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Non-domicile taxation reforms – issues that may require legislative change and other areas of uncertainty

Submission by the Chartered Institute of Taxation

1. Introduction

1.1. Following the general election in July 2024, draft legislation for the government's non-domicile tax reforms was published at Autumn Budget in October 2024. The draft legislation was enacted, with limited amendments, in March 2025. The truncated timetable to implement this complex new legislation has meant that significant omissions and uncertainties remain. We suggest these need to be addressed in order to meet the government's policy objective of implementing 'a new residence-based regime which is internationally competitive and focused on attracting the best talent and investment to the UK'[1]. This submission is intended to help identify those technical areas that we consider require legislative change and those issues that may be appropriately covered or clarified in HMRC's manuals guidance.

1.2. Our stated objective for the tax systems include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers
- Responsive and competent tax administration, with a minimum of bureaucracy.

2. New foreign income and gains (FIG) regime[2]

2.1. As we have already said[3], we cannot understand why a taxpayer (even if technically careless) should not be permitted to make a consequential claim for relief if they inadvertently fail to identify an item of foreign income/gain (ITTOIA 2005 section 845A(6)). If the government wishes to attract people to come to the UK, the

[1] HM Treasury policy paper 'Changes to the taxation of non-UK domiciled individuals' https://www.gov.uk/government/publications/2024-non-uk-domiciled-individuals-policy-summary/changes-to-the-taxation-of-non-uk-domiciled-individuals
[2] FA 2025 sections 37-39 inserting ITTOIA 2005 new section 845A, TCGA 1992 new paragraph 1 Schedule D1
[3] See paragraph 10 Finance Bill 2024-25 briefing - Replacement of special rules relating to domicile

regime should be trying to make things as easy as possible for new arrivers rather than creating potential traps. We would suggest that further consideration is given to removing the inability to make consequential claims where an individual has been careless.

2.2. It might be possible to deal with this issue by making relief the default position rather than having to identify every possible item of overseas income/gains which might qualify. We recognise however that there is a tension between having a default relief and trying to ensure that a qualifying new resident (QNR) qualifies for treaty relief. If the relief is automatic and therefore exempts overseas income/gains from tax (rather than simply giving rise to an amount of relief which can be set against total income/gains), it may be that the QNR will not be treated by other jurisdictions as UK resident for treaty purposes. One possible solution to this would be to give a taxpayer the ability to elect that all qualifying overseas income/gains are exempt from tax whilst retaining the existing mechanism of identifying foreign income/gains in a claim for relief where treaty protection is important.

2.3. Another point that we have made previously[4] is that it is common for individuals in some jurisdictions to own life assurance policies which are set up in a standard way for the overseas jurisdiction, but which fall foul of the UK's personal portfolio bond (PPB) regime. The inability to claim relief in respect of chargeable event gains or PPB charges is a trap for the unwary. The fact that such charges did not benefit from the remittance basis is irrelevant if the objective is to create an attractive regime for individuals moving to the UK. The CIOT therefore considers that all charges in respect of offshore bonds, and including personal portfolio bond charges, should be excluded from UK taxation in the four-year period of FIG exemption. It would of course not be difficult to add this to the list of qualifying foreign income in ITTOIA 2005 section 845H.

2.4. We are unclear why the treatment of QNRs in receipt of trust capital distributions differs as between CGT and income tax. TCGA 1992 Sch D1 effectively treats the capital payment as if it had been received by a non-resident in that it is ignored both when received and going forward. The capital payment is neither matched nor reduces the trust gains and is therefore a complete disregard. The income tax rules by contrast focus on the notional income arising under ITA 2007 section 732 and require any designation to be of that. This is cumbersome and off-putting (particularly bearing in mind that new arrivers will by definition not know all the vagaries of the UK tax system and will often be beneficiaries of trusts with international beneficiaries where the trustees have not accounted for income or gains taking into account UK considerations at all and will not now want to do so. They will assume that they can make a one off distribution to the beneficiary which is tax free to enable that beneficiary to live in the UK without further enquiry as to relevant income pools).

Inter alia the income tax rules appear to mean that, in contrast to CGT, a benefit received during the four year FIG period in excess of relevant income carries forward and can be taxed if there is relevant income in the future. This is not consistent with the policy behind the regime which is to encourage people to come here on the basis of simplicity and certainty in the first four years. Indeed the potential for anomaly is considerable as (assuming the benefit is designated for CGT) it will not be matched against s 1(3) amounts as would be the case if income tax and CGT rules aligned, but instead will carry forward against future relevant income.

The income tax treatment also creates problems with relevant income and appears to have led to new sub section (2B) and (2C) of section 733 ITA 2007. Sub section (2B) is obscure in meaning but what sub section (2C)

[4] See paragraph 12,13 Finance Bill 2024-25 briefing - Replacement of special rules relating to domicile

seems to be saying is that the QNR benefit reduces relevant income for the QNR but not for anybody else. We wonder if this creates scope for the relevant income to be matched twice, which is odd. Does ITA 2007 section 735A in particular need looking at?

Is not the cleaner and more logical solution to use the CGT approach? We strongly recommend that this drafting is rethought and the income tax position aligned with the CGT rules as set out above rather than having inconsistent rules. If HMRC are concerned about avoidance then it would be helpful if they could outline particular scenarios. There have been too many past occasions where a relief has been offered to the taxpayer but is over complex and therefore not used. Business Investment Relief springs to mind. The aim is surely to encourage people to come to the UK and offer them a time limited relief to enable them to do so. These complexities fly in the face of that objective.

2.5. PRs of a deceased QNR do not appear to be entitled to any relief. This contrasts with the former position (at least for income tax – and perhaps by way of a concession) of PRs of a remittance basis user who did not pay tax on overseas income. There seems no reason in principle why the PRs of a QNR should not be entitled to the same reliefs as a QNR. It may be that such relief can also be allowed on a concessionary basis although, in our view, it would be better if it were provided for in the legislation.

2.6. The provisions dealing with how relief is given are not as clear as they might be:-

i) As far as income tax is concerned, ITTOIA 2005 section 845A(3) provides that the relief should be given by deducting the amount of the relief in step 2 in ITA 2007 section 23 . However, this cross-refers to the 'components' of total income that are mentioned in step 1 which gives rise to the question as to whether, if the relief derives from (say) overseas dividend income, the relief must be deducted from the overseas dividend component. This does not appear to be the right answer as ITA 2007 section 25(2) requires the relief to be deducted in the way which will give rise to the greatest reduction in the income tax liability. The overseas dividend income would therefore be deducted from one of the components which would otherwise be taxed at the top rate of income tax rather than the dividend rate. It would be helpful if this could be confirmed in guidance and it may be that no change to the legislation is needed.

ii) In relation to capital gains tax, paragraph 2(2) of schedule D1 provides that relief is given by deducting the relevant amount from 'the total amount of the chargeable gains accruing to the individual'. As far as we can see, there is nothing in the CGT legislation which explains how you decide which gains the relief should be deducted from (unlike the position in relation to allowable losses where TCGA 1992 section 1F allows them to be deducted in the most beneficial way). Given that most gains are now taxed at the same rate this will probably only matter if the individual has carried interest gains (and even then may not make any difference after 5 April 2026 assuming carried interest is then taxed as income[5]). It would however be helpful to know if a taxpayer can choose which gains the relief should be set against or, if not, whether it reduces all gains proportionately. Ideally the legislation should be amended to make the position clear for the future in case there are differing rates of CGT.

2.7. If the relief is given in the way which we believe to be the case (as set out above), there may be situations where the UK receives less tax than might otherwise be the case. One example of this may be where the overseas income is subject to withholding tax. This can be illustrated as follows:

[5] https://www.gov.uk/government/calls-for-evidence/the-tax-treatment-of-carried-interest-call-for-evidence

A receives overseas dividend income of £100 less withholding tax of £15 so that the net receipt is £85. A also has UK interest income of £100. Assume A pays tax at the highest rate.

Our understanding is that, as a QNR, the amount of relief which A can claim is equal to the gross amount of the foreign dividend – ie £100. A deducts this from his UK interest income as this gives rise to the greatest reduction in his liability to income tax. He is therefore taxable in the UK on the overseas dividend of £100. The tax liability is £39.35 (dividend additional rate) but is he entitled to a tax credit of £15 giving a net liability of £24.35. The amount of tax paid by A is shared between the UK and the overseas jurisdiction. If A was required to deduct the relief from his overseas dividend income, he would still have to pay the overseas withholding tax of £15 but would also pay tax of £45 on the UK interest income.

3. FA 2025 Schedule 12 Changes for trusts: connected amendments, transitional provision etc

3.1. Paragraph 62:new TCGA 1992 section 87HA(2). This appears to mean that the chargeable period for the purposes of supplemental tax (TCGA 1992 section 91) ends on 30 November following the end of the tax year when the onward gift is made rather than 30 November following the end of the tax year in which the original benefit is received. This was a feature of the repealed onward gift legislation, but is it logical?

3.2. Paragraphs 71(2)(b)(ii), 73(2)(b)(ii) and 75(2)(b)(ii). Should these paragraphs provide that the original benefit is not treated as received by the original recipient? Otherwise there is scope for double tax should the original recipient remit the original benefit.

3.3. New sections 643EA (paragraph 17) 735AF (paragraph 44) and section 87HA (paragraph 62). Do these provisions need amending to exclude QNRs where the QNR does not make a claim for exemption as respects the benefit/capital payment?

3.4. TCGA 1992 Sch 1 para 1. Should not the past tense be used in para 1(1)(a) – (c)?

3.5. Paragraph 67. This repeals TCGA 1992 Sch 1 para 3(5)(b). But the whole of para 3 is repeated by Schedule 9 paragraph 2(7).

3.6. Paragraph 69(4), inserting TCGA 1992 Schedule 5 paragraph 5C . Must the rebasing election have been made before the start of the tax year in which the section 86 gains accrue and if so must the election have been made in 2024 – 25 or prior? Or is an election competent if made in the tax year when the section 86 gains accrue or in the following tax year pre filing?

Where the trust is filing tax returns could any rebasing election the trustees now wish to make be provided for in the trust tax return for the year in which the triggering event occurs or (where appropriate in the trust tax return for an earlier tax year).

3.7. Paragraph 39(3)(b). This amends ITA 2007 section 732(1)(d). What is the effect of the words ‘and would not be liable if the effect of sections 726 and 730 were ignored’. Is this intended to mean section 732 does not apply to a transferor who has made a four year FIG claim in respect of income deemed to be his under sections 721 or 728?

3.8. More generally does Step 1 need amending to make it clear benefits received by non-residents between 6 April 2017 and 5 April 2025 are excluded. Under section 732 as it existed in those years such benefits were not excluded, relief being delivered by section 731(1A), which provided that in such circumstances the ensuing section 732 income was not chargeable.

3.9. It should be considered whether all the work intended to be done by ITA 2007 section 735AD is in fact done by ITTOIA 2005 sections 643A – 643C. Viewed alone, do not the latter catch all benefits to the settlor or a close family member (CFM) matched with protected foreign-source income (PFSI) and transitional trust income (TTI)/ transitionally protected income (TPI) at trust level, ie PFSI/TPI within ITA 2007 sections 721A(3) and 729A(3)? If so, could sections 643A to 643C be given exclusive application in relation to income at trust level. As such they would be given priority in transferor benefit cases, with section 735AD only coming into play insofar as the benefit is unmatched under sections 643A – 643C and there is relevant income in an underlying company which has not been distributed up to the trust and is PFSI/TPI by virtue of sections 721A(4) or s 729A(4).

As it stands the interaction between sections 643A – 643C on the one hand and section 735AD on the other is difficult to construe and is so complex that loopholes and anomalies could well emerge when the sections are applied in practice. By way of example step 3 in section 643C(1), when read with section 643C(3), appears to have the effect that neither sections 643A – 643C nor section 735AD apply in motive defence cases. Is this intended?

It would also be helpful to have clarity as to whether provisions requiring a benefit to be ignored have that effect in any case where the benefit is or has been matched under section 732 and so has given rise to notional income, or whether they are restricted to cases where that notional income is in fact taxed under section 731. Section 643B(B)(1) step 3(c) is an example of a provision which many would regard as ambiguous in that context (this provision not being one amended by Schedule 12).

3.10. On a rather different point section 643B(1) step 3(a) requires the deduction of a benefit on which the individual is otherwise 'liable to income tax'. Presumably this means any benefit to a qualifying new resident is deducted, regardless of whether or not a claim is made under ITTOIA 2005 section 845A.

3.11. Assuming section 735AD stands, new section 733(2A) appears to prevent notional section 732 income not taxed as a result of section 735AD(2) from being a deduction under Step 2 in section 733. This is logical as such income should not have been in Step 2 at all. But is an equivalent provision needed in ITA 2007 section 744(4)?

3.12. New sections 735AE and 735AF. Section 735AA means these are confined to settlements where PFSI or TSI had arisen before 5 April 2025. But they are not confined to benefits matched with such income. Is this intended?

4. Temporary Repatriation Facility[6] (TRF)

General comments on scheme of TRF

4.1. The overall scheme of the TRF is that there must be:

- Qualifying Overseas Capital (QOC) of an individual

[6] FA 2025 section 41 and Schedule 10

- The individual 'designates' that QOC
- Such 'designation' leads to:
    - The TRF charge
    - Income tax and CGT exemptions
    - Modified rules about remittances

4.2. Before we turn to our detailed comments, we start by noting two overriding issues with the design of the TRF:

- What is designated are particular assets ('overseas capital') that derive from or otherwise represent past FIG, rather than the FIG itself.
- The facility is not available to non-residents.

In our view a number of the following points would be simpler to deal with if the scheme allowed users to designate either the FIG itself or the assets derived from them and was available to both residents and non-residents.

4.3. The first of these points can immediately be illustrated.

4.4. The main definition of QOC contains three cases (Schedule 10 para 2(2), (5) and (8)). The first two cases deal with QOC that, when it arose[7], was income or gain. The third case (sub-para (8)) deals with capital where neither of the first two cases applies, but the capital was held by the individual before 6 April 2025 and, throughout the individual's ownership up to 6 April 2025 was situated outside the United Kingdom.

4.5. The third case is presumably needed in case an individual over-designates. We assume that this is provided for (and was something CIOT's original paper called for) because individuals may not always know exactly how much unremitted FIG they have and the intention is[8] to allow those affected to err on the side of caution.

4.6. However, there appear to be two gaps in sub-para (8):

- The asset was not held by the individual – for instance it was held by another relevant person (eg the individual's spouse);
- The asset was situated in the United Kingdom at some point before 6 April 2025 (for instance because Business Investment Relief or another remittance relief applied to it). (Another example would be where assets are brought to the UK during a period of non-residence or temporary non-residence – see below).

(Although not explicit, there seems to be nothing in either sub-para (2) or sub-para (5) that prevents QOC of an individual actually being in the hands of another relevant person[9]. And it seems clear from para 2(7) that BIR and other remittance reliefs are not intended to prevent assets from being QOC).

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[7] The reference to 'arose…as a gain' is not strictly apposite as gains 'accrue' rather than 'arise'. However, presumably, the reference is to simplify the language given that schedule 1 treats a gain accruing on the disposal of an asset as not accruing until they are remitted.
[8] Unlike the 2017 mixed fund cleansing opportunity which required exact computations.
[9] RDRM 73200 suggests that the designation can (indeed must) be made by the individual whose FIG it is, and not by the relevant person. We agree. RDRM 73200 could be clearer on this point as it is framed in terms of what the relevant person cannot do rather than on what the individual can do. (And then gets side-tracked into the question of whether an advisor can assist with preparing a tax return).

4.7. If the intention is to allow individuals to err on the side of caution when designating FIG, then we cannot see why this also does not apply in these two situations. An individual may be unsure exactly how much FIG they have transferred to another relevant person[10]. And an individual may be unsure exactly how much FIG is included in a BIR investment (say).

4.8. We consider that these issues would be simpler to deal with if individuals were allowed to designate (what they believe to be) the FIG itself, rather than overseas capital.

4.9. However, even if you do not accept this overarching point, we think that the drafting here could still be radically simplified, simply by saying that an individual can designate any assets they wish (whether in their own hands or in another person's hands; and whether already in the UK or not) and that such designation leads to the TRF consequences (payment of the TRF charge; remittance not causing a tax charge; modified rules about remittances).

4.10. We are also unclear why – at least for the main TRF – there is a requirement in para 1(5) that the individual must have been subject to the remittance basis for at least one tax year before 2025/26. Leaving aside trusts[11], for the main TRF a designation will be of no use to an individual unless they have income/gains qualifying for the remittance basis. This appears to be a doubling-up of tests.

Foreign tax

4.11. Under paragraph 8(3) schedule 10 FA 2025, only the net amount of any foreign income after deducting foreign tax may be designated. What is the position if the foreign tax is actually paid from a different source?

Take a taxpayer who has 100 of foreign income and 30 of foreign tax. However, the foreign tax is actually paid using different funds. In such a situation paragraph 8(3) allows only 70 of the 100 to be designated. But what, then, is the status of the remaining 30?

So far as we can tell the 100 then becomes a mixed fund consisting of:

- TRF Capital of 70
- Foreign income [within section 809Q(4)(g) say] on which foreign tax has been paid, with the result that once the first 70 has been remitted tax free, the next 30 in the mixed fund is still chargeable to UK income tax. (Presumably with credit for the 30% = 9 of foreign tax that has been paid on it).

We presume that this is not the intention and would therefore recommend a legislative fix. (Either that the 30 in the above example is also treated as TRF capital, or – although we think this may be more complex - that the whole of the foreign tax of 30 attaches to the 30 so that there is no further tax on its remittance).

Interaction of TRF and temporary non-residence

[10] Example 1 at RDRM 74500 notes that Lucia cannot use the TRF on the amounts gifted to Gabriel because she cannot identify them. However, we are unclear – in policy terms – why the government would not want to allow Lucia to make a TRF designation in such circumstances.

[11] We have previously suggested that the Trust TRF (where after 6 April 2025 an overseas trust or other person makes a capital distribution or benefit matched with earlier gains or income) would be more attractive if it simply applied to all beneficiaries. See [Technical submission to HMRC - Finance Bill 2024-25 Clauses 37-46 and Schedules 8-13]

4.12. In the absence of the TRF applying to non-residents, the interaction of the TRF and the temporary non-residence (TNR) rules is complex and we think that there are gaps in the provisions as a result. It is unclear whether these gaps are intentional or inadvertent. If deliberate, we cannot see a particular policy reason for these gaps.

4.13. We think that six situations need to be considered:

	Income/gains arose	**Income/gains remitted**	**TNR period ends**	**Consequences per current legislation**
1	Before TNR Period	Before 6 April 2025	During TRF period	S832A deems remittance during TRF period. Designation seems possible in year of return.
2	Before TNR Period	Before 6 April 2025	After TRF period	Designation not possible
3	Before TNR Period	After 6 April 2025	During TRF period	As in case 1
4	Before TNR Period	After 6 April 2025	After TRF period	Designation not possible and residence requirement in para 1(7) prevent designation while non-resident.
5	During TNR Period but before 6 April 2025	-	During TRF period	TRF unavailable because income/gains deemed to be post 6 April 2025
6	During TNR Period but before 6 April 2025	-	After TRF period	As in case 5

4.14. It appears from the above that only cases 1 and 3 can qualify for the TRF.

4.15. A principled case can be made as to why case 2 above does not qualify (because the FIG was actually remitted before the TRF period and residence was not resumed until after it). However, even in this case it is unclear why the UK would turn down a TRF payment (which might also encourage the individual to return early).

4.16. In the other cases it is unclear why TRF is not available. In case 4 the FIG actually arose before 6 April 2025 and it is only the period of temporary non-residence – which may not be within the individual's control – for instance if their employment keeps them out of the UK – that deems the income/gains to be remitted at a later date. In cases 5 and 6 the income/gains actually arose when non-resident, but would have been FIG had the individual been UK resident (or the TNR period come to an end before 6 April 2025.).

4.17. These issues would be relatively easily dealt with by allowing non-residents to make a designation if they wish to do so and amending para 1(7) accordingly. Otherwise they will need a specific fix.

Exchange rates – conversion date

4.18. We are aware that HMRC's longstanding view at RDRM 31190 is that where foreign income is received in a non-sterling currency, the date at which the conversion to sterling is undertaken is the date of remittance. HMRC will be aware that this view has been strongly criticised by the leading textbooks and that the 'practitioners' view' is that the conversion should take place at the date the income is received.

4.19. RDRM 73310 notes that HMRC's traditional view does not work for designation (as the TRF contains no requirement that the foreign income is actually remitted) and therefore proposes – given that designation is treated as having taken place at the start of the tax year in question – that the exchange rate as at 6 April at the start of the relevant year be used.

4.20. While, in many cases, this may be a pragmatic and helpful solution, in our view it leaves open more questions than it answers. What, for instance, is the position if the foreign income is actually remitted during the tax year? It is unclear why HMRC's traditional view should (were it correct) not then apply and why – instead – the taxpayer should backdate to the previous 6 April. There seems no basis in law for HMRC's view – and indeed this seems to highlight the inconsistencies in the RDRM 31190 view.

4.21. In our view, in the absence of a statutory rule, taxpayers should be allowed to adopt any reasonable basis they wish, provided they do so consistently. In many cases, we suspect that taxpayer will adopt the longstanding practitioners' view (that the date of conversion is the date the income is received) as they will already have kept records on this basis.

4.22. While HMRC might view this as a concession, given that exchange rates might just as easily have moved in either direction, we suspect that HMRC are as likely to gain as lose from allowing taxpayers to adopt any basis. In our view, anything that makes life easier for taxpayers will encourage take-up of the TRF generally and so should be encouraged.

More than one asset derives from the same FIG – ' Quantum FIG'

4.23. Given the wide definition of 'remittance' in ITA 2007 section 809L, it is possible – indeed common – for more than one asset to derive from the same FIG.

4.24. An obvious example of this – although there are a number of others - would be where a taxpayer lends their FIG, outside the UK, to another relevant person. In such case:

- The assets in the hands of the relevant person; and
- The debt owed by the relevant person

Both derive from the same FIG[12].

[12] James Kessler (17.24.9) refers to this as 'double representation'. The position is not limited to two instances, however, as there are situations where multiple assets can derive from the same FIG.

4.25. In such a case it seems to be generally accepted that FIG cannot be taxed more than once. Hence if any of the assets is remitted to the UK then that leads to the FIG being charged to tax. But such a charge to tax then releases the other derived assets from a tax charge (either on general principles or as a result of section 809P(12)).

4.26. Presumably, therefore, the appropriate result under the TRF is that paying the TRF charge once should similarly relieve future remittances of all assets derived from one lot of FIG. However, it is not clear that schedule 10 Finance Act 2025 achieves this. This is because:

- What is designated is not the FIG itself, but qualifying overseas capital – ie the capital asset that either is or derives from the FIG (or in situations where conditions C or D of section 809L apply);
- The exemption from tax (paragraph 10, paragraph 12 etc.) only applies to the remittance of the designated qualifying overseas capital – not to the FIG. Therefore, if something else derived from the FIG is remitted, it is unclear that this gets any exemption.
- It is unclear that section 809P(12) saves the position because payment of the TRF charge does not require a remittance.

4.27. While an affected taxpayer could obviously pay the TRF charge multiple times (on each asset derived from the same FIG) this is presumably not the intention, and once more than three assets derive from the same FIG it would be uneconomic.

For example:

X has 100 of FIG

X lends the 100 of FIG to a company (Y). The company is a relevant person in relation to X

Y later repays the loan (using other monies)

The FIG now exists in two places at the same time (two separate assets derive from the FIG), namely:

(i) The 100 of funds in the company

(ii) The 100 proceeds of repayment in X's hands

If X only designates the 100 of proceeds in his hands then this will exempt any remittance by X of that 100.

But it does not appear to exempt X from tax if the company, at some point, remits the 100 of funds in its hands to the UK.

4.28. One solution to this, is to adopt our general suggestion of allowing the FIG itself (rather than the QOC) to be designated. In the absence of this, we suggest that the solution is that once qualifying overseas capital is designated, any other assets derived from the same FIG (by virtue of which the qualifying overseas capital so qualifies) is also treated as designated (and/or treated as TRF capital) to that extent.

Single asset derived from multiple FIG

4.29. This is the opposite of the previous situation, namely whether one asset can derive from more than one lot of FIG.

4.30. HMRC will be aware that, on the basis of *Harmel v Wright*, there is a view that such a situation cannot arise and that a particular asset can only derive from one lot of FIG – its real source. However, we are aware that HMRC may take a different view on this point, so think it is important that the point is definitively covered.

4.31. Assuming HMRC's view is correct this can arise in a number of ways, for instance where a wife lends her FIG to her husband (say) and the husband then repays that loan using his own FIG. The assets now in the wife's hands could be said to derive from both her own FIG and from her husband's FIG.

However, the above example also confuses the situation of two different taxpayers. So a better example would be where:

X has funded a trust with 100 of X's foreign income (say)

The trust makes a capital gain (say 50)

The trustees make a capital payment of 50 (back to X, say)

The 50 now in X's hands derive from both:

(i) X's original foreign income (with which he funded the trust)

(ii) The trust gain of 50 matched with the capital payment

4.32. If X designates the 50 of capital in his hands the effect appears to be that no liability to either income tax (paragraph 10) or capital gains tax (paragraph 13)[13] arises. The consequence appears to be that one designation exempts both 50 of X's income and the 50 of capital payment. It is unclear whether this is the intended outcome.

4.33. On one view, being the mirror image of the situation at point 5 above, it should be necessary for the taxpayer separately to designate each item of FIG.

4.34. The opposite view is that the TRF is a rough-and-ready mechanism designed to help former remittance basis users clear up the past (and/or that the Harmel v Wright analysis is correct). Many may not have suitable records of what trusts were originally funded with. And payment of multiple tax charges may put them off using the TRF at all. So there is an argument that the outcome here is the correct result anyway.

4.35. However, we suggest HMRC should clarify the point, as a minimum, in guidance. We suggest that for simplicity and to align with what we believe to be the policy, the remittance of a distribution which has resulted in the designation should not give rise to any further tax.

FIG falls in value

4.36. HMRC's long-standing view is that where FIG is invested and the investment falls in value, the amount remitted is still the original amount of the FIG and not the reduced value.

[13] We note that for paragraph 13(1)(b) the designation must be 'under paragraph 3'. However, it is unclear (a) how the taxpayer indicates on his or her tax return under which paragraph the designation is made (b) why this should make a difference. The taxpayer here appears free to designate under paragraph 3 and the consequence is that the capital payment in his hands are then designated qualifying overseas capital and then qualifies for the paragraph 10 (or 12) exemption as well.

4.37. RDRM35030 gives the example of Marianne who purchases a car for £25,000 of foreign chargeable gains. Then, at a point when the market value of the car is £14,000, she either (a) drives the car to the UK or (b) sells the car abroad and brings the £14,000 proceeds to the UK. In either case, HMRC's view is that the amount Marianne remits is £25,000 and not £14,000.

4.38. While HMRC's view is arguable, we would note that the opposite technical view is possible (on the basis that in the above example the £14,000 that remains could be said to derive only from £14,000 of the original gains and not from the full £25,000).

4.39. The position is widely misunderstood and many taxpayers and their advisers may not be aware of the issue.

4.40. The HMRC view is hard to deal with where the original purchase price is a mixed fund (for instance in the above example assume that the original £25,000 consisted of £10,000 of foreign income and £15,000 of clean capital). What is the amount remitted if only some of the proceeds are then brought to the UK? What if the car falls further in value below the amount of the foreign income?

4.41. Insisting on the strict position here is likely either to put taxpayers off from using the TRF and/or lead to a large number of mistakes. We suggest HMRC should clarify the position in guidance as a minimum. It would be helpful for taxpayers to have the choice either to designate the current amount or, if they want to, to the higher amount of FIG from which the capital derives.

Trust TRF - General

4.42. In the time available we have not been able to look into all aspects of the TRF as it applies to the pre 6 April 2025 gains and foreign income of trusts. The legislation is inevitably complex and may become more so if the call for evidence[14] results in changes to the provisions during the TRF period.

4.43. In our submission dated 23 December 2024[15] we identified a number of specific points with the Trust TRF in paras 35 – 37 and Annex 4. Some of the points we made have been addressed in the legislation as enacted. We would urge consideration be given as to which of the other points we made might be appropriate for amending legislation and/or guidance clarification.

Trust TRF – Specific comments

4.44. One of the points in our submission that has been addressed is the position of offshore income gains (OIGs) (see Schedule 10 para 4). However as is already recognised the coverage of OIGs is not complete:

- Schedule 10 paragraph 5 (Schedule 4C pools) needs extending to cover Schedule 4C OIG pools
- Schedule 10 paragraph 7 needs extending to cover the position where the benefit would, if it did not result in income under ITA 2007 section 732, be QOC under paragraph 4 (or any extension of paragraph 5 to OIGs)
- Equivalent provision to paragraph 7 is needed to cover the position where OIGs of 2025 – 26 and post would be matched in priority to s 1(3) amounts of 2024 – 25 and prior.

[14] Personal Tax Offshore Anti-Avoidance legislation - GOV.UK
[15] https://www.tax.org.uk/ref1442

4.45. The reference to 'chargeable gains' in paragraph 4(1)(a) should, we think, refer more accurately to 'offshore income gains'.

4.46. As seen at paragraph 4.31 above, the interaction of the Trust TRF is complex where the funds used to provide a capital payment or benefit also derive from the settlor's FIG (in relation to which the trustees are a relevant person). To the extent to which HMRC do not accept our proposed solution at 4.31 further thought will need to be given to this.

Personal Representatives

4.47. We are unclear whether a designation of QOC is possible after the death of the former remittance basis user. Schedule 10 itself is expressed in terms of individuals. This point would be material where an individual receives a trust distribution or effects a remittance after 5 April 2025, but dies before he is able to or does file a tax return for the tax year in question.

Clearance mechanism

4.48. Given the above and a number of other technical difficulties with the TRF, we strongly recommend that HMRC develop a clearance/advanced assurance mechanism that allows taxpayers to negotiate a binding TRF settlement with HMRC. The recent correspondence[16] between the CIOT and HMRC in relation to HMRC's position on re-remittances, that has given rise to unsatisfactory uncertainties, underlines the need for this facility.

4.49. We propose to write more fully about this shortly. However, in brief:

4.50. The clearance should be such that provided full disclosure is given by the taxpayer and all facts are placed face up on the table and no new facts come to light, HMRC and the taxpayer will be bound by the payment of the TRF charge and no additional charge will be levied because of a later change in interpretation of the law or interpretation of the facts.

4.51. The Liechtenstein Disclosure facility is a potential model here where HMRC became contractually committed to accept a particular disclosure, once certain formal requirements were met.

5. Inheritance Tax (IHT)[17]

5.1. We fully endorse and support the recommendations made by STEP in their submission of 5 June 2025[18] for IHT in relation to the need for a reference to a death election in IHTA 1984 section 267ZD(8) (assuming this reflects the policy intent) and the points STEP make for guidance.

5.2. It would be helpful to have an example to illustrate new section 81B. Prior to April 2025 a will trust set up by a settlor who was not UK domiciled or deemed domiciled on death where his spouse took a qualifying IIP in the form of an immediate post death interest would remain excluded property while the spouse was alive and it would not be charged on the termination of second spouse's IIP. However, it would thereafter come within the relevant property regime if the second spouse is domiciled or deemed domiciled when the IIP ended as one tested the domicile of the last IIP beneficiary. Under the amended provisions, if the settlor dies and is not

[16] https://www.tax.org.uk/ref1503
[17] FA 2025 sections 44-46 and Schedule 13
[18] https://www.step.org/public-policy/consultation-tracker

a long term UK resident after April 2025, then on the death of the spouse with the immediate post death interest gifted to her under the settlor's Will, there will be a charge on that second death if second spouse dies a long term UK resident under IHTA 1984 section 48ZA(5) (subject to the transitional provision). Furthermore if the IIP is terminated when second spouse is a long term UK resident the condition in s81B(1) is not satisfied (property is deemed comprised in a settlement on that second death and second spouse is a long term UK resident so the property is not excluded property under s48ZA). We assume the intention is then that not only is there a charge on the termination of the last IIP to end but also that the settled property is not excluded property going forward thereafter despite the long term residence status of the settlor being non-UK as the spouse was a long term UK resident. In short both the actual settlor and the spouse must not be long term UK residents for the property to be excluded property for the purposes of the relevant property regime after the termination of the last IIP and if the IIP terminates when second spouse is long term resident there is also a charge then. Is this correct and intended? Presumably the problem could be avoided by terminating the second IIP before the spouse becomes a long term resident if it would otherwise be excluded property but as noted above an example would be helpful. This is of course in contrast to the position for other qualifying IIPs where there is now a charge on the life tenant's death if a long term UK resident on termination but going forward the settled property is not relevant property if the settlor is not a long term UK resident.

5.3. Where there have been transfers between trusts which took place before 22 July 2020 when both trusts were set up prior to the settlor being deemed domiciled but the inter trust transfer took place after that point what is the position regarding new section 102(7A) FA 1986? Such trusts were transitionally protected under the relevant property regime (section 82A(1)(a)) but were subject to a reservation of benefit (ROB) problem albeit HMRC undertook to review this gremlin when the legislation was amended. At present such transfers between settlements made prior to July 2020 will still be subject to a ROB on the death of the settlor and not benefit from the transitional provision against ROB in Schedule 13. Is this intended?

5.4. Does IHTA 1984 section 65(7) need amendment more generally as otherwise a trust could move into UK situated property while the settlor is a long term resident just before an exit charge in say April 2028 ;there would be no exit charge on 6 April 2028 when the settlor ceases to be a long term UK resident and then the trust could invest in foreign situated property.

5.5. It would be helpful to clarify the administrative procedures on claiming treaty relief particularly in relation to ten year and exit charges in relation to the US/UK treaty. We are aware that a separate submission has been made on this.

6. Remittances – Schedule 9

6.1. We endorse and support the comments made by STEP in relation to paragraphs 5 and 6 of Schedule 9 in their submission of 5 June 2025.

6.2. In addition we would refer to Schedule 9 paragraphs 9 and 10, which inter alia can make personal representatives UK resident if the deceased was non UK resident when he died but had been UK resident within the prior 10 years and, as a result, remained long term resident for IHT purposes. In relation to CGT this applies even if all the personal representatives are non UK resident. As such it is a significant extension of the prior law, and, we would suggest, flawed as it uses the IHT concept of long term residence rather than income tax and CGT residence concepts. Was this intended and if not should not the provisions be amended?

6.3. No qualifying claims can be made for Business Investment Relief (BIR) on or after 6 April 2028 (FA 2025 Schedule 10 paragraph 19). We consider that it should continue to be possible to make a BIR claim on a corporate reorganisation if a BIR claim was made in respect of an investment before 6 April 2028. Reorganisations cause BIR to be lost when shares in one company are exchanged for shares in another company (since this is a disposal which is a potentially chargeable event for BIR purposes). Presently, BIR in practice remains available because a further BIR claim would be made on the basis that funds have been reinvested. The law as it stands following enactment of Finance Act 2025 is that it will not be possible to make a claim on reinvestments made post-5 April 2028, such that funds that remain invested would be taxable as remitted. The potential outcomes of this are:

- the taxpayer must fund a tax liability (potentially large) without having received any funds – this may or may not be feasible;
- the reorganisation does not go ahead, which means that whatever commercial purpose the transaction would have been done for will not be achieved (the taxpayer may not be able to make this decision – eg if they do not control the company), or;
- the taxpayer will leave the UK.

None of these outcomes are desirable and so we consider that BIR should be retained where a post-5 April 2028 reorganisation occurs in respect of investments on which a BIR claim was previously made (either automatically or on the making of a new claim specifically on the reinvestment).

7. Foreign employment income relief

7.1. ITEPA 2003 sections 56(4) and (5), 61G (4) and (5) and 61R(4) and (5) were repealed by FA 2025 Schedule 9 paragraph 14. Before the FA 2025 amendments, the relief in the off-payroll working law for overseas workdays mirrored that in the general earnings provisions for those who were entitled to overseas workday relief.

7.2. The original updates to this law only removed references to being non-domiciled, but a later government amendment at committee stage repealed the subsections that allowed for overseas workday relief altogether, saying that they were now redundant. It is not clear why this would be so, as the original law had only required a combination of being non-domiciled and meeting the condition in ITEPA 2005 s26A to allow relief. For the law to remain consistent in meaning, we would have expected it to refer instead to individuals meeting the requirements of ITEPA 2003 s41M.

7.3. We request confirmation of whether a further amendment is anticipated or is this approach a policy change?

8. Acknowledgement of submission

8.1. We would be grateful if you could acknowledge safe receipt of this submission.

The Chartered Institute of Taxation

19 June 2025

APPENDIX : Further points for guidance

1 RFIG42100

1.1 Will HMRC insist in all circumstances on the amount of the income and gains which have been identified being quantified? There may be circumstances where this would put the taxpayer and HMRC to significant effort and expense and the result is entirely academic. For example, if a QNR taxpayer gives away shares in the holding company of a privately held foreign trading group and identifies the resultant gain in a foreign gain claim, the relief is given by way of a deduction from total chargeable gains of the amount of the gain. Unless there are different gains taxed at different rates (which will not be the case for most taxpayers), the amount of the gain is irrelevant and will make no difference to the overall tax liability. Valuing the shares could however be a very expensive undertaking. If there are situations in which HMRC would accept a white space disclosure describing the nature of the income/gains without quantifying the amounts, perhaps this could be mentioned in this section.

1.2 What should a taxpayer do where a motive defence (TOAA/section 3 TCGA) is potentially available and is claimed? Should the income/gains nonetheless be identified just in case the motive defence claim is refused? If not, do HMRC accept that a consequential claim for relief would be possible if the motive defence claim is refused after the expiry of the normal time limit for making a claim? This would be on the basis that the taxpayer had not been careless as the failure to claim relief was a result of making the motive defence claim.

2 RFIG45400

2.1 The guidance does not say whether, where relief is claimed from the TOAA transferor charge, the amount of income is relevant income which can be taxed if UK beneficiaries receive benefits or whether it has already been ‘taken into account’ for the purposes of ITA 2007 sections 743/744 given that the relief does not mean that the income is not taxable but simply gives rise to an amount which is available as a deduction against total income (and may be deducted from other income). Unless there is a change to the legislation to deal with this, it appears that ITA 2007 section 743 would prevent a future charge by reference to this income.

2.2 In example 3, it should be made clear (if it is the case) that the income in respect of which relief has been given will not be available to be matched against future benefits to Trinity but will be available to be matched against future benefits conferred on other beneficiaries.

3 RFIG45500

If relief is claimed in respect of gains attributed under TCGA 1992 section 86, do the gains form part of the section 87 pool? It seems that the pool is not reduced because of paragraph 3(2) of schedule D1 which prevents the gain from arising to the settlor (rather than the gains which are treated as arising being a deduction from total gains). It would be helpful to mention this (as is done in the subsequent paragraph in this section of the manual dealing with TCGA 1992 section 87).

4 Treaties

It would be helpful if the manual set out HMRC’s view on the availability of treaty benefits in respect of overseas income and gains in respect of which a claim for relief has been made. In particular, do HMRC take the view that an individual who makes a foreign income/gain claim is nonetheless UK resident for the purposes of a relevant double tax treaty and is not someone who is ‘liable to tax … in respect only of income from sources in’ the UK?