

The UK non-dom FAQs

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What's happening?

The UK government is changing the rules for the taxation of UK resident non-domiciled individuals ('non-doms').

And... what are non-doms again?

Non-doms are people who have a domicile (permanent home) outside the UK, but who live in the UK. When we talk about nondoms, we are talking about people who do not intend to stay permanently or indefinitely in the UK, and don't plan to die and have their estate dealt with here. They can currently choose to be taxed on the 'remittance basis', which means that they need only pay tax on the income and gains they earn in the UK, and offshore income and gains they remit (bring) into the UK. Frequently, they will have assets held in trusts outside the UK, which can offer tax benefits.

OK, so what's changing?

Four main changes:

- Non-doms will be 'deemed domiciled' for all tax purposes once they have been resident in the UK for more than 15 of the last 20 years. Once deemed domiciled, a non-dom will not be able to use the remittance basis, and will be taxed as a regular UK resident on all income and gains. There are some tricky and unexpected ways in which this 15 year period may be calculated, so it is best to seek expert advice on this.
- As a regular UK taxpayer, they will be taxed on the 'arising basis', meaning that they will be taxed (for income, capital gains and inheritance tax) on all assets around the world.
- People born and domiciled in the UK will no longer be able to claim non-dom status so long as they are living in the UK.
- Assets held in trusts can offer benefits if established before deemed domicile. Once the individual becomes deemed domiciled, they will be taxed when they, their spouse or children start to receive any benefits from the trust. The exact nature of this largely depends on matters including who receives the benefit and where they are resident.

At the same time, the UK government is introducing new inheritance tax charges for companies owning UK property.

It is worth noting that the above changes are based on what was set out in a consultation document issued in August 2016 and there are rumours that there will be further changes in draft legislation which will be available in December 2016. This is driven in part by responses to the consultation which closed on 20 October 2016.

Why are they changing non-dom status?

Politics has a lot to answer for here. The changes were introduced by former Chancellor George Osborne, and he arguably introduced them to take the wind out of the Labour Party's policy plans. Non-dom status has been incorrectly presented as giving wealthy people an unfair tax advantage, and in the era of austerity, taking steps to limit eligibility and benefits of non-dom status were popular moves. It's anyone's guess why, post-Brexit, this remains a key policy.

When will it happen?

The changes will come into effect on 6 April 2017, though there may be further changes to the rules before this deadline.

So should I do anything now/do I need to start doing things for my non-dom clients?

Everyone should assess their status. The actions that are required will depend on how drastically the changes will affect their status, and how complex their wealth planning structures are. Significant changes to trusts and how assets are held will need several months to be properly dealt with, so measures would need to be undertaken as soon as possible. At the very least, we would recommend advisors to conduct a thorough review of their clients' situation as soon as possible to assess how the changed rules will affect them.

What should I do for my non-dom clients?

First, let them know about the changes. Second, check when they become deemed domiciled. If it looks like your client will be deemed domiciled from April 2017 – in other words, they have spent 15 or more of the last 20 years in the UK under the new rules – then there are some key actions which should be taken:

- Consider establishing a trust (if one doesn't already exist) before they are deemed domiciled to defer income tax and capital gains tax.
- Consider putting any non-UK property into a trust to protect it from inheritance tax.
- If a trust exists, consider whether the trustees should make distributions from it before they are deemed domiciled, and whether the trust should be restructured.
- Double check the position when draft legislation is released.

This generally sounds like bad news. Is there any upside?

The new rules offer some upsides for non-doms. Principally, non-doms who become deemed domiciled next year are permitted to rebase the value of assets that have been held offshore since July 2015 with effect from April 2017 – in other words, effectively have them revalued at current rates and potentially brought onshore to the UK without facing any tax penalties. The biggest benefit here is that it can offer an uplift in the value of the assets, which can be brought to the UK, with no capital gains tax due to be paid on the revaluation.

Non-doms are also offered a one year window from April 2017-April 2018 to 'cleanse' funds which consist of a mixture of income, gains and capital. The income, gains and capital can be separated out, enabling the non-dom to remit these elements separately, in a tax efficient manner.

What happens if we miss the deadline, or get things wrong?

Some unfortunate consequences will follow! As explained above, if a non-dom becomes deemed domiciled without having first prepared for the change and made plans to protect assets where possible, then income tax and capital gains tax will apply to all of their worldwide income and gains on directly held assets. Their worldwide assets will also be subject to inheritance tax, including any UK property that is owned through a non-UK company.

Does this send a discouraging message to non-doms?

It is hard to avoid the conclusion that, in tandem with Brexit, this sends a discouraging message to those who are only partly tied to the UK. Non-doms are frequently major contributors of investment into the UK, so this message is not a helpful one for the UK economy.

However, as we have outlined, there are some clear options to be taken which will enable non-doms to plan for April 2017, and even those who won't immediately become deemed domiciled on that date should start thinking about their position well in advance of reaching their 15 year mark.

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