Domicile – income tax and CGT new clause and schedule

Inheritance Tax and trusts | Personal tax

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The CIOT has commented on the draft clause published on 2 February 2016 (and updated on 5 February to correct typographical errors) to be included in Finance Bill 2016 to introduce the new deemed domicile rules for income tax and capital gains tax. The new rules will take effect from 6 April 2017.

The CIOT reiterated its strong preference for the complete package of measures enacting the changes to domicile for tax purposes to be introduced into legislation at the same time (in Finance Bill 2017), including the changes to the treatment of offshore trusts. If the changes are to be legislated in stages, the CIOT has proposed a 'sunset clause' under which the Finance Bill 2016 measures fall away if the Finance Bill 2017 trust changes are not enacted.

Although the explanatory notes to the draft clause indicate that the intention 'to provide the protections promised by the chancellor for trusts and transfer of assets abroad arrangements made when an individual is not deemed domiciled in the UK', the current amendments to TCGA 1992 ss 69 (trustee residence) and 86 (attribution of gains to settlors) as the draft clause stands it does not offer the promised protection.

The CIOT made three specific comments on the draft legislation:

- The clause refers to the individual's domicile of origin being 'in the United Kingdom'. We recommended that this wording be amended to 'in any part of the UK' to reflect the legal position that England and Wales, Scotland and Northern Ireland are separate countries for the purposes of domicile.
- We consider that a grace period of two or three years should also be included for non-UK source income and capital gains for returning UK domiciliaries who work in the UK for a short time or return to the UK for medical treatment or to

care for elderly relatives after many years abroad.

- ITEPA 2003 s 355 (deductions for corresponding payments by non-domiciled employees with foreign employers) and ss 373-374 (the five-year rule for non-UK domiciled employees' travel costs) are amended in the draft schedule to remove the ability to claim a deduction if the individual is deemed to be domiciled in the UK. The CIOT asks whether the deeming rule will apply equally where deeming would assist the employee. Section 376, for example, provides for a deduction for foreign accommodation and subsistence costs for overseas employments if the employee is domiciled in the UK.

The CIOT's response can be found here.