KPMG

April 2019 year end actions

Private Client update

March 2019

The start of the new tax year may be some way off but for non-doms there are certain key actions to consider before the current year draws to a close. Following the introduction of fundamental changes to the compliance landscape for long term UK resident non-doms applying from 6 April 2017 and with some further changes applying from 6 April 2018, there are many changes for non-doms to continue to be aware of. The checklist below highlights some of the issues to be aware of before 6 April 2019.

Will the non-dom become deemed UK domiciled for all UK taxes?

From 6 April 2017 onwards, non-doms who have been resident in the UK for more than 15 out of the past 20 tax years will become deemed domiciled for all UK tax purposes (15/20 year rule). As a result, they will be subject to UK tax on their worldwide income and gains as they arise and they will no longer be able to claim the remittance basis in respect of non-UK income and gains. Furthermore, both foreign and UK assets will be subject to inheritance tax (IHT).

Additionally, individuals born in the UK with a UK domicile of origin who have acquired a non-UK domicile of choice under general law will become immediately deemed domiciled for income tax and capital gains tax (CGT) when they return to the UK (returners). This will not apply for IHT until they have been UK resident for at least one of the two previous tax years.

As part of these rules, two transitional reliefs were introduced which are each subject to certain conditions:

— Rebasing: only non-doms who became deemed domiciled in April 2017, but not returners, were able to rebase their foreign assets to their market value on 5 April 2017. While rebasing was a one-off opportunity (not available to those who will become deemed domiciled after April 2017), it will continue to have relevance where an eligible non-dom disposes of an asset post 6 April 2017 that qualified for rebasing. Note, the individual must be non-dom under general law at the date of disposal to benefit from the rebasing as well as satisfying some other criteria.

— Cleansing of mixed funds: non-doms, but not returners, who have been taxed on the remittance basis at some stage prior to 6 April 2017, have a two year window of opportunity ending on 5 April 2019 to rearrange their mixed funds held in non-UK bank accounts into their constituent parts.

Non-doms affected by these changes should take advice as soon as possible to ensure they can benefit from the transitional rules, where applicable, and to understand and identify future UK tax exposures and manage cash flows. This is most relevant for the cleansing relief as the window to take advantage of this relief closes on 5 April 2019.

Some of the most common matters we are discussing with affected non-dom clients are:

— Assessing what their UK tax computation will look like on the arising basis, particularly for clients who have always been used to claiming the remittance basis.

— Assessing the cost of living outside the UK compared to the cost of living inside the UK.

— Where the non-dom will become deemed domiciled in April 2019, advising if action should be taken to accelerate a receipt of funds offshore pre 6 April 2019 whilst still claiming the remittance basis so that those monies can be spent outside the UK after 6 April 2019. No tax will then be charged if funds are not remitted to the UK post April 2019.

— Considering if they have any personal cash bank accounts that are mixed funds for tax purposes. If so, can they take advantage of the two year window ending on 5 April 2019 to unmix them and hence release clean capital for UK spending.

— If they have not already done so, considering the non-UK situated assets owned personally and obtaining estimates of their market value on 5 April 2017, where rebasing to 5 April 2017 market value is in point.

— Reviewing how investments are structured and whether it is appropriate to reassess investment strategy in consultation with clients financial advisors.

Is the non-dom a settlor or beneficiary of a non-UK trust?

As a result of the 15/20 year rule, the Government has introduced a new regime with effect from 6 April 2017 that will give a 'protected' status to non-UK trusts made before, and not added to after, an individual becomes deemed domiciled under the 15/20 year rule. Liability to income tax on non-UK source income or CGT on gains will be dependent upon the extent to which benefits or capital payments are received by settlors/beneficiaries of the non-UK trust. Generally, UK source income of non-UK trusts and underlying companies will continue to be taxed on the settlor on the arising basis.

Settlors and beneficiaries of non-UK trusts who will become deemed domiciled on or after 6 April 2019 under the 15/20 year rule should take advice as soon as possible to understand and identify future UK tax exposures. In particular:

— care should be paid to what constitutes an addition to the trust. There may also be actions to prevent the unnecessary loss of protected status by 'tainting' the trust.

— not every source of trust non-UK income will be taxable on a receipts basis and hence may be taxable on a deemed domiciled settlor on the arising basis (or non-dom settlor on the remittance basis if the remittance basis is claimed), if the trust is settlor interested. Offshore Income Gains arising from the disposal of trust owned non reporting funds are one such category of income that is taxed on the settlor directly rather than being taxed when matched to capital payments. The treatment of OIGs had been queried with HMRC and HMRC's current view is that they are taxed on the settlor.

Non-doms settlors who became deemed dom on 6 April 2017 onwards must continue to be vigilant and ensure they don't do anything to taint their trusts. There are many ways that a protected trust can be tainted. Loans between the settlor and the trust/underlying companies and between trusts created by the same settlor must be kept under continual review to prevent tainting. For example, a settlor may have become deemed domiciled on 6 April 2017 and may have ensured that prior to 5 April 2018, a loan from him to the trustees was amended to reflect arm's length terms and that interest was paid on arm's length terms. Interest must continue to be paid at least annually on arm's length terms, and in accordance with all the terms of the loan, in order to avoid tainting the trust.

Should trust distributions be made before 6 April 2019?

To answer this question, the position of both the trust and the beneficiaries should be reviewed. There may be advantages in accelerating or delaying distributions depending on the circumstances. A more detailed review is essential for any non-dom who is going to become deemed domiciled under the 15/20 year rule on 6 April 2019.

Careful management of the timing of distributions could have the following benefits:

— Reducing the number of years in which the non-dom needs to pay the remittance basis charge.

— Allowing distributions to be matched with gains realised prior to April 2008 that are not taxable, rather than income or gains of future tax years.

— Helping a non-dom paying tax on the arising basis for the first time in 2018/19 manage their UK tax exposure.

It is also important to note that:

— From 6 April 2017, non-dom or deemed domiciled settlors of offshore trusts can be charged to income tax on certain types of benefits paid by the trust to members of the settlor's 'close family' if the recipient of the benefit is not subject to UK tax. From 6 April 2018 similar rules apply to tax capital gains on the settlor where capital gains are matched to capital payments to the settlor's 'close family'.

— From 6 April 2018, new anti-avoidance legislation applies to charge tax on UK resident individuals who indirectly receive a benefit from an offshore trust. For example, if a Trust pays a capital distribution to an individual who is non-UK resident or non-dom ("Person A) and they pass on those funds to another person ("Person B") within 3 years, Person B might be subject to tax as if they received the distribution from the Trust, if Person B is UK resident. The scope of these new rules is potentially wide ranging.

— From 6 April 2018, trust capital gains will no longer be so matched to capital payments to non-UK residents. This change affects any non-UK resident trust, i.e. even trusts with non-UK resident, UK domiciled settlors.

This can be a complex area and advice should be taken as soon as possible.

Does the non-dom have a home in the UK but is resident outside the UK?

Since 6 April 2015:

— CGT has been due in respect of capital gains accruing on disposals by non-UK residents of residential property located in the UK.

— Any residence owned by a UK or non-UK resident will only be capable of qualifying for Principal Private Residence (PPR) relief (i.e. exemption from CGT upon disposal) if it is located in a territory in which the individual is resident or, where it is located in a different territory, the individual meets the 'day count test' in relation to the residence (broadly speaking, they spend at least 90 midnights in the property).

Non-doms who are resident outside the UK will therefore need to keep records to demonstrate their occupation of the property if they want to be able to claim PPR relief on a future disposal of their home.

Was the remittance basis claimed in respect of the year ended 5 April 2015?

For individuals who first claimed the remittance basis in 2014/15, the deadline to make the 'capital loss election' is 5 April 2019. Non-doms who are affected by this should take advice as soon as possible to determine whether the election is appropriate for them.

The election is required if a non-dom wants to be able to obtain UK tax relief for capital losses on non-UK assets. The election is one-off and applies for all subsequent tax years. Making the election also imposes a statutory ordering to the use of losses which can have significant ramifications and advice should be taken before any election is made. If no election is made the non-dom will not be able to obtain UK tax relief for any future capital losses on non-UK assets, even in years in which they are taxed on the arising basis although the election ceases to have any effect once the non-dom becomes deemed domiciled under the 15/20 year rule.

Has nominated income or gains for 2018/19 been identified?

Non-doms who have been UK resident for at least seven out of the previous nine tax years and wish to claim the remittance basis need to include an amount of 'nominated' income or gains on their tax return. As there can be adverse tax consequences of remitting the nominated income or gains, many individuals look to nominate small amounts of income that are held in a ring fenced bank account. Non-doms are advised to review their position before the end of the tax year to ensure that they have sufficient procedures in place to identify income or gains to be nominated.

Did the non-dom come to the UK during the year ended 5 April 2005?

Non-doms who have been UK tax resident for less than 15 of the last 20 tax years can establish trust structures that fall within a statutory exemption such that the trusts are not within the scope of IHT (subject to rules for non-UK assets and the new rules concerning UK residential property referred to above). These trusts can be protected trusts for income tax and CGT purposes post becoming deemed domicled. For non-doms who came to the UK during the year ended 5 April 2005, the window to establish such trusts closes on 5 April 2019. The IHT exemption should continue to apply even after the settlor becomes deemed domiciled under the 15/20 year rule.

Should the non-dom leave the UK before 6 April 2019?

Non-doms who expect to cease to be UK resident should review their position before the end of the current tax year.

A statutory residence test became law with effect from 6 April 2013. Individuals intending to leave the UK should take advice on the implications of the legislation. The application of the test can be complex, but for the first time sets out some parameters as to how long a non-dom can spend in the UK and be non-resident for UK tax purposes.

Are new bank accounts required?

Given the provisions that govern the ordering and identification of funds remitted to the UK, for some non-doms and their structures there is merit in establishing new bank accounts to receive income and gains of the next tax year. This depends on the circumstances and advice should be sought.

If significant income or gains are expected shortly after the start of the new tax year, advice should be sought as soon as possible so that any new arrangements can be put in place.

Non-doms who are now deemed domiciled under the 15/20 year rule also need to consider if their bank account segregation arrangements are still fit for purpose considering they can no longer claim the remittance basis.

Does the non-dom own UK residential property through a non-UK structure?

From 6 April 2017, offshore ownership structures which have previously shielded the value of UK residential property ultimately owned by a non-dom from UK IHT will be liable to IHT. IHT charges will potentially arise on the death of and following certain gifts made by non-doms as well as during the life of certain trusts established by them. This will be the case regardless of whether the individual is UK resident or non-UK resident. Furthermore, in certain circumstances debt used to finance such property will be subject to IHT in the lender's hands.

The Annual Tax on Enveloped Dwellings (ATED) continues to apply to companies and other corporate vehicles that own UK residential property valued at more than £500,000. For the 5 chargeable periods beginning from 1 April 2018, the property valuation date for ATED purposes is 1 April 2017.

ATED returns for the period 1 April 2019 to 31 March 2020 need to be submitted to HMRC ahead of 30 April 2019. If a new property subject to ATED is purchased mid year, an ATED return needs to be submitted within 30 days of acquisition.

All such structures should be reviewed to ensure they still meet the client's objectives.

Further changes to the tax treatment of UK land to take effect from 6 April 2019

New changes to the sale of UK land owned by non-UK residents were enacted in Finance Act 2019.

Some of the key changes are:

— ATED CGT will be abolished.

— The tax treatment of UK residential property owned by a non-UK resident company should not change in theory as disposals of such property has already been within the scope of Non Resident Capital Gains Tax since 6 April 2015. But post 6 April 2019, it is HM Treasury's intention that all non-UK resident corporate property owners should be subject to corporation tax not CGT upon disposals of UK land.

- Gains on disposals of UK situated commercial properties by non-UK resident owners will be taxed in the UK. Increase in appreciation post 6 April 2019 only should become chargeable to tax.
- Special rules will need to apply to deal with the disposal of a property by a non-UK resident owner that is mixed use, i.e. part residential and part commercial.
- Non-UK residents will pay UK tax on disposals of shares in 'property rich companies'. Broadly, this is sales of interests in a company that derives at least 75% of its value from UK land and the shareholder (and connected persons) has a 25% stake in the company. It is necessary to look at the period of 2 years before the disposal to see if the rules bite. There is an exemption from the tax charge if the UK land is used for trading purposes.
- How shareholders will be taxed on profits of disposals in property rich companies will be depend on their UK residence status, i.e if they are a non-UK resident shareholder and sell their shares post 6 April 2019, only appreciation in value post 6 April 2019 should become taxable.
- How the new rules will interact with non-UK companies that own UK land and change their corporate residence status could have some unexpected results. In order not to dis-incentivise on-shoring, the Government has agreed that companies who become UK resident on or after 6 April 2019 will be retain the ability to calculate their gains or losses using rebasing to April 2015/ April 2019 market values as applicable dependent on the type of UK land. This infers that non-UK companies that own UK land that become UK tax resident before 6 April 2019 could lose this valueable tax "rebasing".

Anyone that has an interest in UK land, either corporate or individual owners and non-UK resident shareholders in such property rich companies should consider their exposure to the proposed changes as soon as possible.

If you would like KPMG to assist in considering any of the issues that could arise for you, please contact one of KPMG's Private Client specialists.

Greg Jones
Director, Tax
KPMG in the Isle of Man
T: +44 (0) 1624 681000
E: gregjones@kpmg.co.im

David Parsons
Director, Tax
KPMG in the Isle of Man
T: +44 (0) 1624 681000
E: davidparsons@kpmg.co.im

Justine Howard
Senior Manager, Tax
KPMG in the Isle of Man
T: +44 (0) 1624 681000
E: jhoward@kpmg.co.im

Katie Kneale
Senior Manager, Tax
KPMG in the Isle of Man
T: +44 (0) 1624 681000
E: kkneale@kpmg.co.im

kpmg.co.im/socialmedia