Mishcon de Reya LLP

Non-dom tax changes: The Government publishes draft legislation to form Finance Bill 2018

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This briefing note is only intended as a general statement of the law and no action should be taken in reliance on it without specific legal advice.

After last week's publication of the final Finance Bill for 2017, which had been interrupted by the snap election, the Government has published draft legislation to form the Finance Bill 2018. As expected, it contains previously announced provisions omitted following the snap election earlier this year and provides additional clarity on the Government's position on the taxation of offshore trusts. The new rules will be effective from 6 April 2018 or later (but most likely from 6 April 2018).
In what must seem like a whirlwind of changes for non-domiciliaries, the latest publication confirms that the tax treatment of chargeable gains will be amended in line with the recent changes to income so that:

1. Where a capital payment is made to a close family member of a UK resident settlor (where the beneficiary does not pay tax on it due to being non-resident or a remittance basis user) that settlor will be taxed as if the payments were received by the settlor. A close family member will include the settlor's spouse, cohabitee and minor children.
2. Trust distributions to non-residents will no longer reduce the pool of gains in a trust available for matching. This means that the trustees will not be able to "wash out" gains by paying them to a non-resident beneficiary (who could include the settlor) with a view to then making a further tax-free distribution to a UK resident beneficiary on the basis that there are no more gains left to match.

Additionally, and again as we predicted, the draft legislation includes "anti-conduit" or "onward gift" provisions relating to capital payments or benefits received by a non-taxable individual (because either the individual is non-resident or a remittance basis user who does not remit the payment or benefit). Currently such a payment can be passed on to a UK resident recipient by way of an onward gift tax-free. The new onward gift rules provide that any such onward gift to a UK resident will be taxed on the ultimate recipient as if they had received a capital payment or benefit directly from the trust equal to the amount of the onward gift. There is no time limit to the making of the onward gift if there is an arrangement or intention at the time of the original payment to make the onward gift, as had been the case when the legislation was originally published in December 2016. What has changed, however, is that there now appears to be no outright restriction on onward gifts made within three years even where there was no arrangement or intention to do so at the time of the original payment.

These new provisions are likely to come in to force on 6 April 2018. That means there is a window of opportunity for trusts to take advantage of the current position. We would recommend that you discuss your options with your usual Mishcon de Reya adviser to ensure that you are fully aware of any opportunities available.

The date for the Autumn Budget has been announced as 22 November and we will continue to monitor the situation and consult with our clients and their advisors to ensure that they are in the best possible situation given the ongoing seismic changes to the tax regime. We will provide further information as it becomes available.

If you would like us to analyse your particular circumstances and advise on a tailored strategy, please contact Andrew Goldstone [https://www.mishcon.com/people/andrew_goldstone] or your usual Mishcon de Reya LLP tax contact.

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