

Briefing note

Offshore trusts: what now?

December 2017

Background

On 16 November 2017, the big changes to the taxation of non-UK domiciled individuals and offshore trusts contained in Finance (No.2) Act 2017 became law. Whilst the majority of the new rules are contained in this Act and are effective from 6 April 2017, some of the changes have been deferred until 6 April 2018, some to be covered by the Finance (No 2) Bill 2017-19, just published.

Action for Trustees and individuals

For trustees: consider if any action still needs to be taken before the end of the current tax year, including any of the following:

- **Preserve protected status** Non-UK domiciled settlors, who have been UK resident for at least 15 out of 20 tax years, will not be immediately assessed on the capital gains and non-UK income arising in their offshore trusts, and any underlying companies, provided that no steps are taken to jeopardise the trust's new 'protected' status. Trustees should review all loans to and from the trust to ensure that they do not 'taint' the trust and reorganise any uncommercial loans made to the trust by the settlor (or by any other trust that the settlor has settled) in the 12-month grace period to 5 April 2018. As a trust will lose 'protected' status if the settlor becomes UK domiciled as a matter of law, regardless of the length of UK residence, we recommend a regular review of the settlor's domicile status.
- **Review trust realised gains** After 5 April 2018, capital payments or benefits provided to non-UK resident beneficiaries will no longer be 'matched' to trust capital gains. Trustees should therefore bear in mind that any distributions made to non-UK resident beneficiaries before 6 April 2018 'wash out' trust capital gains.
- **Carefully plan any trust windings up** If there are plans to wind up the trust, consideration should be given to which beneficiaries receive distributions and in what order because, under the draft 2018 legislation, trust capital gains will be matched on a pro-rata basis between UK resident and non-UK resident beneficiaries receiving distributions in the year that a settlement ceases to exist, if that is on or after 6 April 2018.
- **Review indirect gifting** If a beneficiary is not subject to tax in respect of a distribution received, either because the beneficiary is non-UK resident or non-UK domiciled, any gift made to a UK resident individual by the beneficiary after 6 April 2018 could cause the ultimate recipient to be treated as though the recipient received the trust distribution directly. Non-UK resident or non-UK domiciled beneficiaries who have received trust distributions in this or prior years should therefore consider whether or not to make any gifts to UK resident beneficiaries before 6 April 2018.
- **Beneficiaries about to become deemed domiciled** Conversely, trustees should review if non-UK domiciled beneficiaries who will become deemed domiciled on 6 April 2018 should receive trust distributions and keep the funds offshore, before they are no longer able to claim the remittance basis or the remittance charge increases.
- **Review new inheritance tax exposures** If any UK residential property interests are held within a trust structure, or there are any loans connected to UK residential property (or collateral, securities or guarantees connected to such loans), the trustees should consider the trust's new exposure to inheritance tax if they have not done so already. This may be on both the next 10-year anniversary and, in some cases, on the death of the settlor or life tenant.

- **Asset valuation** Do trust assets need to be valued for the purpose of calculating trust benefits under the new rules? Where moveable property, such as art, yachts and so on, are made available to a beneficiary, the benefit will now be calculated by reference to the original acquisition cost of the asset or the market value of the asset at the time it was acquired, so the trustees may need to check historic records.
- **Review using a company to hold UK trust assets** In many cases, this will no longer constitute a taxable remittance by the settlor. Care is needed, however, especially if the trustees may provide a non-UK benefit to a non-UK domiciled beneficiary in the future.
- **Action for non-doms approaching key anniversaries** Non-UK domiciled individuals could also consider making a trust at an earlier date before the remittance basis charge increases, either because they will become UK resident in 7 out of the past 9 tax years or 12 out of the past 14 tax years.

There may be some inconsistencies and uncertainty about how the rules should be applied in certain circumstances. The Government has stated these will now only be dealt with in guidance to be published later. The rules are complex and trustees should seek formal advice. Please speak to your usual Smith & Williamson contact to discuss any of the matters raised in this briefing note.

For individuals:

- **Action for those about to become deemed domiciled** Non-UK domiciled individuals who will become deemed domiciled on 6 April 2018, because they will have then been UK resident for at least 15 out of the past 20 tax years, should consider putting assets into a trust before 6 April 2018 to protect them from inheritance tax.

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