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The UK Tax System

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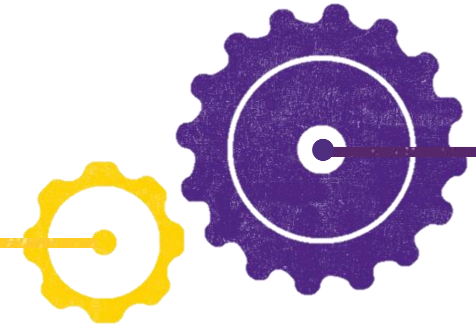
Overview

1. UK Economy
2. Domicile and Tax Residence
3. UK Residential Property
4. Taxation of Trusts
5. Reforms to The Taxation of Non UK Domiciles



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UK Economy

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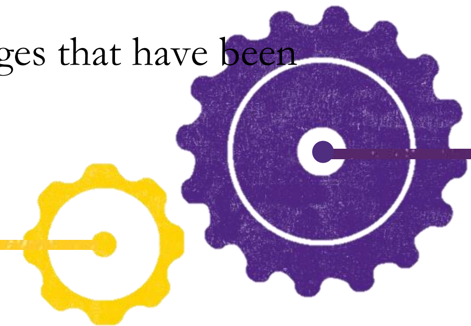
UK Economy

- Some big events: Brexit followed by Trump
- The Bank of England has raised its forecast for economic growth next year to 1.4% from 0.8%, but cut expectations for 2018 to 1.5% from 1.8%.
- UK consumer confidence index is back to its pre-Brexit vote levels in September
- Article 50 of the Lisbon Treaty, which starts two years of formal negotiations, will be triggered before the end of March 2017. In practice this means the UK will be out of the EU by the summer of 2019. Subject to the legal challenge which is being appealed by the Government.
- Prime central London property has cooled, although with the fall in sterling we have seen renewed appetite from overseas investors.
- Investors called for certainty regarding UK tax law following significant changes that have been implemented in recent years



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UK tax residence & domicile

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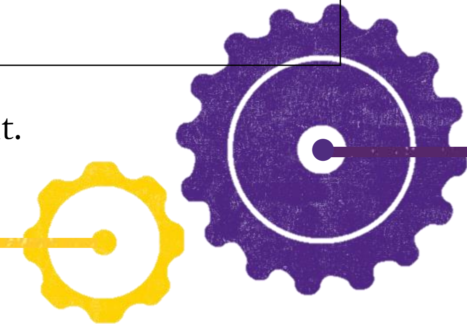
The UK Tax System - Domicile

- The scope of UK inheritance tax (IHT) is determined by an individual's domicile as opposed to their tax residence status.

- Domicile does not necessarily correspond with either residence or nationality; rather it is the place an individual considers his permanent home.

Domicile of origin	Inherited from father
Domicile of dependency	Inherited from Father where he acquires a domicile of choice during child's minority
Domicile of choice	Individual has the intention to reside in another jurisdiction permanently and indefinitely in the future
Deemed domiciled	Where an individual has been resident in UK for 17 out of the previous 20 tax years (15 out of 20 from April 2017 – to be covered later)

- The law governing domicile is complex and professional advice should be sought.



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The UK Tax System - Domicile

Tax implications

	Within the scope of UK IHT? (rate of 40%)	
	UK situated assets	Non-situated assets
UK domiciled	✓	✓
Non-UK domciiled	✓	X
Deemed UK domiciled	✓	✓*

* Potential planning available to significantly mitigate exposure

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The UK Tax System - Residence

- UK statutory residence test introduced in April 2013 that allows certainty over an individual's residency status.

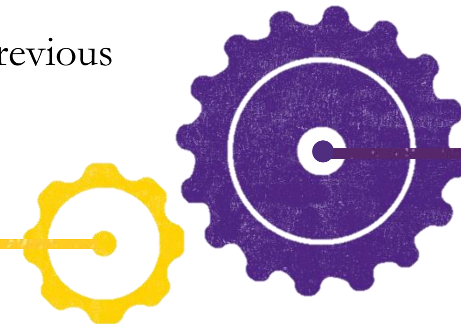
- Broadly;

Automatically UK resident	More than 183 days in the UK
Automatically non-UK resident	Less than 16 days in the UK

- If an individual falls between these day counts, the number of days they can spend in the UK without becoming UK resident will be dependent on their 'ties' to the UK.

- HMRC will consider the following ties:

(a) Family in the UK
(b) Accommodation in the UK
(c) Substantive work in the UK
(d) More than 90 days presence in the UK in either of the previous 2 years
(e) More time in the UK than in any other single country



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The UK Tax System - Residence

Tax implications

- Worldwide income subject to UK income tax at the rate of up to 45%*
- Worldwide gains subject to UK capital gains tax at the rate of 20%* (28%* for residential property)

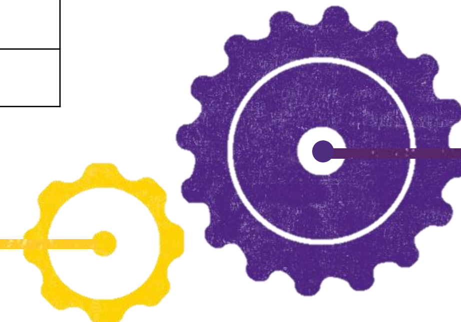
* Subject to claiming the remittance basis of taxation

Remittance basis of taxation

- Only available to non-UK domiciled individuals
- Foreign income and gains only subject to UK tax to the extent that the funds are remitted to the UK
- A charge must be paid to make the claim depending on period of time the individual has been resident in the UK:

Charge	Years of residence
£0	less than 7 out of the previous 9 tax years
£30,000	7 out of previous 9 tax years
£60,000	12 out of previous 14 tax years
£90,000	17 out of previous 20 tax years

- Income and gains arising prior to becoming UK resident are treated as 'clean' capital and can be remitted to the UK without being subject to UK tax.



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What Constitutes a Remittance

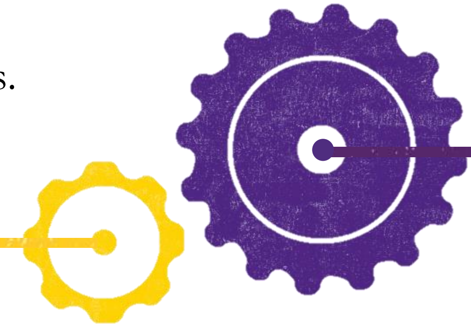
- Rules are complicated and care needs to be taken.

- There will be a taxable remittance where any property representing or derived from foreign income or foreign chargeable gains is brought to, received or used in the UK for the benefit of a 'relevant person'.

- Examples of when a tax remittance can arise:
  - settling a UK credit card debt
  - settling an overseas credit card used for UK expenditure
  - repaying a UK loan
  - paying professional fees where the service has been provided in the UK
  - bringing assets acquired abroad to the UK
  - investing in UK companies

- Statutory exemptions and reliefs may be available e.g. Business Investment Relief

- We can advise and help with pre-arrival planning in order to mitigate the risks. This involves establishing an appropriate bank account structure to maximise the amount of clean capital.



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UK residential property

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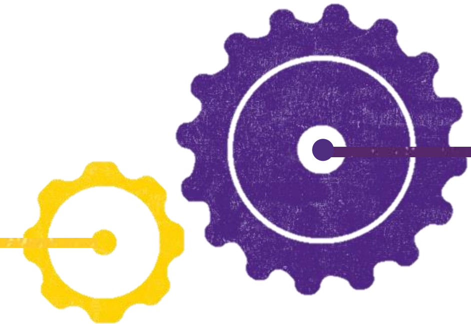
IHT

- From April 2017, IHT will be charged on UK residential property irrespective of how it is held.
- It is no longer possible to shelter the property from IHT by holding it via a non-UK incorporated company by placing a non-UK trust above a non-UK company, in addition to incurring annual ATED charges (covered in the next slide).
- Loans taken out to acquire or maintain UK residential property will be within the lender's IHT estate
- Disposal of non-UK company holding UK residential property – proceeds will stay in the scope of UK IHT for two years



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What does this mean?

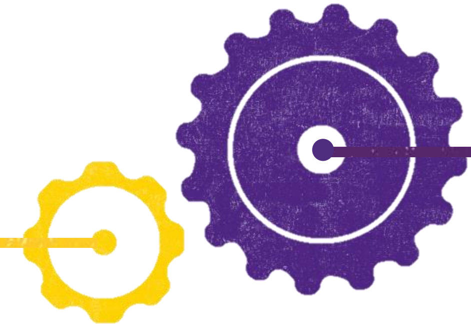
Personal ownership or held via offshore company

- The market value of the property, less any encumbrance, will form part of the ultimate beneficial owner's UK estate and subject to UK IHT on death at a rate of 40% after taking into account the nil rate band of £325,000 (the amount a taxable estate is exempt from IHT).

Held via offshore trust

- On every 10th anniversary of the trust being set up and upon any distribution of the property from the trust, there will be a principal charge of 6% on the market value of the property, less any encumbrance, at that date.

- Planning should be considered prior to a chargeable anniversary or event.



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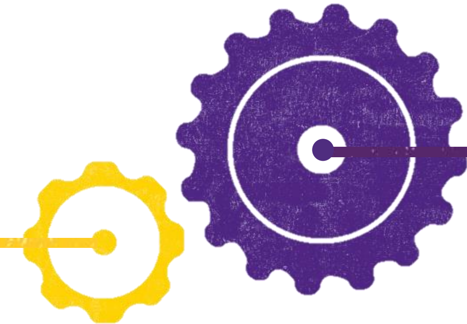
Annual Tax on Enveloped Dwellings (ATED)

- ATED is an annual tax payable mainly by companies that own UK residential property valued at more than £500,000.
- The table below illustrates the annual tax for 2016/17 based on the property value:

Property value	Annual charge
More than £500,000 but not more than £1 million	£3,500
More than £1 million but not more than £2 million	£7,000
More than £2 million but not more than £5 million	£23,350
More than £5 million but not more than £10 million	£54,450
More than £10 million but not more than £20 million	£109,050
More than £20 million	£218,200

Filing

- Normal filing date – 30 April following start of tax year to which it relates
- Acquisition – 30 days after completion
- Creation of new dwelling – 90 days (ATED payable on same day)



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ATED-related CGT

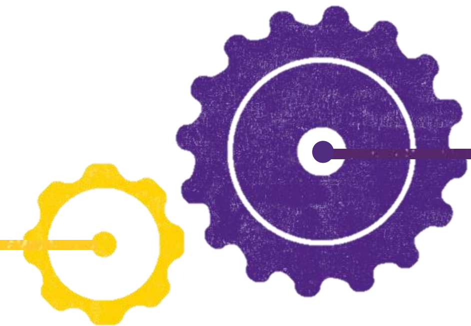
- Additionally, disposals of high value UK residential property owned by a company will be subject to an ATED-related CGT, regardless of whether the company is UK or non UK resident.

- The ATED-related CGT will be applied at the highest rate, currently 28%, however it will only apply to the proportion of any capital gains which accrue from 6 April 2013.

Reliefs

1. Property rental businesses
2. Property developers
3. Property traders

Care should be taken as the occupation of non qualifying person even for 1 day can cause significant restriction of relief.



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Non-resident Capital Gains Tax

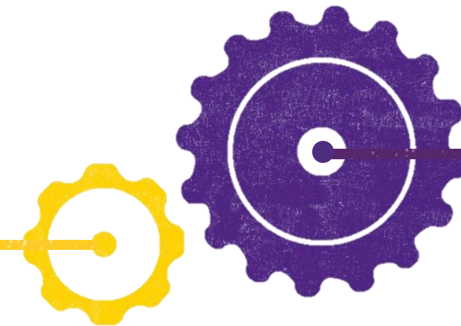
- New rules were introduced effective from 6 April 2015 that apply to extend the charge of UK CGT to the disposal of UK residential property by non-residents.
- Applies to all residential property but to post 6 April 2015 gains only.
- All disposals must be reported to HMRC irrespective of whether there is a tax liability – within 30 days of conveyance unless already within self-assessment regime.

Disposal by a non-resident individual or non-resident trust

- CGT will e charged at the rate of up to 28%.

Disposal by a non-resident company

- Gain will be taxed at the rate of 20% and a form of indexation allowance will be available.
- ATED-related CGT provisions take precedence.



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Renting UK Property

There are different rates of tax to pay on rental income depending on who owns the property:

Renting by a trust or individual

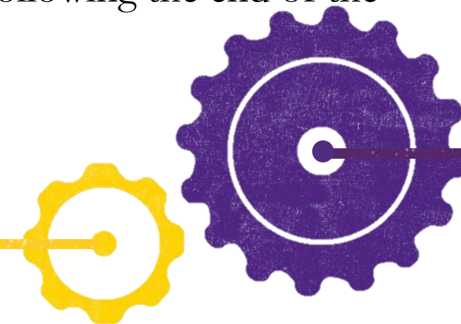
- Tax is due at 45% on the rental income.

Renting by a non-resident company

- Corporation tax is due at 20% on the rental income.

Withholding tax

- Obligation of tenant or letting agent to withhold basic rate tax from gross rent.
- Registration under NRL scheme is required.
- However the landlord can apply to get rental income paid without UK tax being taken off by filling in an NRL1 form.
- An NRL return will need to be submitted to HMRC annually by 31 January following the end of the tax year



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Taxation of non-UK trusts

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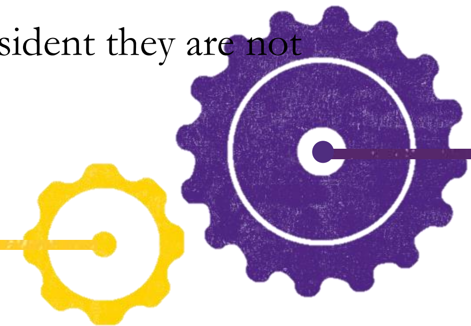
Taxation of Trusts

General rules

- Foreign income or gains of non UK tax resident trusts is not chargeable to UK income tax.
- Non-UK resident trustees will only pay tax on their UK source income.
- Income of the trust will be taxable on UK resident beneficiaries where matched to a benefit, subject to the remittance basis
- Gains of the trust will be taxable on UK resident beneficiaries where matched to a capital payment, subject to the remittance basis
- Matching takes place on a worst first basis, i.e. income first. Unmatched income and gains are carried forward.
- Trustees are subject to income tax at the rate of 45%. As they are non-UK resident they are not subject UK CGT (except where UK residential property is involved).



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Taxation of Trusts

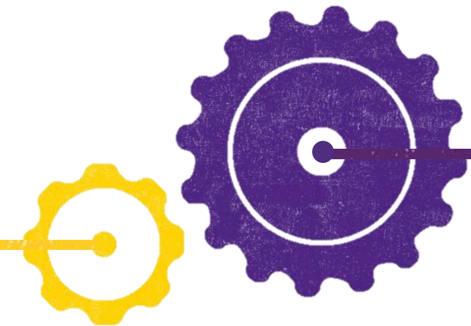
Anti-avoidance rules

- Where a settlor is not excluded from benefiting, income and gains will be treated as theirs on an arising basis

- Where settlor has transferred value to the offshore stucture whilst UK tax resident, income of the structure can be attirbuted to them on an arising basis.

- Subject to the remittance basis.

- A UK company can be intriduced to act as a blocker, although this will result in an element of UK tax leakage.



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Reforms to the taxation of non-doms

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Proposed changes

- From 6 April 2017, non-UK domiciled individuals who have been UK resident for 15 of the previous 20 tax years will be deemed to be UK domiciled for all tax purposes.

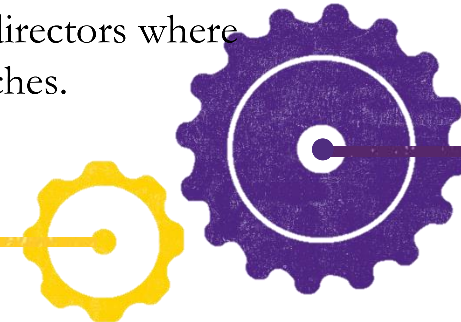
Tax implications

Income tax and CGT

- No ability to claim the remittance basis
- Taxed on world wide income and gains on an arising basis

IHT

- Worldwide assets within the scope of IHT
- Assets settled into protected trusts will remain outside the scope of UK tax (except UK residential property)
- The Government have announced that they will no longer find trustees and directors where IHT liabilities are not paid. They are still, however, considering other approaches.



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Changes to Non-domiciliaries Rules

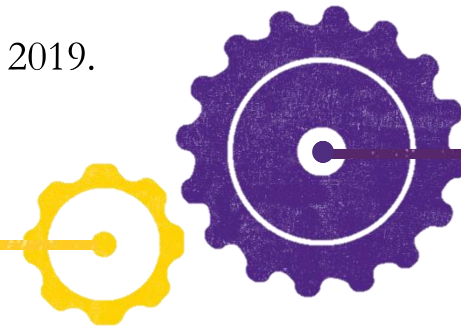
Transitional protections

Asset rebasing

- Individuals who become deemed-domiciled in April 2017 will be able to rebase directly held foreign assets to their market value on 5 April 2017.
- Any further increase in the value of an asset between April 2017 and the date of disposal will be charged to CGT in the normal way.
- An election needs to be made on an asset by asset basis

'Clean up' historic mixed funds

- All non-domiciliaries will have the opportunity to separate out the constituent parts of their mixed funds (bank accounts and similar holdings only) into separate offshore accounts.
- They will be able to move their clean capital, foreign income and foreign gains into separate accounts, and will then be able to remit from their accounts as they wish and pay the appropriate amount of tax.
- This clean-up can begin from 6 April 2017 but must be completed by 5 April 2019.



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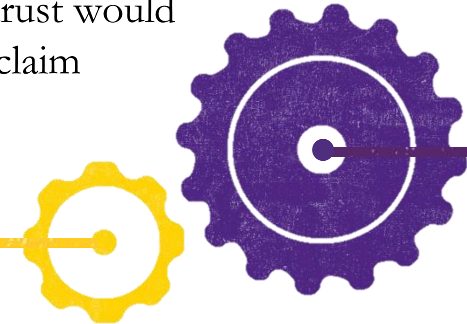
Taxation of Trusts

Changes from 6 April 2017

- Previously a distribution to a non-resident beneficiary matched against income and gains but was not taxable. Future distributions to UK beneficiaries then had nothing to match against.
- Distributions to non-resident beneficiaries will no longer clear out income and gains.
- Matched gains will be attributed to the UK tax resident settlor where capital payment made to close family member e.g. spouse, minor children. Unless recipient is subject to UK tax.
- Settlor will have the right to be reimbursed by the beneficiary or trustees.

Protected settlements

- Settlments created before settlor becomes deemed domiciled will be protected i.e. continue to be taxed under current regime
- Settlement can be tainted where value subsequently added by deemed domiciled settlor or by one of their other trust structures. In such circumstances the foreign income of the trust would become assessable on settlor on an arising basis and he would not be able to claim the remittance basis.



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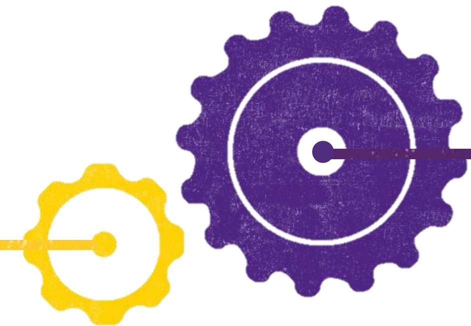
Potential planning

- Need to review foreign assets to decide what elections are beneficial
- Need to review existing cash balances to quantify the amount of clean capital which may be extracted.
- Foreign assets could be settled into a non-UK trust before 6 April 2017 to qualify as a protected settlement yielding income and IHT protection.
- Foreign assets could be sold into an existing trust to allow future extraction of value which will be clean from a UK tax perspective
- Distributions from the trust be accelerated so as to allow the remittance basis to be claimed before they become deemed domiciled and also to reduce income and gains within the trust.



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Questions to think about?

- Do any of your structures include UK situated property?

- Are your clients going to be affected by the proposed tax changes in the UK? What planning can be implemented to mitigate their tax exposure? Is it worth making large distributions out of the trust prior to 6 April 2017?

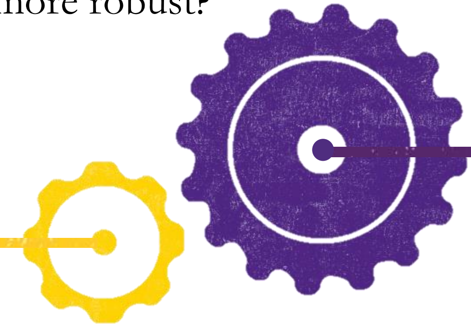
- Are any of your clients investing in the UK? How should those investments be structured?

  Do your client's trust structures involve any UK tax resident settlors or beneficiaries?

- Do your clients spend much time in the UK? Is there a chance they may be considered UK tax resident?

- Is your client relying on their non-UK domicile status, how can they make it more robust?

- Are your clients making all the necessary filing requirements in the UK



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Questions

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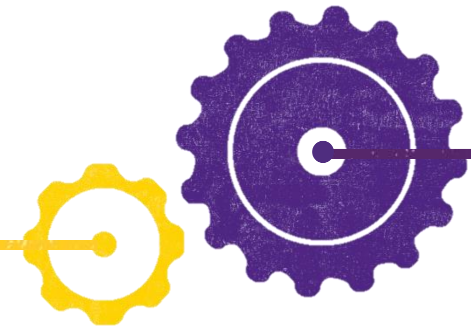

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