

Explanatory Note

Clause 1: Domicile: Income tax and capital gains tax

Summary

1. This measure reforms the Income Tax and Capital Gains Tax treatment of certain individuals who are not domiciled in the UK [non-doms]. Such individuals will be deemed to be domiciled in the UK for Income Tax and Capital Gains Tax purposes and will lose the main advantages for non-doms of the UK's tax system.
2. In most cases, anyone deemed UK domiciled for tax will be treated in exactly the same way as anyone who is domiciled in the UK under general law. However, the effect of section 86 of the Taxation of Chargeable Gains Act 1992 [foreign trusts], the settlements legislation in Part 5 of Chapter 5 ITTOIA 2005 as it applies to foreign trusts, and Chapter 2 of Part 13 ITA 2007 [Transfer of Assets Abroad legislation] will be further amended in Finance Bill 2017 to provide the protections promised by the Chancellor for trusts and ToA arrangements made when an individual is not deemed domiciled in the UK.
3. For most purposes the reforms will have effect from 6 April 2017.
4. Draft legislation for the measure which provides for similar reforms affecting Inheritance Tax were published at Autumn Statement 2015.

Details of the clause and Schedule

Clause 1

5. Clause 50(1) makes provision to amend Chapter 2A of Part 14 of the Income Tax Act 2007 [ITA] by inserting new section 835BA.
6. New section 835BA (1) provides that the section affects the parts of the Income Tax Acts, other enactments which apply to this section; and anything else amended in consequence of amendments carried out by Schedule 1 [for example to section 12 TCGA by the amendment made to section 809B in the Schedule].
7. New section 835BA (2) provides that an individual is to be deemed domiciled in the UK for the purposes of those provisions covered by section 835BA(1) at a time in a tax year if that individual meets either of two conditions, Condition A or Condition B
8. New section 835BA (3) gives Condition A. Condition A is that the individual was born in the UK, has a UK domicile of origin, and is resident in the UK.
9. New section 835BA (4) gives Condition B. Condition B is that the individual has been resident

in the UK for at least 15 out of the preceding 20 tax years.

10. Clause 50(2) introduces the Schedule which applies new section 835BA to specified provisions in the Income Tax Acts and other enactments.

Schedule 1: Domicile - Income Tax and Capital Gains Tax

11. Paragraph 1 of Schedule 1 amends the Income and Corporation Taxes Act 1988 [ICTA].
12. Paragraph 1(1) amends section 266A of ICTA covering employer paid life assurance premiums so that anyone deemed UK domiciled for tax purposes under new section 835BA ITA 2007 is treated in the same way as someone domiciled in the UK under general law.
13. Paragraph 1(2) provides that the amendment made by paragraph 1(1) takes effect from 6 April 2017.
14. Paragraph 2 of Schedule 1 makes provision to amend the Taxation of Chargeable Gains Act 1992 [TCGA].
15. Paragraph 3(1) of Schedule 1 amends section 69(2) of TCGA which sets out the conditions to be satisfied in order for the trustees of a settlement to be treated as resident in the UK for Capital Gains Tax Purposes Paragraph 3(1) applies the new deemed domicile test in section 835BA of ITA for the purposes of determining whether a settlor was domiciled in the UK when the settlement was created under s 69(2B)(c)
16. Paragraph 3(2) provides that the amendments made by paragraph 3(1) take effect in relation to settlements created, whether on a death or during a person's lifetime, on or after 6 April 2017.
17. Paragraph 4 (1) amends section 86 of TCGA [attribution of gains to settlors with interests in foreign settlements] by insertion of a new sub-section 3A which applies the new deemed domicile test for the purposes of s 86(1) (c) This means that settlors with interests in such settlements and who are deemed UK domiciled for tax purposes under new section 835BA will be subject to Capital Gains Tax under section 86 in the same way as settlors domiciled in the UK under general law.
18. Paragraph 4(2) provides that the amendment made by paragraph 4(1) takes effect on 6 April 2017.
19. Paragraph 5(1) amends section 275 of TCGA, by the insertion of a new sub-section 3A, which provides that the new deemed domicile test in 835BA will apply for the purposes of 275(1) (l) (iii). This means that the location of foreign currency bank accounts held by an individual deemed UK domiciled for tax purposes under new section 835BA will be the same as that for an individual domiciled in the UK under general law.
20. Paragraph 5(2) provides that the amendment made by paragraph 5(1) takes effect on 6 April 2017.
21. Paragraph 6(1) makes provision to amend the Income Tax [Earnings & Pensions] Act 2003 [ITEPA].
22. Paragraph 6(2) amends section 355 of ITEPA, covering deductions for corresponding

- payments by non-domiciled employee with foreign employers. It inserts new section 835BA ITA into section 355 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK under general law.
23. Paragraph 6(3) amends section 373 of ITEPA, covering non-domiciled employees' travel costs where their duties are performed in the UK. Paragraph 6(3) inserts new section 835BA ITA into section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK under general law.
 24. Paragraph 6(4) amends section 374 of ITEPA, covering non-domiciled employees' spouses' travel costs where an employee's duties are performed in the UK. Paragraph 6(4) inserts new section 835BA ITA into section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK under general law.
 25. Paragraph 6(5) provides that the amendments made by paragraph 6 take effect from 6 April 2017.
 26. Paragraph 7 makes provisions to amend ITA.
 27. Paragraph 8 amends with section 476 ITA. Section 476 explains how to work out whether a settlor meets Condition C in section 475 ITA for the purpose of determining whether trustees of a settlement are UK resident for income tax purposes. Paragraph 8(1) inserts new subsection (3A) which applies the new deemed domicile test in s 835BA ITA for the purposes of determining under section 476(2) (b) and section 476(3) (b) whether a settlor was domiciled in the UK at the time the settlement was created .
 28. Paragraph 8(2) provides that the amendments made by paragraph 8(1) take effect in relation to settlements created, whether on death or during a person's lifetime, on or after 6 April 2017.
 29. Paragraph 9 deals with section 718 ITA. Section 718 covers the meaning of a 'person abroad' for the purpose of Chapter 2 of Part 13 ITA [Transfer of Assets Abroad legislation [ToAA]]. Paragraph 9(1) amends section 718(1) (b) so that the treatment of an individual deemed UK domiciled for tax purposes under new section 835BA will be the same as that for an individual domiciled in the UK under general law.
 30. Paragraph 9(2) provides that the amendments made by paragraph 9(1) take effect from 6 April 2017.
 31. Paragraph 10 covers amendment made to Chapter A1 of Part 14 of ITA [the Remittance Basis].
 32. Paragraph 10(2) amends section 809B ITA so that a claim cannot be made by anyone deemed UK domiciled for tax purposes under new section 835BA. This amendment also means that any other provisions of the taxes acts that depend on a claim being made under section 809B will be likewise affected unless specific provisions are made to prevent this.
 33. Paragraph 10(3) consequentially amends section 809C ITA to remove references to the '17 years' long-term residence test so that persons who are deemed domiciled in the UK by virtue of Condition B in new section 835BA will not be liable for a Remittance Basis Charge.
 34. Paragraph 10(4) amends section 809E ITA [application of the Remittance Basis without a claim], so that the treatment of an individual deemed domiciled in the UK by virtue of new

section 835BA and under section 809E will be the same as that for an individual domiciled in the UK under general law.

35. Paragraph 10(5) makes further provision to remove references in section 809H to the `17 years` residence test also referred to in paragraph [] of this note above.
36. Paragraph 11(1) provides that the amendments made by paragraph 10(1)-(5) take effect from 6 April 2017.
37. Paragraph 11(2) makes provision for paragraph 11(3) to apply where section 10A as originally enacted applies to an individual and the year of return is 2017-18.
38. Paragraph 11(3) provides that the amendments made under paragraphs 10(2), (3) and (5) have no effect in paragraph 1(2) cases where `foreign chargeable gains` accrue in an intervening year.
39. Paragraph 11(4) sets out the statutory definitions of `year of return` and `intervening year` for the purposes of paragraphs 11(2) and (3).
40. Paragraph 11(5) applies paragraph 11(6) to cases where section 10A substituted by paragraph 119 of FA 2013 applies to an individual.
41. Paragraph 11(6) disapplies the effect of the amendments made under paragraphs 10(2), (3) and (5) in the period of return for the purposes of Capital Gains Tax in respect of foreign chargeable gains accruing to the individual during a `temporary period of non-residence` beginning before 8 July 2015.
42. Paragraph 11(7) sets out the statutory definitions of "temporary period of non-residence" and "period of return".
43. Paragraph 11(8) sets out the statutory definition of `foreign chargeable gain` for the purposes of paragraph 10(3) etc.
44. Paragraph 12 deals with the residence of personal representatives. Paragraph 12(1) amends section 834 ITA to insert sub-section (5) which applies the new deemed domicile test in s 835BA ITA for the purposes of determining whether a deceased person was domiciled in the UK at death under s 834(3).

Background note

45. The UK currently provides significant tax advantages for wealthy individuals who are resident here but domiciled abroad, often referred to as `non-doms`.
46. These advantages encourage talented foreigners to live and work in the UK. Sometimes however, they have led to unfair outcomes.
47. The Government wants to reform the tax treatment of non-doms so that the UK can continue to benefit from the presence of talented foreigners while also addressing the unfair tax outcomes. Accordingly, the Chancellor announced at Summer Budget 2015 the government's intention to reform the taxation of UK resident individuals who are non-doms. Included in this announcement was a commitment to include legislation in Finance Bill 2016 covering the

Income Tax, Capital Gains Tax and Inheritance Tax aspects of these reforms.

48. When the reforms were announced at the summer 2015 Budget, the government made it clear that those long-term resident non-doms who have set up an offshore trust before they become deemed-domiciled having been resident for 15 of the past 20 years will not be taxed on trust income and gains that are retained in the trust. These protections will be legislated in Finance Bill 2017.
49. Since then, HM Treasury consulted on the detail of these reforms. Draft legislation was published as part of the consultation which showed how the new “deemed domicile” tests would work for Inheritance Tax. This consultation also showed how legislation for the Income Tax and Capital Gains Tax could work for the purposes of access to the Remittance Basis only.
50. This note covers consultation on how the legislation for the Income Tax and Capital Gains Tax could work in other areas where there is a difference in treatment between UK doms and non-doms.

If you have any questions about this change, or comments on the legislation, please contact David McDowell on 03000 585284 (email: david.mcdowell@hmrc.gsi.gov.uk). The deadline for comment is 2 March 2016.