

Client Update

Journey's End for the Autumn Statement. The Odyssey Continues for UK Taxation of Non-Domiciliaries (with a Goddess, a Monster and a Paradise Island)

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Today's Autumn Statement was the new chancellor's first, and last. Many will read with relief that following the spring 2017 budget, there will be only one major UK tax event each year; the Autumn budget. Although the chancellor announced wryly that there will also be a Spring Statement, he was at pains to point out that this will be in response to the Office of Budget Responsibility's spring forecast and will not be used to make major tax changes. Instead, the Spring Statement will be used to launch consultation documents. Further, the government will use the summer period to consult on draft legislation prior to publication of the draft Finance Bill at the Autumn Budget. Despite this being the Autumn Statement's final airing, it was not one of big announcements; rather a "keep calm and carry on" effort. The reforms to the taxation of UK-resident, non-UK-domiciled individuals were confirmed and we are therefore using this note to update you regarding the current status of these reforms.

Following the Greek victory at Troy (remember beautiful Helen and the Trojan Horse?), one of the key warriors, Odysseus, starts his journey home, only to be stranded on a paradise island. "Persuaded" by the goddess Calypso, Odysseus made his home on the island, and even, some say, had children there. Yet, throughout his years in paradise, Odysseus dreamt of returning home to his wife. One might say Odysseus was a resident, non-domiciled individual; yes, he lived on the island, but he did not intend to do so permanently, as he had somewhere else that he thought of as home. Had Calypso "persuaded" him otherwise, his domicile might have changed.

Historically, the concept of domicile has enabled a resident of the United Kingdom to claim that, although resident in the United Kingdom, they are not

UK-domiciled, thereby enabling them to benefit from the United Kingdom's remittance basis of taxation. Under the remittance regime, upon payment of a toll, an individual is taxed in the United Kingdom only to the extent that income or gains have a UK source or are remitted to the United Kingdom.

In the Summer Budget 2015, the UK government announced that it would be changing the rules around domicile so that a person resident in the United Kingdom for 15 of the past 20 years (the "15/20 Test") would become deemed UK-domiciled, irrespective of any intention to permanently reside in the United Kingdom. A person born in the United Kingdom will also be deemed to have a UK domicile automatically. The announcement was pretty thin on detail and much speculation has ensued amidst UK's non-UK-domiciled population.

Over the summer, the UK government published an updated consultation document looking into the mechanics of how the deemed-UK-domicile rule will work (there has been no Brexit-inspired about-face). Although the document is still in the nature of a consultation document, and so does not offer definite answers, it certainly shows how the UK government is thinking in certain key areas. Nothing was announced in today's Autumn Statement that casts doubt over the summer guidance.

CALCULATION OF THE 15/20 TEST

- An individual should determine their residency for prior years based on the rules in place for the relevant year.
- Despite criticism, the government has confirmed that years spent in the United Kingdom as a child will count towards the 15/20 Test.
- If an individual spends part of a year as a resident, but part as a non-resident, and is able to benefit from split-year status, such years are still included in the 15/20 Test.

REBASING OFFSHORE ASSETS

As announced at Budget 2016, individuals will be able to rebase overseas assets to the market value of the asset at 5 April 2017, the result being that pre-April 2017 gains will not be subject to UK capital gains tax. Legislation on rebasing is expected later in 2016 and this client update serves as a summary of what we know so far.

Rebasing will be on an asset-by-asset basis and, importantly, on a realisation, pre-6 April 2017 gains may be brought to the United Kingdom tax-free.

For assets which were offshore on 7 July 2015:

- to the extent that an asset was purchased with clean capital, the entire proceeds may be brought into the United Kingdom after becoming deemed UK domicile without incurring any UK tax charge; and
- to the extent that such asset was bought wholly, or partly, with foreign income or gains, an element of any disposal proceeds will be taxable on the remittance basis when brought to the United Kingdom.

Rebasing will apply only to those non-UK-domiciled individuals who have paid the remittance basis charge in any year before April 2017.

An individual who becomes deemed domiciled in years after April 2017 or because they were born in the United Kingdom will not be able to rebase their assets. This is a surprising twist and we expect representations to be made to soften this rule. It is difficult to see the policy justification for this, and treating taxpayers who are essentially the same differently makes the United Kingdom look like a humbug.

OFFSHORE MIXED FUNDS

The mixed funds rules mean that where an offshore bank account comprises a mix of clean and unclean capital, the unclean capital is deemed to be remitted to the United Kingdom prior to the clean capital, which can result in clean capital getting stranded offshore. Alive to this risk, the government's proposed solution is to introduce a temporary window in which individuals will be permitted to rearrange their mixed overseas funds. This window will run from 6 April 2017 to 5 April 2018 and will apply only to amounts deposited in a bank account, or similar, prior to the end of this period.

We note that an individual does not need to be resident in the United Kingdom to take advantage of this window but they need to have been so resident at some point and to have been taxed on a remittance basis. The opportunity is not available to individuals who were born in the United Kingdom.

TRUSTS

Work is still ongoing around the interaction between the new rules and trusts; however, the government has reconfirmed that a non-UK-domiciled individual who sets up an offshore trust before becoming deemed domiciled will not be taxed on trust income and gains retained in the trust or its underlying entities. The government has provided assurances that it does not intend to introduce a charge which could have a punitive impact on non-UK-domiciled individuals as

compared to UK domiciles and has set out a series of proposals to amend the existing rules around offshore trusts to make them work with the new deemed domicile regime. Broadly, the protections for pre-existing trusts will apply only to the extent that a deemed-domiciled settlor does not receive benefits from the trust and on the condition that new assets are settled into the trust before the settlor becomes deemed UK-domiciled.

In today's Autumn Statement, the government confirmed that "non-domiciled individuals who have a non-resident trust set up before they become deemed-domiciled in the United Kingdom will not be taxed on income and gains arising outside the United Kingdom and retained in the trust."

ENCOURAGING INVESTMENT INTO THE UNITED KINGDOM

Business investment relief ("BIR") allows a non-UK-domiciled individual to remit money to the United Kingdom to invest without that money's being subject to UK tax. At the close of 2015, the UK government announced that it would consult on ways to make it easier for non-UK-domiciled individuals to use this relief. This consultation has been launched and in today's Autumn Statement the government confirmed that it is continuing to consider improvements in this area.

To qualify for BIR, an investment needs to be a "qualifying investment", which includes an investment into a trading company/group or into a company involved in R&D or commercial investments. Unsurprisingly, there are fairly extensive anti-avoidance provisions and the scheme is relatively complex to navigate.

The government is seeking ideas for ways to amend the existing BIR to encourage further investment into the United Kingdom. They are particularly interested in any ways that they can simplify the existing rules.

After "escaping" the persuasions of the goddess Calypso, Odysseus is said to have escaped being eaten by a giant Cyclops using his legendary cunning. Just as we did not say that the United Kingdom was like the paradise island, we are not suggesting that the deemed domicile rules should be personified as a one-eyed monster, but if you reached this conclusion yourself, we are, of course, happy to help you, with a fresh pair of eyes.

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Please do not hesitate to contact us with any questions.