Protected trusts

There will be a ‘protected trust’ regime for settlor interested non-UK resident trusts. This will apply where the trust is settled by an individual at a time when he is not UK domiciled or deemed domiciled. ‘Protected’ status will not apply to trusts settled by individuals deemed domiciled in the UK under the ‘returning domiciles’ rule.

The protected status will continue to apply provided the settlor makes no direct or indirect additions to the trust on or after 6 April 2017 at a time when he is deemed domiciled in the UK. Additions will be disregarded if made:

- on arm’s length terms;
- in the absence of gratuitous intent;
- in fulfilment of a liability entered into before 6 April 2017; or
- where a settlor meets trust expenses that are in excess of the trust’s income for a tax year.

Detailed rules will apply to determine whether loans made to a trust are on arm’s length terms.

Great care is needed to ensure that protected status is not lost. A settlor-interested non-UK resident trust which is not ‘protected’ will be effectively transparent and all its capital gains and income will be taxable on the settlor as if they were the individual’s own.

Capital gains tax

Capital gains arising to ‘protected’ trusts will be taxable in accordance with the existing rules that match trust capital gains to capital payments received by beneficiaries (who may include the settlor). The settlor will not be taxed on trust capital gains, other than under the capital payment rules, as long as the trust has ‘protected’ status.

As currently, trust capital gains will (subject to the changes mentioned below to take effect from 6 April 2018) be matched to capital payments received by beneficiaries and taxed on them accordingly. Any UK resident beneficiary who is domiciled or deemed domiciled in the UK will be taxed on the matched capital payment on the arising basis.

Additional changes to the taxation of capital payments that affect all trusts, not just those with a non-UK domiciled settlor, will take effect from 6 April 2018:

- Capital payments made to non-UK resident beneficiaries, either paid on or after 6 April 2018 or paid but unmatched with trust gains before that date, will not be matched with trust gains (except where made in a “temporary period of non-residence” or to a ‘close family member’ of the settlor - see below).
- Capital payments made to a beneficiary in a period of temporary non-residence (of less than five years) will be treated as being matched to trust gains in the year of return to the UK.
- Capital payments made to ‘close family’ of the settlor will be treated as made to a UK resident settlor.
- A ‘recycling rule’ will treat capital payments received by a beneficiary that are paid on to another UK resident recipient as being a capital payment made to the ‘onward’ recipient (who will be taxed accordingly), unless the original recipient has been charged to tax on the payment. This recycling rule will apply where at the time of the original capital payment there is an intention or arrangement to pass this on to a UK resident ‘onward’ recipient.

A similar ‘recycling rule’ (see capital gains tax section above) will also apply for income tax purposes from 6 April 2018.

**Non-UK companies not owned through a trust**

UK and non-UK income and gains of a non-UK company not owned through a trust will be taxable on the individual who set up the company, subject to a motive test. All such income will be taxable on the arising basis where the individual is UK deemed domiciled.

### Valuation of benefits

New rules will govern the value of certain non-cash benefits received from trusts. These benefits are the provision of loans at beneficial rates of interest, provision of land and property, and use of assets. These rules will provide certainty of treatment but may produce higher tax costs than some of the current methods of valuation which are based on practice and case law.

### For further information see:

- [kpmg.com/uk/nondoms](http://kpmg.com/uk/nondoms)
- [kpmg.com/uk/ukresidentialproperty](http://kpmg.com/uk/ukresidentialproperty)

**If you would like KPMG to assist in considering any of the issues that could arise for you from the new rules on the taxation of non-domiciled individuals, please contact one of the KPMG Private Client specialists below.**

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