person (including payment of UK legal fees or investment in the UK) would give rise to a tax charge on the donor. However, they indicated that they are looking at whether the charge should be limited, in relation to Relevant Persons, to situations where the donor benefits from or enjoys the funds/assets remitted. However, they stressed that this was a matter for ministers to decide.
- They also indicated that they would consider whether it would be possible to introduce an exemption for remittances by charitable trusts which fall within the definition of Relevant Person.
- Section 809J: HMRC intend to look again at the definition of 'capital' in s809J(4)(e) ie the ordering rule for remittances from mixed funds. They also indicated that they would consider whether the same ordering rules should apply where funds from mixed accounts are spent offshore or transferred between offshore accounts.
- HMRC intend that rental expenses should be deductible from foreign rental income as they are in relation to UK source rental income.

£30,000 fee

- Where an individual is treated, under the tie breaker provisions of a double tax treaty to which the UK is a party, as resident in the other state, as a matter of administrative policy HMRC indicated that they do not intend to impose the £30,000 charge even where that charge does not fall within the definition of taxes covered by that treaty.
- Where an individual has paid the £30,000 fee and HMRC are successful in arguing that that individual was UK domiciled for that year, their intention is that they will take the payment into account in coming to any settlement.

Statutory residence test

- Ministers have asked HMRC to look further at the question of a statutory residence test but no policy decision has been made.

Prepared by STEP UK Technical Committee 22 February 2008