

## GES NewsFlash

### HMRC provides draft legislation for Residence and Domicile Changes

On 18 January HMRC published details of the Government's proposed changes to the UK residence and domicile rules, taking effect from 6 April 2008, as previously outlined in the Pre-Budget Report of 9<sup>th</sup> October 2007, and the Consultative Document published on 5<sup>th</sup> December 2007. Although the draft legislation is voluminous it contains no major surprises, but several significant points of detail. The full implications will take time to digest.

#### **Residence**

In determining residence, days of arrival and departure will be counted as full days, including days where an individual arrives and leaves on the same day. The only exception is for certain transit days where the individual does not emerge from the customs area. This will make it impossible for executives to fly into and out of the UK on the same day and hold business meetings at the airport, without that being taken into account as a whole day's visit for residence purposes.

HMRC maintains that anyone spending more than 182 days in the UK under the new count will be automatically resident. They will apply the same approach in counting days for the non-statutory 90 days average test over four tax years.

**Our View:** This approach is aggressive and it seems questionable whether failing the new 90 days average test would in all cases make an individual tax resident in law.

#### **The £30,000 charge and loss of Personal Allowances**

As expected, the draft legislation confirms that the charge will apply where an individual is resident at any time in seven of the previous nine tax years, and will be charged and collected as income tax. Double tax issues are not addressed.

HMRC also confirm that an individual who claims the remittance basis will also lose both their income tax personal allowance and the capital gains annual exempt amount, unless their remittance basis income and gains together are less than £1,000 per annum.

**Our View:** Employers will need to consider revising their tax equalisation policies to reflect the potential loss of allowances.

#### **Claiming the remittance basis**

Unless a non-domiciled or not ordinarily resident individual claims the remittance basis in his tax return he is taxable on his worldwide income and gains. He has five years from the filing date to do this. Currently, foreign employment income earned by a temporarily resident (not ordinarily

resident) employee is exempt from income tax, unless remitted.

**Our View:** It appears that for tax equalised employees employers will have to account for grossed up tax via PAYE until such a claim is made, although the draft legislation does not so far address the PAYE consequences. Also individuals who are resident but not ordinarily resident will pay income tax on their share options and restricted shares in the same way as resident and ordinarily resident employees. However, as HMRC does not mention this point, this may be unintended.

## Closing remittance loopholes

The draft legislation sets out new rules regarding the remittance basis of taxation and closes some loopholes:

- "Source ceasing" will no longer apply
- "Cash" basis of taxation: the purchase and importation of an asset using foreign income or gains will be immediately taxable.
- "Claims mechanism": no tax free remittances for non-domiciled individuals who choose to be taxed on the arising basis.
- "Mixed funds": a new statutory rule will identify the nature of funds remitted to the UK from a mixed income fund.
- Gifting income and gains to relatives or personal trusts or companies. Remittance by the relative for their own benefit will count as a remittance by the donor.
- Holding UK assets via a non-UK resident personal company, capital gains realised by the personal company will be imputed to a UK resident, non-domiciled shareholder.
- Using offshore trusts. Capital gains realised by non-UK trusts set up by UK resident but non-domiciled individuals will be taxed in the UK if they are UK sourced or if the proceeds of non-UK asset disposals by the trustee are brought to the UK.

## People to Contact

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