RPC Taxing Matters

Changes to non-domiciliary rules with Philip Simpson KC and Ben Symons

Alexis Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC.

My name is Alexis Armitage and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a roadmap to guide you and your business through this labyrinth.

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Alexis I am delighted to be joined today by the following double act from Old Square Tax Chambers. Firstly, Philip Simpson, KC who advises on all aspects of tax law and is ranked band one for tax by Chambers & Partners and is also recommended for tax by the Legal 500. Secondly, I am joined by Ben Symons who is an experienced tax barrister with extensive experience in all areas of UK tax law. Ben advises on and undertakes litigation in relation to a diverse range of taxation matters.

Today, Ben, Philip and I are going to be discussing the Government Spring Budget 2024 and, in particular, the proposed changes that will affect non-UK domiciled individuals, often referred to as the "non-dom regime". The UK tax system will switch from a domicile based system of taxation for individuals to a residence-based regime. The Government Spring Budget therefore represents a major shakeup of the non-dom regime. Welcome Philip and Ben and thank you so much for joining me today. If we go to Ben first, what are the major changes that the government proposes to make?

Ben Alexis, very broadly there are three main themes. The first theme is that the UK tax system for the taxation of individuals will switch from a “domicile basis” to a “residence basis” - and that is a major change.

The second theme is that there will be transitional reliefs for those currently non-domiciled individuals who are on the remittance basis and the third them is that the inheritance tax regime will also switch from a domicile basis of taxation to a residence basis of taxation.

Alexis Quite a lot of changes then. So, can you tell me a bit more about the first theme the government's proposed changes to change the basis of the taxation of individuals from domicile to residence? Shall we go to you Philip?

Philip Loss the protection of income gains made on offshore trusts. So, they will, essentially, be treated in the same as any other foreign income and gains. In other words, someone who does not qualify for the new regime - in other words, someone who hasn't been non-resident for 10 years, or is not within the first four-years of UK residence - will pay UK income tax and capital gains tax on income and so on arising within the trust; unlike any other sector who puts assets into a trust. But if someone is within the new four-year regime then the income and gains within the trust will be treated in exactly the same way as any other foreign income and gains of that person and, thus, will be exempt from UK income and capital gains tax for those four years.

Ben As Philip said, for new residents - that is those taxpayers who have been non-resident for at least 10 tax years - if they come to the UK for their first four tax years they can elect to opt into what is a temporary residence regime; they can elect that for the first four tax years - they won't be subject to tax on their foreign income and gains.

We don't know exactly yet what foreign income and gains means because we don't have draft legislation.

	The individuals who do elect into this new regime will lose their entitlement to personal allowances and also the CGT annual exempt amounts. There is also a modified oversees workday relief for these individuals who do qualify for the new "FIG" regime, as it is known, the new "foreign and income" tax regime for the first three years of residence they will be able to access oversees workday relief, which means they won't be subject to UK tax on earnings they earn from work performed outside the UK. They will still remain exempt from UK tax even if they remit that income to the UK. Essentially this is what is known as a "temporary residence regime" and the purpose is to encourage entrepreneurs to move to the UK and provide some tax incentives for them, at least in the short term.
Philip	Yes, so there is obviously lots of speculation about how many non-domiciled individuals currently within the UK are going to leave or, indeed, how many individuals might be put off coming to the UK at all in the future given that there are other jurisdictions with, in some respects, better tax systems for them. One would suppose the treasury has, a least, done some analysis and concluded that any loss of tax because people leave will be more than compensated for by extra tax arising under the new regime by comparison with the existing one. There is lots of speculation by professional advisers, the London School of Economics has apparently conducted analysis that shows that out of over 68,000 non-doms currently in the UK, 77 are going to leave, which is somewhat a precise number, but in any event there is all sorts of different views about what is going to happen. However, there are some transitional concessions which will be available and I think this is what we are going to move to now.
Ben	The new regime - as it applies to currently non-domiciled individuals - is a lot less generous than other regimes in Europe. For example, in Ireland non-domiciliaries can claim the non-domiciled basis of taxation for as long as they like, as long as they don't remit their income and gains to Ireland. Italy has a non-domiciliary regime and individuals there pay a flat tax on foreign income up to €100,000 - that is all the tax they pay and they can claim this basis for up to 15 years. So, the UK's new regime, superficially, it is not as competitive as other regimes in Europe from a tax point of view.
Philip	Yes, that is absolutely one of the big uncertainties about these proposals that, at the time that they are going to take effect, there is almost certainly, by the government in the UK, going to be a rather different approach to taxation. But, in any event, the second transitional relief is that individuals who currently pay capital gains tax on a remittance basis will be able to rebase any foreign assets they sell to 5th April 2019. In other words their base costs won't be their actual cost but if they own those assets on 5th April 2019 will be the market value as at that date, so somewhat higher based costs than otherwise the consequent reduction of capital gains tax.
Alexis	So that brings us nicely onto our second theme, as you have said: what transitional concessions are available for currently domiciled individuals?
Ben	The government is proposing to provide transitional relief to individuals who currently claim the remittance basis under the non-domiciled regime for those individuals who won't qualify for the new exemptions from foreign income and gains regime. For those individuals for the first year - that is the 2025/26 tax year - they will be exempt from tax on 50% of their foreign income and gains. Labour is, actually, threatening to repeal this exemption and we will discuss a little bit more about that later. The third major, transitional relief is that business investment relief will continue to be available for qualifying investments made from 6th April 2025, where those investments are made using pre-5th April 2025 FIG income.
Philip	Yes, indeed some form of business investment relief is likely to stay because, certainly, that is one of the things Labour have said that they are looking at - some form of rules to continue to encourage what would now be non-domiciled individuals to bring money into the UK for investment purposes. Anyway, the fourth transitional provision is what is called the "transitional relief facility". For the first two years of the new regime, in other words, for a tax year 25/26 and tax year 26/27, individuals who are non-domiciled this year 24/25 will be able to bring in foreign income and gains and be taxed at only 12%, even if they are outside the new regime. That might not apply to income and gains within the trust structures but that is something that we will have to just look at when the legislation eventually comes out.
Alexis	I think there was a third and final theme. What changes is the government proposing for the inheritance tax regime?
Ben	Yes, the Conservative Spring Budget 2024 proposes that the inheritance tax regime will switch from a domicile basis at present to a residence basis regime. The government have said that it will undertake a consultation in relation to this.

	Very broadly, the government proposes that an individual who has been resident in the UK for the last 10 tax-years will be in scope for inheritance tax and will be subject to UK inheritance tax on their worldwide assets and it will then take another 10 years of non-UK tax residence before that individual is out of scope.
Philip	Yes, that seems a very long period. After one leaves the UK, then still in year 10 of residence elsewhere the UK seems to want still to impose inheritance tax on a worldwide assets basis. Certainly, that will require a lot of action by HMRC to 'follow-up' such individuals and the extent of which any of that will actually be enforceable against non-UK assets, and indeed personal representatives who are non-UK resident, is questionable. Not least given how few double taxation treaties the UK has entered into in relation to inheritance tax. Returning to the technical note, what the Treasury has said in that is that of course UK situated assets will remain within the scope of the inheritance tax regardless of individuals' residence. In any event, it is a significant change in the inheritance tax regime and a loss of a lot of benefits that non-domiciled individuals currently have.
Ben	There was one way of light for non-domiciled individuals and that is they have the opportunity, prior to 6 April 2025, to put assets into an offshore trust that has been settled by a non-UK domiciled settlor. Those assets will be outside the new inheritance tax regime. Essentially assets of a settlement that continue to make the definition of excluded property under the current regime, they are often referred to as "excluded property off-shore trusts". These will be outside the scope of the new inheritance tax regime. The gift with reservation provisions in relation to excluded property will continue to apply. The property will remain excluded property even if the settlor retains a benefit from the trust assets.
Philip	Yes, certainly how this is going to work for individuals, who are formerly domiciled residents and have returned to the UK, is all very unclear - as I suppose is the proposal, generally, at the moment - it is somewhat vague because it is going to be subject to a consultation. We have been told in the budget notes, who knows what will come out of that. One point to mention is that the protections for excluded property, again, are subject to change of government, Labour has said that it will do something to abolish those rules although again exactly what remains unclear. Now I suppose we move onto what the more general effects of the possible change of government might be?
Alexis	Indeed we might have a new Labour government by the end of the year, so if we do, how will this impact on the Conservative Spring Budget do you think?
Ben	Essentially the Conservatives have pinched the Labour party's tax policies in relation to non-domiciled individuals. There will be an election, certainly by January 2025 and there is speculation that there will be an election in the Autumn of 2024. It seems likely that there will be a Labour party victory at this stage.
Philip	Yes, that is certainly true given recent polls. I think one can say with almost certainty that if Labour gets in then the non-domiciled regime will be abolished and replaced with something. One can say with equal certainty that what it is going to be replaced with will not be what the Conservatives put in their Spring budget. The general shape of it might be similar, with some sort of beneficial review for a number of years after someone comes to the UK that seems to work reasonably well as a matter of policy to attract individuals who will only be here for a short term. For example, Rachel Reeves has been quoted in the Financial Times as saying that if Labour were elected, they would remove the 50% transitional exemption of the taxation remitted for income gains for individuals who have, so far, benefited from the remittance regime. So, one example of where the rules are likely to be different from what was in the budget.
Alexis	So, what tax planning tips do you have for taxpayers, or any listeners out there, who may be particularly affected by this? What can they do in response to the Government's Spring Budget, do you think?
Ben	Tax planning is tricky for two reasons. The first is, as Philip said, there is the expectation that a Labour government will be elected before January next year and they may come up with a substantially different regime. It will be broadly the same, it will retain benefits for temporary residents for a period of time, maybe four years, but to differentiate themselves from the Conservatives they will come up with a different regime, so it is hard to start to make planning in the face of that uncertainty. It also remains to be seen whether any anti-

	forestalling measures will be introduced by either the current government, or a potential Labour government. It helps to understand those anti-forestalling rules in order to make planning to account for that.
Philip	Some possible planning ideas, as Ben said it's, somewhat uncertain. I think, the third reason is, of course, we don't, actually, have any legislation and even if we did, it wouldn't be what was eventually elected. Individuals who are currently non-domiciled and who are planning to continue to stay in the UK, if you had been UK resident so long that you won't benefit from the proposed regime, in other words, you are outside your first four years of UK residence, then it might be worthwhile accelerating receipt of income or gains outside the UK if not, as matters stand they will be charged UK tax when they arise from 6 April 2025 onwards. If they are realised before then, then they will be the subject of the remittance regime for a period, and it may be possible to get a lower rate of tax if they are admitted within the first two years of the regime and after that if they stay outside the UK then they will not come into UK tax at all. The second point again: putting non-UK assets into offshore trusts before the regime comes into place because that may or may not help with inheritance tax - depending upon what the Labour government does - but at least it has the potential to put non-domiciled individuals into a better inheritance tax position than they would otherwise be, but actual specific planning ideas are very difficult to pin down at this stage.
Ben	Another alternative is for a non-domiciled individuals to move to another jurisdiction. Many jurisdictions in Europe have favourable non-domiciliary regimes. Ireland and Italy are two examples, Switzerland is also often cited as an example of a country that offers non-domiciled individuals significant tax concessions. From a tax point of view many of these jurisdictions will be more friendly than the UK. As Philip said there is a London School of Economics study that suggests that only 77 individuals will move. It's a matter of speculation how many individuals will move, but this is another potential planning possibility.
Philip	Yes, there is always a contradiction between professional advisers of high-net-worth of individuals who, on the one hand, claim they are going to be leaving in their droves but who, on the other hand, say that it is unfair to make these changes because their clients have been in the UK for a long time - their children go to school here, they have got homes here, they have got societal ties here. It's somewhat less clear how all these are going to be so easily given up for a tax benefit, but one can only speculate at this stage.
Alexis	Well, thank you so much both of you for your time and for joining me today! Unfortunately, that is all we have got time for in this month's episode. Thank you again to Philip and Ben for today's Podcast! As ever a big thank you goes to Inciter Productions and Andrew Waterson for the production, music and sound editing of this episode. A full transcript of this episode together with our references can be found on our website www.rpc.co.uk/taxingmatters. If you have any questions for me or for Andrew or any topics you would like us to cover in a future episode, please do email us on taxingmatters@rpc.co.uk. We would love to hear from you. If you like Taxing Matters why not try RPC's other podcast offering, Insurance Covered which looks at the inner workings of the insurance industry hosted by the brilliant Peter Mansfield and available on Apple podcast, Spotify and our website. If you like this episode please take a moment to rate, review and subscribe and remember to tell a colleague about us. Thank you all for listening and talk to you again soon.