

Reform of the taxation of non-domiciled individuals

Increasing the Remittance Basis Charge and encouraging UK business investment

Grant Thornton UK LLP (Grant Thornton) welcomes the opportunity to respond to the consultation document released on 17 June 2011 by HM Revenue & Customs (HMRC) in connection with the proposed reform of the taxation of non-UK domiciled individuals. Our general comments in respect of the proposals are set out below, followed by our responses to the specific questions raised in the consultation document.

General comments

Increasing the Remittance Basis Charge (RBC)

Grant Thornton is in general agreement with the Government that the time is right to review the taxation of non-UK domiciled individuals. It is our view that the proposed increase in the RBC is not excessive and, balanced against the proposed incentive for UK business investment, the proposals are generally accepted as a positive resolution.

The consultation document does not raise any specific questions regarding the specific level of the increase in the RBC so it is assumed that the increased amount, and proposed length of residence before it should apply, are not within the consultation. Regardless, it is our belief that the proposed increase in the RBC will go some way to address the potential disparity between the existing tax treatment of certain UK resident individuals without discouraging non-UK domiciled tax payers from contributing to the UK economy.

Encouraging business investment

The proposals introduce a new measure that is purported to encourage business investment in the UK by allowing non-domiciled individuals to remit untaxed foreign income and gains to the UK for the purpose of commercial investment in UK business without a tax charge. This proposition will certainly be good news for those individuals able to take advantage of the provisions. We would agree with the comment at 1.5 of the consultation document, which states that the current rules may discourage individuals from bringing funds into the UK and generally welcome this relaxation to the rules.

Grant Thornton's opinion on these proposals is largely delivered in the answers to the questions set out in the consultation document. We feel that there are a number of issues that require addressing in order to ensure the smooth integration of the measures into the UK tax regime and should therefore be grateful for your further clarification on a number of our concerns. These include:

- i. It is proposed that any trading or commercial property activity must constitute 'a substantial proportion of the overall activities of the business'. We should welcome clarification as to what would represent a 'substantial proportion'.
- ii. We should also be grateful for some confirmation as to whether there will be a set time frame within which an investor will be able to move funds back out of the UK without penalty, in circumstances where the 'substantial proportion' test is breached.

- iii. It is assumed that any return of investment will be treated as a taxable remittance, where the returned funds remain in the UK, only to the extent of the amount received. We should be grateful if you would confirm that only those funds actually received, and then subsequently retained in the UK, will be subject to a remittance charge.
- iv. The proposals confirm that the non-UK domiciled individual may be connected with the business but there will be anti-avoidance provisions concerning the extraction of value from the business. Whilst this measure will no doubt be appreciated, it is hoped that the accompanying rules will not be unduly complicated.
- v. Paragraph 2.59 states that individuals who choose to be taxed on the arising basis 'will, by definition, not benefit from the business investment incentive'. We assume that this assertion does not imply that such an individual will be denied the opportunity to take advantage of the incentive. The incentive may appeal to an individual who has opted to be charged to tax on the remittance basis in previous years and so it would be unfortunate if the availability of the incentive was limited in such a way.

Furthermore, while we would report that there is some support for the inclusion of UK LLP business within the incentive, we would agree that the difficulties summarised in points 2.28 and 2.29 of the consultation mean that extending the policy in this way may lead to additional issues and would inevitably give rise to substantial anti-avoidance measures. It is preferable that the measures remain as simple as possible, in line with the statement of intent made at paragraph 2.19 of the consultation document.

We also have a query with regards to the application of the remittance basis following the introduction of the incentive. Paragraph 2.58 of the consultation document appears to suggest that the payment of any respective RBC will be a prerequisite for the making of any tax free investments in the UK. However, we should be grateful if you could confirm whether a requirement to make a claim for the remittance basis to apply, under s.809B of the Income Tax Act 2007, will remain where an individual chooses to take advantage of the incentive to the full extent of their overseas income and capital gains. More specifically, will s.809D take precedence where less than £2,000 of unremitted income and gains remain after the investment is made?

Simplifying the existing remittance basis rule

The rules surrounding this area of taxation are complex, not least with regards to the application of the 'remittance basis'. Any efforts to simplify the regime are generally welcomed. We do feel that additional measures could easily be introduced to further simplify the rules, however. It would be unfortunate not to take advantage of this opportunity to consider a number of these now, especially in light of the fact that the consultation document confirms that the regime will not be subject to any further changes for the life of this Parliament.

Whilst not within the specific remit of the objectives announced at the 2011 Budget, we do believe that the government could have taken the opportunity to 'go a little further' in providing greater clarity on an individual's domicile status. With a statutory test for residency also under consultation, could it be argued that a similar exercise could have been undertaken in defining the concept of domicile for tax purposes?

In addition, the concept of 'nominated income' continues to be a major source of complication. Whilst the simplification proposed would be a welcome measure, it is unfortunate that the consultation fails to consider any alternative methods here. The removal of this requirement all together would undoubtedly simplify the regime.

Specific comments

We set out our comments on the specific questions raised in the consultation document below.

Business Investment

1. Are the proposed exclusions from the incentive appropriately drawn? Should other types of business be included or excluded?

The proposed exclusions, such as the letting of residential properties, are logical given the policy objective. However, we should welcome further confirmation regarding the specific availability of the incentive with respect to investments in qualifying furnished holiday lettings and also with regards to farming businesses.

2. What would be the impact on both investment and complexity of extending the incentive to listed companies?

We believe that extending the incentive to include listed companies would have no adverse implications for tax purposes. Indeed, allowing investments into all companies may avoid any potential complications arising where a company either becomes listed or de-lists during the period of investment.

This measure would almost certainly increase the value of the proposals and would no doubt see a great deal more funds remitted into the UK under the incentive.

3. Are the proposed anti-avoidance provisions suitable? Would it be appropriate to require remitted income or capital gains to be taken out of the UK or reinvested within two weeks of the disposal of the investment?

The proposed anti-avoidance measures are again logical given the policy objective. We would agree that a provision requiring the subsequent expatriation of funds from the UK once an investment comes to an end is a much simpler method than imposing a series of generic restrictions. However, it is our estimation that the time frame proposed is far too short. We would propose that a 28 day period would be more suitable, especially in instances where an individual wishes to reinvest the funds in a further UK business. In these cases in particular, a two week window will simply not be practicable.

We would be interested to hear whether any special dispensation may be granted in this regard, perhaps on appeal to HMRC, where there are further mitigating circumstances, or where funds are to be reinvested in new business endeavours.

4. Would a mandatory requirement to claim the relief for business investment on a Self Assessment tax return be an appropriate way of monitoring the policy? If not, what alternative monitoring approach would be appropriate?

Claiming the relief for business investment on a Self Assessment tax return would appear to be an appropriate option.

The additional reporting obligations may be unattractive to some investors as the record keeping requirements may, in some cases, prove onerous. We believe that the basic information required, identified in paragraph 2.56 of the consultation document, should indeed suffice for the purposes of the disclosure. However, further details will need to be retained by the investor in case the funds are later subject to a remittance charge. It may be helpful if separate working sheets are made available that an individual may use to record each separate component of income and capital remitted.

5. Would the policy as outlined be an effective means of encouraging investment in the UK?

As stated above, we would consider the proposals to be an attractive option for many non-UK domiciled individuals.

Simplification

6. (a) Do you think the proposed solution for each simplification would be effective?

Nominated Income

The introduction of the RBC has led to many individuals being required to exercise great care in managing their offshore income and, in particular, those funds subsequently intended to be remitted to the UK. This can place significant administrative burden on the affected individuals, not least with regards to the practice of segregating nominated funds that has since become common practice.

The recognition of the problems and complexities brought about by these measures is welcome. It is our opinion that the proposal to allow individuals to remit a nominal £10 of income or capital gains free of tax will certainly help reduce some of these administrative burdens. We would also suggest that the backdating of this measure would further benefit those affected.

However, it is acknowledged, in paragraph 2.72 of the consultation document, that the current practice with regards to the nominating of funds within a specific overseas bank account leads to 'excessive and unhelpful complexity'. Whilst the proposed relaxation would be welcome, we would question whether the requirement to nominate such an arbitrary source of income or capital gains would, subsequently, be necessary at all.

Foreign currency bank accounts

The calculation of capital gains and losses incurred as a result of the withdrawal of funds from a foreign currency bank account is another source of great complexity and administrative burden. The proposed removal of sums held from such accounts would be a welcome relaxation of the rules. However, we would again ask that consideration be given to the backdating of this measure, to exempt gains previously brought in to charge since the inception of the regime in 2008.

Taxation of assets sold in the UK

We are in general agreement that this measure would be received positively by those affected. However, it is our belief that the proposed 14 day window to expatriate the proceeds from the UK is unlikely to prove operable. This window should be extended to a minimum of 28 days, with the facility available to make a claim for a longer period in certain mitigating circumstances.

Statement of Practice (SP) 1/09

We are in general agreement that legislating for the measures included within SP 1/09 would provide greater clarity for those affected.

6. (b) Can you propose other ways in which the remittance basis rules could be simplified, provided they meet the principles described in paragraph 2.63?

See our comments above.

7. Would two weeks be a suitable period of time before which the proceeds of the sale of an exempt asset should be taken out of the UK?

As stated above, a two window in which to facilitate the removal of funds subsequent to a relevant disposal is considered too short a time frame in our opinion.

8. Should the situations outlined in paragraphs 2.98 to 2.101 fall within the new statutory treatment for employees who are not ordinarily resident and carry out duties in the UK and overseas? Are there any other situations which are not covered by SP 1/09 and might require legislative provision?

It is logical that provisions to allow the tax year to be split into periods of residence and non-residence are not duplicated when legislating for the respective measures currently provided for by extra statutory concession A11 and SP 1/09.

We are in general agreement with the points raised in paragraph 2.101 of the consultation document.

Conclusions

It is Grant Thornton's opinion that the measures proposed are likely to achieve the intended objective of encouraging non-UK domiciled individuals to continue to contribute towards the UK economy. It is our belief that the proposals are fair and welcome the measures to simplify the regime.

While we do have some reservations about the potential complications the proposed incentive may add to the already complicated regime, we are encouraged by the efforts to keep the measures as simple as possible. However, we do wonder whether the opportunity could have been taken to consider a more thorough review of the regime, with a view to achieving further simplification of the rules, as commented throughout our report.

Contacts

For any queries in respect of our comments in this document, please contact:

Francesca Lagerberg (email: francesca.lagerberg@uk.gt.com)
Chris Tysoe (email: chris.tysoe@uk.gt.com)

Grant Thornton UK LLP
Grant Thornton House
Melton Street
Euston Square
LONDON
NW1 2EP

Telephone: 020 7383 5100
Fax: 020 7383 4715



www.grant-thornton.co.uk

© 2011 Grant Thornton UK LLP. All rights reserved.

"Grant Thornton" means Grant Thornton UK LLP, a limited liability partnership.

Grant Thornton UK LLP is a member firm within Grant Thornton International Ltd ("Grant Thornton International"). Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered by the member firms independently.