

Briefing document

Remittance basis claimants: capital losses

Introduction

UK resident, non-UK domiciled individuals who have made a claim for the remittance basis to apply in any tax year from 2008/09, and who are not deemed UK domiciled, are only eligible to claim relief for foreign capital losses if an election (a 'loss election') is made. Making the election has wider consequences, which are summarised in this note. Losses must be claimed separately in order for relief to be available.

Throughout this note, we refer to the tax position of UK resident individuals.

Claiming the remittance basis

Where the remittance basis applies most foreign income and gains are only subject to UK taxation if they are remitted to (brought into) the UK. The remittance basis can be claimed by non-UK domiciled individuals who are not deemed UK domiciled (see the end of this note). Non-UK domiciled individuals, including those who are deemed UK domiciled, can be taxable on the remittance basis automatically in some circumstances.

The remittance basis applies automatically to an individual for a given tax year if the individual:

- Has less than £2,000 unremitted foreign income and gains (relating to the tax year in question) and/or
- i) Has not made any taxable remittances to the UK; ii) has no UK gains and UK source income of at most £100 taxed investment income, iii) is not deemed UK domiciled and; iv) either, was UK resident in 6 or fewer of the preceding 9 tax years, or is under 18 throughout the tax year.

If the remittance basis does not apply the arising basis applies instead, under which worldwide income and gains are taxable. An individual who qualifies for automatic remittance basis can elect to be taxed on the arising basis if desired.

Foreign loss position if the remittance basis has not been claimed

Individuals who have not claimed the remittance basis since 2008/09 are able to claim relief for foreign capital losses without needing to make a loss election.

Foreign loss position if the remittance basis has been claimed

Position if a loss election is not made

Individuals who have claimed the remittance basis and who have not made a loss election cannot claim relief for foreign capital losses for tax years prior to becoming UK domiciled or deemed UK domiciled. This means that the individual:

- Will always be chargeable on UK gains and eligible to claim relief for UK capital losses.
- In tax years in which the remittance basis applies, he or she will only be chargeable on foreign chargeable gains to the extent they are remitted to the UK. No relief will be available for foreign capital losses.
- In tax years in which the arising basis applies, the individual will be chargeable on worldwide chargeable gains, but will only be eligible to claim relief for UK capital losses.

While this note focuses on UK residents, it should be borne in mind that a period of non-UK residence does not 'reset the clock' for a loss election to be made by an individual who later resumes UK residence, nor does it cause loss elections previously made to lapse. An individual's ability to claim foreign capital losses will be the same as it was pre-departure.

Position if a loss election is made

Making a loss election is not necessarily a straightforward decision, as doing so affects the way in which both UK and foreign capital losses can be utilised. If a loss election is made, losses realised in years in which the remittance basis applies to the individual are relieved in the following order:

1. Against foreign chargeable gains both realised and remitted in the same tax year.
2. Against foreign chargeable gains realised but not remitted in the tax year.
3. Against other chargeable gains made by the individual in the tax year (i.e. UK gains).

Crucially, the reordering rules mean that UK losses can be offset against foreign chargeable gains that may never be remitted to the UK, meaning loss relief is wasted.

There is a further aspect of making a loss election, in that, if an election is made, capital losses cannot relieve foreign chargeable gains that were realised in earlier tax years and which are subsequently taxable on remittance. This restriction does not apply if the election is not made (i.e. UK losses can be offset against remitted gains realised in earlier tax years).

Deciding whether or not to make a loss election

When deciding whether or not to make a loss election the following should be considered:

- A view has to be taken on the likely level of UK and foreign chargeable gains and losses, potentially for many years to come;
- The likelihood of foreign chargeable gains being remitted;
- The likelihood of becoming deemed UK domiciled, and the date this may occur;
- The administration associated with calculating and claiming losses. This is particularly relevant if losses may remain available to set against UK gains, after foreign gains have been fully relieved;
- There is no obligation to claim capital losses. If an election is made, the individual concerned could choose to claim capital losses in some years but not others. For example, he or she may decide to claim relief for losses only in respect of tax years to which the arising basis applies;
- Loss elections are irrevocable (i.e. permanent). They only lapse if an individual becomes legally UK domiciled or becomes deemed UK domiciled for tax purposes.

Time limits

Loss elections must be made within four years of the end of the tax year in which the remittance basis is first claimed after 2007/08. In 2020/21, the latest tax year in respect of which a loss election can be made is 2016/17, which ended on 5 April 2017. The election deadline is 5 April 2021.

Tax years between 2008/09 and 2015/16 (inclusive) are now out of time, and so loss elections cannot be made by individuals who claimed the remittance basis in one of these tax years.

Capital losses must be claimed within four years of the end of the tax years in which they are made. 2016/17 capital losses must be claimed by 5 April 2021, 2017/18 capital losses by 5 April 2022, and so on.

Deemed UK domicile

Deemed UK domiciled individuals are normally required to pay tax on the arising basis, unless the automatic remittance basis applies. Deemed UK domiciled individuals can always claim relief for foreign capital losses realised from the tax year in which deemed UK domicile commenced. Individuals are deemed UK domiciled for capital gains tax purposes if:

- 1) They were UK resident in at least 15 of the previous 20 tax years ('long-term UK residence').
- 2) They are UK resident, were born in the UK and have a UK domicile of origin ('formerly domiciled residents').

If a loss election was previously made, it lapses on commencement of deemed UK domicile. If the individual ceases being deemed UK domiciled and subsequently claims the remittance basis, a decision as to whether or not to make a new loss election must be taken, bearing in mind the points set out above.

Find out more...

This note reflects the law in force as at 6 April 2020. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk). For further information visit our website at www.deloitte.co.uk.

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