Draft FB 2017 Cl 40: Deemed domicile, income and capital gains tax

Inheritance Tax and trusts | Personal tax

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The CIOT considers the first tranche of the FB 2017 clauses implementing the non-dom reform package.

The CIOT has submitted a response to the first tranche of the FB17 draft consultative clauses, published on 5 December 2016, that implement these reforms. The CIOT response referred firstly to the unintuitive consequence of the new 'fifteen out of twenty year' rule (set out in Condition B at a new ITA 2007 s835BA(4)) that an individual can become deemed domiciled in a year when he or she is not resident (i.e. in the sixteenth year). An example is set out in the response. That result has potentially adverse consequences for a trust established before the settlor becomes deemed domiciled as an addition to such a trust in the sixteenth year would mean that the proposed legislative protections for overseas trusts established before becoming deemed domicile will no longer apply.

Our response continues with a detailed review of the CGT aspects of the protection for offshore trusts that are contained in Schedule 12 Part 2 of the draft clauses ('Protection of Overseas Trusts'). The response also considers the draft provisions in Schedule 12 Part 3 providing for CGT rebasing of non-UK assets held personally by individuals who become deemed domiciled on 6 April 2017 under the fifteen out of twenty year rule. An earlier submission responded also to Schedule 12 Part 4 dealing with the 'cleansing' of mixed funds that is the provisions allowing mixed funds held in overseas bank accounts to be segregated into income, capital gains and 'clean' capital for future use.

Subsequent to the CIOT's submission, the government published a further draft of the legislation on 26 January. The new draft, together with explanatory notes, can be found on GOV.UK. This second tranche contains new draft legislation in respect of the income tax protections for overseas trusts and includes changes to the draft provisions for 'cleansing' of mixed funds and CGT rebasing. The CIOT's response to the further draft is in progress at the time of writing.