

Non-domiciled tax changes Chancellor's 2008 UK Budget

This bulletin summarises the key changes in the Chancellor's 2008 UK Budget for non-domiciled individuals and non-UK resident companies and trusts published on 13 March 2008.

Residence and domicile

An individual's domicile and country of residence determine which of their income and gains are subject to tax in the UK. Domicile is a complex concept of general law and residence is based at least partially on case law. An individual's residence and domicile position will depend on their particular circumstances.

In general, an individual who is both resident and domiciled in the UK will pay tax in the UK on their worldwide income and gains as they arise.

An individual who is resident in the UK but domiciled elsewhere is subject to UK tax on their UK income and UK gains as they arise. In certain circumstances, they only pay UK tax on their non-UK income and gains when they are brought into or remitted to the UK. An individual who is not resident in the UK is only subject to UK tax on certain UK income.

In general terms, an individual acquires their country of domicile at birth. In certain circumstances, it is sometimes possible for an individual to change their country of domicile, if they change the place they regard as their permanent home, although this requires more than merely relocating to another country.

Domicile is distinct from nationality or residence. Whilst an individual can be resident in two countries at one time, one cannot be domiciled in two countries at any given time.

Financial Bill 2008 key changes

The Finance Bill 2008 will introduce a number of key changes to the way that UK non-domiciled residents are taxed. These changes will take effect from 6 April 2008.

Residency test

As indicated in the pre-budget report there is to be legislation to change the way days are counted for residence test purposes. There are to be two basic rules for determining residency in the UK:

- An individual will be regarded a resident if they are physically present in the UK for 183 days or more in a particular tax year;
- If an individual visits the UK on a regular basis and spends an average of 91 days or more over 4 consecutive years, they will be regarded as resident in the UK.

Under the new legislation, in determining the number of days that the individual is physically present in the UK, a day of residence will only count where an individual is present in the UK at midnight. There will also be exemptions for those in transit through the UK and who find themselves in the UK at midnight. Days spent in transit will not be counted as a day of presence in the UK for residence test purposes so long as during transit the individual does not 'engage in activities that are to a substantial extent unrelated to their passage through the UK'. The example given of such an unrelated activity is attending a business meeting, in which case the transit exemption will not apply.

Personal allowances and the remittance basis

Non-domiciled individuals who choose to pay tax on the remittance basis will lose their entitlement to certain personal allowances for income tax and to the annual exempt amount for capital gains.

Any individual who has unremitted foreign income and gains below £2,000 can use the remittance basis they will retain access to personal allowances and the annual exempt amount for capital gains.

Charge for long term residents using the remittance basis

There will be a new £30,000 annual tax charge on unremitted income and gains for individuals, who are non-domiciled or not ordinarily resident, and;

- who are 18 years of age or over;
- who have been resident in the UK for seven of the nine tax years immediately preceding the relevant tax year;
- whose unremitted foreign income and gains exceeds the de minimis limit of £2,000; and
- who claim the remittance basis of taxation for that year.

Individuals paying the new annual tax charge will be able to choose whether the charge is in respect of unremitted income and/or gains, which should enable credit to be obtained under a Double Tax Agreement.

If paid from offshore sources directly to HMRC the annual tax charge will not of itself constitute a remittance.

Non-UK resident companies

The gains on UK assets will be taxed on an arising basis and gains on offshore assets will be taxed on a remittance basis.

Non-UK resident trusts

A non-domiciled beneficiary will only be taxable if the benefit or capital payment is remitted to the UK. It is important to note that the new provisions will apply even where the trust gain is in respect of UK assets.

Surplus capital payments brought forward from 2007/08 will not be taxed unless (as now) the non-UK domiciled beneficiary is resident and domiciled in the UK when trust gains are realised.

It has been confirmed that it will not be necessary for settlors and beneficiaries of any non-resident trust to disclose the trustees or any details of overseas trust assets to HMRC. It may however be necessary to do so in the event of an enquiry into a tax return.

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