Non-UK domiciliaries tax changes

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9 April 2024

Your hosts

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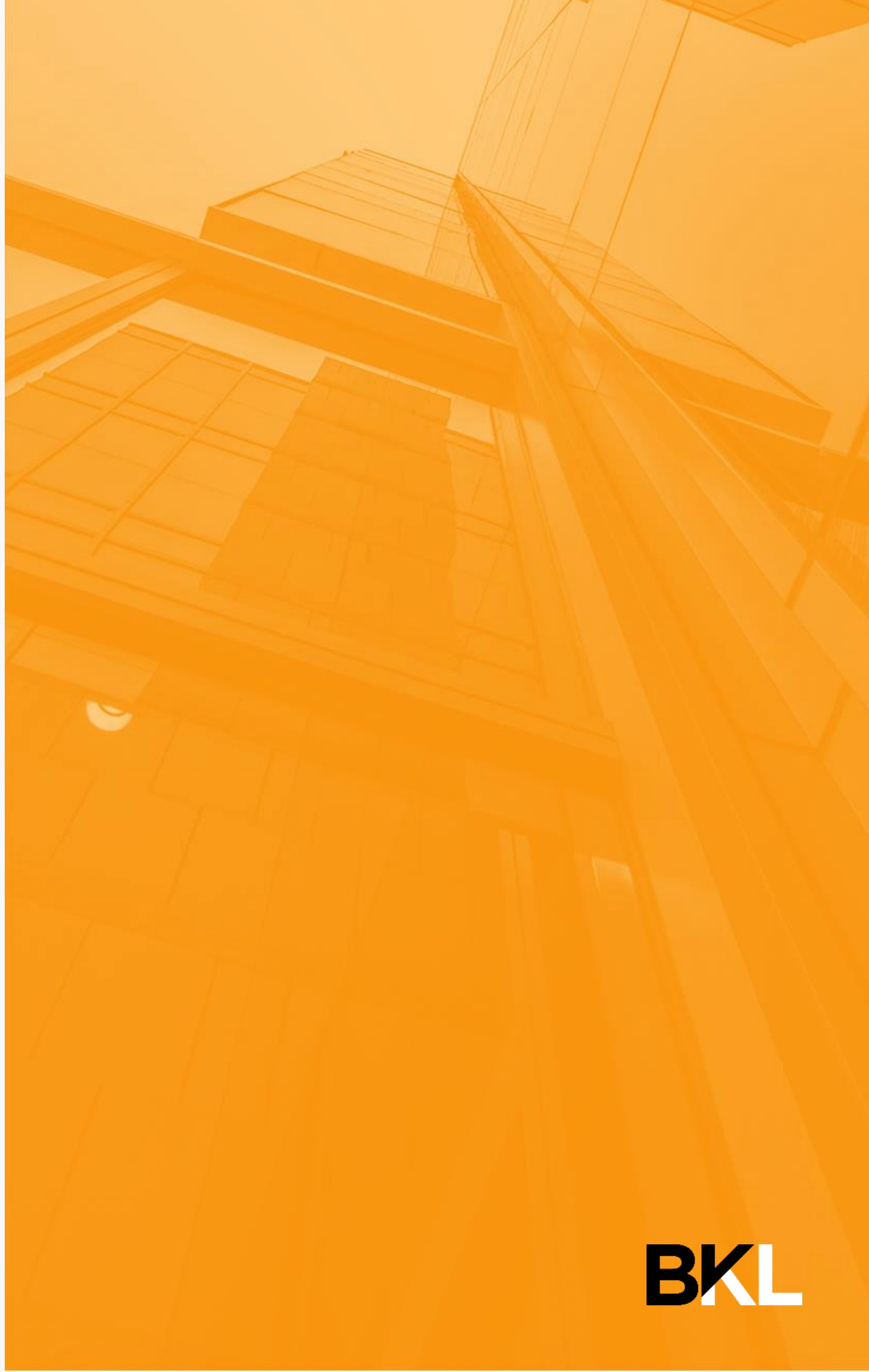
What we'll be covering

- Changes to non-UK domiciliary status from April 2025
- Changes to the taxation of existing protected trusts
- Consultation on the potential changes to the IHT position
- Potential planning opportunities ahead of the changes



Background

- Changes announced by chancellor Jeremy Hunt in Spring Budget 2024 on 6 March
- Removal of the non-UK domicile tax status from April 2025
- Abolition of the protected trust status
- Announcement on a consultation of potential changes to the inheritance tax (IHT) regime
- The Finance (No.2) Bill 2023/24 was introduced on 12 March 2024 and didn’t include any changes in relation to any of the above points
- The information we have is based on the Government’s technical note *Changes to the taxation of non-UK domiciled individuals*
- There are still areas of uncertainty as this is a major overhaul of the legislation which has been taken without any consultation

The current position

- Current rules introduced from 6 April 2017
- Introduced the concept of UK **deemed domiciled** for income tax and capital gains tax
- UK-deemed domiciled if resident for 15 out of 20 years, or if born in the UK and had a UK domicile of origin
- Once deemed domiciled an individual is subject to tax, in the UK, on their worldwide income and gains
- Non-UK domiciliaries can claim the remittance basis, so only foreign income and gains which are remitted to the UK are taxable
- **Remittance basis charge** of £30,000 if resident for 7 out of 9 tax years or £60,000 if resident for 12 out of 14 tax years

Changes from April 2025

- Domicile is a concept of international law so can’t just be abolished, but it can be removed as a concept for determining UK tax liabilities
- From 6 April 2025, the UK tax liability will be determined by residence and not by domicile
- Residence will be based on statutory residence test and split years or treaty residence/non residence are ignored
- Remittance basis of tax will be removed, but will still be relevant in some circumstances

Changes from April 2025

- Individuals who come to the UK and have been non-resident for 10 consecutive tax years will not be liable to tax on foreign income and gains (**FIG**s) for the 4 years following, regardless of if they are remitted or not
- A claim needs to be made to obtain the relief, the result of which is a loss of the personal allowance and capital gains tax (CGT) annual exemption
- Relief can be claimed on a year-by-year basis
- This will also apply to individuals who have not been resident for 4 years at 6 April 2025

Example: An individual becomes resident in 2023/24 after a period of absence of 10 years. They will have been resident for 2 years at 6 April 2025 and therefore can claim relief from FIGs for 2025/26 and 2026/27

Changes from April 2025

- After the four-year period, FIGs will be taxable in the UK on an arising basis
- Relief for tax suffered on FIGs can be claimed in the usual way, subject to the double tax treaty
- **Overseas workday relief**: there are some modifications to how this relief can be claimed but not covered here

Temporary Repatriation Facility

- There will be a transitional period where there will be a temporary repatriation facility
- The transitional period will apply for 2025/26 and 2026/27 for unremitted FIGs
- FIGs remitted in the transitional period will be taxed at **12%**, provided they arose personally, in a year when the individual was on the remittance basis
- Previously unremitted FIGs, remitted after the transitional period, will be subject to tax in the normal way

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Transitional rules

- There is an opportunity to rebase the CGT base cost for foreign assets to the value at 5 April 2019 if an individual has previously claimed the remittance basis
- In order to qualify for rebasing, the individual can’t have been either UK domiciled nor UK deemed domiciled at 5 April 2025
- When they dispose of a personally held foreign asset after 5 April 2025 which they held at 5 April 2019, they can elect to rebase to the April 2019 value

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Transitional rules

- Relief in the transitional period excludes income and gains of companies and trusts which are treated as the individual's income for tax purposes, therefore it will be important that these are kept separate
- If an individual moves from the remittance basis to the arising on 6 April 2025 and is not eligible for the four-year relief period, they will only pay tax on **50%** of foreign income (but not gains) for the 2025/26 tax year only
- **Business investment relief** will still be available for previously unremitted FIGs on or after 6 April 2025
- No information has been provided in relation to other reliefs which are currently available, but it can be assumed that these would likely still apply

Winners & losers

Winners

- Individuals with large amounts of unremitted FIGs will have an opportunity to remit to the UK at a lower rate of tax
- Individuals who are in the four-year period will be able to remit FIGs free from UK tax consequences
- Individuals who are not deemed domiciled and have assets with unrealised gains will have an opportunity to rebase to the 5 April 2019 values

Losers

- Individuals who have been resident for four years or more will be taxable on their worldwide income
- General uncertainty around changes in an already complex area of tax, which could be subject to future changes

Changes to the taxation of existing protected trusts

Current position

- Concept of a protected trust introduced from 6 April 2017
- Where a trust is set up by an individual who is not UK-domiciled or UK deemed domiciled, the trust is regarded as a protected trust
- Where the trust is settlor interested, and provided the trust has not been 'tainted', the foreign income is regarded as protected foreign source income (**PFSI**)
- PFSI is not taxable on the UK-resident settlor unless a benefit is derived
- The legislation is complex and contains various anti-avoidance provisions, including tainting, onward gifting and pre-arrival distributions

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Changes to the taxation of existing protected trusts

- Existing protected trusts will lose their protection from 5 April 2025
- Foreign income will thereafter be taxed on the settlor on the same basis as a UK domiciled settlor, unless eligible for the four-year relief period
- Matching pre 6 April 2025 PFSI to trust distributions will continue
- Beneficiaries or settlors who are within the four-year relief period will be able to receive benefits free from any UK tax charges, whether or not the benefits are received in the UK
- Benefits matched to trust income and gains and will be subject to modified onwards gift rules

Changes to the taxation of existing protected trusts

Winners

- Potentially more certainty around the rules of what is a complex area of taxation
- Settlors who take pre-arrival distributions are unlikely to be subject to UK taxation in the future

Losers

- Settlors of settlor interested trusts will now be taxable on all the income in the trust, regardless of whether they take a benefit

Consultation on potential changes to the IHT position

Current position

- Current rules introduced from 6 April 2017 and are broadly in line with income tax and CGT rules, but must also be resident in one of the last four tax years which include the relevant event
- Includes an additional category for formerly domiciled individuals, where they remain deemed domiciled for three years after they have lost their legal UK domicile
- The concept of deemed domicile for IHT has existed in various forms going back to the 1861 Domicile act
- UK domiciliaries are subject to IHT on their worldwide assets, whereas non-UK domiciliaries are only subject to IHT on their UK situs assets
- Trusts created by non-UK domiciliaries are excluded property trusts

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Consultation on potential changes to the IHT position

- An individual's IHT status will be based on residence and not domicile
- Their worldwide assets will be subject to IHT after being UK resident for 10 years
- They will stay within scope of IHT for a period of 10 years after residence ceases
- No changes to excluded property trusts which have already been settled
- Any trust settled before 6 April 2025 by a foreign domiciliary will be 'permanently' excluded
- IHT treatment of returning non-domiciliaries is subject to consultation
- The 10-year residence rule is much more certain than current domiciliary rules
- May affect existing UK double tax treaties for which there are only 10 for IHT/estate duties

Consultation on potential changes to the IHT position

Winners

- The only benefit will be more certainty when using residence as the basis as opposed to domicile

Losers

- Individuals will be brought into scope of UK IHT sooner and will stay in scope longer

Potential planning opportunities ahead of the changes

- There are potential planning opportunities to mitigate the effect of the potential tax changes
- Planning needs to be done on a personal level
- Planning opportunities include:
  - Removal of settlor interest from protected trust
  - If the remittance basis is currently available, release FIGs or take trust distributions now and remit in 2025/26 to take advantage of the repatriation tax rate of 12% or just keep overseas
- Consider the level of unremitted FIGs and what should be remitted in 2025/26 and what should be kept as unremitted for future overseas use
- If you are in the four-year relief period, consider what FIGs can be realised in that period

Other points

- There may be a General Election before any draft Finance Bill is published. This could result in changes or deferrals
- Could be subject to future changes and modifications
- Third major change to taxation of non-UK domiciliaries since 2008
- Increased revenue estimates (ignoring IHT):
  2025/26 - £185m; 2026/27 - £2,805m; 2027/28 - £3,675m; 2028/29 - £2,715m
- Decrease in Class 1 NIC by 1% would cost £4,600m in 2024/25
- Comparison with other foreign regimes relief for FIGs: Irish regime has no limit; Italian and Greek regimes are 15 years; French eight years, and Spanish five years

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Thank you

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