


RESIDENCE AND DOMICILE CHANGES
THE IMPACT ON OFFSHORE STRUCTURES
“A WORK IN PROGRESS” HMRC 18 January
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BY CLARE MAURICE AND
ARABELLA SAKER
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- Overview of changes
 - Top tips for UK resident settlors and beneficiaries
 - How will this affect the way banks and trustees do business in future?

Overview of changes

- Daycount
- Remittance basis
- CGT treatment of offshore trusts
- Reporting obligations

Daycount

- 183 days **or** 91 day average
- Days of arrival and departure do count
- The “Tom Hanks” exception for transit passengers
- Who may be affected:
 - Those not currently resident
 - Those trying to become non-resident
 - Business visitors
 - Offshore trusts with individual trustees

Remittance basis

- Position until 5 April 2008
 - Only taxed on overseas income and gains to the extent they are remitted
- Rules from 6 April 2008
 - Elect to claim remittance basis on self-assessment form
 - De Minimis
 - Tax cost
- Additional charge for long-term residents
 - 7 out of 9 years immediately preceding relevant year
 - £30,000 levy
 - Husband and wife = £30,000 x 2
 - Nature of charge = Double Tax?

Remittance basis

- There is a remittance if money or other property is brought to or received/used in the UK by/for the benefit of a relevant person
- **Or** any service is provided in the UK to/for his benefit
- **And** the property, or consideration for the service, represents income or gains (directly or indirectly)
- **Or** income/gains/anything deriving from them are used to satisfy a debt in respect of the property or service
- “Relevant person” includes connected person (eg spouse, child, sibling, trustee, person with whom living)

Remittance basis

- Temporary non-residence rule now same as CGT
- No source ceasing
- No alienation of income/gains to connected person post 5 April 2008
- Loans = Interest only?
- Things brought into UK post 5 April 2008

CGT changes for offshore trusts

- S86 (settlor charge) now applies to RND settlors:
 - On arising basis for UK gains
 - On remittance basis for non-UK gains
- S87 (beneficiary charge) now applies to RND beneficiaries:
 - On payment/benefit provided anywhere in the world
 - NB remittance basis does **not** apply
- NB income tax rules are the same for settlor, but **not** for beneficiaries – remittance basis applies

Reporting obligations for offshore trusts

- **All** non-resident trusts, whenever created, must be reported to HMRC:
 - Before 5 April 2009 for RND settlors of existing trusts
 - Within 3 months of creation by RND settlor
 - Within 6 months of arrival, if created by NRND settlor who moves to the UK

Top tips for RND settlors and beneficiaries (1)

- Identifying the potential problems
 - Status of settlor:
 - Alive, dead, residence, domicile?
 - Don't forget other tax regimes, eg US settlor
 - Status of beneficiaries
 - Who are they e.g. charities and where are they resident?

Top tips for RND settlors and beneficiaries (2)

- Audit trust assets
 - What was originally transferred and when?
 - Location of assets
 - Nature of assets
 - Land
 - Art
 - Loans owing to Trustees
 - Holding Company

Top tips for RND settlors and beneficiaries (3)

- Have there been capital gains realised since April 1998?
- What capital payments have been received by beneficiaries?
- Are there any “unfranked” capital payments?
- Are capital payments going to be required in the future?

Top tips for RND settlors and beneficiaries (4)

- Some solutions:
 - Wind up and start again (if S still non dom)
 - Rebase and wash out (if S deemed dom or dead)
 - Create a “Treasury Trust” for RND beneficiaries who rely on trust for distributions
 - Segregation of assets:
 - Income generation for distributions offshore
 - Capital appreciation to remit onshore
 - Non-producing assets in separate trust

Effects for bank and trustee businesses (1)

- Residence risk for visiting employees
 - Keep diaries of business/personal visits
 - Individual trustees
 - Directors of companies
- Investment structures and remittances
 - Offshore mortgages/loans
 - Offshore products with onshore element
- Fees and charges
 - s809H: remittance if foreign income/gains used directly or indirectly to pay for services onshore

Effects for bank and trustee businesses (2)

- Compliance
 - Reporting obligations – reputational risk if offshore trustees do not alert settlors (and risk of s20 TMA notice for onshore related businesses)
 - Trustees need to have robust systems for identifying s86 gains, the s87 pool, and all benefits (in the UK or abroad)
 - Know your assets: assets transferred to a trust are no longer treated as losing their inherent gains, so later use/distribution (or remittance to the UK) triggers tax – NB this is retroactive

Questions?

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