

# TAX

## Non UK Domiciliaries from April 2011



### Claiming the remittance basis

As first announced by the Chancellor in his Pre-Budget report in October 2007 major tax changes affecting those resident in the UK but not domiciled or not ordinarily resident apply from 6 April 2008. Further changes were proposed in the Budget on 23 March 2011, to be effective from April 2012.

### Remittances

### Non-resident companies

Before 6 April 2008 UK residents not domiciled or not ordinarily resident in the UK were only subject to tax on overseas income when this was remitted to the UK. And those residents who were not domiciled in the UK were only subject to tax on gains realised on overseas assets when these were remitted to the UK. Furthermore, those not domiciled in the UK were not liable to capital gains tax on the gains of a non-resident trust or company, wherever those gains arose.

### Non-resident trusts

### Notification

### Transfer of assets abroad

### Claiming the remittance basis

### Offshore income gains and accrued income on transfer of securities

From 6 April 2008 (unless their unremitted income and gains are less than £2,000 in the tax year) those who claim the remittance basis on overseas income and/or gains, because they are not domiciled in the UK and/or not ordinarily resident in the UK, are not entitled to income tax personal allowances or the annual exemption for capital gains tax. From 6 April 2008 overseas income for this purpose includes income arising in the Republic of Ireland. Previously the remittance basis did not extend to such income.

### Losses on the disposal of overseas assets

Furthermore, if the claimant has been resident in the UK for at least seven out of the nine preceding tax years, and is aged 18 or more, he or she will only be entitled to claim the remittance basis for a tax year on payment of £30,000. In a change from the original proposals, this will be treated as tax (income tax or capital gains tax as the individual chooses) on unremitted offshore income or gains. It will be collected at the usual tax due date, with interest and surcharges for late payment. If characterised as payment of income tax in respect of unremitted offshore income, it will form part of the liability which determines the level of interim income tax payments for the following year. As announced in the Budget on 23 March 2011, from 6 April 2012 this is to change, so that those who have been resident in the UK for 12 years will have to pay £50,000 for the privilege of being taxed on the remittance basis.

### Inheritance tax

The unremitted income or gains on which the £30,000 (or £50,000, in future) has been paid will not be taxed again if it is eventually remitted to the UK. However, all untaxed unremitted overseas income and gains will be treated as remitted before income or gains on which the £30,000 (or £50,000) has been paid.

As the £30,000 (or £50,000) will be either income tax or capital gains tax, it should be treated as such under double taxation agreements

Where unremitted income and gains are expected to be under £2,000, so no claim is

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required in order that the remittance basis should apply, but it is later found that the unremitted income gains are too much, it would seem that the accruals basis would apply automatically, unless the individual is still in time to claim the remittance.

### Remittances

The definition of remittances which represent overseas income or gains (including any from a 'ceased source', even one which ceased years earlier) is extended to include cash or property brought into the UK, or services used in the UK, by or for the benefit of the individual or his immediate family. The 'immediate family' will include spouses, civil partners (and those living together as husband and wife or as civil partners) and their children and grandchildren under 18.

There are exemptions for personal effects (clothes, shoes, jewellery and watches), assets costing less than £1,000, assets brought into the UK for repair and restoration and assets in the UK for less than nine months, but only when 'purchased from 'relevant foreign income' (i.e. investment income), overseas employment income or capital gains.

Although ostensibly only applying from 6 April 2008, the changes proposed by the original draft clauses in the definition of remittances would have meant that events many years earlier could result in a tax liability in 2008/09 or later. However, any asset bought out of untaxed overseas investment income that an individual owned on 11 March 2008 will be exempt from charge under the remittance basis, whether the asset is in the UK or overseas. Furthermore, any asset in the UK on 5 April 2008 bought out of untaxed overseas investment income will also escape the remittance charge for so long as the current owner owns it, even if it is later exported and re-imported. But, as previously, a charge will arise if an asset bought from untaxed overseas investment income is turned into cash after import into the UK.

A separate exemption applies from 6 April 2008 where a work of art is bought from unremitted offshore income or gains and brought into the UK for public display. Otherwise there continues to be a constructive remittance of unremitted overseas employment income or gains when assets are brought into the UK which have been bought out of such income or gains.

As to identifying unremitted income and gains, remittances from a 'mixed source' (e.g. employment income, investment income, capital gains, original monies) are to be attributed on a 'just and reasonable' basis. An existing division of bank accounts between 'capital' and 'income' will hold good after 5 April 2008, so that remittances from the 'capital' account may be made tax-free.

Previously interest on offshore mortgages might be paid from unremitted overseas income without a tax charge. Under the original draft clauses payments of such a mortgage would have been treated as remittances from 6 April 2008. However, 'grandfathering' provisions are included such that repayments on mortgages existing at 12 March 2008 secured on a residential property in the UK will not be treated as remittances after 5 April 2008 for the life of the loan or until 5 April 2028 if sooner, unless the terms of the loan are varied or any further advances are made after 12 March 2008. The Budget on 23 March 2011 proposed that, also to be effective from April 2012, overseas income or gains could be remitted to the UK tax-free if invested in a UK business. No detail was immediately available on this measure.

An individual is to be able to choose for each tax year from 2008/09 onwards whether or not to adopt the remittance basis. But income and gains arising in a year when that choice is made will remain taxable in any year that they are remitted, even though the individual may by then be taxable on the arising basis.

If the £30,000 (or, in future, £50,000) tax charge is paid directly to HMRC by cheque or electronic transfer from overseas sources it will not be taxed as a remittance.

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### Non-resident companies

A major change affects gains realised by non-resident companies that would be 'close' if they were resident. From 6 April 2008, the gains of such a company will be attributed to UK resident participators even if non-domiciled (if their 'participation' - including that of their 'associates' - exceeds 10%). Those non-domiciled UK residents who are on the remittance basis will be chargeable only on remittances of gains on overseas assets.

Where the non-resident company's shares are held by a non-resident trust, the gains are attributed to the trustees. The re-basing election referred to below will then extend to the company's assets held at 6 April 2008.

There is no exemption for a gain realised on disposal of a residence owned by a company, even if it is the main residence of a participator. So the common situation of a UK residence owned by an offshore company (to avoid UK inheritance tax) will become less tax-efficient. And it is worth noting that the benefit of living in a house in the UK may represent a 'capital payment' from a non-resident trust (in the common situation where the company is owned by such a trust), and it is clearly remitted to the UK.

### Non-resident trusts

**Settlors** - The original draft clauses indicated that the provision which charged the UK resident domiciled settlor to capital gains tax on the gains of a non-resident trust (if the trust might benefit the settlor, the settlor's spouse, etc) would be extended to a settlor not domiciled in the UK. But in fact the existing exemption for those not domiciled in the UK remains, regardless of whether the settlor is taxed on the remittance basis.

**Beneficiaries** - A UK domiciled resident who receives a capital payment from a non-resident trust is deemed to have a capital gain to the extent of the capital gains of the trust ('trust gains') not previously attributed to earlier capital payments. If the capital payment exceeds the unattributed trust gains to date the excess capital payment is carried forward to be attributed to any later trust gains. A gain would then be deemed to arise in that later year.

From 6 April 2008 this also applies to non-domiciled UK residents.

Previously the linkage between trust gains and capital payments was first in, first out (or FIFO); the trust gain was linked with the earliest previously unattributed capital payment. From 6 April 2008 it becomes last in, first out (LIFO) for all beneficiaries in receipt of capital payments.

Trust gains arising after 5 April 2008 that are linked with capital payments prior to 6 April 2008 will escape tax if the beneficiary is non-domiciled (even if he is not on the remittance basis) in the year the gain arises in the trust.

Furthermore, trust gains arising before 6 April 2008 that are matched with capital payments made after 5 April 2008 will escape tax if the beneficiary is not domiciled in the year the capital payment is received.

Capital payments to non-UK domiciled beneficiaries in the period 12 March to 5 April 2008 are never to be linked with trust gains arising after 5 April 2008, thus increasing the chance that a subsequent trust gain will be matched with a post-5.4.08 capital payment.

Trustees of non-resident trusts are to be able to make an irrevocable re-basing election, which will have the effect of excluding from tax for non-domiciled beneficiaries such part of the gain on a disposal made after 5 April 2008 as had accrued by that date. The election has to cover gains on all assets held on 6 April 2008 by the trust and on the trustees' participation in all assets held by non-resident companies that would be 'close' if they were resident, if the trustees' 'participation' - including that of their 'associates' - exceeds 10%. The election has to be made by 31 January next following the first year ending on or after 5 April 2009 in which a UK resident receives a capital payment.

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Finally, where a trust gain does arise to a UK resident non-domiciled beneficiary, and he is on the remittance basis, he will only be taxable to the extent that the capital payment that gives rise to the attributed gain is remitted to the UK. This will be so whether the trust gain arose on an offshore asset or a UK asset.

The supplemental charge (which increases the beneficiary's capital gains tax liability by reference to the delay between the trust gain arising and receipt of the capital payment) will be based on the year the capital payment is received, not when it is remitted to the UK by a non-UK domiciled beneficiary.

In essence UK resident non-domiciliaries will only be taxable on trust gains to the extent that both the trust gains and the capital payments relate to the period after 5 April 2008

### Transfer of assets abroad

The anti-avoidance provisions that exist to counter the avoidance of tax attempted by transferring assets abroad now reflect the changes in the taxation of the non-domiciled who are taxable on the remittance basis.

### Offshore income gains and accrued income on transfer of securities

These provisions also now reflect the changes in the taxation of the non-domiciled who are taxable on the remittance basis.

### Losses on the disposal of overseas assets

Non-domiciled individuals taxed on the arising basis will have relief for losses on overseas assets. And those non-domiciled who claim the remittance basis for any year from 2008/09 may elect irrevocably (but only with effect from the first such year) into a regime that may enable them to get relief for such losses in the UK. The regime involves that losses realised in a particular tax year on disposal of overseas assets are set off first against overseas gains accruing on disposals in that year to the extent they are remitted to the UK in that year; then against overseas gains accruing on disposals in that year to the extent they are NOT remitted to the UK in that year; before any balance may be set off against gains accruing in that year on UK assets (which would be net of allowable losses on UK assets brought forward). If the overseas losses exceed the total of the gains accruing in the year the excess is not available to be carried forward.

### Inheritance tax

There are no changes to the position for inheritance tax.

### LONDON

10 Orange Street  
Haymarket  
London  
WC2H 7DQ

**T** +44 (0)20 7312 0000  
**F** +44(0)20 7312 0022  
**E** advice@shipleys.com

### GODALMING

3 Godalming Business Centre  
Woolsack Way  
Godalming  
Surrey  
GU7 1XW

**T** +44 (0)1483 423607  
**F** +44 (0)1483 426079  
**E** godalming@shipleys.com

### SAFFRON WALDEN

Market House  
10 Market Walk  
Saffron Walden  
Essex  
CB10 1JZ

**T** +44 (0)1799 521301  
**F** +44 (0)1799 523854  
**E** saffron@shipleys.com

### BIRMINGHAM

2nd Floor  
3 Brindley Place  
Birmingham  
B1 2JB

**T** +44 (0)121 698 8566  
**F** +44 (0)121 698 8600  
**E** birmingham@shipleys.com



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