

# ● Finance Bill 2012

## The Draft Finance Bill 2012



The Draft Finance Bill 2012 was published on 6 December following the Chancellor's Autumn Statement. For most non-doms the draft clauses signal good news, namely the simplification to their taxation as proposed in June 2011. However, on the downside, the delay to the long anticipated statutory residence test and the proposals to clamp down on QROPS make disappointing reading.

### Statutory Residency Test

The introduction of a statutory residence test to define residency and non-residency in law and the reform of the tax consequences of ordinary residence are both being delayed until 6 April 2013 to provide time to consider a number of issues raised during the consultation process. This means that the uncertainty surrounding the question of whether an individual is tax resident or not will remain for the time being.

### Remittance Basis Charge ("RBC")

As previously announced a higher RBC of £50,000 will be introduced from the tax year 2012/13 where the non-dom claiming the RBC has been UK resident in at least 12 of the previous 14 tax years. Those under 18 years of age and those with unremitted income and gains of less than £2,000 remain exempt from the RBC. The RBC remains at £30,000 for those who have been UK resident in at least 7 of the previous 9 tax years.

### Foreign Currency Bank Accounts

We are pleased to see draft legislation with effect from 5 April 2012 which exempts individuals and trustees from capital gains tax on foreign currency bank accounts. Such gains were already exempt for companies whether resident in the UK or offshore. Even where the resulting currency gains are small, significant time and compliance costs are incurred in calculating them and we consider this to be a very welcome simplification of non-dom taxation.

### Nominated Income

The draft Bill provides that with effect from 6 April 2012 it will be possible to remit up to £10 of overseas income or capital gains which have been 'nominated' for the purposes of the RBC without triggering the penal re-ordering rules. At present, even if only 1p of the nominated income is remitted to the UK, it creates adverse tax consequences from that tax year onwards, creating considerable administrative complexity and generally higher tax liabilities. To limit this risk, non-doms tend to nominate just the minimum of £1 income, and therefore this new clause will provide a measure of reassurance.

### Remittance of Assets to the UK for Sale

Under current rules if an asset acquired with overseas income or capital gains is brought to the UK to be sold this may give rise to a taxable remittance unless one of the existing exemptions is available (e.g. the exemption for repair, storage, public exhibition or temporary importation (for less than 276 days)).

The draft Bill introduces an additional exemption with effect from 6 April 2012 which would allow assets to be sold in the UK without giving rise to a taxable remittance, as long as the entire proceeds of sale are paid to the vendor within 95 days and all the sale proceeds are taken offshore within 45 days of the vendor receiving the final instalment.

### **Investment in UK Businesses**

Currently the remittance of overseas income and capital gains to the UK are taxable regardless of the purposes for which they are used. However, the draft legislation introduces an exemption with effect from 6 April 2012 if the remitted income or gains are used to invest in UK businesses providing certain conditions are met. (Note that the conditions for relief are narrower than those originally mooted in the consultation document.)

The investment (via share capital or loans) must be in an unlisted or AIM company which carries out trading activities on a commercial basis or undertakes the development or letting of commercial property. Foreign income or gains must be invested within 45 days of being remitted to the UK and the invested funds must be removed from the UK within 45 days of encashment. There are limits to what 'benefits' the investor can obtain from the investment without triggering a 'potentially chargeable event', but if work is carried out for the company it may be possible with careful planning to take an arm's length salary.

Great care should be taken to avoid triggering a 'potentially chargeable event' (which includes the situation where one or all of the qualifying conditions cease to apply). Although a 45 day grace period is available, it may not always be practical or commercially possible to remove the invested funds from the UK in this time.

### **Changes to the Qualifying Retirement Overseas Pension Scheme ("QROPS") Regime**

The QROPS regime allows an individual to transfer their pension savings in a UK registered pension scheme to a QROPS abroad free of UK tax. This is of great value to a non-dom with a UK registered pension scheme leaving the UK intending to only pay tax in the country of retirement. A consultation document and draft legislation have been published increasing reporting and compliance requirements to ensure compliance with the regime and to prevent misuse.

The proposed new rules tighten the conditions that an overseas pension scheme must meet to be a QROPS (in particular the QROPS must be recognised for tax purposes in the local jurisdiction and QROPS managers must treat pensioners not resident in the local jurisdiction in the same way as resident pensioners by withholding tax on pension benefits). HMRC requires an acknowledgement by the individual that tax charges may apply before the transfer is made. The proposed rules introduce revised time limits for registered pension schemes to report transfers to QROPS. They provide additional powers for HMRC to request information from a QROPS manager and increase the time limits from 5 years to 10 years for the reporting of transfers or the payment of benefits by a QROPS to HMRC. The sum effect of these new rules is to prevent "pension busting" and to discourage the use of tax havens where pensions would otherwise be paid gross. The proposed changes require local tax to be withheld (at no benefit to the UK Exchequer) and could represent a tax cost to the pensioner unless the withholding tax can be credited or relieved in the jurisdiction in which he or she chooses to retire.

There is already a groundswell of opposition to this from the QROPS managers, and much lobbying is to be expected from them. The draft legislation may of course be amended, however based on the current rules, it may be prudent to ensure any new QROPS are established before 5th April 2012.



### Contact Us

Should you have any queries concerning the points mentioned above or would like to discuss any other aspect of the draft legislation, please do not hesitate to contact us for specific advice. This note deals with draft legislation which can change and in any event will not be enacted until late next summer. You should therefore check the final form of the legislation before taking or refraining from taking any action which may be affected by this legislation.

#### Mark Davies

Director

Telephone: + 44 (0) 20 3008 8102

Email: [mdavies@nondom.com](mailto:mdavies@nondom.com)

#### Clive Butler

Manager

Telephone: +44 (0) 20 3008 8109

Email: [clive.butler@nondom.com](mailto:clive.butler@nondom.com)

This bulletin is intended to provide general information only and is not intended to constitute legal, accounting, tax, investment, consulting, or other professional advice or services. Before making any decision or taking any action which may affect your tax or financial position, you should consult a qualified professional adviser.