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Dear Daniel

Temporary Repatriation Facility

1. Introduction

- 1.1. This note raises certain issues on which clarification and confirmation is sought. References to paragraph numbers are to FA 2025 Sch 10 as amended by FA 2026 Sch 3. This note focuses on the temporary repatriation facility (TRF) in its application to trusts and in particular on paragraph 7.
- 1.2. This note uses the term “capital distribution” as a shorthand for a distribution or benefit that is both a benefit within ITA 2007 s 732 and a capital payment within TCGA 1992 ss 87 – 97. It is assumed that the recipient is not the settlor or a close family member and for that reason ITTOIA 2005 s 643A is not referred to. It is also assumed the recipient is UK resident and not within the four-year foreign income and gains (FIG) rule.
- 1.3. The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.

2. Structure in the absence of TRF

- 2.1. It is well known that a capital distribution is taxed as the recipient’s income to the extent there is available relevant income (ITA 2007 s 733). In the context of TRF the first-in-first-out (FIFO) rules in ITA 2007 s 735A apply to determine which relevant income is matched. The resultant income of the recipient is referred to here as “s 732 income”. In general, the relevant income includes underlying company income as well as income at trust level. But where company income is distributed up to the trust it becomes relevant income in the trust rather than in the company. Section 732 income includes such income which is not taxed as a result of the application of the purpose defence in ITA 2007 ss 736 – 42.
- 2.2. To the extent there is no relevant income or the capital distribution exceeds it, the capital distribution is taxed as the capital gain of the recipient to the extent the trust has s 1(3) amounts for tax years up to and including

the tax year of the distribution (TCGA 1992 s 87). Here the matching is under prescriptive rules in TCGA 1992 s 87A and is on a last-in-first-out (LIFO) basis. Such matching is here referred to as “substantive matching” and the resultant gains of the recipient as s 87 gains. The s 1(3) amounts include gains realised in underlying companies, but for s 1(3) amounts of 2012/13 and post this is not so unless the purpose test in TCGA 1992 s 3A is failed.

3. Basic TRF trust rules

- 3.1. Under para 6, s 732 income is treated as qualifying overseas capital (QOC) if the following conditions are met:
- a) The matched relevant income arose in 2024/25 or a prior year.
 - b) The s 732 income arises to the recipient in one of the tax years of the TRF period. In view of the above first condition that means the matched benefit, here referred to as the capital distribution, must be conferred in one of the tax years in the TRF period.
 - c) Had the s 732 income arisen not in the TRF period but in 2024/25 or prior it would have been relevant foreign income (RFI) of the recipient. Under ITA 2007 s 735 as it existed in 2024/25, this requires the matched relevant foreign income to itself have been relevant foreign income.
- 3.2. Where under these rules s 732 income is QOC, the effect of designation is that the designated amount is deducted from total benefits and total relevant income going forward (para 11(3)). But it is not a capital payment (para 10(3)). It is subject to tax at 12%.
- 3.3. The TRF capital gains tax (CGT) are in paras 3 and 5. In this note para 3 alone is referred to as a shorthand but it is not thought para 5 (which relates to Sch 4C pools) is in any material respect different.
- 3.4. The requirements for the capital distribution be QOC under para 3 are as follows:
- a) Section 87 gains accrue to the individual as a result of substantive matching of the capital payment in a TRF year to s 1(3) amounts of that or a prior tax year. As a result of TCGA 1992 ss 97(1)(a)(i) and 97(3) this requires all or some part of the capital distribution to exceed the matchable relevant income for the tax year in which the distribution is made for if it does not it is not a capital payment at all.
 - b) The settlement has s 1(3) amounts for 2024/25 and/or prior tax years. Such s 1(3) amount(s) need not be those which are matched to the capital distribution in the substantive matching. But what is required for para 3 to apply is that there are pre-2025 s1(3) amounts.
- 3.5. Where these conditions are met, special matching rules apply to determine whether the capital distribution is QOC. These rules modify the substantive matching rules but *only* for the purposes of determining whether a capital distribution is QOC. These counterfactual modifications are called here “TRF matching”. The modifications are set out in (para 3(3)) as follows:
- There is assumed to be no s 1(3) amount in any tax year in the TRF period.
 - The only capital payments in the TRF period taken into account for TRF matching purposes are those to *qualifying individuals*. That term means individuals who are UK resident in the tax year of matching and were remittance basis users in 2024/25 or at least one prior tax year (para 3(9)).
- 3.6. The TRF restriction of capital payments to qualifying individuals applies only to capital payments made in the tax year in which the capital distribution is made and does not require all historic s 87A computations to be redone. This is because para 3(2)(b) refers to step 2 in s 87A(2). That step refers to the relevant tax year and that term is defined as the tax year in which the matching is carried out, i.e. here the tax year in the TRF period in which the capital distribution is made (TCGA 1992 s 87(1)).

3.7. The restriction of capital payments to those made to qualifying individuals comes into play if in the tax year of the TRF period in which the capital distribution is made to a qualifying individual there are also capital payments to non-qualifying individuals. Here substantive matching matches s 1(3) amounts pro rata, and first matches s 1(3) amounts of the TRF period. The effect of the restriction of capital payments to qualifying individuals is that the part of the capital payment(s) to qualifying individual(s) substantively matched to s 1(3) amounts of the tax year concerned can under TRF matching be matched to s 1(3) amounts of 2024/25 and prior that under substantive matching are matched to capital payments in the TRF year(s) to the non-qualifying individuals. But because the restriction to qualifying individuals applies in relation to capital payments only in the tax year when they are made, capital payments to non-qualifying recipients in an earlier tax year in the TRF period that under substantive matching are matched to s 1(3) amounts of 2024/25 and prior remain so matched in applying TRF matching, and so are not available for TRF matching in the TRF tax year in which the capital distribution at issue occurs.

3.8. To sum up so far:

- a) capital payments to qualifying individuals are eligible for TRF under para 3 if and to the extent of pre-April 2025 s1(3) amounts;
- b) pre-April 2025 s1(3) amounts for the purposes of TRF are computed taking into account any capital payments that were made *before* April 2025 so there is no redoing of the historic s87A computations on the pool of stockpiled gains as it stood prior to April 2025;
- c) the same applies as respects capital payments made in the second or third tax year of the TRF period as respects capital payments made in a prior year of the TRF period;
- d) capital payments made post 2025 to more than one qualifying individual in the same tax year are matched on TRF principles and pro rata if there are insufficient pre s1(3) amounts. So, if a capital payment of £1000 each is made in 2026/27 to two individuals both eligible for TRF and the pre 2025 gains are only £1000 they can only designate half their capital payment as eligible for TRF (assuming there is no relevant income eligible for TRF – see below);
- e) where a capital payment of say £1000 each is made in the same TRF year to a qualifying and non-qualifying individual the pre-April 2025 gains (in the above example £1000) are matched to the qualifying individual first even if there are no post April 2025 gains;
- f) where a capital payment of say £1000 is made to a non-qualifying individual in 2025/26 and under substantive matching is matched to the pre April 2025 gains (because there are no post April 2025 gains) and a TRF payment is not made to a qualifying individual until 2026/27, the pre April 2025 pool is computed for the qualifying individual taking into account the substantive matching as a result of the earlier capital payment in 2025/26.

4. Paragraph 7

4.1. Paragraph 7(2) treats an amount of s 732 income as QOC if the following conditions set out in paragraph 7(1) are met:

- 7(1) (a) The recipient has s 732 income in a tax year in the TRF period;
- 7(1) (b) That s 732 income is not within para 6(1)(c) and so is not QOC under para 6;
- 7(1)(c) The matched benefit which results in the s 732 income would be QOC under para 3 (or para 5) if it were not chargeable to income tax.

- 4.2. The condition in para 7(1)(b) is satisfied on either of two quite distinct scenarios:
- a) The matched relevant income arose in the TRF tax year in which the capital distribution is made, or in another TRF year. In view of the FIFO rule applicable to TOAA benefits such would only be the position if and to the extent the capital distribution is in excess of the total relevant income of 2024/25 and prior.
 - b) The matched relevant income arose in 2024/25 or a prior tax year, but that income was not relevant foreign income and so, to the extent of such income, the s 732 income is not QOC under para 6. The obvious examples here are UK rental income or UK dividends received prior to April 2025. Such income cannot be relevant foreign income and therefore does not fall within para 6(1)(c). We call this non-qualifying income.
- 4.3. The condition in para 7(1)(c) overlays a further counterfactual over the counterfactual which para 3 represents. First, we disapply substantive matching and apply TRF matching under para 3. Second para 7(1)(c) tells us to apply para 3 where s732 income has arisen but is not eligible for TRF because it is UK source or post 2025 income. Para 7(1A) supplies matching for this double counterfactual matching and requires s 87A to be operated as follows:
- It is assumed there are no s 1(3) amounts in the TRF period – this is the general para 3 counterfactual TRF matching rule which operates for the purposes of para 7 also;
 - The only capital distributions which count as capital payments are those which fall within para 7(1)(c).
- Effectively para 7(1A) simply substitutes clearer machinery in achieving this result.
- 4.4. A point that is not immediately clear is how the double counterfactual matching required by para 7(1A) interacts with the single counterfactual TRF matching under para 3. Here the answer appears to be supplied by para 7(1A)(b) which requires single counterfactual matching under para 3 to happen first.
- 4.5. What this appears to mean is as follows:
- (1) The issue of whether a capital distribution in the TRF period is a capital payment for the purposes of s 87 is determined in the ordinary way. In other words, it is not a capital payment save to the extent it exceeds available relevant income, whether the latter arises in 2024/25 or prior or in the TRF period.
 - (2) Under TRF matching whatever as a result is the capital payment is matched with s 1(3) amounts of 2024 – 25 and prior.
 - (3) Only what is left of those s 1(3) amounts is available for the double counterfactual matching contemplated by para 7(1A). This means the benefit is not ineligible for TRF just because it is matched to non-qualifying income but there must be sufficient pre-April 2025 s1(3) amounts.
- 4.6. Assuming all this is right there are likely to be some cases where TRF relief under para 7 fails simply because there are insufficient s 1(3) amounts of 2024/25 and prior. *However, even where there are significant amounts of non-qualifying income, a capital payment can still be eligible for TRF provided there is sufficient pre-April 2025 relevant foreign income, pre-April 2025 s1(3) amounts or pre-April 2025 offshore income gains.*
- 4.7. Assuming and to the extent there are available s 1(3) amounts, the s 732 income is QOC (para 10(4)). However, in contrast to para 6 designation there is no reduction in real world relevant income or benefits (para 11(5)). Instead, the amount is treated as a designated capital payment for the purposes of para 3. This amount is also treated as a capital payment for the purposes of the substantive s 87 matching rules and so reduces applicable s 1(3) amount(s) (para 11(5)). The fact that the para 7 QOC does not reduce benefits for the purposes of the benefits code means inter alia that the para 7 relevant income that results in the s 732 income designated under para 7 is available relevant income to other recipients of benefits in the tax year in question and insofar as not matched then carries forward. So for example, if there is £1000 UK source income and a payment of £1000 to a

non-qualifying individual and a payment of £1000 to a qualifying individual in 2026/27 but also pre April 2025 gains of at least £1000, para 7 operates so that the qualifying individual is eligible for TRF but the non-qualifying individual is taxed on the whole £1000 by reference to the UK source income not just on half.

- 4.8. It is not immediately clear whether s 1(3) amounts matched under TRF matching are deducted in computing s 1(3) amounts for the purposes of the double counterfactual para 7 matching when non-qualifying income has arisen and para 7 sends the capital payment to be designated under para 3. So too it is not immediately clear whether s 1(3) amounts matched under the double counterfactual matching in para 7 are deducted when applying TRF matching in a future TRF tax year. But at a purposive level such deductions must fall to be made and it may be suggested such a conclusion follows on the language by the requirement in para 3(6) that once the QOC is designated the s 1(3) amount is reduced by the amount of the capital payment or benefit that is designated QOC. This would appear also to apply where the designation is under para 7.
- 4.9. Drawing the various points together, the critical requirement for the capital distribution to be QOC under para 7 where it fails to be QOC under para 6 is that sufficient s 1(3) amounts remain after TRF matching under para 3 has applied. In short, even if there is non-qualifying income in the overseas structure, provided there are sufficient pre-April 2025 s1(3) amounts under para 3 to match to a capital payment then TRF can apply.

Yours sincerely

CIOT Private Client International Technical Committee

The Chartered Institute of Taxation

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