
CAPITAL GAINS TAX (CGT) REBASING

Individuals who became deemed domiciled in April 2017, because they had been resident for 15 out of the previous 20 tax years ('15 out of 20 rule'), will be able to rebase their directly held foreign situs assets to the market value on 5 April 2017. This form of relief only applies to non-UK assets which were owned on 5 April 2017.

As a result, on disposal any capital gain which arose prior to 5 April 2017 will not be taxable. Any further increase in the value between 5 April 2017 and disposal will be charged to UK CGT as it arises. The gain must be calculated in the normal way with conversion to Sterling, thereby incorporating exchange rate fluctuations.

- For example, Jill became deemed domiciled on 6 April 2017. She owns shares in a listed Swiss company, which were acquired for £100,000 in 2012, they are worth £150,000 on 5 April 2017 and she later sells them for £175,000 in 2019. Jill has the opportunity to rebase the shares to their value on 5 April 2017, ie. £150,000. As a result, only the capital gain which arose after 5 April 2017 of £25,000 will be subject to UK CGT and the capital gain which arose prior to 5 April 2017 of £50,000 will never be subject to UK Tax.

Rebasing will only apply to assets which were not situated in the UK between 16 March 2016 (or the date of acquisition, if later) and 5 April 2017. An asset will be treated as situated in the UK if it was brought to, received or used in the UK by, or for, the benefit of the individual or a 'relevant person' (eg. their spouse or minor child). This will not include assets which qualified as exempt property for remittance purposes eg. clothing, footwear, jewellery and watches for personal use, assets worth less than £1,000 or assets which were temporarily imported to the UK for less than 275 days.

Where the asset was originally purchased with clean capital, the entire proceeds from the disposal can then be remitted to the UK without triggering a further UK tax charge. However, where the asset was purchased wholly or partly with foreign income and gains, the normal mixed fund rules will still apply upon remittance to the UK. (See our separate article on mixed foreign account 'cleansing').

- Returning to the example of Jill, she acquired the Swiss company shares using £50,000 of clean capital as well as foreign income of £20,000 and foreign capital gains of £30,000 arising in a year in which she claimed the remittance basis. When Jill later remits the full sale proceeds to the UK the foreign income and capital gains utilised to purchase the shares will still be subject to UK tax.

Rebasing will be automatic but you are able to make an irrevocable election for rebasing to not apply within four years after the end of the tax year in which the disposal occurs. This election may be beneficial in some circumstances, for example if rebasing will reduce a capital loss, and can be made by reference to each disposal. It is important that UK tax advisers work closely alongside foreign investment

managers to ensure that rebasing is applied appropriately, elections to opt out of rebasing are made within the time limit and the correct base cost is recorded for UK tax purposes.

Although this is a valuable opportunity, it is not available to everyone. Rebasing is restricted to those who have paid the Remittance Basis Charge (RBC) for at least one tax year up to the tax year ended 5 April 2017. It may therefore be beneficial for non domiciliaries to claim the remittance basis and pay the RBC for the first time in one of the tax years prior to 5 April 2017, particularly for those who are asset rich but cash poor. The deadline for making a remittance basis claim is four years from the end of the relevant tax year so planning opportunities remain available.

- For example, Ben is a UK resident non domiciliary. His offshore wealth is largely tied up in non-income producing foreign property, which is standing at a large capital gain. His foreign income and capital gains do not warrant payment of the RBC and so he has not previously made a claim for the remittance basis. It may however be worthwhile Ben paying the RBC for 2015/16 or 2016/17 in order to benefit from rebasing and protect the gains accrued on the foreign properties up to 5 April 2017 from UK tax.

Rebasing is restricted to individuals who became deemed domiciled in the UK on 6 April 2017 under the 15 out of 20 year rule but remain non UK domiciled under general law. The individual will also need to remain deemed domiciled in the UK under this rule for all subsequent tax years up to the year of disposal.

Unfortunately, individuals who become deemed domiciled in years after April 2017, and those who become deemed domiciled because they were born in the UK with a UK domicile of origin ('returners'), will not be able to rebase their foreign assets. These individuals could consider disposing of their foreign assets and re-acquiring after 30 days in a remittance basis year in order to manually rebase their assets prior to becoming deemed domiciled.

HMRC have confirmed that units held personally in an offshore non-reporting fund that may give rise to Offshore Income Gains (OIGs) will also qualify for rebasing even though the OIGs are subject to income tax.

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