Non-dom reforms: Finance (No 2) Bill

Personal tax

01 May 2017

The consultative process moves into its final stages with the publication of the Finance Bill, however some provisions will not be legislated for in the 2017 Act.

With the publication of Finance (No.2) Bill 2017 we see the final shape of the non-dom reforms. However, unexpectedly, the government announced, by way of a technical note published on 21 March 2017, that it has deferred some of the anti-avoidance provisions in relation to the offshore trust protections, some of which would have affected offshore trusts more widely.

The legislation to be published in a future Finance Bill is:

Capital Gains Tax TCGA Schedule 5:

- disregard of section 87 capital payments to non-residents
- disregard of section 87 capital payments to migrating beneficiaries
- transfer of s 87 benefits charge to the settlor where the beneficiary is a close family member of the settlor and is not liable to CGT on the payment
- attribution of gains to recipients of onward gifts (recycling rule)

Chapter 5 of Part 5 of ITTOIA (Settlements):

- benefits charge for settlor and close family members of settlor
- benefits charge on settlor when beneficiary is close family member and is not taxable on the benefit
- attribution of deemed income to recipients of onward gifts (recycling rule)

Chapter 2 of part 13 of ITA 2007 (Transfer of Assets Abroad)

- attribution of deemed income to recipient of onward gift (recycling rule)

Following the issue of the technical note, the CIOT and the ICAEW asked HMRC to clarify when these measures are likely to be brought into effect and from what date. HMRC stated that, although not made explicit in the technical note, any future legislation will take effect from the start of the relevant tax year for the Finance Bill in question. They have also made clear that it would not be backdated to April 2017 as that would be retrospective in effect, and contrary to the standard practice of avoiding retrospective legislation wherever possible. However, it should be emphasised that final decisions on future legislation will rest with HMT Ministers.

It has not been confirmed whether the omitted provisions will appear in Finance Bill 2018 or a later Bill.

The clarification is also available on the CIOT's website.