UK domicile status for tax purposes – Making sure your client's tax return is correct

Client name:

UTR:

Why you have received this letter

We believe your client, named above, may be affected by new rules that apply if you are not domiciled in the UK under common law.

From 6 April 2017 these new rules changed the UK domicile status for tax purposes. These rules were made under the Finance Act (No 2) 2017.

About the rules

If your client is not domiciled in the UK under common law and they meet either condition A or B below, we'll apply these new rules to them. This means that we'll treat them as domiciled in the UK for tax purposes (known as 'deemed UK domiciled').

Condition A

You're 'deemed UK domiciled' if you:

- were born in the UK
- have the UK as your domicile of origin
- are resident in the UK after 5 April 2017

If your client was born in the UK and had a UK domicile of origin at birth, they can get a domicile of choice outside the UK under common law, if they've resided in another country or law territory with the intention of staying there permanently.

If they then return to the UK on or after 6 April 2017 and become UK resident for that year, they will automatically be deemed domiciled in the UK for tax purposes, under Condition A.

Condition B

This condition applies when you're non-UK domiciled under common law and have been UK resident for at least 15 of the 20 tax years immediately before 2017 to 2018 tax year, or later tax years.

You must count all UK tax years of residence including:

- tax years where you were under the age of 18
- any tax year you were resident for part of the tax year (for example if you leave from or arrive in the UK during a tax year)

What this means for your client

Your client may have become deemed UK domiciled under one of the above conditions. This means they have to pay UK tax using the 'arising basis'. This means they:

- cannot claim to be taxed on the remittance basis
- must report all their worldwide income and gains in their UK tax return using the arising basis

How to report foreign income and gains on the arising basis

Using the arising basis, they pay UK tax on:

- income and gains from the UK
- income from outside the UK
- gains from the disposal of their assets, wherever they are in the world

However, they must declare all of their foreign income and gains on their tax return. Even if:

- they have already been taxed in another country
- they do not bring them to the UK

If the foreign income or gains have already been taxed in another country, they may be able to claim a credit in the UK for the tax paid in another country. For more information about this, go to **www.gov.co.uk** and search for 'HS263'.

Appendix A and B enclosed give more detail which any affected customer needs to consider.

What you need to do now

Please check if your client meets any of the conditions to be deemed UK domiciled for the 2017 to 2018, or 2018 to 2019 tax year.

If they are deemed UK domiciled and have not already done so, please amend their 2018 to 2019 tax return, completing boxes 23, 23.1, 23.2 and 23.3 of the SA109 'Residence, remittance basis etc' supplementary pages.

If your client is unable to make an amendment to their 2017 to 2018 return, they may want to make a disclosure to HMRC. They should do this if they believe they have omitted any additional tax liability on their UK tax return.

You should also carefully read the enclosed Appendix A and B, to make sure that they have reported all their worldwide income and gains correctly to HMRC. And that they have included any foreign income or gains they've remitted in the tax years 2017 to 2018, or 2018 to 2019 that are from a previous year where they claimed the remittance basis.

For more information about the changes, you can:

- go to **www.gov.uk/government/collections/deemed-domicile-changes-from-6-april-2017**
- contact us on 03000 511811between the hours of 9am and 5pm – please note that this number is only available for three months from the date at the top of this letter
- email us at wmbc.mailboxbelfast@hmrc.gov.uk

We may in the meantime check your clients tax affairs to make sure that they are dealing with everything correctly. This is to help avoid mistakes, as the new rules make significant changes to the way we tax these customers.

If you think you need to make any amendments to your clients return, or any disclosure to tell us about any additional UK tax, please do so now.

We recognise the value of professional agents helping customers with their tax. For information about the required standards for agents, go to
www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents

Yours faithfully

WMBC Compliance
HM Revenue and Customs

HM Revenue & Customs

Appendix A

Changes to consider under both Condition A and Condition B as a deemed UK domicile

Using the remittance basis offshore income and gains from earlier years

If you've used the remittance basis in earlier years and bring any of those earlier years' foreign income or gains to the UK at a later date, you'll need to pay any UK tax that is due. This applies even if you're using the arising basis to pay UK tax for that year.

Typical examples of foreign income and gains which you need to report include:

- interest from overseas savings
- dividends from foreign companies
- income from overseas pensions and property
- foreign employment and self-employment income
- capital gains from the disposal of overseas assets and property
- certain income or gains paid out of a trust
- income or gains retained or accumulated in certain types of trust (for example, settlor interested trusts)
- income or payments that are an individual's based on anti-avoidance legislation, including the Transfer of Assets Abroad provisions
- services and benefits provided in the UK that are paid for with offshore income or gains

Appendix B

Transitional provisions to consider as a deemed UK domicile taxed on the arising basis under Condition B

Cleansing of Mixed Fund Accounts

If you are deemed UK domiciled in the tax year 2017 to 2018 or 2018 to 2019 under Condition B, you may have cleansed mixed fund offshore account. This must have been done within a two-year period ending 5 April 2019, and would only apply if you met the conditions for cleansing as detailed in the guidance. Go to **www.gov.uk/guidance/cleansing-mixed-funds** for a copy of this guidance.

You must be able to show evidence of the sources of different funds nominated before any transfers were made and you should keep a record of any mixed fund cleansing 'nomination'. If you do not, the normal mixed fund ordering rules as detailed in s809Q and s809R ITA07 will still apply. Also, any remittances made to the UK from that account may be taxable.

Rebasing of foreign assets for Capital Gains Tax purposes

If you were deemed domiciled under condition B on 6 April 2017, you'll be entitled to rebase certain foreign assets if you disposed of them. You can use their market value at 5 April 2017 to calculate the gain or loss on the disposal of that asset. But a number of conditions apply.

For you to rebase certain foreign assets that you disposed of, then:

- Section s809H ITA 2007 (claim for remittance basis and a charge applies) must apply to you in relation to the tax year 2016 to 2017 or an earlier year
- you must have been resident in the UK for 2017 to 2018
- for tax year 2017 to 2018 and each year up to and including the year that you made the disposal, you must have met condition B of s835BA (that is, you are deemed UK domiciled under the 15 out of 20 rule and you have not become domiciled in the UK under common law)
- Condition A of s835BA ITA2007 must not apply to you – for example. rebasing is not available if you were born in the UK with a domicile of origin in the UK

- for the year of disposal, you're not domiciled in the UK at any time in the year under common law

For the asset that you disposed of, it must:

- have been held on 5 April 2017
- have been disposed of on or after 6 April 2017
- not have been situated in the UK at any time in the period from 16 March 2016 (or date it was acquired if this is later) to 5 April 2017

Special rules affecting overseas trusts

You may have settled an offshore trust before you became deemed UK domiciled. If so, you may be able to take advantage of special rules about those trusts. These new rules mean that you'll not have to pay UK tax on any overseas income and gains from the trust as they arise. But you'll still have to pay UK tax on any UK income from the trust and any amounts from "Offshore income gains".

This is a special 'protected' status for trusts.

Offshore income gains (OIGs) from a tax year that the settlor of an offshore trust is deemed UK domiciled are not automatically protected under the trust protection rules. This is because OIGs are not included in the definition of "relevant foreign income" under section 830 ITTOIA 2005. Regulation 19 of the Offshore Funds (Tax) Regulations 2009 states that OIGs will be treated as an individual's "relevant foreign income" only if the remittance basis applies to the individual for the tax year in question. Individuals who are deemed domiciled under "the 15 of the last 20 years" rule cannot qualify for the remittance basis. This means OIGs in a trust settled by them cannot be treated as Protected Foreign Source Income.

If you become deemed UK domiciled we will also tax the value of any benefits that you, or in certain circumstances a close family member, receive from the offshore trust. We will do this from the point you become deemed UK domiciled. This is instead of taxing any income or gains. We will apply this charge if we can match the value of the benefit with protected foreign source income or gains from the trust structure. As you can no longer use the remittance basis this charge will apply to benefits that you have received anywhere in the world.

It's possible for a trust to lose this special protected status if the trust becomes 'tainted'. This can happen for example, where loans are made between the deemed domiciled settlor and a trust where:

- the settlor makes a loan to the Trust on non-commercial terms
- the settlor takes a loan from the Trust and pays excessive interest on that loan to the Trustees
- a fixed term loan agreed before you become deemed domicile on non-commercial terms is not put on to commercial terms at the end of the fixed term
- interest on a loan is capitalised
- interest due on a loan is not paid

If a trust is 'tainted' then the deemed domicile settlor will have to pay UK tax on an arising basis on all income and gains from the trust structure.

For more detailed guidance on trust protections and capital gains tax changes, go to:
www.gov.uk/government/publications/trust-protections-and-capital-gains-tax-changes

Important note

The majority of transitional provisions only apply if you are not deemed UK domiciled under Condition B and not UK domiciled under common law.

Please check your position carefully.

HM Revenue & Customs

Important information: Supporting customers during the Coronavirus (COVID-19) situation

The Coronavirus (COVID-19) situation continues to change. We're following government advice and are regularly reviewing our processes. This information sheet tells you what we're doing to support our customers.

If you need more help

If you have any health or personal circumstances that may make it difficult for you to deal with us, please tell us. Our contact details are at the top of the enclosed letter. We'll help you in whatever way we can. For more information about this, go to www.gov.uk and search for 'get help from HMRC if you need extra support'.

Paying tax

We know the Coronavirus (COVID-19) situation has affected many people's personal and business finances. So, we want to help customers work out the best way of paying any tax they owe.

By paying any tax you owe, you'll be helping to fund the vital public services that we all rely on. And you'll help the economy recover as quickly as possible.

Paying now will make it easier for you to manage your tax payments in the future. It might also help you manage your cash-flow.

If you can pay now

If you owe tax, and you can pay it now, we recommend that you pay electronically. To find out how to pay, go to www.gov.uk and search for 'paying HMRC'. Then select the type of tax you need to pay and follow the step-by-step instructions.

If you cannot pay now

If you cannot pay tax because of Coronavirus (COVID-19), you may be able to delay some tax payments without having to pay a penalty. You can delay your:

- VAT payments due between 20 March 2020 and 30 June 2020 – you have until 31 March 2021 to pay these
- Self Assessment payment on account due in July 2020 – you have until 31 January 2021 to pay this

For more information about VAT payments, go to www.gov.uk and search for 'deferral of VAT payments due to coronavirus (COVID-19)'.

For more information about delaying your Self Assessment payment on account, go to www.gov.uk and search for 'if you cannot pay your tax bill on time'.

If you think you'll have problems paying any other tax bills, please tell us as soon as possible. We'll work with you to agree payment arrangements that you can afford. We'll do everything we can to help you.

To talk about your payment options, phone us now on 0800 024 1222. We have a team of experienced advisers who are here to help.

More time to appeal or ask for a review

Because of the Coronavirus (COVID-19) situation, we're now giving our customers more time to appeal or ask us for a review if they disagree with a decision we've made.

We normally allow 30 days to appeal or ask us for a review. However, we know this might not be long enough at the moment. So, for now, we're giving customers an extra 3 months.

If we send you something that says you can appeal to us or ask for a review:

- within 30 days – you now have 3 months and 30 days
- by a certain date – you now have an extra 3 months after that date

If we send you something that says you can appeal to the tribunal, you would normally have 30 days to do this. If you appeal later than the 30 days, the tribunal will ask us if we object to a late appeal. We will not object if you appeal within 3 months and 30 days.

Reasonable excuse for not meeting a tax obligation

If we're charging penalties because certain tax obligations have not been met, we'll consider whether there was a 'reasonable excuse' for them not being met. A reasonable excuse is something that stopped a person from meeting a tax obligation they had taken reasonable care to meet.

We'll now consider problems caused by the Coronavirus (COVID-19) situation as a reasonable excuse for some tax obligations not being met. For example, not paying or not sending us a return.

For more information about this, go to www.gov.uk and search for 'disagree with a tax decision' and then select 'reasonable excuses'.

More information about Coronavirus (COVID-19) and the financial help available

Millions of customers affected by the Coronavirus (COVID-19) situation have already taken up financial support. For more information on the range of support available, go to www.gov.uk and search for 'Coronavirus COVID-19'. Then select from:

- work and financial support
- businesses and self-employed people

HM Revenue & Customs

Corresponding with HMRC by email

Use the following information to decide whether you want to deal with us by email. We take the security of personal information very seriously. Email is not secure, so it's very important that you understand the risks before you email us. We will not deal with you by email unless you tell us you accept the risks of doing so.

About the risks

The main risks associated with using email that concern HMRC are:

- confidentiality and privacy – there's a risk that emails sent over the internet may be intercepted
- confirming your identity – it's crucial that we only communicate with established contacts at their correct email addresses
- there's no guarantee that an email received over an insecure network, like the internet, has not been altered during transit
- attachments could contain a virus or malicious code

How we can reduce the risks

We'll desensitise information, for example by only quoting part of any unique reference numbers. We can also use encryption. We're happy to discuss how you may do the same but still give the information we need.

If you do not want to use email

You may prefer that we do not respond by email, for example because other people have access to your email account. If so, we're happy to respond by another method. We'll agree this with you either by telephone or in writing via post.

If you do want to use email

If you would like to use email as one of the ways HMRC will contact you, we'll need you to confirm in writing by post or email:

- that you understand and accept the risks of using email
- that you're content for financial information to be sent by email
- that attachments can be used

If you are the authorised agent or representative we'll need you to confirm in writing by post or email that your client understands and accepts the risks.

Please also:

- send us the names and email addresses of all people you would like us to use email with - you, your staff, your representative, your agent, for example
- confirm you have ensured that your junk mail filters are not set to reject and/or automatically delete HMRC emails

How we use your agreement

Your confirmation will be held on file and will apply to future email correspondence. We'll review the agreement at regular intervals to make sure there are no changes.

Opting out

You may opt out of using email at any time by letting us know.

More information

You can find more information on HMRC's privacy policy, visit **www.gov.uk/help/privacy-policy**