Your guide

UK year end tax planning for non-UK domiciliaries

2014/15
Introduction

As the UK tax year draws to a close, all prudent taxpayers should review their affairs to ensure they are not paying more tax than they need. Much of the year end planning which can be contemplated will apply to all taxpayers, but non-UK domiciled individuals (non-doms) who are UK resident will have additional considerations which are particular to them.

This guide highlights some of the major issues and areas that we think non-dom taxpayers specifically should consider as the end of the tax year approaches. It is intended to give readers an overview and to summarise the general opportunities. However, you should always take advice tailored to your personal circumstances. In addition, you may also wish to consider our ‘Guide to year end tax planning’ for suggestions which will be applicable to all (UK and non-doms alike). And remember, by starting your planning early you will give yourself the opportunity to take advantage of strategies that may not be available later in the year because of changes in the law, or because there is insufficient time to implement such plans.

For the purposes of this guide, all references to ‘spouse’ include ‘civil partners’.

Guide to UK year end tax planning for non-UK domiciliaries
In 2014/15 and 2015/16 adult non-doms who are long-term residents (i.e., those who have been UK resident in any part of seven out of the preceding nine tax years), and wish to claim the remittance basis of taxation will need to pay a remittance basis charge (RBC) of £30,000. For individuals who have been resident in the UK for 12 out of the previous 14 years, there is a higher charge of £50,000 for 2014/15, which will increase to £60,000 for 2015/16. For those who have been resident in the UK for 17 of the previous 20 years there will be an increased charge of £90,000 for 2015/16.

The £30,000 charge will apply to individuals for 2014/15 who have been resident in the UK every year since 2007/08 and the £50,000 charge will apply to individuals who have been resident since 2002/03. From 2015/16, the £90,000 charge will apply to those who have been resident since 1998/99. Those who became resident earlier than this, but have had a gap in their residence, may also be affected.

This claim is currently made on an annual basis and, therefore, you can elect in and out of the remittance basis each year according to your circumstances. Where the remittance basis is not claimed by long-term residents, the arising basis of taxation applies and UK tax is levied on worldwide income and gains. Individuals who are not treated as long-term residents (i.e., those who have been UK resident for fewer than seven out of the previous nine years) will not need to pay the RBC in order to claim the remittance basis. If you are in any doubt as to your residence position and whether or not you will be subject to the RBC for 2014/15 and 2015/16, we will be happy to discuss this further.

Please note that the Government is reviewing the ability to opt in and out of the remittance basis each year. One proposal is for the remittance basis to apply for a three year period, although this is subject to consultation. Changes may be introduced from as early as 6 April 2016.
If you are a long-term resident, when considering whether or not to pay the RBC, you will need to review your non-UK income and gains for the current year. This may include benefits received from trusts. If you are both the settlor and a beneficiary of a trust, you will need to take trust income into account for this purpose even if the income is not distributed. It may also be necessary to consider the income and gains of some offshore companies with which you are connected. Those who have already carried out a review of their income, and who will have been resident for more than 12 years or more than 17 years may wish to revisit their calculations in the light of the increase to the RBC. See the table below for some general guidance on the level of income and gains which would make it economic to claim the remittance basis.

Inter-spouse transfers could be considered prior to 6 April 2015 to mitigate the RBC for the following year where otherwise:

► You and your spouse would both be subject to the charge (i.e., because you both have sufficient offshore income and/or gains).

► One spouse would be subject to a higher charge than the other (because you have been resident in the UK for different lengths of time).

Depending on the timing of receipt of income and gains, making transfers now may not reduce an exposure to the RBC for the current tax year, but it should help to improve the position going forward, particularly where one spouse is not working.

Please note that any such gifts/transfers may give rise to gift tax or equivalent tax charges in other jurisdictions (e.g., the US) so advice should be sought prior to any such gifts being made.

If you are considering making transfers of assets, we would be happy to review your wills and inheritance tax (IHT) position both in the UK and internationally.

If you are considering becoming non-UK resident, please see the planning points set out in the ‘non-UK residence’ section.
Claiming the remittance basis: the economics

The following table shows the amount of income/gains taxable at the applicable rate, at which claiming the remittance basis becomes economically beneficial for 2014/15 and 2015/16.¹

<table>
<thead>
<tr>
<th>Period of residence in the UK² – whole or part UK tax years</th>
<th>RBC</th>
<th>Income (£)</th>
<th>Gains (£)³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than seven (2014/15)</td>
<td>NIL</td>
<td>10,000</td>
<td>11,000</td>
</tr>
<tr>
<td>Less than seven (2015/16)</td>
<td>NIL</td>
<td>10,600</td>
<td>11,100</td>
</tr>
<tr>
<td>At least seven less than 12, 40% taxpayer</td>
<td>£30,000</td>
<td>75,000</td>
<td>107,143</td>
</tr>
<tr>
<td>At least seven less than 12, 45% taxpayer</td>
<td>£30,000</td>
<td>66,667</td>
<td>107,143</td>
</tr>
<tr>
<td>12 or more, 45% taxpayer (2014/15)</td>
<td>£50,000</td>
<td>111,200</td>
<td>179,000</td>
</tr>
<tr>
<td>12 or more, 45% taxpayer (2015/16)</td>
<td>£60,000</td>
<td>133,333</td>
<td>214,286</td>
</tr>
<tr>
<td>17 or more, 45% taxpayer (2015/16 only)</td>
<td>£90,000</td>
<td>200,000</td>
<td>321,429</td>
</tr>
</tbody>
</table>

Remember that in addition to the above, where the remittance basis is claimed, you lose your entitlement to personal allowances and capital gains tax (CGT) annual exemptions, meaning that claiming the remittance basis can have a cost even when no charge is payable. However, the remittance basis can apply without the need to pay the RBC or losing your entitlement to personal allowances in the following circumstances:

1. This table is designed to give a guide only. For example, many people will pay some tax at 40% and some at 45% and for these people the true amount of income needed to make paying the RBC economic will differ from the above.

2. Residence in only part of a tax year counts as a whole year for these purposes, so an individual may have been resident in the UK for nine tax years even if they have only been present here for roughly seven calendar years. An individual may count as resident in the UK for the RBC even if he is claiming to be treaty resident in another country under a double taxation agreement.

3. The level of gains at which it will be economic to claim the remittance basis may be affected by any gains which are eligible for entrepreneurs’ relief.

Whether or not to claim the remittance basis is a personal decision and if you are in doubt whether it will be economic for you to pay the RBC, you should seek professional advice. It may be economic to claim the remittance basis if your gains and income are lower than the levels shown here, if you have a combination of both foreign income and gains. Foreign tax paid on income and gains may also affect the level at which it is economic to pay the charge. In addition, some individuals may choose to claim the remittance basis for non-economic reasons, for example, to avoid the need for complex calculations in respect of overseas income and gains.

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Donations to charity

If you are considering making donations to UK charities using your offshore income and gains, you should seek to make the donation to the charity’s offshore account so as to prevent a remittance occurring. So long as the charity is a qualifying charity, Gift Aid income tax relief should still be available on that donation.

Nomination of income and gains

You should read the notes below to consider whether a nominated income account will be relevant for you for 2014/15:

► If you claimed the remittance basis and paid the RBC in 2013/14, you may already have in place a suitable account for nomination purposes and you may wish to keep this account. Alternatively, following changes to the nominated income regime in 2012, you may wish to close this account and nominate income from another source.

► If you are making a claim for double tax relief (particularly in the US) and still need to set up a nominated income account, you should speak to your usual EY contact about an effective way to do this.

► If you wish to nominate capital gains (e.g., where no suitable source of foreign income exists, or to avoid payments on account being due in respect of the remittance basis charge), ideally an amount of at least £107,500 (for those paying £30,000) or £179,000 (for those paying £50,000) of foreign gains will need to be realised in 2014/15. If capital gains of less than £107,500 (or £179,000) are nominated, the balance required to ‘make up’ the £30,000 (or £50,000) charge will be set against deemed income, and this deemed balance will apply for 2015/16 payment on account purposes. See below for more detail on when it might be appropriate to nominate gains.

Notes: nominated income

When making the remittance basis claim for 2014/15, individuals are required to nominate overseas income and/or gains to which the £30,000 (or £50,000) tax charge will be referable. Although this nomination does not need to be made until 31 October 2015 (for a hard copy tax return) or 31 January 2016 (for a return submitted electronically), the overseas income and/or gains in question need to be received during 2014/15 and, depending on your circumstances, a separate account may need to be set up to hold these income/gains by 5 April 2015. The nomination can be the full amount of income and/or gains received to which the £30,000 (or £50,000) tax charge is referable (e.g., £66,667 of income for the £30,000 charge where the 45% tax rate is appropriate) or can be of a smaller amount (as little as £1). Any ‘shortfall’ of actual nominated income or gains is deemed to be made up of income. A separate bank account will not be needed for 2014/15 for the majority of individuals.

For tax years prior to 2012/13, if such nominated income or gains (but not deemed amounts) were not segregated from other overseas income and gains, and remittances were made from this mixed account, very complex deeming rules applied to determine what has been remitted for UK tax purposes. These rules could result in a higher tax bill than originally envisaged as well as a need to carry out complex calculations. Since the tax year 2012/13, it has been possible for most people to nominate only £10 (or less) and there will be no need to keep this in a separate account. This is because the complex rules outlined above will not apply if no more than £10 of each tax year’s nominated income is remitted.

You will be required in your tax return to identify the precise income and gains nominated, including the country of origin and the type and source of income and/or gains. Many individuals will wish to keep disclosure as simple as possible and, in this light, nominating a bank account which receives, say, bank interest, is perhaps the most straightforward route.

However, some individuals may prefer to nominate capital gains, since one advantage of fully nominating against capital gains for 2014/15 is that the RBC does not apply for 2015/16 payment on account purposes. Therefore, the 2015/16 RBC does not need to be paid until 31 January 2017.

If you are considering making a double tax treaty claim in another jurisdiction in order to claim credit for the RBC payment, you should be aware that the foreign jurisdiction may only consider the RBC tax to the extent that it has been paid against actual nominated income and not deemed nominated income. For example, for US citizens and others with a US tax connection, the IRS has now confirmed that it will allow a tax credit for the RBC when it has been paid against real income and gains (i.e., when full nomination has been made).
Use of foreign income and gains as collateral

In August 2014, HMRC announced a significant change to its guidance regarding remittances and the use of foreign income and gains as security for loans.

Where an individual has a ‘relevant debt’ (broadly, any debt with a connection to the UK, though advice should be taken on the full definition) there is a remittance of any foreign income or gains ‘used in respect of’ that debt. This would include amounts used to repay the debt or to pay interest on that debt. It may also extend to amounts used outside the UK as security or collateral for the debt, although there may be an argument that these amounts are not ‘used’ in respect of the debt until the security is called in.

Until the announcement, HMRC guidance stated that where a loan was taken out on ‘commercial terms’, the payment of interest and repayment of the debt ‘masked’ any amounts used as collateral, and therefore foreign income and gains used as security for a loan under a commercial arrangement would not be treated as remitted to the UK.

HMRC announced on 4 August 2014 that it regarded this treatment as concessionary and would be withdrawing the guidance immediately. Any new loans brought to the UK, with effect from 4 August will, therefore, be regarded by HMRC as triggering a remittance of any remittance basis overseas income or gains used as security.

However, HMRC’s change in approach will also affect existing loans, since in most cases, property will continue to be ‘used in the UK’ after the change in treatment. However, HMRC has announced that it will take no action to assess those remittances if the loan arrangements were within the terms of the guidance in RDRM33170, provided:

► Individuals give a written undertaking (which is subsequently honoured) by 31 December 2015 that the foreign income or gains security either has been, or will be replaced by non-foreign income or gains security before 5 April 2016.
► The loan or part of the loan that was remitted to the UK either has been, or will be repaid before 5 April 2016.

Those affected by the changes to HMRC policy may wish to review their position with their advisor now, in plenty of time to take action by 31 December 2015.
Bank accounts

It is important that appropriate offshore banking arrangements are in place so as to manage remittances to the UK on a tax efficient basis. As a minimum, you should ensure capital and income are kept separate, and, in addition, where necessary, that a separate account is maintained for nomination purposes (as described above).

In certain situations, income which has arisen pre-6 April 2008 can be more tax efficiently used in the UK (e.g., for investing in the UK through trusts or the making of gifts to persons who then use the gift in the UK) than post-5 April 2008 income. We will be happy to advise further in this connection and to assist in identifying and separating the pre and post-6 April 2008 elements of your income.

In some years, it may make sense to pay the RBC in one year, and to be taxed on the remittance basis, but not in another. If this is likely to apply to your circumstances, it would be advisable to have separate bank accounts to receive income and gains each year in order that funds which are taxed on the arising basis can be segregated and brought to the UK without incurring a further tax charge ahead of funds that are taxable on the remittance basis. If you or your spouse will be claiming the remittance basis for 2014/15, but you know one of you will not be for 2015/16, separate accounts (as appropriate) should be set up by 5 April 2015 to receive the income and gains of 2015/16. Please note that the Government is reviewing the ability to opt in and out of the remittance basis on an annual basis (see above).
Overseas workday relief (OWR) applies to UK resident employees who perform work both in the UK and overseas under a single contract of employment and who are taxed on the remittance basis. Such individuals are liable to UK tax on their earnings for their UK duties in full, but are only liable to UK tax on earnings that relate to their overseas workdays to the extent that these are remitted to the UK. However, these amounts will be received as one mixed payment.

Typically employees who are eligible for OWR will set up a special bank account for their employment income and nominate this with HMRC. Provided all the required conditions are met, the bank account can then enjoy special remittance rules. Where these rules apply, remittances to the UK are calculated at the end of the tax year and are deemed to be made first from UK taxed income of the relevant year. The operation of the special mixed fund account rules are more beneficial than the mixed fund rules that would ordinarily apply.

However, the special rules only apply per tax year. Therefore, if a bank account contains UK and non-UK source employment income of two years, the entire income of the most recent tax year will be deemed remitted before any income of the preceding tax year, and so on. The result of this could be that non-UK employment income is remitted to the UK and subject to UK income tax whilst UK source taxed income of the prior year (which can be remitted to the UK without further tax charge) remains in the bank account.

In order to avoid the UK source employment income becoming ‘trapped’ behind the following year’s non-UK employment income for the remittance rules, it is advisable to clear out the designated account before the end of the tax year. Individuals may, therefore, wish to consider whether they have remaining 2014/15 UK source income in their special mixed fund bank account. If so, the individual should consider whether to either remit this to the UK before 6 April 2015, or ring-fence it to facilitate the management of future remittances, by transferring it to a separate bank account. Action is required by 5 April 2015.

If you would like assistance with this, please speak to your usual EY contact.
Capital gains and foreign capital losses

Those who first made a claim for the remittance basis in 2010/11 and have not yet made or considered making a capital loss claim will need to consider this urgently. The deadline for making a capital loss claim for those who first claimed the remittance basis in 2010/11 is 5 April 2015 (see below for more detail about making this claim).

Where a capital loss claim has been (or will be made) in respect of foreign losses and you are claiming the remittance basis, there are some actions that may need consideration before 6 April 2015 (see below). All decisions regarding the sale or transfer of assets must take into account the impact this will have on the individual’s overall investment portfolio and long term investment plans as well as the tax consequences of such actions.

► Assuming you have realised and unused capital losses and you have realised UK capital gains in 2014/15, you may wish to consider deferring triggering any foreign capital gains in 2014/15 to a later year, so that you can potentially maximise the use of the brought forward and current year foreign capital losses against realised 2014/15 UK gains. This is because the set-off rules would allocate the foreign capital losses against any unremitted foreign gains before any balance can be set against UK gains.

► Assuming you have realised overseas gains in 2014/15, and either have already remitted these gains to the UK or will do so in the future, you could consider triggering offshore or UK capital losses by 5 April 2015 so that these losses will be available for offset against the 2014/15 foreign gains, thus reducing UK tax on the gains once remitted. Any losses realised during, say 2015/16, will not be available for offset against any foreign gains realised during 2014/15 (even if remitted in a later year).

► Inter-spouse transfers of assets standing at a loss could also be made by a non-dom to a UK domiciliary spouse (or to a non-dom spouse who has never claimed the remittance basis or has made a foreign capital loss election) to ensure that the donee spouse is entitled to claim the loss without the need to make a foreign capital loss claim.

► Equally, spouses might wish to consider transferring assets between themselves such that UK and foreign assets are held respectively by each spouse in order to prevent the risk of UK losses being ‘wasted’ against unremitted foreign gains.

► Note that where foreign gains are remitted to the UK (whether or not covered by losses) or the proceeds from loss making assets are brought to the UK, and the proceeds of disposals originate from non-sterling sources, you should be aware that foreign currency capital gains or losses may arise in addition and this should be taken into consideration if implementing any of the above planning.

If you have losses for 2014/15 in a non-UK close company in which you are a participant, you may wish to consider whether it is possible to trigger a gain in that, or another non-UK close company. Any losses relating to non-UK close companies cannot be carried forward and will be lost to the extent that they are not used against gains in the same tax year.

Notes: foreign capital losses

Prior to 2008/09, foreign capital losses were not available for offset against UK source capital gains or remitted foreign capital gains of non-doms. However, from 2008/09 onwards, foreign capital losses are available for offset against overseas and UK gains, where an appropriate foreign loss claim is made. This foreign loss claim needs to be made in respect of the first year for which the remittance basis is first claimed (regardless of whether or not the RBC is payable and whether or not any foreign capital losses have actually arisen). Otherwise all future foreign capital losses will not be allowable losses even in a year where the individual pays tax on an arising basis (unless the individual becomes UK domiciled). However, the time limit for making the foreign loss claim is four years following the end of the first tax year for which the remittance basis is claimed. For those who first claimed the remittance basis in 2008/09 the deadline for making a foreign capital loss claim has now passed.
If the remittance basis was claimed for the first time in 2010/11, the deadline for making a claim is 5 April 2015.

Note that once a foreign capital loss claim is made, a strict order of set-off against gains will apply to both UK and foreign losses. That is: firstly against remitted foreign gains of the year, then against unremitted foreign gains of the year and finally against UK gains. Without a foreign capital loss claim, UK losses are set-off against UK gains and remitted foreign gains, but not against unremitted foreign gains. This is an important distinction and whether you decide to make this irrevocable foreign capital loss claim may, in part, turn on whether you wish to invest in the UK, or have need to make remittances to the UK. This is a complex area and will need some thought before a decision is made as to whether to make a claim.

**Entrepreneurs’ relief claims on disposal of non-UK assets**

Where a non-dom makes a qualifying disposal for entrepreneurs’ relief (ER) of a non-UK asset, they may wish to consider making an ER claim so that the proceeds may be remitted to the UK making use of the reduced ER CGT rate (currently 10%). If this is to be done, a claim must be made for the year of disposal, not the year of remittance. So for example, if you made a qualifying disposal in 2014/15 but do not expect to remit those funds until 2015/16, the claim must be made in the 2014/15 tax return. Care should be taken in determining whether claiming ER on the offshore gains are the most beneficial use for the £10mn lifetime ER allowance.
Non-UK residence

Since 6 April 2013, an individual’s UK residence has been determined by the ‘statutory residence test’. This is a three part test which will determine an individual's UK residence based on their ties to the UK, days of presence and historic residence. As such, some individuals may wish to review their residency position to ensure that their residence does not unintentionally change. In particular, where you are relying on the sufficient ties test, or your circumstances have changed in the year, you may wish to review your position prior to the tax year end to check that you are ‘on course’ to achieve your expected UK residence status. Similarly you may also wish to review your position and projected UK days for 2014/15 to ensure you achieve your desired residence status.

Becoming non-UK resident has the advantage of bypassing the remittance basis rules and, in certain circumstances, can be a method of ‘restarting the clock’ for various taxes:

► If you are subject to the RBC, having been UK resident for seven of the nine previous tax years, and you become non-UK resident for three complete tax years, you could return to the UK in year four without having to pay the £30,000 RBC (and for the following six years). A three year period of non-residence would equally restart the clock if the £60,000 RBC would apply to you. A four year break (returning in the fifth year) from the UK would be required to stop the £90,000 charge from applying to you. Leaving the UK for a set period for tax purposes will require detailed consideration.

► Similar rules apply for losing one’s deemed domicile status for IHT purposes (for persons who have been resident for at least 17 out of 20 tax years), though if a return to the UK is anticipated, four complete tax years of non-UK residence will be necessary.

► Where a non-dom spouse of a UK domiciled person has elected to be treated as UK domiciled for IHT purposes, this election will cease to have effect if the electing person is later non-UK resident for four successive UK tax years.

The circumstances in which a tax year can be split are very limited and for this reason, those planning on leaving the UK during 2015 may wish to consider a departure date before the beginning of the new tax year.

If you are considering leaving the UK before 6 April 2015 and, therefore, becoming non-UK resident from 6 April 2015, but you do not envisage being non-UK resident for at least five complete tax years, you could consider deferring receiving overseas income, if at all possible, until after 5 April 2015. Otherwise, if you receive foreign income before 6 April 2015 and remit this income in the years of non-UK residence, the income will be treated as a taxable remittance in your year of return to the UK, where you have not been non-UK resident for at least five complete years. However, anti-avoidance rules will treat some types of income as taxable where the period of non-residence is less than five full years (see below). You should, therefore, speak to your usual EY contact before deferring any income.

There are a number of provisions which seek to undo the advantages an individual may otherwise claim by becoming ‘temporarily’ non-UK resident. These apply where a UK resident individual ceases to be ‘solely’ resident in the UK for five years or less and have been extended considerably by the Statutory Residence Test (SRT). In this case, certain sources of income and gains may be taxable on resumption of UK residence.

If you are planning a return to the UK in 2015/16, you may wish to consider accelerating the receipt of income or gains so they are received whilst still non-UK resident. Whether this is beneficial will depend on your personal circumstances (i.e., whether the temporary non-residence anti-avoidance rules will apply – see above) and the tax impact in any other jurisdiction. You should, therefore, speak to your usual EY contact before accelerating any income or gains.
Offshore trusts remain a useful planning vehicle for non-doms, providing CGT deferral for both foreign and UK gains, and IHT protection for foreign sited assets.

Inheritance tax:
► To benefit from the IHT protection offered by a trust, you must not be ‘deemed domiciled’ in the UK for IHT when you set up or add property to the trust. You will be deemed domiciled in 2014/15 if you have been UK resident in any part of 17 out of the 20 tax years ending in 2014/15. It is worth noting that, for the purpose of counting years, if you are treaty non-resident for a year, that year will still count as a UK year. We will be happy to advise further in this connection. Generally speaking, non-doms who first arrived in the UK in the 1999/2000 tax year will become deemed domiciled in the UK on 6 April 2015 and, as a result, for these individuals such planning must be undertaken by 5 April 2015.
► Currently, trusts (whether UK resident or non-UK resident) may be subject to IHT charges on each 10 year anniversary of the trust and when capital is distributed. With effect from April 2014, where income is received by trustees and has neither been distributed out nor accumulated for at least five years at the time of the 10 year anniversary charge, it will be treated as forming part of the trust capital for the purpose of calculating any IHT charges. There are some exceptions to this, notably accumulated income held in a non-UK bank account of a trust settled by a non-dom will not become capital. Individuals who are settlors, trustees or beneficiaries of trusts may want to use the year end as an opportunity to consider when the next 10 year anniversary will arise, to identify whether a trust contains income that is likely to be affected by this rule, and to consider whether any steps can be taken now to mitigate it.

Capital gains tax:
► To the extent capital gains have arisen in the 2014/15 tax year, the trustees may wish to consider making capital distributions by 5 April 2015 to non-dom beneficiaries claiming the remittance basis who will keep the distributions outside the UK. If a similar strategy has been adopted for every tax year since 2008/09, this leaves any pre-6 April 2008 gains free for distribution and remittance in 2015/16 on a tax free basis (subject to the trust’s gains position for that year). Such a strategy should be considered towards the end of each tax year.
► Conversely, where a trust has made capital payments into the UK during the current tax year, which are matched against pre-6 April 2008 tax free gains, the trustees should consider refraining from crystallising any gains until after 5 April 2015. If gains have been crystallised in the current tax year, the trustees may wish also to crystallise losses on other assets by 5 April 2015 to net off the position.
► Where capital payments have been received in the UK in previous tax years and a gain has been made during 2014/15, the trustees may wish to consider making a payment to a non-dom who will claim the remittance basis and keep the payment outside the UK. This will reduce the extent to which the gain can be matched against earlier year’s payments. You should seek specialist advice if you consider this planning will be appropriate to your circumstances.
► Should the trustees have realised any offshore income gains in 2014/15, they should consider making capital payments or providing benefits to UK resident non-dom beneficiaries offshore by 5 April 2015, so that these income gains are taxed under the capital gains rules. If so, the rebasing election (if made) will be available to the trustees to ‘wash out’ the portion of the gain that relates to the holding period until 5 April 2008, on the offshore funds held at 5 April 2008. Current year realised offshore income gains not distributed by 5 April 2015 may fall to be treated as income after 5 April 2015, and into a different, more complicated tax regime.

Notes: capital payments
Capital payments are not limited to cash payments but may include any benefit received by a beneficiary of the trust. For CGT purposes, the extent to which capital payments-benefits (which are matched against trust capital gains) can be received tax free from offshore trusts by UK resident and non-dom beneficiaries is now limited. The remittance basis is available for capital payments received by non-dom beneficiaries from 6 April 2008 on the making of an appropriate claim. Undistributed capital gains realised by the trustees prior to 6 April 2008 remain tax-free to a non-dom beneficiary should a payment or benefit be received in the UK (regardless of whether a claim for the remittance basis has been made). However, the matching rules will require careful consideration as any capital payments or benefits made since 6 April 2008 will be matched in priority against gains from 6 April 2008 before being matched against brought forward tax free gains as at 6 April 2008.
Offshore trustees have been able to make a one-off irrevocable election in respect of all assets held within the trust and underlying companies for them to effectively be re-valued as at 5 April 2008 for CGT purposes (the ‘rebasing’ election). The election has enabled trustees to calculate what portion of any subsequently realised gain relates to post-5 April 2008 (taxable) gains versus the pre-6 April 2008 portion (non-taxable gains).

The election must be made no later than 31 January following the first tax year that a capital payment (see above regarding capital payments) is made by the trustees to a UK resident beneficiary. Therefore, where a capital payment or benefit was provided by the trustees in the tax years from 2008/09 to 2013/14 inclusive, the deadline for making any election has already passed. If no such capital payments were made before the 2014/15 tax year, and there have been no transfers to other settlements, the deadline for making the election is extended until at least 31 January 2016.

This election will effectively ring fence any part of a gain realised in 2008/09 or future years, on the disposal of an asset held at 5 April 2008 that accrued in the period from acquisition to 6 April 2008. This ring fenced element will not be subject to UK CGT, providing the beneficiary remains non-dom. Capital payments to non-UK resident beneficiaries will not trigger the deadline date for the election to be made.
If you have taken advantage of business investment relief (BIR) by bringing funds to the UK to subscribe for shares in or to make loans to a UK trading company, you may wish to review your investment to ensure that the company continues to qualify. Where a company ceases to qualify, you must sell the investment within 90 days and remove the proceeds from the UK within a further 45 days to prevent a taxable remittance arising. It is, therefore, sensible to review the company accounts on an annual basis to ensure that the company remains a trading company (at least 80% of its activities are carrying out a trade). We would be happy to assist with such a review.

If you are considering making investments in tax effective investments such as the enterprise investment scheme (EIS) or the seed enterprise investment scheme (SEIS) to take advantage of the tax reliefs before the end of the tax year, you may wish to consider using taxable non-UK income and gains. Provided the conditions are met, business investment relief will normally be available in respect of investments in companies which qualify for EIS and SEIS and non-doms may, therefore, be able to use non-UK income and gains without incurring a taxable remittance. Certain investments qualifying for social investment tax relief may also qualify for BIR. However, there are further implications to claiming BIR and you should speak to your usual EY contact before making your investment.
UK residential property

ATED and ATED related gains:

► With effect from 1 April 2013, the Government introduced a new ‘annual tax on enveloped dwellings’ (ATED). The regime was originally for UK residential dwellings valued at over £2mn and owned by a ‘non-natural person’ (a company, a collective investment scheme or certain partnerships) but is being extended to dwellings valued at over £1mn with effect from 1 April 2015. It should be noted that the threshold for ATED will fall to £500,000 from 6 April 2016.

► The value is determined by the market value at 1 April 2012, or at acquisition if later, and is updated on every fifth year anniversary of 1 April 2012.

► As well as being extended to property valued at £1mn, the ATED charge is being increased significantly (by 50% above inflation) with effect from 1 April 2015.

► The value of the dwelling determines the level of ATED charge, with a minimum annual charge of £7,000 (starting 1 April 2015 for dwellings worth £1mn or more but less than £2mn), increasing to £218,200 for dwellings worth over £20mn. In the absence of further changes, these charges will increase in line with the consumer prices index.

► For structures within the charge, the next return and tax payment (for the year ended 31 March 2016), for properties within the charge on 1 April 2015, will be due on 30 April 2015. For properties valued at less than £2mn, coming into the charge for the first time in April, the first return is due on 1 October 2015, and the first tax payable on 31 October 2015. If you have a structure which will be affected by this, you may wish to make sure that it is ready for the return and tax payment. If you (or another person) will be required to fund the tax charge, you may wish to take tax advice on the implications of this.

► Newly acquired properties within the ATED charge have 30 days from completion of the acquisition to file an ATED return and pay any tax charge.
In addition, any gains arising on dwellings within the ATED regime will be subject to a CGT charge at 28%. This will apply to disposals with proceeds between £1mn and £2mn with effect from 6 April 2015. There is a form of rebasing to 6 April 2013 (or 6 April 2015 for properties valued between £1mn and £2mn) and entities within the new charge should ensure they have obtained a valuation at that date. It should be noted that the threshold for ATED related CGT charges will also fall to £500,000 from 6 April 2016.

There are a number of exemptions and reliefs from the ATED and associated CGT charge for dwellings. These are based on their use and who they are provided to, but specific advice should be sought to confirm the availability of any exemption or relief. Even where a relief applies, there will still be a need to file an ATED return to claim the relief but the Government is changing the filing requirements with a view to simplifying the position where reliefs mean that no ATED charge is payable.

If an ATED return was filed for the year ended 31 March 2014, you may wish to review whether the return, and any tax charge, requires an adjustment. An adjustment may be required due to a change of use of the property, subsequent disposal of the property or where there has been a fundamental change to the property. If there has been any change to the property which may affect the previously filed ATED return, the company may be required to pay additional tax, file an adjusted return, or a tax repayment may be due. You should speak to your usual EY contact to discuss the impact of any change to the property.
Capital gains tax for non-residents

CGT will be extended to include gains on residential property made by non-resident individuals, trusts and certain companies with effect from 6 April 2015.

► The new charge will take priority over existing anti-avoidance provisions for gains realised by non-resident trusts and companies. ATED related capital gains, however, will apply in priority to the new charge.

► The new charge is only intended to apply to gains accruing from 6 April 2015 and in the absence of an election, properties will be treated as rebased to market value on 6 April 2015, although a number of other calculation methods are available.

► If you hold an interest in residential property through a non-resident company or trust you may wish to take advice now on the effect of the new rules.

► If you have an interest in residential property in your own name and are not currently UK resident or are considering leaving the UK, you should take advice on the effect of the new provisions. Becoming non-UK resident may also affect your entitlement to principal private residence relief (which exempts from CGT any gains to the extent that they relate to a period of actual or deemed residence).
General anti-abuse rule

From 17 July 2013 a new anti-tax-avoidance provision known as the general anti-abuse rule (GAAR) was introduced to combat abusive tax schemes which, whilst not illegal, are designed primarily to extract a tax advantage in one of the following areas: income tax, corporation tax (including amounts chargeable or treated as corporation tax), CGT, IHT, petroleum revenue tax, SDLT and the ATED. Where HMRC successfully demonstrates that an arrangement ‘cannot reasonably be regarded as a reasonable course of action’, the GAAR allows HMRC to counteract the advantage in a ‘just and reasonable’ way.

Planning which is contrary to HMRC established practice or which involves a number of steps which may be perceived to be contrived may be at risk of counteraction under the GAAR. Planning entered into before 17 July 2013 should not be caught by the GAAR, but planning implemented before 17 July 2013 where there are steps occurring after this date can be within the scope of the GAAR. Therefore, if you have bespoke or complex planning arrangements in place for which the GAAR has not been considered, you should discuss the implication of the GAAR with your usual EY contact.
# Contacts

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