

**CHANGES AFFECTING UK RESIDENT NON-DOMICILIARIES**  
**FROM 6<sup>TH</sup> APRIL 2008**

Currently, persons who are resident but not domiciled in the UK enjoy favourable treatment for income and capital gains tax purposes in the following respects:

1. Broadly speaking, foreign source income is charged only if remitted to the UK (ITTOIA 2005, section 832, ITEPA 2003, section 22). Foreign source income arising under a settlement in circumstances in which the settlor would normally be charged on it is similarly not taxed unless remitted (ITTOIA 2005, section 648). The charge under ITA 2007, section 720 (formerly under ICTA 1988, section 739) on income arising to a non resident as a result of a transfer of assets where the transferor has power to enjoy the income does not apply if the income is not remitted (ITA 2007, section 726).
2. Capital gains arising on disposal by a non domiciliary of assets situated outside the UK are taxable only if remitted (TCGA 1992, section 12).
3. Gains realised by non-resident trustees cannot be attributed under TCGA 1992, section 86, to a settlor who is not domiciled in the UK in any part of the tax year in which the gain is realised.
4. Gains realised by non-resident trustees attributed under TCGA 1992, section 87 to a beneficiary who receives a capital payment are not taxed if the beneficiary is not domiciled in the UK at any time in the year of attribution.
5. Gains realised by non-resident “close” companies are not apportioned to non-domiciled individuals (TCGA 1992, section 13).

As from 6<sup>th</sup> April 2008, the law is to be changed, as follows:

1. An adult non-domiciled individual with foreign income and/or gains of £2,000 a year or more who has been resident in the UK for more than seven of the last ten tax years can use the remittance basis only if he pays (through the self-assessment system) an annual charge of £30,000 in respect of unremitted income and gains. This is in addition to any liability on income or gains remitted. The sum used to pay the charge will not be taxed as a remittance if it is paid from an offshore source directly to HMRC by cheque or electronic transfer, but if the sum is repaid, it will (assuming it to represent income or gains taxable on remittance) be taxed as a remittance at that point. The choice of whether to claim the remittance basis can be made annually – it is not a choice made once and for all – but income arising in a year for which a claim is made will be taxed if remitted in a later year for which there is no claim. A person electing for the remittance basis will not be entitled to the personal allowance or the annual exemption from capital gains tax.

2. The charge under ITA 2007, section 720 on income arising to a non-resident as a result of a transfer of assets will apply to non-domiciled individuals. The remittance basis will apply where relevant.
3. Detailed rules relating to remittance are being introduced to close perceived loopholes. Income received in the UK and used in such a way that the owner, his or her spouse, or certain other specified persons (principally cohabiting partners and minor children and grandchildren) benefit will be treated as remitted. A charge on remitted investment income will no longer be dependent on cash being received in the UK; other assets, and services, derived from such income will generally speaking also attract a charge, unless the current owner owned the asset on 11<sup>th</sup> March 2008 or it was in the UK on 5<sup>th</sup> April 2008. There are a number of specific exemptions including assets costing less than £1,000, clothing and jewellery. Income applied abroad to pay interest on a loan made abroad will be treated as remitted if the moneys advanced are brought to the UK by or for the benefit of the owner of the income (or spouse or other specified person), subject to transitional relief for existing loans secured on residential UK property. Further, it will no longer be possible to remit income in a tax year after the source of the income has ceased without charge.
4. The charge under TCGA 1992, section 87 on beneficiaries who receive capital payments (including benefits provided such as rent free accommodation) is to be extended to non-domiciled resident beneficiaries. The remittance basis will apply where the beneficiary claims (or is entitled to) the remittance basis so that in these circumstances only benefits received in the UK will be taxable. Trustees will be able to make an irrevocable election to rebase assets held as at 6<sup>th</sup> April 2008 in order to exclude from charge on a non-domiciled beneficiary any part of a gain attributable to the period before that date. Capital payments made to non-domiciled beneficiaries before 6<sup>th</sup> April 2008 will not attract a charge even if matched to gains realised thereafter and trust gains realised before that date matched to capital payments thereafter will not be taxed in the hands of non-domiciled beneficiaries, irrespective of whether the remittance basis applies to the beneficiary concerned. There will be specific rules governing the question of the particular gains to which payments made to non-domiciled beneficiaries before 6<sup>th</sup> April 2008 are to be matched.
5. Gains realised by non-resident “close” companies will be able to be apportioned to resident but non-domiciled participators. Although some changes (described in the relevant Budget Note as “minor”) are to be made to the recent draft legislation, it is expected that tax will be charged on an arising basis if the asset is situated in the UK and (subject to the claim for the remittance basis) on a remittance basis if it is situated abroad.

Depending on individual circumstances, some planning prior to 6<sup>th</sup> April 2008 may be possible to mitigate the effect of the changes. Consideration should be given to this possibility without delay.

This note is intended for general guidance only and it is important to consider the effect of the provisions with reference to the facts of each particular case. For further information or advice please contact **Chris Cooke, Gerald Chappell, Karen Methold or Lawrie Kearns.**

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Whilst every effort has been made to ensure that the information contained in this briefing is correct it is intended as a guide only and should not be relied upon when embarking on any tax or estate planning exercises. Specialist legal advice should always be sought so that all the factors specific to your circumstances can be taken into account.