BRIEFING NOTE

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# HMRC changes position on foreign income/gains used as collateral or loans by UK resident, non-UK domiciled Remittance based users ("non-domiciliaries")

HMRC changed its position from 4 August 2014 on the taxation of non-domiciliaries using foreign income/gains as collateral for borrowings used in the UK. From that date using foreign income/gains in this way will result in a taxable remittance.

Non-domiciliaries who already have arrangements in place in reliance on HMRC's previous concession will not be taxed on the foreign income/gains being used as security provided they take steps to either replace the security or repay the loan.

## Background

Non-domiciliaries are only subject to UK tax on foreign income and gains if they are "remitted" to the UK. Remittance has a wide meaning. If a non-domiciliary:

> Borrows money from an offshore bank and brings that money to, or uses it in, the UK (e.g. to buy a UK house); and
>
> Uses his foreign income or gains "in respect of" the debt (e.g. to pay the interest on a loan or repay all or part of the capital sum) the non-domiciliary is treated as remitting the foreign income/gains and will be taxed on that income/gains.

So, if the non-domiciliary's foreign income or gains are used to pay the interest on a debt or repay the borrowing, that will be a taxable remittance of the foreign income or gains used for this purpose.

On the strict wording of the relevant legislation, if an individual uses his foreign income and/or gains as collateral for the bank borrowing, that too would be a remittance on the foreign income/gains as non-domiciliary would be using his foreign income/gains "in respect of" the debt.

However, HMRC has, up to now, taken the view that in most normal commercial situations the use of the non-domicilary's foreign income/gains (or investments representing them) as security for an offshore borrowing would not, itself, constitute a taxable remittance of the foreign income/gains. This meant that if UK taxed income or gains or clean capital was used to service the debt or pay off the loan, there would be no remittance of the assets used as security. This treatment, whilst concessionary, was published by HMRC in its Manuals, which are publically available documents. It is recognised by HMRC that taxpayers rely on its published statements, and this statement was indeed relied on widely by non-domiciliaries.


## HMRC's change of position

HMRC has, without warning, with effect from 4th August 2014, withdrawn this concessionary treatment, even for commercial arrangements. HMRC is understood to have advised that this treatment would not apply in cases involving avoidance or non-commercial arrangements.

From the 4th August 2014 money brought to or used in the UK under a loan facility secured by foreign income or gains will be treated as a taxable remittance of the foreign income or gains being used as collateral. Foreign income or gains used to pay interest on the debt and/or to repay the borrowed capital will also, as before, constitute a taxable remittance. Thus there are potentially two possible sources of taxable remittance charge in respect of the debt – the foreign income or gains used as collateral and the foreign income or gains used to repay the debt.

## Position of non-domiciliaries who have relied on the concession

Non-domiciliaries who have used foreign income or gains as collateral for a loan and, in reliance on HMRC's published position to date, not declared a remittance will not be taxed on those foreign income or gains provided:

They notify full details of the loan to HMRC; and

They give a written undertaking (which is subsequently honoured) by 31 December 2015 that the foreign income or gains security either has been, or will be replaced by non-foreign income or gains security before 5 April 2016; or

The loan or the part of the loan that was remitted to the UK either has been, or will be repaid before 5 April 2016.

In many cases, in particular where a loan has been taken out to purchase a UK house or fund UK living expenses, this may prove very difficult even in the time frame allowed.

These arrangements were often put in place precisely because of the difficulty the non-domiciliary had in identifying "clean capital" for use in the UK. If it is not possible for the non-domciliary to organise their arrangements, HMRC have indicated they will tax the non-domiciliary on a remittance equal to the lesser of the amount of foreign income and gains used as collateral and the amount of the loan brought to the UK. If the non-domiciliary has no clean capital to pay the tax, they may be faced with a potential double charge of having to remit further taxable funds in order to pay the tax on the original remittance.

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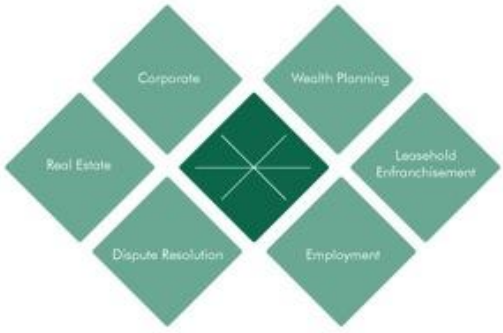


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