

NON-DOMS AND INHERITANCE TAX

On 8 September 2017 the government published the Finance Bill 2017-19. The rules are backdated to 6 April 2017 and bring all UK residential property held through offshore companies and trusts (including certain loans to fund their purchase and assets used as security for those loans) within the scope of UK inheritance tax (**IHT**).

We last saw an update on the Bill when some draft clauses were released on 13 July 2017 (see our previous update on this [here](#)). Royal Assent of the Bill is likely to be in December, but we may see substantive enactment potentially before the end of November.

There is still some uncertainty surrounding the operation of the rules relating to UK residential property and non-UK domiciliaries (**non-doms**), which we have set out to clarify below:

1. **Who do the rules affect?**

The rules affect non-doms and interests they have in offshore structures which derive value from UK residential property. This includes certain loans to fund their purchase and assets used as security for those loans. UK residential property held via an offshore company will be subject to IHT at 40%. This is despite the fact that the shares in an offshore company is treated as not situated in the UK.

2. **When will IHT be payable?**

The following are taxable events on which inheritance tax could be chargeable:

- a) The death of the individual who holds the property
- b) Lifetime gifts of the property
- c) Ten-year charges and exit charges for trusts which hold such property

The IHT charge applies to taxable events which occur after 5 April 2017. If an individual has made a gift of UK residential property before 6 April 2017 and dies after 5 April 2017, but within seven years of having made the gift, this will not give rise to an IHT charge.

3. **Is disposing of UK residential property a solution?**

The rules state that the proceeds of a disposal of the shares in the offshore company holding the property will remain within the scope of IHT for two years following the sale. The value subject to IHT will be capped at the amount of the consideration where there is a subsequent increase in value.

However, the two-year rule only applies on the disposal of company shares rather than to the disposal of residential property directly. Therefore, if the property is disposed of directly and the proceeds are retained within the structure, there should be no tax charge even if the individual passes away within two years of the disposal.

4. What to do now?

We have seen a number of clients de-enveloping residential property prior to the 6 April 2017 deadline. However, for those who chose to retain their structures, there are still steps to be taken to mitigate the tax expense.

If you wish to discuss how the new rules on non-doms may affect you, please get in touch with us by contacting [James Cohen](#) or [Sana Sheikh](#):



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