Reforms to the taxation of non-domiciled individuals

Personal tax

01 April 2017

The CIOT responds to the second tranche of legislation and HMRC issues clarification in some areas.

As previously reported the CIOT responded to the first set of draft clauses published on 5 December last year. A further draft of the legislation was published on 26 January. This second tranche contains new draft legislation in respect of:

- The introduction of income tax protection provisions for offshore trusts where the property in the trust was settled at a time when the settlor was non-UK domiciled and not deemed domiciled under the 'fifteen out of twenty' rule;
- An extension of the CGT re-basing provisions from those previously published. (The opening words of paragraph 41(5) of the Schedule now reads 'In computing, for the purposes of TCGA 1992' rather than – as was the case in the Schedule published on 5 December – 'In computing, for the purposes of capital gains tax'. It has been confirmed to the CIOT that the effect is to clarify that rebasing will now apply to non-reporting status offshore funds, provided all the other conditions in Part 3 to the Schedule are met).
- Amendments to the previously published provisions governing the ability to segregate mixed funds held in offshore bank accounts into their constituent parts that is income, capital and gains (the so-called 'cleansing' of mixed funds) to allow for remittances from overseas clean capital in priority to taxable income and gains.

Our comments made in our previous submission dated 19 January 2017 remain relevant to the provisions that have not been amended and, in some cases, there is cross reference between our comments dealing with the CGT aspects of the trust protections (as published in the 5 December draft and replicated in the 27 January

drafts) and the equivalent income tax protections (included for the first time in the 27 January draft).

The CIOT's submissions on both tranches can be read on the CIOT website. In addition this page of the CIOT's website sets out a further clarification from HMRC in respect of additions to trust property that may 'taint' the income and CGT protections for offshore trusts (referred to above).

It was announced at the Spring Budget that the one-off opportunity to 'cleanse' existing mixed funds within foreign bank accounts (as noted above) will be extended by government amendment to income, gains and capital held in mixed funds from years before 2007/08, as well as those from subsequent years. The amendment is welcome and one that the CIOT made the case for in its latest submission