Chartered Institute of Taxation.

Non UK domiciled individuals

INTRODUCTION

1. This paper comments on the proposals outlined in HM Treasury's policy paper dated 7 March 2024 and entitled:

   > "Technical note: Changes to the taxation of non UK domiciled individuals" ("the Technical Note")

2. This paper provides initial high level comments and does not deal with the IHT proposals suggested in the Technical Note. CIOT will comment on the latter proposals in a separate paper.

3. This paper assumes the intended rationale of the proposals is as stated by the Chancellor in his budget speech specifically:

   > "I have concluded that we can indeed introduce a system which is both faster and remains competitive with other countries"
   >
   > "Overall abolishing non-dom status will raise £2.7 billion a year by the end of the forecast period"

REMOVAL OF DOMICILE AS A CONNECTING FACTOR

4. CIOT agrees that the uncertainties inherent in the English law concept of "domicile" support the view that domicile has had its day as a connecting factor for tax purposes. As a result of the enactment of the SRT in 2013, residence is (with certain exceptions) clearly defined and can stand the weight of being the sole connecting factor.

5. CIOT notes the proposal in the Technical Note that domicile should remain a connecting factor for IHT purposes as respects pre 2025 settlements. CIOT suggests the government will also need to consider:

   (1) The use of domicile as a connecting factor in estate and inheritance tax double tax treaties.
   (2) The use of domicile to access certain historic transitional reliefs, most notably CGT reliefs (and equivalent OIG reliefs) in FA 2008 Sch 7, including 2008 rebasing relief in Sch 7 para 126 .

4 YEAR FIG EXEMPTION REGIME

6. CIOT agrees that an exemption regime for foreign income and gains ("FIGs") is preferrable to a relief turning on remittance. The legislation introduced in FA 2008 left the law relating to remittance uncertain and still subject to dispute e.g. in relation to

collateral and loans. The original concept of remittance dates back to the early 19th century and, like domicile, has had its day.

7. CIOT however considers that the limitation of the FIG exemption regime to the first four years of residence will not be competitive. The Italian substitute tax regime lasts 15 years, the French regime is effectively over 8 (albeit different) and the Swiss forfait regime indefinite. Israel has an exemption period of 10 years. Greece has a regime for up to 15 years and new countries are constantly amending their rules to attract high-net worth individuals. We would suggest that ten years should be considered but cliff edges avoided.

8. To the outside observer a reasonable inference is that the 4 year limit was driven by a desire to arrive at the target revenue yield of £2.7bn. In view of the importance of the issue and the need for informed debate CIOT would urge HMT to:

   (1) Publish the figures and assumptions by which the yield figure is arrived at.
   (2) In particular publish the extent to which account has been taken of the economic activity that would be generated by individuals who would locate to the UK were the FIG regime in place for a longer period of 10 or 15 years and will not locate in the UK if the FIG regime lasts only 4 years.
   (3) Also publish the estimates of how many people will, as a result of the proposal, leave the UK sooner if the FIG period is 4 years than they would if the FIG period is 10 or 15 years. This will enable advisers to make comparison with what they are finding in practice.

9. Should a longer period be adopted, CIOT would favour a lump sum payment to access the exemption regime after a minimum period, rising according to how long the individual has been in the UK. The CIOT, by analogy with anecdotal evidence from Italy, does not consider a lump sum payment of £100,000 per year would be a deterrent, coupled perhaps with a higher annual payment in later years if a period in excess of 4 or 6 years is adopted. This would avoid a cliff edge of all or nothing before and after the four year period. Our own anecdotal experience as a group is that people are far more likely to put down roots and therefore stay after ten years rather than stay after only four years. We would suggest a lump sum payment to access the exempt regime after the first four years with the whole regime ceasing after ten years. But of course there are many variants.

10. Regardless of the length of the FIG period CIOT considers:

   (1) If the year of arrival qualifies as a split year under SRT, it should be excluded in computing the exempt FIG period.
   (2) The years of residence counted to qualify for FIG treatment should exclude years of non-residence between years of residence.

11. CIOT agrees that a minimum of 10 years prior non-residence should be required to access the FIG exemption regime. The 10 years should be up to and including the year immediately preceding the first year of residence and we think it is reasonable to

require ten years consecutive non-residence in line with the current rules on losing deemed domicile and in ensuring that people do not need to consider residence status before 2013.

12. CIOT can see no good reason why a disclosure of FIGs should be required in a claim to access the new 4-year FIG regime.

13. It should be confirmed that losses on foreign situs assets realised after the FIG period had ended will be fully allowable and that the same will apply from 2025 – 26 onwards where the taxpayer's residence on 6 April 2025 is already longer than the FIG period (and regardless of whether he previously made a 16ZA election).

14. It should be confirmed whether the new 4-year FIG regime applies to all foreign income and gains, or only income and gains which would currently qualify for the remittance basis. Chargeable event gains on foreign life insurance contracts would be one key example where income is deemed to arise, but it does not currently qualify for the remittance basis.

REDUCED AMOUNT OF FOREIGN INCOME SUBJECT TO TAX

15. CIOT notes this relief will apply for 2025 – 26 only. We also note that it may be abolished under Labour so the proposals below could be redundant.

16. CIOT considers there is no good reason why it should not apply to all of the following:

    - Individuals who claimed the remittance basis in 2024 – 25
    - Individuals who were entitled to the remittance basis in 2024 – 25 without need for claim (ITA 2007 s 809D and 809E)
    - Individuals who were entitled to the remittance basis in 2024 – 25 if it had been claimed and (for whatever reason) did not claim it

17. It should be confirmed:

    (1) The relief will apply to deemed income as well as actual income (including by way of example offshore income gains ("OIGs")).
    (2) Whether it applies to foreign income that would not currently qualify for the remittance basis (e.g. chargeable event gains on life insurance contracts)
    (3) How the relief will operate where some of the foreign income is dividend and some not.
    (4) Credit relief on the half of the income taxed (whether treaty or unilateral) will be available against the tax charged on that half of the income.

18. It should be confirmed whether or not the relief will be applicable to:

    (1) Income of trusts and underlying companies that would have been PFSI had the trust protections continued after 6 April 2025 and is taxable on the settlor/transferor in 2025 – 26 under the income tax settlement/transfer of assets code.

(2) Income that would have been so taxable even if PFSI protection had continued (e.g. income of directly owned companies taxable on the transferor under the transfer of assets code).
(3) Income treated as arising to an individual in 2025 – 26 under the transfer of assets benefits charge (ITA 2007 s 731) (it is assumed that on any view the relief will apply to company dividends and trust income distributions).

CAPITAL GAINS TAX REBASING

19. CIOT notes this relief will be subject to conditions to be set out later. It would be helpful to know these conditions quickly in order that clients can make informed decisions as to whether to dispose of assets in 24/25 and thereby access the remittance basis or rely on rebasing.

20. We assume that rebasing will only be available to those who would have been eligible for the remittance basis in 2024/25 but clarification is needed. Assuming that position is maintained:

(1) It should be confirmed a claim to the remittance basis in any year suffices rather than only a claim in 2024 – 25.
(2) The position of those eligible for the remittance basis without need for a claim should be considered (ITA 2007 s 809D and 809E).
(3) Rebasing will be allowed no matter how long after 6 April 2025 the disposal takes place.
(4) It should be confirmed whether individuals who would have become deemed domiciled on 6 April 2025 under present law will be eligible for rebasing.
(5) It should be confirmed whether rebasing will apply to OIGs.

21. CIOT queries whether 2019 rebasing should extend to:

(1) Trust gains (or OIGs) taxable on the settlor under TCGA 1992 s 86 (or ITA 2007 s 720) which would not have been taxable had the trust protections continued.
(2) Assets held in companies where gains will become taxable as they arise on UK participators under TCGA 1992 s 3 (or ITA 2007 s 720 in the case of OIGs).

TEMPORARY REPATRIATION FACILITY ("TRF")

22. CIOT reads the proposal as applying to unremitted FIGs no matter how long ago they arose and regardless of whether or not the taxpayer to whom they arose is now a remittance basis user. It should be confirmed this is so and thus that the only conditions for the relief are:

(a) The FIGs were eligible for the remittance basis when they arose; and
(b) They have not so far been remitted.

23. CIOT sees it as implicit in the proposal that there is a desire to end both the need to consider what may or may not constitute remittance and the impossibility of identifying what FIGs are or are not comprised in a mixed fund. CIOT agrees these objectives are highly desirable. To that end it has submitted a separate memo setting out detailed suggestions.

24. It should be confirmed the TRF applies to FIGs resulting from matching under TCGA 1992 s 87 or ITA 2007 s 731 – 5 (and the equivalent provisions dealing with OIGs). It is assumed trust income distributions and company dividends would on any view qualify as FIGs.

25. In general CIOT agrees the relief should be applicable to FIGs arising to the individual personally. This is because, in general, the trust protections prevent FIGs in trust and underlying companies being taxed on the settlor/transferor. But income and gains in directly held companies do not enjoy the trust protections so it is suggested these should be in scope to the TRF. The same should apply to certain categories of income at trust level that may not be PFSI for the purposes of the settlement code.

26. It should be clarified whether a remittance after 5 April 2025 of foreign gains realised before 6 April 2025 will be offset by losses in circumstances where such offset is not currently possible (TCGA 1992 Sch 1).

TRUST PROTECTIONS

27. The effect of the Policy paper is that once an individual has been UK resident for 4 years:

    (1) All income and deemed income of the settlor interested trusts and (in general) their underlying companies will be taxable as his.
    (2) All gains of trusts of which he or his children or grandchildren are beneficiaries will be taxable on him, as will the gains of certain underlying companies.

28. The anti-avoidance legislation which has this result dates back to the inter war years in the case of the transfer of assets code and to the 1990s in the case of CGT and the income tax settlement code. It was when enacted directed at individuals born and based in the UK who set up foreign entities as a means of avoiding UK tax. It was not directed at immigrants or temporary visitors to the UK, many of whom may previously have set up trust and companies for reasons quite unconnected with UK tax. One of the main policy reasons justifying the trust protections was a recognition of this point.

29. CIOT consider this anti-avoidance legislation must be looked at afresh in view of the additional impact it will have, and the fact that this legislation is now being applied to situations it was never designed for. Now is not the place for detailed analysis but two high level points may be made:

    (1) The transfer of assets code is unfit for purpose, dating back, as it does, to the time when Neville Chamberlain was Chancellor. There can be few if any anti-avoidance codes where HMRC have suffered so many litigation defeats in recent years, a point

which of itself signifies how uncertain the code is in meaning. At trust level the transferor charge is duplicated by the settlement code. At company level something based on TCGA 1992 s 3 could be proposed and for benefits TCGA 1992 s 87 may be a better structure than ITA 2007 ss 731 – 35.

(2) Primary liability should be on the overseas trust or company where anti-avoidance legislation attributes income or gains to a UK resident settlor or transferor as they arise. This will avoid the difficulties that can occur where the settlor/transferor seeks to be reimbursed, particularly where (in trust cases) he is not in fact a beneficiary.

30. On any view the opportunity should be taken to repeal anti-avoidance legislation which is disproportionate and rendered unnecessary by subsequent case law and/or the GAAR and principles of purposive construction. Prime among these are:

- The TOAA capital sum provisions in ITA 2007 s 727
- The CGT trustee borrowing rules in TCGA 1992 Sch 4B and 4C
- The settlor benefits charge in ITTOIA 2005 ss 643A – 643N

31. In addition the opportunity should be taken to simplify and redraft the onward gift rules in TCGA 1992 s 87I – 87P and ITA 2007 ss 733B – 733E.

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