withersworldwide

The UK is still a great place to live

06 MARCH 2018

Lara Crompton
PARTNER | UK

CATEGORY:
ARTICLE

The prospect of a deemed domicile status for all UK tax purposes for those resident in the UK for more than 15 out of 20 years was met with horror by some but, now that we have the full picture, it is clear that the UK is still a very attractive jurisdiction from a tax perspective for those who come to live here but for whom the UK is not their permanent home. The one caveat to this is those who are in the unfortunate position of being "formerly domiciled residents" ('FDRs'). The UK tax environment for FDRs (any one who was born in the UK with a UK domicile of origin, acquired a non-UK domicile of choice and returns to the UK) is not nearly as benign.

No more remittance basis charge?

There is still the opportunity for non-doms to claim the remittance basis in their first 15 years of residence, allowing them to shelter non-UK income and gains from UK tax provided such income and gains are not brought into the UK (or treated as brought in). For the first seven years of UK residence claiming the remittance basis is free but after that there is an annual charge of £30,000 rising to £60,000 after 12 years. A happy consequence of the suite of changes to the taxation of offshore trusts for non-doms introduced with effect from 6 April 2017 is that non-doms who choose to set up a trust prior to becoming deemed domiciled will shelter their offshore income and gains from UK tax without having to pay the remittance basis charge. This is because the non-UK income arising in a protected trust (more on this below) is no longer (from 6 April 2017) treated as the settlor's. So for those who are approaching seven years of residence in the UK it is worth considering establishing a trust over non-UK assets
rather than keeping them in their own name and paying the remittance basis charge on the basis that annual running costs of a trust could be less expensive than paying the charge.

Cleansing and rebasing

The new rules introduced the potentially valuable opportunities of cleansing and rebasing, allowing certain non-doms to "access" more clean capital and benefit from a deemed uplift in value of non-UK assets to their 6 April 2017 value respectively. But perhaps the most generous aspect of the new rules is the opportunity to benefit from the "protected" trust regime.

The protected trust regime

The ability to protect non-UK assets from UK inheritance tax by establishing an excluded property trust prior to becoming deemed domiciled remains. Although for FDRs who have established an excluded property trust, the protection from IHT falls away once they have been UK resident for a year.

The new "protection" concept is for income and capital gains tax purposes. Those who establish a non-UK trust prior to becoming deemed domiciled (other than FDRs) can benefit from UK tax-free roll-up on non-UK assets unless the trust is "tainted". (Trusts created by FDRs will fall outside the protected trust regime in any year in which the FDR is UK tax resident.) Provided no additions are made to the trust once the settlor has become deemed domiciled (and care needs to be taken to avoid inadvertent additions), there will be no UK tax until a distribution or benefit is received.

The trade-off for the Government's decision to allow the UK tax-free roll-up in protected trusts is the tightening of the anti-avoidance rules to close perceived loopholes allowing tax-free benefits. In particular, the upcoming limiting of the ability to wash out gains to non-residents should be noted. Trustees of existing trusts (with no borrowing) should consider taking the opportunity to make distributions to non-UK resident beneficiaries before 6 April 2018, if the trust contains significant stockpiled trust gains in which case this could significantly improve the UK tax outlook for UK resident beneficiaries in the future.

It would be misleading to paint an entirely rosy picture. The legislation is undoubtedly complex and particular care needs to be taken to avoid falling foul of the "tainting" rules, as once the trust is tainted, a deemed domiciled settlor will be taxed on the income and gains of the trust on an arising basis. Trustees of existing trusts need to review all outstanding loans between the settlor and the trust or underlying companies or between connected trusts or underlying companies, to see whether action needs to be taken before 6 April 2018 to ensure these loans will not cause "tainting".

Overall, however, despite (and, in some cases, because of) the changes, the UK's tax environment for those non-doms living in the UK remains generous.

Authors

Lara Crompton

PARTNER | LONDON

Private client and tax

+44 20 7597 6526

lara.crompton@withersworldwide.com