

JOINT EXPATRIATE FORUM ON TAX AND NICS: 25 August 2015

2/65, HMRC, 100 Parliament Street, London, SW1A 2BQ
Chair: Mary Aiston (HMRC) and Philip Paur (Deloitte LLP)
Secretary: Owen Price (HMRC)

MEETING NOTE

1. Introductions

1.1 Introductions were given.

1.2 It was explained that as the last meeting had taken place on the morning of the Budget, it had not been possible to discuss the proposed changes to the non-domicile regime. This extraordinary meeting had therefore been called to allow the Forum to explore the proposals in more depth.

2. Summer Budget 2015

2.1 HMRC explained the wider political context underpinning the proposed changes. The issue of domicile and the taxation of non-domiciled individuals has become more salient in recent years and while the Government wishes to attract talented individuals to live in the UK and contribute to the success of the country by investing and creating jobs, it is important that those who choose to live in the UK make a fair contribution. These reforms will ensure that non-doms with close connections to the UK will be treated in the same way that everyone else is treated for tax.

2.2 In practice it is proposed that these reforms will be implemented in a two stage process. The first stage will cover core changes for Income Tax, Capital Gains Tax and Inheritance Tax (IHT) and will be legislated in Finance Bill 2016.

2.3 The second stage will encompass the more complex changes including any outstanding changes in relation to trusts and extending IHT to indirectly held UK residential property. This will be legislated in Finance Bill 2017.

2.4 HMRC confirmed the intention that all changes will take effect from April 2017.

2.5 Officials have met with external stakeholders to discuss the changes and further meetings are planned in the future.

2.6 The first stage, which will be legislated in Finance Bill 2016, will include measures to ensure that, in principle, those with a close connection to the UK will not be allowed to claim non-domicile status if they meet certain criteria.

2.7 It is proposed that individuals with a domicile of origin in the UK and who were born in the UK but subsequently leave the country will be treated as UK domiciled for tax purposes as soon as they return to the UK. HMRC acknowledged that there are certain circumstances, such as individuals returning from abroad to provide care to elderly relatives, which may require further consideration.

2.8 It is also proposed that individuals who have been resident in the UK for 15 out of the last 20 years will be deemed to be UK domiciled.

2.9 The second stage, which will be legislated in Finance Bill 2017, will take forward measures covering UK residential property held indirectly through an offshore company or other opaque vehicle. The Government proposes to amend the rules on excluded property so that non-domiciled individuals pay IHT on the value of such UK property in the same way as UK domiciled individuals.

2.10 HMRC set out the timeline for the changes. A consultation document will be published in September, followed by a 4 – 6 week consultation period. Draft legislation will then be published following Autumn Statement for inclusion in Finance Bill 2016. HMRC again confirmed that although the legislation will be in Finance Bill 2016, the changes will not take effect until April 2017.

2.11 A consultation on the IHT proposals relating to indirectly held UK residential property will be published after Autumn Statement.

2.12 Forum members asked the rationale behind focusing on an individual's domicile at birth, rather than later on in life, for example at age 16. HMRC stated that it is felt that a test based on birth is clear and straight forward, although they recognise that there may be some hard cases, such as children born prematurely while the parents are on holiday in the UK. HMRC confirmed that the residence of the child at birth would be immaterial for this test, and that deeming under this test would only apply for a year when a taxpayer is resident.

2.13 Some Forum members felt that it was unfair that people born in the UK and with a UK domicile of origin who return to the UK after a long period of absence will be deemed UK domiciled immediately even though they have acquired a domicile of choice elsewhere. HMRC explained that this was the policy the Government wanted to pursue – those born in the UK and with a UK domicile of origin would be treated as UK domiciled if they were resident in the UK. This would apply regardless of whether the individual was treated as domiciled abroad under an estate duty treaty.

2.14 Forum members also asked about individuals born in the UK to parents without a domicile of origin in the UK and who continued to live in the UK long term. HMRC suggested that the 15 year rule would most likely apply in these cases.

2.15 Another Forum member suggested that the proposed changes might cause problems for foreign employers with offices in the UK who employ short term secondees from abroad. HMRC confirmed that such hard cases would be considered as part of the consultation process.

2.16 HMRC encouraged Forum members to submit responses to the consultation once it is published to help bottom out any outstanding issues.

2.17 Forum members suggested that Overseas Workdays Relief should also be reviewed and simplified, in particular the restrictions on qualifying accounts opened in the arrival year.

2.18 Forum members asked whether the de-minimis exemption where total unremitted foreign income and gains are less than £2000 per annum will continue after someone is deemed domiciled after 15 years of residence. HMRC said that this would be covered in

the consultation and stakeholders' responses will be considered before any decisions are made.

2.18 A Forum member asked about aligning the IHT "tail" for UK doms with that of deemed doms.

2.19 Once an individual is deemed domiciled, it will take six years of non residence in the UK before they are no longer caught by the 15 out of 20 rule – so if they were here for 15 years for example and then left and returned after say three years, the 15/20 rule would catch them because HMRC look back 20 tax years. However, if they leave the UK and do not return until six full tax years have passed they would have shaken off that deemed UK domicile status and the 15/20 clock would start again from scratch.

2.20 For UK doms the position is slightly different. When they leave, their clock (which is three years) starts ticking once they have acquired a domicile of choice elsewhere. For example - an individual who has lived in the UK all his life and decides to leave and move to Italy. After five years the individual acquires a domicile of choice in Italy (and has no intention of returning to the UK). The IHT clock starts ticking at that point. After three years, HMRC would no longer have any claim on the individual's estate. So although the individual left the UK eight years ago, it is only now that he is rid of his UK domicile status for IHT purposes.

2.21 HMRC stated that they are considering aligning these rules so that the periods for both groups of people are the same. HMRC would welcome views on how this can best be done.

2.22 Forum members stated that they are happy to provide evidence as part of the consultation process but that it is often difficult to establish how common some of the situations they come across through their private client work actually are.

2.23 Stakeholders asked whether Ministers were simply reacting to recent media controversies about non-doms and questioned whether the general public fully understand the issues of residency and domicile.

3. AOB

3.1 The next meeting will be held on 20 October at 10:30.

3.2 Forum members requested an agenda item on the restriction of the pension annual allowance and wider pensions issues at the next meeting.

Action Point – HMRC to include pensions item on agenda for next meeting.

3.3 Forum members asked for an update on the recent review into travel and subsistence expenses.

Action Point – HMRC to provide an update on T&S review.