Chartered Institute of Taxation.

FINANCE BILL 2024

Clauses 37 – 46 and Schedules 8 – 13

As published 7 November 2024

COMMENTS OF CIOT – 23 December 2024

In the first part of this paper we provide some high level comments on the remittance basis, four year FIG, TRF and IHT. More detailed commentary on these provisions is found in annexes 1 to 5. We also cover in the main paper some additional areas where clarification is needed including on BIR, hold over relief, Schedule 12, and treaty relief. We intend to submit further comments on BIR, Schedule 12 and treaty relief in due course.

A. ABOLITION OF DOMICILE AND THE REMITTANCE BASIS

1. CIOT continues to support the ending of domicile as a connecting factor for tax purposes.

2. CIOT notes that apart from transitional provisions and the estate/IHT treaties, residence will be the sole connecting factor as respects the tax status of the taxpayer. There are certain instances under the Bill where it could be necessary to go back up to twenty years in investigating individual residence status. CIOT recommends that taxpayers should have the option of using SRT rules as respects 2012 – 13 and prior years in determining their residence status for such years when calculating whether they are a qualifying new resident for income tax and CGT purposes or a long term UK resident for IHT purposes. There is precedent for this in para 154(3) Schedule 45 Finance Act 2013. The old law and practice was riddled with uncertainty and should be allowed to die an unmourned death.

3. CIOT also continues to support the ending of the remittance basis, albeit the old law will (subject to TRF), continue to apply to FIG of 2024 – 25 and prior.

4. CIOT does not support the proposed amendments to what constitutes a taxable remittance (Sch 9 para 5). These proposals have had an unhelpful effect on the existing non dom population in that they suggest an unstable regime and thus are further encouragement for people to leave, particularly combined with the shorter IHT tail for those who leave by April 2025. The Technical Note indicates (at para 144) that these amendments are in response to the Upper Tribunal decision in Sehgal [2024] UK UT 74. But that case is inherently satisfactory as it is difficult to see why, if simple discharge of the breach of warranty claims would not (as was admitted) have resulted in remittance, the actual transactions adopted did. Annex 1 to this note sets out a critique of the proposed amendments, which on any view go much wider than the mischief in Sehgal. CIOT urges that para 5 be withdrawn. It is not appropriate to

make significant changes to the remittance rules which substantially widen the scope of what constitutes a remittance in circumstances where the remittance basis is being abolished. The current legislation has been on the statute books for nearly 20 years and should be left alone.

B. FOUR YEAR FIG REGIME – clauses 37 -39

5. CIOT continues to welcome the proposal that the incentives for new arrivers to the UK is that their FIG should not be taxed (rather than being taxed when remitted).

6. CIOT notes that this regime will, as originally announced, last only for the first four years of residence. CIOT continues to be of the view that a longer period could be beneficial both to economic activity and to tax yield, perhaps coupled with a lump sum charge. CIOT recommends this issue be kept under review.

7. CIOT regrets that the FIG exemption does not appear to operate automatically by default but will require a claim on a source by source (or gain by gain) basis. The statutory requirement imposed for claims is made clearer for CGT purposes where TCGA 1992 Sch D1 para 2 does require an identification of each qualifying foreign gain. The position seems more ambiguous in ITTOIA s845A which simply gives relief for an amount that reflects qualifying foreign income and is identified as such. This could be regarded as embracing a total relief. In any event there should be no need to specify any figure or specific source at all.

8. A requirement to identify (and quantify) all FIG in respect of which exemption is claimed will be off-putting and will make the UK less attractive given that many other jurisdictions which have similar regimes do not require detailed, or even any, disclosure of overseas income and gains. It will be impractical in some cases – for example individuals who own overseas trading groups or other significant overseas structures. It also puts people in a difficult position if they think that the ToAA/CGT motive defences may apply but do not know if HMRC will agree. Do they need to make a protective claim? If they do make such a claim, does this prejudice their motive defence in later years? These uncertainties are demotivating in encouraging people to move here. The argument that such people will have to disclose all their FIG after four years anyway or that UK persons already have to declare worldwide income and gains is no answer to this objection as the aim is to attract people to the UK in the first place.

9. An onerous reporting position would be very objectionable to arrivers particularly as HMRC has a (uniquely long) 12 year enquiry period not merely where an error is deliberate or careless but also where there is no fault at all. It is therefore suggested that the FIG relief should apply by default except where the individual specifically elects out of it on items of income or gains. This would also help low or medium earners coming to work here who will otherwise have to declare all specific small items of foreign investment income and gains (e.g. foreign rental income) which were previously automatically exempt. Some of these workers may not always realise they are UK resident. They will incur professional fees to access an exemption.

10. If (contrary to CIOT's recommendation) the claim basis for the four year FIG relief is retained, the inability to make a consequential claim for FIG relief where an individual has been careless is highly objectionable. Would HMRC treat individuals as careless if they have failed to identify (and quantify) income in an overseas structure on the basis that they had been advised that the motive defence should be available but HMRC take a different view? In any event, as a matter of principle, it is difficult to see why an individual should not be permitted to make a consequential claim even if they have been careless. A typical example of omission of foreign income involves 'excess reportable income' (ERI) on offshore reporting funds. This is deemed income that the taxpayer does not receive, and they often never receive any notification from investment managers that it exists, so the omissions often only come to light when the investment is sold. These errors are clearly not deliberate in most cases, but they are arguably careless. Similar provisions also apply for foreign employment elections and foreign gain claims, which are equally problematic.

11. It is assumed that one purpose behind requiring the taxpayer to itemise income and gains is to enable them to claim foreign tax credits or be able to claim they are treaty resident in the UK when they are also resident in the foreign jurisdiction. However, it is far from clear that relief will always be available. For example, many treaties based on article 4(1) of the model treaty (e.g. the German treaty) provide that *a resident of a contracting state does not include any person who is liable to tax in that state in respect only of income from sources in that state or capital situated therein.* If an eligible individual claims the FIG regime in respect of all their sources of non-UK income and gains for a particular tax year they could come within this exclusion so would not be able to access the article 4(2) tiebreaker provisions. What is HMRC's view here?

12. 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 regime, and so these rules are a bear-trap for the unwary. This is especially true of France, though the same issue can arise with insurance policies from other jurisdictions. CIOT therefore considers that all offshore bonds, and including personal portfolio bond gains, should be excluded from UK taxation in the four-year period of FIG exemption especially in relation to policies owned before arrival in the UK.

13. However, the proposed ITTOIA 2005 s 845F lists what items constitute FIG for the purposes of the relief. It omits life assurance products, most notably offshore investment bonds and personal portfolio bonds. These are important investment vehicles for Europeans in particular and have tax favoured treatment there. There is no need to link the new exemptions to the current remittance regime. The purpose of this regime is to be internationally competitive and give people time to sort themselves out after arrival in the UK. The current exclusion of bonds from the remittance basis under the existing system was always an oddity. Extending this now to exempt FIG will be a trap for the unrepresented. The objective should be to remove deficiencies in the current regime not preserve them.

14. Annex 2 lists a number of further points that arise under the Bill provisions as drafted. The provisions relating to capital and income distributions from trusts need particular attention. Further consideration should be given to how this and the TRF regime will interact with a taxpayer's obligations under Making Tax Digital.

15. In summary, and if the Bill is not amended, in advising clients as to whether or not to take up residence in the UK, advisers must now tell clients that they will need to itemise all FIGs and calculate them in sterling (when many such FIGs will currently be calculated in dollars or an alternative foreign currency). Advisers must also point out that the FIG exemption regime is not comprehensive – it omits other types of foreign income and gains. Moreover, if a client fails to report any such FIGs then they are very unlikely to be able to correct the position given HMRC's current view of careless behaviour. Finally, advisers must inform clients that HMRC may well have up to 12 years to enquire into the returns even after they have left the country. In these circumstances many clients will opt to stay non-resident. The FIG four year exemption will no doubt prove useful for those who might now decide to come here for a short time to sell their company tax free and for those who must come here anyway e.g. for work purposes. However, if the regime is intended as a positive **incentive** to encourage wealthy people to move to the UK and settle here on a longer-term basis, CIOT believes it is unlikely to prove attractive.

C. OVERSEAS WORKDAY RELIEF

16. CIOT will comment separately on the changes being made to this relief.

D. REBASING RELIEFS – Schedule 11 and Schedule 12 para 70(4)

17. CIOT welcomes the extension of this relief. We assume the purpose is to give relief to those who were not deemed domiciled in 2017 (and therefore obtained rebasing under the current rules) and were expecting to continue to claim the remittance basis after Apil 2025. The new relief is not available to those who are already deemed domiciled but may not have been deemed domiciled as at April 2017. Guidance should make this clear.

18. HMRC is asked to confirm that offshore funds, whether reporting or non-reporting, will be eligible for rebasing in principle, as the rebasing provisions apply for the purposes of computing the gain for the purpose of TCGA. Whether the gain is subject to income tax or CGT, it is computed under TCGA. Where a fund is currently a reporting fund, but it had previously been a non-reporting fund at some point before 6 April 2017, it is not clear whether the tainting provision in Reg 17(3) of SI 2009/3001 is switched off. A reporting fund is normally subject to income tax if the fund had been a non-reporting fund during the "material period" and a deemed disposal election under Reg 48 was not made. The "material period" starts when consideration was given for the asset. It is not defined by reference to TCGA and the Finance Bill does not appear to amend SI 2009/3001 in any way. To avoid any confusion, the legislation

should provide that the "material period" for the purpose of the regulations should be treated as beginning on 6 April 2017.

19. The extension of 2008 rebasing relief to s 86 gains appears to apply regardless of the domicile of the settlor (see Sch 12 para 70(4)). Is this the intention? Should it be restricted to settlors who were foreign domiciled at common law at all times prior to 6 April 2025. See further paras 59 onwards under Other Points in section G below regarding the changes to CGT in Schedule 12.

20. CIOT suggests that rebasing should not be limited to situations where trustees have already made an election under para 126 Schedule 7 FA 2008. In some cases, the need for election under para 126 may have been overlooked or no tax may have turned on it. In other cases, there will have been no need for trustees to make an election because capital distributions were not envisaged. Provided the settlor was foreign domiciled prior to 25/26 it should be possible for the trustees to make an election for rebasing at any time so that the settlor only pays tax under s86 on the post 2008 element of trust gains realised after April 2025 even if no capital payment is made. It is these sorts of complex traps that (if the relief is to be given at all) the legislation should strive to avoid. It is not likely to result in loss of revenue as if it is not available the trustees would probably carry out a rebasing exercise by making actual disposals this tax year while the settlor still has the benefit of the trust protections.

E. TEMPORARY REPATRIATION FACILITY – clause 41 and schedule 10

21. CIOT continues to support the introduction of this relief. The relief will potentially apply in two different situations, namely (A) where unremitted FIG as at 5 April 2025 are remitted after that date and (B) where after 6 April 2025 a trust or other person abroad make a capital distribution or benefit matched with gains or income arising before that date. CIOT refers to the former as "Main TRF" and the latter as "Trust TRF". CIOT refers to the three tax years for which the TRF applies as "the TRF Period".

22. On a general point, CIOT is unclear why designation elections can only be made by UK residents (para 1(7)) or why it refers to a person being resident for either income tax or CGT – surely it should say **and** not **or** non-residents. Non-residents who have previously been UK resident may well wish to use Main TRF protect their remittance position should they return to the UK. Should they not in fact return, any designation will simply be a bonus for HMRC.

23. Allowing non-residents to use Trust TRF would inter alia have the following advantages:

    (1) For HMRC in securing extra TRF tax.
    (2) For both HMRC and taxpayers in that capital payments and benefits so designated could then be taken out of the complexities of the onward gift rules and the Temporary Non-Residence (TNR) rules.

If this change were made, paras 3(1), 4(1) and 5(c)(i) would need to include words requiring it to be assumed (if not the case) that the individual is UK resident. If the change is not made, provision will be needed to allow onward donees and returning TNRs who had previously been taxed on the remittance basis to be eligible, to designate and any such provision will leave gaps where the onward gift or the return happens after the TNR period has ended. It might also mean that people would feel able to return within 6 years of leaving even if they had wound up their trust because the tax charge would then be quantifiable.

24. CIOT notes that to make a designation the individual must at some time in the past have used the remittance basis. CIOT welcomes the fact that there is no limit on how long ago use of the remittance basis was and that designation will also be allowed wherever there was reliance on the de minimis in s 809D. However:

    (1) Could it be confirmed, in relation to 2007 – 08 and prior, that an individual would count as having used the remittance basis if he/she in fact had unremitted foreign income/gains even if no claim to be non-domiciled was filed, or, if filed cannot now be found.
    (2) CIOT would suggest that reliance on foreign domicile to avoid liability under TCGA 1992 s 87/Sch 4C (in 2007 – 08 and prior) or s 86 or (for 2017 – 18 and post) relying on the trust protections should be treated as equivalent to using the remittance basis. In some such cases there will either have been no personal FIG or the remittance basis will not have been worth claiming.

Main TRF

25. CIOT understands that a primary aim of the policy is to enable former RBUs to pay 12% tax on overseas funds without having to engage in the complexity of the mixed fund rules and investigate the history of those funds and in particular without having to identify specific income, gains or clean capital. Assuming this is indeed the primary aim CIOT has doubts as to whether it is achieved by the legislation as it now stands.

26. The main reason for this conclusion is that Sch 10 para 2 is expressed in terms of two different types of qualifying overseas capital ("QOC") namely:

    (a) Paras 2(2) and 2(5) which are amounts that "arose as income or as a gain"; and
    (b) Para 2(8) which are amounts that do not "fall within sub paragraph (2) or (5).

27. The implication is that each income or gain has to be identified to be QOC and similarly para 2(8) sums have to be proved not to be within paras 2(2) and 2(5) and thus in other words similarly identified. The fact that precise identification of this kind is required is confirmed by para 6(8), which requires a record to be kept of "each amount designated". It is also confirmed by para 6(3) which requires foreign tax attributable to the specific item of QOC to be identified.

28. CIOT accepts that the legislation allows there may be uncertainty in that para 6(5) allows designation of an amount "where it has not yet been determined… whether

the amount is QOC". But this is still expressed in terms of a specific amount that has to be designated. More generally, there may be difficulties in determining what precisely para 2(8) and in particular para 2(8)(c) means.

29. CIOT suggests the policy would be better achieved if sub para 2(8) were recast as follows (and also making it clearer that TRF can be used for income in the hands of a relevant person other than the taxpayer):

> *"An amount of capital falls within this sub paragraph if it comprises all or part of one or more assets or money held by the individual or another relevant person on 5 April 2025"*

30. In this formulation, capital held by a relevant person is included as such capital results in tax on the individual insofar as it is derived from the individual's FIG and the relevant person remits it. The formulation also makes it clear that the amount can comprise assets in specie and thus embraces what must surely be principal targets of TRF, namely portfolios, overseas land and items of tangible property.

31. CIOT considers paras 2(2) and 2(5) would on this scenario continue to be needed to cover the position where a specific item of income or gain can be identified. However, there is an ambiguity in these sub paragraphs as drawn. It is unclear whether they refer to the amount of the income or gain when it arose or whether they refer to the asset or assets which at the time of designation represent the income or gain. CIOT suggests the legislation should make it clear the former is right thereby enabling the individual to make a designation that ensures the FIG is not taxable regardless of what is derived from it and which relevant person comes to own such derived property. Paras 12 – 16 of Annex 3 further illustrate this point. If this is accepted, it should be made clear that the amount is the sterling equivalent of the income or gain at the time it arose, and not the current sterling value of the income or gain. On certain scenarios there could be overlap with the proposed para 2(8) but that should simply be accepted as a bonus for HMRC.

32. CIOT considers that if the above suggestions are adopted (and perhaps even if they are not) para 6(3) should be confined to QOC within paras 2(2) and 2(5). CIOT would suggest (for avoidance of doubt) that it be made clear foreign tax cannot be a credit against the TRF charge albeit it is a deduction on the amount that is designated on which TRF is paid. On this scenario any sum within the proposed para 2(8) which is later reduced by payment of foreign tax would simply be a bonus for HMRC.

33. If the suggested para 2(8) is adopted, the existing paras 8(1) and 9(1) should be confined to QOC within paras 2(2) and 2(5). Words should be added to each of the two sub paragraphs to cover designation within para 2(8):

> *"or in the case of QOC within para 2(8) on the remittance of any FIG from which such QOC is derived"*

34. Annex 3 contains some more detailed points on Main TRF.

Trust TRF

35. CIOT is doubtful as to whether, as Sch 10 currently stands, OIGs are covered by the Trust TRF. This is because reg. 20(3) of the OIG regulations has not been amended to include paras 3, 4, 10 and 11 of Sch 10 in the provisions adapted to OIGs. CIOT urges that consideration be given to making such amendment and checking whether any other changes are needed to bring OIGs fully within TRF. Such changes are fully within policy and in what follows CIOT assumes they are made. It is thought that no such problem exists with Main TRF on account of the language of para 2(3)(a) but in the light of previous confusion on OIGs in relation to the protected trust provisions, specific confirmation would be welcome that all OIGs, whether arising to a trust company or individual, are potentially eligible for TRF. Can Schedule 10 refer explicitly to offshore income gains?

36. CIOT notes that paras 3(1)(c) and 4(1)(c) make an exception to the LIFO rule to the effect that it is assumed that there are no s 1(3) amounts of 2025 – 26 and post in determining whether the conditions of those two paragraphs are met. CIOT considers that there needs to be a similar exclusion of relevant income arising in 2025 – 26 and post and, when ordinary gains are being considered, so too OIG amounts of 2025 – 26, and post similarly need to be excluded insofar as such is not achieved by what is suggested above. The final part of the two sub paragraphs could be worded as follows:

> *"if the relevant income, OIG amount and s 1(3) amount for each tax year after the tax year 2024 – 25 were nil"*

37. A fundamental issue as respects Trust TRF is the great uncertainty as to the correct construction of the rules for computing relevant income (and to a much lesser extent) of those for computing s 1(3) amounts. This is compounded in many cases by uncertainty as to whether on the facts one or other motive defence applies in which case it does not become relevant foreign income capable of being matched for TRF purposes. Given this, there is a real risk trusts and individuals wishing to ensure all historic income and OIGs are paid out and designated or who simply wish to make a capital distribution and pay 12% irrespective of whether it can be fully matched will have no way of being certain HMRC will agree they have in fact done so. It should be appreciated that given the complexity of the provisions many trusts will not have complete records showing historic pools of income and gains. CIOT suggests there are three potential solutions to this:

    (1) Allow over designation, which is of course for the benefit of HMRC as it generates extra TRF tax. CIOT considers para 6(5) in fact has this result, and would be interested to know if HMRC agree. Assuming CIOT is right, it is necessary to ensure that an over designated amount cannot carry forward against future income/gains as otherwise it would fall foul of the principle that TRF applies only to pre 2025 income/gains. CIOT considers the words of exception in para 6(6) may have this

result but wonders if the point should be made more explicit. The point is considered further in Annex 4.

(2) Allow late designation where in litigation or by agreement it is established that the aggregate pre April 2025 relevant income, OIG amounts and s 1(3) amounts is greater than the amount of the capital payment(s)/benefits in fact designated in the TRF period.

(3) Provide that if a capital distribution is not fully matched in the TRF Period to historic pre 25 income and gains but TRF is paid then there is no further tax due i.e. the excess cannot be matched to post 6 April 2025 income and gains arising in 25/26 or later. Without this provision and given the complexity of the provisions Trust TRF will not be attractive and less revenue will be raised as many trustees are for a variety of good reasons only prepared to distribute part of the trust fund and will not end the trust. [1]Therefore the possibility of future income and gains arising remains.

38. Annex 4 also has analysis and detailed further comments on Trust TRF.

F. INHERITANCE TAX – schedule 13 and s48ZA

39. CIOT welcomes the modifications to the rules which will apply in determining whether or not an individual is a long term UK resident ("LTR") for IHT purposes. However the term LTR is a misnomer and seems to be causing confusion for clients in that they do not understand why they will be termed long term UK residents even after they have been non-resident for up to 10 years. It may be better to use the term "long term UK connection" in the legislation.

40. CIOT notes that the test of whether settled property is capable of being excluded property will be ambulatory in that it will turn on the LTR status of the settlor as at the occasion of charge and will turn on his LTR status as at death as respects occasions of charge after his death. CIOT welcomes the grandfathering where the settlor died before 6 April 2025 in that in such cases excluded property status will in all cases be governed by existing law. The point should be made more explicit when inserting the additional provisions in Part III Ch II on IIP trusts. It is not clear that s48ZA(4) reads across to s52 such that the life tenant's status will not be taken into account where the settlor dies before April 2025.

41. CIOT notes that subject to the transitional provisions, a settlement which would otherwise be excluded property will not have that status on the death of the life tenant if the settlor has died after 5 April 2025 not a LTR and:

(A) It is subject to a qualifying interest in possession ("QIIP"); and
(B) the holder of that interest has LTR status.

[1] For example there may be other beneficiaries not UK resident and the trust has to be retained for them. Or the trustees may not want to distribute too much capital to the settlor as this loses the benefit of the IHT transitional relief over the whole trust fund. A principal beneficiary may be undergoing a divorce or not be suitably mature to receive the whole trust fund.

However, thereafter the trust regains excluded property provided the settlor is not a LTR and would not be chargeable under the relevant property regime. Do HMRC agree? The words in s48ZA(5) refer to "at that time" the person beneficially entitled to the interest being a LTR. This is also consistent with the redrafted s81B. See Annex 5.

42. CIOT welcomes the following grandfathering rules applicable to QIIPs:

    (1) The new QIIP rules does not apply at all where the settlor died before 6 April 2025.
    (2) The charges on termination of a QIIP do not apply where the holder of the QIIP became entitled to it before 30 October 2024 and the settled property was excluded property and remains so.

43. CIOT also welcomes the similar grandfathering rules applicable to property subject to a reservation of benefit (ROB) (see para 30 of schedule 13). Any guidance produced by HMRC should make it clear that where part of the settled property has lost the benefit of excluded property status temporarily (e.g because an informal loan has been made by the trust direct to a UK resident beneficiary), although the benefit of the transitional relief has been lost permanently to the extent of that loan even if it is later repaid, it does not prejudice the status of the remaining foreign situs settled property. Similarly, if trustees accidentally invest in UK shares the benefit of this transitional will be permanently lost.

44. Where a deemed domiciliary leaves the UK before 6 April 2025, the underlying principle seems to be that they should be in the same position as under the current rules. This is reflected in the fact that they cease to be a LTR after three years even if they have lived in the UK for more than 20 years. We feel it is inconsistent with this principle to have their excluded property trusts coming within the relevant property regime for that three year period and subject to an exit charge at the end of the third year. CIOT accepts that the government does not want to incentivise people to leave the UK but there is an inconsistency here.

45. There is a similar point where a spouse election has been made before 30 October 2024. It is difficult to see why this should impact the excluded property status of trusts previously established by the spouse where they have left the UK and would not otherwise be a LTR.

46. It is also anomalous that where a couple leaves the UK before 6 April 2025 but one dies within three years of leaving, a ten year tail should apply to the survivor if they make an election to be treated as a LTR. It is equally odd that a spouse who makes an election after October 2024 will be subject to a ten year tail even if it relates to a chargeable event such as death before then.

47. CIOT considers that the estate and IHT treaties are likely to assume greater importance now and need review. It is anomalous that the treaties still consider domicile and (for example in relation to the US treaty) deemed domicile in

determining taxing rights while this will not be relevant under general law in the UK. This could lead to double taxation and double non-taxation. For example, a German domiciliary who is here say 10 years owning US shares might be within the scope of worldwide UK IHT as a LTR but will not be able to access the treaty as he is neither domiciled nor deemed domiciled here. It would be more sensible to treat an individual who is a LTR as domiciled in the UK for treaty purposes even if there is no direct amendment of the relevant treaties. While CIOT understands this may take some time for the implications to be worked through the project should not be left indefinitely.

48. There are other anomalies in relation to treaties. Where for example a trust is in future subject to ten year charges because the settlor is a LTR but was a US national domiciled in the US under the US/UK treaty, it is presumably intended that taxing rights should continue to be allocated solely to the US under article 5(4) and that article 5(5) does not prevent this even though no US tax is paid on a ten year anniversary (so it is not chargeable in the first place and therefore not paid). Given the prevalence of grantor trusts, GRATs and generation skipping trusts for US nationals who are resident here and will now find their trusts prima facie falling within the relevant property regime this point should be confirmed. The reference in the Manual to Form 742 in relation to such ten year charges at IHTM 27170 is unhelpful as no such form seems to exist. Do HMRC consider that treaty relief specifically has to be claimed on the IHT100 and how can a trustee prove no US tax is chargeable given that there would be no reason to report the trust at the ten year anniversary to the IRS?

49. Following the introduction of an ambulatory test for excluded property status, many foreign entities will now fall within the relevant property regime if the settlor becomes a LTR. Further consideration should therefore be given as to the IHT treatment of such foreign entities taking into account recent case law in the UK as HMRC do not take a consistent position and the scope of s43 in relation to foreign entities remains unclear[2]. While we understand that classification of entities such as foundations can often turn on the specific constitutions, nevertheless further consideration and guidance is needed on the characteristics that determine whether these are to be treated for IHT purposes as companies, settlements or merely nominee arrangements.

50. It is suggested that in the same way that a foundation or anstalt would be outside the scope of CGT and income tax if the settlor and family were excluded, an exclusion from the relevant property regime should be given to foreign situated assets which as at October 2024 are in an excluded property settlement that is charitable in the jurisdiction in which it is established or at least philanthropic if not strictly charitable. This assumes the settlor and wider family are all irrevocably excluded.

51. Further IHT points are found at Annex 5.

[2] *Lincoln v HMRC* [2024] UKFTT 886 (TC)

G. OTHER POINTS

Hold over relief

52. Many currently excluded property trusts will become relevant property trusts from April 2025 and therefore potentially eligible for hold over relief on capital distributions of what is then non-excluded property and therefore subject to an exit charge.

53. If a capital payment or benefit is within ITA 2007 s.733 is it right that IHTA s65(5)(b) applies such that there is no exit charge and therefore no hold over relief under s260 TCGA 1992 is available? What is the position if the available relevant income is less than the distribution in specie? Is hold over relief then available on part as s260(10) suggests?

54. What is the position in relation to hold over relief and TRF? It is assumed that a capital distribution eligible for TRF will be eligible for hold over relief even if matched to pre April 2025 relevant income. These issues will assume great importance after April 2025. Where the settlor is excluded the trustees may well want to distribute in specie to the children and hold over the gain to avoid a s86 charge arising on the settlor which cannot be reimbursed by the trustees.

55. Sections 260(6ZA) and 261ZA TCGA 1992 allow holdover relief on distribution of assets to beneficiaries even if non-UK resident, if the gain relates to UK real estate (such that the trustees are chargeable on the gain arising including where the election for rebasing is disapplied).

56. The position is more difficult in relation to distributions by non-resident trusts to UK beneficiaries. We have seen the view expressed that HMRC may take the view that s260(3) disapplies relief on the basis that a chargeable gain does not as such accrue to the trustees. However, HMRC say in their helpsheet HS295:

"There's no need for the transferor to be resident in the UK. The relief is available for trustees of non-resident settlements, where the chargeable gain would, or might otherwise be, charged on UK residents." HS295 Relief for gifts and similar transactions (2022) - GOV.UK

57. In the view of CIOT the Helpsheet is correct and hold over relief is available on a distribution in specie of non-excluded property whether the gain realised on the capital payment is subject to tax on the settlor under s86 or not. This is because a chargeable gain is not the same as what is charged to tax: see TCGA 1992 ss 15(2) and s 1A. The capital payment is of course a benefit which would potentially be subject to s87 or s731. It seems clear from the structure of TCGA that any gain always accrues to the person making the disposal in the first instance. There is then a separate question as to whether that gain is chargeable to tax (see eg s1A) and/or results in gains being treated as accruing to someone else. Hold over relief reduces the amount of the gain accruing to the trustees and therefore the amount on which the trustees would be chargeable to tax if they were UK resident. This in turn reduces the gain

attributed to the settlor under s86. The effect of s86 is not to treat the gain as not having accrued to the trustee in the first place.

58. Similarly in relation to s87 - where the trust makes a capital payment to a (UK resident) beneficiary that in itself generates a gain, the beneficiary under TCGA 1992 s 71 becomes absolutely entitled to that trust property. The trustees make a disposal and re-acquisition at market value with any resultant gain (on the part of the trustees) falling within TCGA 1992 s1(3) as being a gain on which they would be chargeable if UK resident. Hold over relief is available on that distribution in specie albeit the value of the capital payment is still chargeable to s87 if there are historic unmatched capital gains in the trust.

59. Please can HMRC confirm that they agree the above analysis and if not why not.

Schedule 12

60. CIOT intends to make further comments in due course on this schedule. Immediate comments include the following:

61. CIOT welcomes the ability to set CGT s87 pre April 2025 losses against gains on trusts falling within s86 from April 2025. However, the wording in new s6A(a) means that such relief will only apply to settlements that did not fall within s86 before April 2025 but subsequently do so. Why cannot loss relief be extended to existing trusts already within s86 where gains are realised after April 2025? It avoids further complications on losses and future argument. For example, if HMRC argue that a settlor became domiciled by choice in the UK in 2024/25 that settlor cannot carry forward any s87 losses against future s86 gains. The legislation should try to minimise future disputes around domicile status.

62. CIOT welcome the relief for personal losses against gains chargeable under s87. However, if personal losses can now be set off against such gains, why do s.62(2A)(a), s.279A(7)(b) and s.279C(6)(c) still restrict the offset of losses against s.1(3) gains chargeable under s87?

63. As STEP has commented, is it right that the settlements code benefit charge should be extended to apply to transitional pre 2017 trust income? The current charge only applies where the benefit is matched against post 2017 income. Indeed, more generally, why is the benefits charge still needed at all. It was only introduced to deal with situations where the settlor charge no longer applied because of the PFSI concept. It would make more sense to revert to the pre-2017 position. Do we really need the complexity of a mechanism to still bring into charge income which has arisen between 6 April 2017 – 5 April 2025 given that, in most cases, this will be within the TOAA rules?

64. ITTOIA S.643C – Step 5 – this does not take account of the possibility that the income may have been taxed on another individual under the close family member rule or

the onward gift rule. The income should not be added back if it has in fact been taxed.

65. The legislation introduces s725A and s729B - right of reimbursement. It is assumed HMRC accept this extends to OIGs. Two further clarifications are needed: CIOT suggests that there should be a statement that any amount recovered from the trust is not a capital payment or benefit for any tax purposes. Furthermore, HMRC should confirm that if the settlor and spouse is excluded any reservation of a right of reimbursement for CGT purposes under s86 should not cause the trust to remain settlor-interested for either income tax or IHT purposes.

66. Transfer of assets abroad changes Amended s.733 – Step 1 – does this inadvertently (or deliberately) bring in benefits received by a non-resident between 6 April 2017 – 5 April 2025? What is the impact of new s.733(2A). This only seems to impact a transferor and it restricts the amounts which can be deducted from benefits received by the transferor. However, if a transferor has received benefits which have been matched against income which is not PFSI (or transitional trust income), why should that benefit not, in future, be left out of account? What is the provision trying to achieve?

67. S.735AF – this provides that the recipient of an onward gift is treated as receiving a benefit. However, it does not say that the original recipient is treated as if they had not received a benefit. Does this mean that an original recipient who is a qualifying new resident must identify/quantify the benefit/income and claim relief in order to avoid a tax charge? (The same applies for the settlements code (s.643EA) and for capital gains tax (s.87HA).

68. Para 70(4) inserts new para 5C Sch 5 TCGA 1992. However, it is missing sub para 4C(1)(b).

69. Amendment to s62 TCGA 1992 residence of PRs. Why has s62 been extended to deem PRs resident in the UK for CGT purposes if the deceased is either resident or a LTR? Chargeability to CGT for an individual depends on residence not domicile from April 2025 and they do not need to be LTR to avoid UK CGT. Why then are PRs only able to be treated as non-resident for CGT purposes if the deceased was neither resident nor a LTR?

70. Current draft guidance in relation to BIR seems unhelpful and contrary to the intended policy announced in FA 2012. Many businesses may already have breached the conditions according to the HMRC guidance although this takes a very restrictive view of the provisions. Given that BIR will no longer be available on new investments, the legislation should be clarified to ensure for example that loans to the holding company on which BIR is available that are later lent down to a subsidiary (and other transactions within the same group) are ignored and do not cause a clawback of relief. Nominating such investments for TRF would not work if (according to HMRC) a breach has already arisen.

71. The various relieving provisions in treaties will need further consideration. For example, the US and Switzerland both impose withholding tax at 30 and 35% respectively on US/Swiss dividends where the beneficial owner is not subject to UK tax. If the dividend income is payable to a settlor interested discretionary trust then at present the protected trust provisions mean that there is no UK tax payable. However, from April 2025 the settlor will (if UK resident) be subject to income tax if they or the spouse can benefit or the capital sums provisions are in point. However, the settlor is not as such beneficially entitled and may not want to receive the dividend income as life tenant (not least to ensure that funds are available at the trust level to pay future IHT). A lower withholding rate can only be accessed in these jurisdictions if HMRC confirm that the beneficial owner is UK resident.

72. In these circumstances, will HMRC accept that in relation to trusts where the settlor is taxed under the settlement provisions or the transferor under the TOA provisions (a) they will allow a credit for the foreign tax and (b) that HMRC will stamp the necessary forms required by the relevant foreign tax authority to confirm that the individual settlor/transferor is the beneficial owner (as it is deemed to be their income).

ANNEX 1

FINANCE BILL: CHANGES TO THE REMITTANCE BASIS SCHEDULE 9

Para 5(3)

1. In the proposed s 809L(2)(c), it may be pointed out that most use abroad by an individual of his money or other property is for his benefit, as when he buys goods or services for his own consumption. The new sub paragraph is limited by the fact that the benefit must be "in the United Kingdom". But what is meant by "in the United Kingdom" in this context. Take the example of an individual who buys a haircut while in the departure lounge awaiting a flight to the UK. Surely this will benefit him in the United Kingdom because he will look smart when in the UK. Is this intended to be in scope? The relief in s 809X(5)(a) would not apply as no property is brought to the UK.

2. A more pertinent example concerns a debt owed by an individual remittance basis user which is owed to a non-resident and is not a relevant debt. The individual might discharge it abroad by payment to the non-resident creditor. In this process no money or property comes to the UK. But the payment relieves the individual of an obligation and thus benefits him. Given the individual is UK resident, any enforcement of the debt might well be against him in the UK, judgement being enforced against his UK assets. In these circumstances could not the benefit of the repayment be said to be in the UK? Is para 5(3) intended to catch this?

3. This may be close to the facts of Sehgal, where the payment to the non-resident affiliate of the buyer relieved the taxpayers of their obligations under the warranty. But can it really be said such relief is a benefit in the UK? This would be particularly so were the sale agreement governed by foreign law with a foreign law exclusive jurisdiction clause. In such a case what the individual would be relieved of is the risk of being sued in a foreign court. That can hardly be a benefit in the UK. Yet it would not be rational policy if different tax consequences attach according to the governing law of the contract and the situs of the court having jurisdiction.

4. So far as CIOT understands it, the policy behind para 5(3) has not been stated, beyond the reference to Sehgal. But on the face of it, the implications could be wide and unpredictable. CIOT would ask for confirmation as to the purpose of this provision and then clear amendment to confine it to that purpose. For example, HMRC recently confirmed that payment of personal FIGS by H to spouse W in settlement of a UK divorce order was not a taxable remittance provided the couple are divorced at the point W remits the funds. But under this wording, payment by H to W abroad in settlement of his obligations under a UK financial order could be a benefit to H in the UK. If this is the case it would have major implications which the

family courts would need to be made aware of given that judges currently assume this practice is accepted by HMRC and adjust financial orders accordingly.

5. On any view the quantum of remittance should not exceed the amount or value of the benefit in the UK. It is possible to envisage many uses abroad which might include small or incidental benefit in the UK, where a charge by reference to the property used would be quite disproportionate. But in many cases the benefit in the UK would be very difficult to quantify – the purchase of a foreign holiday home could be seen as a benefit in the UK as it saves the taxpayer from the cost of booking holidays. CIOT strongly urges that this measure should be deleted.

Para 5(7)

6. In its reference to the use of FIG to secure the debt, this amendment to s 809L(9) clarifies what has been a highly controversial area. It is assumed the reference to security means that set-off arrangements which do not entail any security interest are not caught. It should also be made clear that the amount remitted cannot exceed the quantum of borrowed money or other property remitted to the UK.

Para 5(8)

7. Para (a) of the new sub s (9A) is presumably intended to cover transfers to the UK which are not received by a relevant person. This was the facts of Alimahomed [2024] UK FTT 432. Given HMRC were successful in that case is para (a) needed at all? In fact CIOT would suggest that policy is reversed – why should sending property from outside the UK to a non-relevant person in the UK be a taxable remittance where the taxpayer receives no benefit from the funds e.g. a gift to a UK charity. HMRC have always maintained that sending money to the UK even to a non-relevant person is a remittance. But there is no policy reason for this and it just represents a trap for the unwary which can easily be avoided by the well advised who will make the transfer to the non-UK account of the recipient.

8. Para (b) is presumably intended to cover cases where UK securities are bought on foreign clearing systems with settlement wholly abroad. A policy question is whether such investment in UK securities should be discouraged given the potential benefit to the UK economy.

9. The incorporation of the CGT situs rules on any view gives rise to an unintended consequence, because, for CGT purpose a debt is generally situate where the creditor is resident (TCGA 1992 s 275(1)(c)). The effect of para (b) appears to be that a remittance basis user will make a remittance wherever he makes a loan even if the individual borrower is wholly foreign, the loan is made and repaid wholly abroad, and the money lent never comes to the UK. Indeed the same result may follow if someone simply becomes indebted to the remittance basis user. More seriously it could also follow wherever the remittance basis user deposits funds in a non UK bank as such a deposit is a debt owned by the depositor and para (I) of s 275(1) is being repealed (para 17). The problem would be cured if general situs rules apply

and it is urged this course be taken. There should not be such different and complicated rules introduced at this late stage to determine what is a taxable remittance.

Para 5(11)

10 It is assumed this covers a consequence of HMRC's change of position regarding the use of FIG as collateral securing borrowed property brought to the UK. The original guidance was such use did not amount to remittance of the FIG (at least where "masked" by subsequent repaymentof the debt). That view changed in 2014, but in many cases transactions based on the prior view were protected from a tax charge. Equally on the basis of the revised view remittance would in fact have occurred and so, were the collateral FIG in fact brought to the UK, s 809P(12) would preclude a charge. Is the intended policy? If not, what was in mind?

11. Para 5(11) goes much further than the above. Suppose FIG were remitted but no charge arose because the remittance basis user had become non UK resident and remitted the overseas FIGs in that period of non-residence or a tax charge was precluded by a relief, for example loss relief. Suppose further the funds are taken back abroad and that subsequently the individual becomes UK resident again and remits the funds for a second time. It appears para 5(11) would stop s 809P(12) preventing a charge. Is this intended?

12. Indeed, suppose the individual not charged on the first remittance keeps the funds in the UK and uses them to buy an asset he uses in specie in the years following his return to the UK, for example a house or a picture. On one view there is a remittance in each year of use equal to the FIG from which the purchase price of the asset was derived. Hitherto s 809P(12) has prevented the FIG being charged in each year of use. But will para 5(11) now stop s 809P(12) from doing this and so result in the full FIG being charged in the first year of use when UK resident? It is not even clear when this section is intended to have effect e.g. suppose the remittance occurred prior to April 2025 in the period of absence to buy a house and the individual returned after April 2025. The commencement provisions are unclear. Para 5(11) should be deleted.

Annex 2

4 Year FIG regime: detailed points

1. Treaties

It would be helpful to know 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. Is this the reason why the relief is given as a deduction against total income as opposed to an exemption from tax for the specific overseas income/gains? For example, do HMRC consider that US will give treaty relief on such income/gains in respect of US citizens?

2. Losses

It seems illogical to deny CGT relief for overseas relief losses where a claim for relief against foreign income is made (particularly employment income) even if there is no claim for relief in respect of foreign gains.

3. **Trusts and s86**

CIOT welcomes the inclusion of foreign trust gains as being exempt from the s 86 charge on the settlor in the four year FIG regime. But is it right that including such a gain in the foreign gain claim of itself results in all the other consequences of a claim (e.g. non-allowance of personal foreign losses and loss of personal allowance and annual exemption), as well as disallowance of foreign trust losses? Conversely if no trust gains are included in a foreign income claim or a foreign gains claim, trust losses remain allowed for future s 86 purposes.

4. Is it intended that a s 86 gain included in a foreign gain claim passes into the trusts s1(3) amount for the tax year in which the gain is realised and is therefore potentially chargeable on beneficiaries in respect of future capital distributions under s87? This will be counter-intuitive to many new-arrivers who will be in a worse position with a trust than if they owned assets personally. Would it not have been simpler that s86 should impute such a gain to the settlor (but then relieved by the 4-year FIG regime) so that the gain never became a s1(3) amount in the first place?

Trust distributions

5. It should be specifically provided that any capital distribution to a beneficiary from a trust during the four year FIG regime is ignored for all tax purposes i.e. it is not matched to capital gains or relevant income arising in those four years or arising in future and so will not affect or reduce the pool of capital gains or relevant income. It is simply ignored. At present the Technical note (para 48) and legislation suggest that although a capital distribution from a trust during the four-year period is not matched to capital gains (para 50 of Technical note and para 4(2) Schedule D1) and is not

matched to future gains, it is nevertheless matched to relevant income albeit does not reduce the pool of available relevant income and if not so matched can be subject to tax after the four-year period if matched to relevant income arising later. This will effectively nullify the advantages of the FIG regime for those with trusts. Why is such a difference proposed?

6. There are three issues here that can be illustrated by example. Assume a capital payment of say £100,000 is made to a beneficiary (not the settlor) who claims FIG exemption. Trust income is £20k and trust gains are £80k in that year. 80K is unmatched and disregarded under schedule D1. It is not taxed in the year of receipt. Neither is the £20k balance which is matched to relevant income.

7. Is it the policy intention that:

   (a) the untaxed £80k should be carried forward and matched to future relevant income arising in the first year after the FIG regime ceases to apply? We assume not.
   (b) the £20k relevant income should not reduce the pool of relevant income for future matching purposes? At present it does seem to.
   (c) if there are insufficient trust gains or income arising to match to the payment made in the first four years, that payment remains disregarded for all tax purposes and cannot be matched to future relevant income. It seems to us that this should be the case. In short, as stated above, the payment in the first four years is simply disregarded for all purposes. The legislation and the Technical Note are confusing here.

8. It should be remembered that those who arrive in the first four years and receive distributions from trusts are highly unlikely to be able to compute records of gains and relevant income. They may not be the settlor but even if they are, by definition the relevant beneficiary will have been absent for many years and the trustees may have no connection with the UK. Records will not have been kept that are compliant with the pooling rules and so the beneficiary will have no idea if sufficient income has arisen to allow full matching (even though this is not intended to reduce the relevant income pool). It is no answer to say that a beneficiary will have to work out the pools available for matching in the future because they may never receive another trust distribution.

9. Generally there seems confusion. How does the ToAA legislation achieve the stated result in para 48 of the Technical Note which states that where "*an individual that claims the 4-year FIG regime receives a benefit that is matched to foreign income of an overseas entity for which the ToAA rules apply, this will not result in a tax liability. Equally, the amount of the benefit will not be treated as reducing the pool of available relevant income within the overseas entity for future matching purposes. Where the benefit is not matched to foreign income of an overseas entity for which the ToAA rules apply, it may be subject to tax when the 4-year FIG period ends and in future tax years.*"

10. See s.744 ITA and whether income has been "taken into account" where relief has been claimed under the four-year FIG regime. There is a specific provision for the purposes of the settlements code (s.643C). Overall, it is not clear how the legislation works to avoid a reduction in the amount of relevant income available for matching at the end of the FIG period. As noted above the legislation should instead ensure that all capital and income distributions in the first four years should simply be disregarded for both income tax and CGT purposes and not matched to anything. The only exception should be if the income distribution is itself a distribution of UK source income.

11. If it is the settlor who is claiming the FIG exemption he will be taxable on the UK income and gains arising in the trust in that four year period anyway so there is no need to worry about identifying and matching payments to foreign income.

12. It should be remembered that this is a time limited four year exemption and one designed to encourage people to come here not trap them into unnecessary complexity and professional fees.

Partnerships

13. The definition of "qualifying foreign income" in s845F is narrower than the definition of "relevant foreign income" in respect of trading/professional partnerships that are controlled and managed abroad. Under the current rules, s857 ITTOIA treats all foreign profits of such firms as "relevant foreign income" (RFI), which in turn allows them to be taxed on the remittance basis. The categories in s845F only include profits and adjustment income where the firm's trade is carried on wholly abroad. If the firm has a UK branch, the foreign profits therefore do not appear to qualify for relief under the new regime. Is this intentional?

14. The guidance on the above point does not appear to match the legislation. Paragraph 36 reads "*For the purposes of the 4-year FIG regime, profits of a foreign partnership will only be considered foreign if the individual carries out all partnership duties outside the UK*." The legislation does not refer to the activities of an individual partner (nor should it). The question is whether the firm is carrying on trading activities in the UK, whether by that partner or any representative of the firm. Not all activities amount to the carrying on of a trade. This is established in case law and is summarised in HMRC's International Manual at INTM262220. The guidance should be consistent with the legislation, case law and other HMRC guidance, and only refer to where the firm is carrying on a trade.

15. Children under 10

Unlike the "long-term UK resident" rule for inheritance tax, there do not appear to be any special rules for children in the "qualifying new residents" rule in s845B. In order to qualify, an individual must meet the condition in s845B(1)(c) reading "*for each of the 10 tax years before that tax year, the individual was not UK resident*". If a child born in say January 2020 arrives in the UK for the first time during 2025/26 and is

resident in that year, it appears that they meet the condition because they were not UK resident in any of the preceding 10 tax years. Do HMRC agree? We suggest this is changed to be consistent with the IHT legislation.

16. Adjusted net income provision

The proposed s845E states that adjusted net income is calculated as though there were no foreign income claim (a similar provision for foreign employment relief is in the proposed s41S). As the individuals affected are not entitled to personal allowances in any event, it appears that the only effects of this would be an increase in the measure of income for High Income Child Benefit Charge and tax-free childcare and a restriction on pension tax relief. Is this correct? With regard to tax free child care, we notice that the Finance Bill does not include any reference to SI 2015/448 which contains special provisions for couples affected by remittance basis claims.

Annex 3

Main TRF

Procedure

1. CIOT notes a designation election can be included in an amendment to a return (para 1(11)(c)). This means, for example that the cut-off date for a designation election for 2026 – 27 is 31 January 2029. It is assumed that this reflects intended policy.

2. CIOT notes the proposed TRF capital account. HMRC is asked to confirm that no individual will be under any obligation to create a TRF capital account and that where there is no such account any annualised Condition A transfer is simply first identified with the TRF capital in the mixed fund. i.e. if designated amounts are in a mixed fund, those designated funds sit above all undesignated historic FIG for the purposes of mixed fund remittance ordering rules.

3. What is the intention behind para 14(3). Presumably the aim is to switch off the offshore transfer rules in relation to a transfer of designated capital for TRF purposes so that it will always be the first item capable of being remitted in whatever account it lands?

4. CIOT notes the proposed *S809RZZA provides for an annualised basis for mixed funds containing TRF sub s (1) provides that the section applies where at any time in a tax year a mixed fund contains TRF capital.* Is this looking at the account retrospectively on the basis that TRF capital may not be designated as such until after the tax year? E.g mixed fund of £100 income, £200 capital gains and £500 capital with the latter added most recently. X remits £500 in 2025/26 which is not taxed and then designates £300 eligible for TRF in that year's return. How is the remittance of £500 treated?

Location of funds

5. CIOT is puzzled by why para 2(8)(c) requires the QOC to have been held outside the UK immediately before its acquisition and at all times thereafter. If capital has already been in the UK any tax it may have attracted by reason of being in the UK will already have been satisfied and designation will merely secure a bonus 12% for HMRC. This condition should be removed.

Temporary non-residence

6. If a taxpayer remits RFI to the UK during a period of temporary non-residence, s832A treats the remittance as having been made in the period of return (normally the tax year when UK residence resumes). If the date of the actual remittance is before 6 April 2025 and period of return is between 2025/26 and 2027/28, does the remittance qualify for TRF under para 2(5)? It appears it does. Para 2(5) applies to amounts of RFI remitted to the UK in the TRF Period. Although the actual remittance was earlier, s832A deems the remittance to have occurred during the window. Is this correct?

7. If a part only of a mixed fund is designated as QOC, it looks like the only way of segregating this is either to remit the QOC to the UK; or transfer the QOC to a "TRF Capital Account". An alternative presumably would be to make an offshore transfer out of the mixed fund into a completely new account which is not nominated as a TRF Capital Account. Presumably as an offshore transfer this would only carry out a pro rata part of the QOC. Is this correct?

8. QOC is treated as being QOC from the beginning of the tax year in which the designation is made. Does the designation of the funds which have been transferred to the new account mean that the designation relates to income and gains in the mixed fund before the transfer to the new account and so is affected by the new ordering rules in s.809 RZZA – which might mean that the transfer to the new account suggested in the above paragraph would not consist entirely of the QOC? Why is QOC from trust distributions which have been designated not TRF capital for mixed fund purposes (s809Q(9))? We appreciate that such income/gains will be post April 2025 income and gains and should therefore be at the top of the pile for mixed fund ordering purposes. But if the distribution is held in a mixed fund (which may be the case even if paid to a separate account as the distribution may include unremitted overseas income/gains originally transferred to the trust by the settlor), any offshore transfer from the mixed fund will dilute the designated QOC if this takes place before remittance. It also means that the designated QOC cannot be transferred to a TRF Capital account as this would still be an offshore transfer (s809RZA).

<u>The same FIG exists in more than one place at the same time</u>

9. The situation arises in a number of different contexts, but most commonly where FIG has been transferred to another relevant person. The classic example seems to be where FIG is lent to an offshore trust or company. In that case it seems that both:

   (a) the debt; and
   (b) the assets in the hands of the relevant person

   both derive from the FIG. Of course, you could get situations where the FIG has been lent on down a chain of trust/companies, so we are not necessarily limited to just two – however, here the analysis sticks with two to simplify.

10. Conceptually this seems to be the natural result of the "derived from" concept – which implies that more than one thing can derive from a single source. Similarly, conceptually, the right result is that if <u>either</u> (a) or (b) is brought to, received or used in the UK, then that gives rise to a taxable remittance. But if <u>both</u> (a) and (b) are so treated then it is only the first of them that gives rise to a remittance. Or, putting the same thing a different way, when the first of (a) and (b) is remitted the other of them is thereby effectively "cleansed". That is the position, conceptually. The legislative route to that conclusion is slightly less clear. The CIOT view is that it is just implicit in s832 ITTOIA and general principles of taxation that income or gains should only be

charged once to tax. But s809P(12) – even as prospectively amended – gets to the same conclusion.

11. In this situation the right TRF result is clearly that the individual should pay 12% (or 15%) once, and having done so, that should clean up all the different places in which the same FIG exists. CIOT cannot see that it is right that if FIG exists in more than one place that you should have to pay the TRF charge twice (particularly as it could exist in more than two places). How one gets to that result under Sch 10 as it stands in the Finance Bill is unclear. But if the suggestion in our main paper is adopted the point should be covered. Otherwise there should be some overriding paragraph in the legislation saying that (a) an individual may designate QOC that is in the hands of another relevant person and (b) that where more than one amount of QOC is or derives from the same foreign income or gains, the designation of any QOC will be treated as thereby designating the other QOC that so derives.

One remittance can remit more than one lot of FIG

12. This is the opposite issue. It arises in a number of different ways. For instance, FIG(1) may be used as collateral for a relevant loan and FIG(2) may be used to repay that loan. Or, loan A (say to a connected company) might be made using FIG(A), but repaid using FIG(B). The proceeds of repayment now derive from both the FIG(B) used to repay, but also from loan A and therefore (indirectly) from the FIG(A) used to make loan A.

13. A simpler example still (although it conflates the issue with two different people) is that Husband lends FIG(H) to Wife. Wife repays Husband using her FIG(W). The proceeds in Husband's hands now derive from both FIG(H) and FIG(W).

14. One view in this situation that there is nothing conceptually wrong with one remittance, doing service to remit more than one lot of FIG. Each FIG is being taxed once and once only. It is just that the same event has remitted both. CIOT considers the better view is that there is a presumption against double taxation and that much clearer words than currently exist would be needed to double tax a given sum brought to the UK. The correct answer, it is suggested, is to identify the source of the sum brought to the UK and only FIG in that real source is taxed. Thus in para 12 above, the source is FIG A as the money lent to the company was simply an investment of that FIG.

15. But assuming CIOT are wrong, how under paras 2, 8 and 9 does TRF work in the situation above where the proceeds (X) in the individual's hands derive from both FIG(A) and FIG(B)? It seems here that it is the proceeds (X) that is the QOC here. So presumably the individual designates X and pays 12% (or 15%) of X. As X is now designated QOC, paragraph 8 or 9 then simply says that no liability to income tax or CGT arises on the remittance of X. Thus both FIG A and FIG B would be cleansed and thus relieved under paras 8 or 9 if either or both is remitted.

Overlap between Main TRF and Trust TRF

16. Another common example would be where the individual has settled personal FIG(C) into a protected trust. The trust fund has grown and the trustees have, over the life of the trust, realised gains or income (D). The trustees then make a capital payment back to the original settlor or another relevant person. They use FIG(C) (or something deriving from it) to make that capital payment. In short if a capital distribution is received in TRF Period which is matched to Trust income or gains arising in 24/25 or prior years, the TRF will apply on designation. Where the recipient is the settlor, is a double designation required where the distribution traces back to personal untaxed FIG originally settled? CIOT would suggest that the policy position should be simple – if one capital distribution is received then just 12% on that amount is paid and it can be remitted. In this example the capital distribution is a trust distribution that is matched to the Trust income and gains but not as such remove the personal FIGs from the settlement. But if the settlement was ended such that the original capital was also appointed out then TRF would have to be paid on all of it.

17. Does a similar point arise where there is pre 2017 unremitted settlement code income which is not transitional trust income within ITTOIA 2005 s 628C? If this is comprised in a remitted capital distribution or benefit to the settlor it could count as remitted. It is able to be designated under Sch 10 para 5(1)(b). Does that designation also cover the capital payment?

18. In summary, if the intention is to encourage people to use TRF and therefore maximise the uptake there should be no requirement to go back into complicated tracing and matching exercises. As long as 12% is paid on the capital distribution then that is sufficient whatever it may be derived from.

Procedure

19. It is unclear why tax returns have to specify the amount of designated funds that are remitted in 25/26 to 27/28 but no such requirement exists for later tax years? Is that interpretation correct? See para 6(2).

Drafting points

20. Should para 2(7)(a) refer to paras 8(1) and 9?

21. Should para 2(8)(b) and (c)(11) refer to the individual or another relevant person.

Annex 4

Trust TRF

General

1. CIOT understands that the policy of Trust TRF is as set out in the first part of para 137 of the Technical Note:

> "From 6 April 2025, it will be possible to treat a benefit or capital payment received by a qualifying individual from an overseas settlement, an underlying company, or other person abroad as "qualifying overseas capital". As such it will be possible to designate this benefit or payment under the TRF. The benefit or payment must be matched with foreign income or any trustee gains (sections 87, 87A and Schedule 4C TCGA 1992) from the overseas settlement, non-resident company or other person abroad that arose prior to 6 April 2025."

We understand that Trust TRF is intended to be available to both settlor and beneficiaries. The Explanatory Notes suggest it is not available to settlors. We assume this is an error? That restriction is not reflected in the technical notes or draft legislation.

Background

2. To put CIOT's comments on Trust TRF in context it is necessary to summarise how, in the absence of Trust TRF, benefits and capital payments conferred on a UK resident by a non UK trust during the TRF period (i.e. 2025 – 26 to 2027 – 28) would be taxed. This summary is inter alia necessary because views differ on the correct construction of the current rules and the comments in this note assume the summary below is correct.

3. In summary the relevant rules currently applying are as follows:

(A) The benefit or capital payment is taxed as income of the recipient to the extent there is relevant income (i.e. retained income) in the trust or an underlying company (ITA 2007 s 731 – 5). There is no general ordering rule, but for some purposes FIFO is applied (which would continue for the purposes of TRF (Sch 10 para 5(1)(c)(ii)).

(B) Insofar as the benefit or capital payment exceeds the aggregate available relevant income it is taxed as an offshore income gain ("OIG") of the recipient to the extent OIGs have been realised by the trust or any underlying company (SI 2009/3001 reg. 23(2)).[3] The computational rules in TCGA 1992 s 87A are applied (ibid) so LIFO

[3] This assumes as stated in the main paper that trust OIGs will be eligible for TRF and an amendment is made.

applies. However where there is a Sch 4C pool (which can only be post 5 April 2008), OIGs in the pool are matched before any later gains not in the pool as TCGA 1992 Sch 4C is included in the provisions applied to OIGs. (Note that as stated in the main body of this paper OIGs need to be explicitly dealt with for the purposes of TRF).

(C) Insofar as the benefit or capital payment exceeds both the aggregate relevant income and the aggregate OIGs it is taxed as capital gain to the extent capital gains have been realised by the trust or underlying companies (TCGA 1992 ss 87 – 87A). Here too LIFO applies but:

   (1) Gains in any Sch 4C pool are matched before any later gains not in a Sch 4C pool (Sch 4C para 8(4)); and
   (2) If there is both a pre 2008 and a post 2008 Sch 4C pool, gains in the latter are matched first (FA 2008 Sch 7 para 155(a)). But this does not apply where the recipient is non UK domiciled at common law, as such recipients are outside the scope of pre 2008 Sch 4C pools (Sch 4C para 8(4) as originally enacted).

4. The position is complicated by motive defences as follows:

   (1) If the transfer of asset defence (ITA 2007 ss 736 – 42) applies, the matching to relevant income at (A) above does not result in tax. There is an exception where the recipient is the settlor or a CFM and the trust income is PFSI or TTI in which case the matching results in tax under ITTOIA s 643A. It is generally considered a benefit or capital payment protected by the motive defence and outside s 643A, is able to be treated as OIG or capital gain as per (B) and (C) albeit this is not wholly clear on the legislation.
   (2) If the defence in TCGA 1992 s 3A applies, underlying company gains are excluded from (B) and (C) above. However, it is generally accepted OIGs so excluded become relevant income within (A), resulting in tax unless the transfer of assets motive defence applies.

<u>Section 1(3) amounts of 2025 – 26 and post</u>

5. From comments at a recent video meeting CIOT understands HMRC consider that where there are in fact s 1(3) amounts of 2025 – 26 or post, going forward the designated capital payment will be treated as matched with those amounts under normal LIFO rules, leaving some of the pre 2025 s 1(3) amount that has been matched to the designated capital payment for the purposes of designation as unmatched. CIOT understands paras 10(3) – (4) and 10(7) – (8) are seen as providing to this effect. CIOT however comments as follows:

   (a) The meaning of those four sub paragraphs is unclear and sub para (8) has an unanchored reference to a paragraph 13(2); and
   (b) In any event would it not be more logical to give the matching for the purposes of designation general effect? If this is not done, in theory the pre 2025 s 1(3) amounts brought into matching for the purposes of designation could be used again to enable a subsequent capital payment in a TRF period to be designated.

(c) Perhaps more logically, a capital payment if designated should always be matched to pre April 2025 gains if any in priority to post April 2025 gains and taxed at 12% but if not fully matched to pre April gains (or income) remains taxed at 12% (in effect an over designation). Thereafter it should be ignored for the purposes of any future matching or taxing.

Over designation

6. As noted in the main part of this paper para 6(5) appears to allow over-designation. The final words of para 6(6) appear to cover some of the implications. In relation to Trust TRF should not the correct answer be that a capital payment or benefit that turns out to be over designated, and not fully matched to pre April trust income or gains is thereafter ignored for all purposes?

Pre 5 April 2008 issues

7. In paras 4(1)(a) and 10(5)(a) CIOT wonders whether it should be made clear the reference to para 8(1) of Sch 4C is a reference both to that sub paragraph as it has existed since 2008 – 09 and to it as it existed in 2007 – 08 and as such still applies to pre 2008 Sch 4C pools (FA 2008 Sch 7 para 152). In addition para 4(1)(b) and 4(3) and para 10(7) and (9) need amendment to reflect the fact that the s 1(3) amount is not a concept referred to in para 8 of Sch 4C as it existed in 2007 – 08 and prior. These amendments are important as many trusts potentially within Trust TRF will through inadvertence have pre 2008 Sch 4C pools as well as new Sch 4C pools.

8. CIOT considers there is a potential anomaly where a trust has a pre 2008 Sch 4C pool and the capital payments it makes in the TRF period are to individuals who are non UK domiciled at common law. As noted above, such capital payments are not matched and so would be outside TRF. But would it not be consistent with TRF policy that they be matched? This could perhaps be achieved by adding to para 4(1)(a) the words "or would be so matched were the individual domiciled in the UK". As suggested above it would then also need to be made clear the pre 2008 Sch 4C pool is reduced by the gains thereby treated as matched.

9. Under the 2008 CGT and OIG transitional reliefs, some gains resulting from matching are partially exempt (FA 2008 Sch 7 paras 124 and 126). Specifically, this will arise where the capital payment in the TRF period is either:

   (a) In part matched under the LIFO rules with s 1(3) or OIG amounts of 2007 – 08 or prior; or
   (b) Matched with s 1(3) or OIG amounts of 2008 – 09 which benefit from a 2008 rebasing election.

   CIOT is not clear whether any designation of the capital payment can be limited to the part that is not matched to amounts protected by either of these two reliefs and assuming such designation is not possible as Sch 10 now stands urges that consideration be given to this point.

10. One particular 2008 rule is that a surplus capital payment made between 12 March and 5 April 2008 cannot be matched against future s 1(3) amounts unless and until the recipient becomes UK domiciled at common law (FA 2008 Sch 7 para 125). CIOT considers it would be consistent with the tenor of TRF if such capital payments are made capable of designation insofar as there are unmatched s 1(3) amounts as at 5 April 2025, those unmatched amounts then being correspondingly reduced.

11. FA 2008 schedule 7 para 118 provides that no account is taken of s1(3) amounts or capital payments made before 17 March 1998 if the settlor or all the settlors were either non- UK resident or non-domiciled when they made the settlement and have remained so or are dead. On one view, such a trust can therefore have s1(3) amounts and capital payments brought into account if a new settlor adds to the settlement or the original settlor becomes UK resident and domiciled. Assuming such an event has not happened but could, should it be possible for an otherwise unmatched capital payment in the TRF period to be able to be matched with pre 1998 s1(3) amounts.

12. Given all the above problems would it not be easier to switch off matching altogether on capital distributions eligible for TRF?

<u>Onward gifts and close family members</u>

13. CIOT is unclear how designation works where the close family member rule is engaged. Presumably if designation by non-residents is allowed and the actual recipient of the benefit/capital payment designates, the settlor will not need to do so. But if these conditions are not met it should be made clear the settlor can designate.

14. The same point arises with the onward gift rule, where the subsequent recipient needs (and is eligible) they should be able to designate where the original recipient cannot (e.g. because non-resident) or does not. There are also timing points. Should not designation be possible if the original benefit/capital payment is in 2024 – 25 or prior but the onward gift is in the TRF Period? The converse situation is more difficult, i.e. the actual benefit or payment is in the TRF Period but the onward gift is after that period has ended. As noted in para 19 of the main part of this paper, this is a compelling reason why non-resident recipients should be allowed to designate.

<u>Trust immigration</u>

15. Is there any reason why Trust TRF should not be extended to trusts or other persons abroad who have immigrated? In such a case benefits and capital payments to UK residents are taxable by reference to pre immigration income and gains. There are a number of UK resident trusts with significant historic pools of stockpiled gains and relevant income. TRF would allow these trusts to be wound up. This could be achieved by adding "or section 89(2)" into Sch 10 paragraph 3(1)(b) and the heading to paragraph 3.

<u>Designation under para 5</u>

16. Sch 10 para 5(1) includes two items properly within Trust TRF in that they require a benefit during the TRF Period. But they also include para 5(1)(b) which references income that arose in 2024 – 25 or prior and is unremitted and potentially taxable on the settlor under the settlements code. This logically forms part of Main TRF and should be included there.

17. The two items properly within Trust TRF (s 643A and s 732) require the notional income to be designated. The CGT provisions, by contrast require the capital payment to be designated. Should not the income tax items be aligned with CGT, so that it is the benefit that is designated? It is illogical and potentially confusing for the same issue to be approached in two ways as between the two taxes.

18. Questions have been raised as to whether, under para 8(2), both the benefit and the relevant income matched with the designated income drop out of the respective cumulative totals (under both ITA s 733 and for the purposes of s 643). Assuming it is the policy they should, such should be made clear.

19. CIOT notes that where under s 735A the matching is with UK source income, Trust TRF will not apply. CIOT considers this is an illogical restriction which may require a lot of tracing and checking as it is not always clear (to asset managers in particular) whether income does or does not have a UK source and it will require identification through earlier years as to the source of income arising. CIOT does however note and welcomes that it will not be necessary to investigate whether or not foreign source income has been brought to the UK. However, once again these matching provisions in relation to TRF are a potential trap and will significantly deter people from using Trust TRF.

20. As noted in the main part of our paper at para 36, whether or not a capital distribution designated for TRF is fully matched to pre April 2025 income or gains, it should not be carried forward for matching to income and gains arising post April 2025. It should in these circumstances if not fully matched just be ignored going forward albeit having been taxed at 12%. Few trusts will have complete records of historic income and gains and if there is over designation the concern is that beneficiaries will then have to worry about the capital payment being matched to future Trust income and gains.

<u>Income distributions</u>

21. CIOT notes Trust TRF at least in general requires the trust payment or benefit to be capital in the hands of the recipient. This could cause issues where income arose in 2024 – 25 or more recent years and the distribution in the TRF Period is of such income. Could it be said that the income still has the character of income so the distribution is the recipient's income? This problem could be overcome if income distributions are allowed to qualify for Trust TRF insofar as what is distributed is income of 2024 – 25 or prior. i.e. in effect it is deemed to be a capital distribution for TRF purposes.

Temporary non-residence

22. A capital payment (but not a s 732 benefit) is treated as made in the period of return. It is suggested there will be an anomaly unless TRF is extended to non-residents in that a capital payment in the TRF Period will not be eligible for TRF treatment if the year of return is after the TRF Period is ended. This anomaly should be addressed if TRF is not extended to non-residents.

Drafting points

23. Should para 3(3) give “beneficiary” the extended meaning given in TCGA 1992 s 97? Should para 3(1)(b) also refer to TCGA 1992 s 89(2)?

Annex 5

IHT

1. Para 1 Sch A1 IHTA 1984 (non-excluded overseas property) requires a reference to s48ZA IHTA rather than to s48(3)(a).

2. Para 45 Schedule 6: in para 45(c)(ii) of Schedule 6 the phrase used is "was not resident in the United Kingdom for more than 14 of the 20 tax years". This could be read in one of two ways. *Was (not resident) …for more than 14/20*; or *Was not (resident….for more than 14/20).* The second is clearly the intended meaning, otherwise you would have to do at least 15 non-resident years to qualify! It would be clearer if it read: *"Was resident in the United Kingdom for NOT more than 14 of the 20 tax years…"*

3. CIOT welcomes the overall simplification to ss80 and 81 IHTA. However the amendment to s81 at para 15 Sch 13 is not helpful. What are the additional words "held on the trusts of the second" at the end of s.81 IHTA intended to achieve? That is how s.81 works in any event now but the commencement provision in paragraph 46 of schedule 6 seems to indicate that the addition of those words makes a substantive change to the meaning of the legislation.

4. Section 81B appears to reverse the current position in relation to s80. Currently a will trust set up by a settlor who is not UK domiciled or deemed domiciled on death where his spouse takes a qualifying IIP in the form of an immediate post death interest would remain excluded property while the spouse is alive and it would not be charged on her death. However, it would thereafter come within the relevant property regime if the spouse was deemed domiciled when her IIP ended as one tests the domicile of the last IIP beneficiary. Under the amended provisions, if the settlor dies and is not a LTR after April 2025, then on the death of the spouse with the IPDI, there would be a charge on her death if she dies a LTR under s48ZA(5) but it would then become excluded property again for the purposes of the relevant property regime as s81B looks at the status of the actual settlor. It is not clear how the words in s80 deeming the property to become comprised in a separate settlement at the second death would apply.

5. If this is the correct statement of policy we think this is logical in that any IIP where the life tenant dies a LTR will be chargeable on death but thereafter the relevant property regime is tested by reference to the status of the settlor not the life tenant.

6. If the settlor dies before April 2025 and the spouse dies a LTR after April 2025 is it intended that the old rules apply? The way s81B is amended is not clear. Is it s81B or s81B new that applies?

7. Is it the intention that the transitional provision on new s102(7A) FA 1986 as para 30(3) allows a transfer between settlements that come within s81 to obtain the transitional protection even if the transfer occurs on or after 30 October 2024 and even if the settlor is a LTR at the date of transfer?

8. Given the repeal of ss82 and 82A (which is welcomed by CIOT) some consideration needs to be given to 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. Such trusts were transitionally protected under the relevant property regime (s82A(1)(a)) but were subject to a ROB problem albeit HMRC undertook to review this gremlin when the legislation was amended. Is it now the case that such transfers between settlements made prior to July 2020 will still be subject to the ROB regime even though on the basis of s102(7A) FA 1986 transfers made after April 2025 would be protected from a ROB even if within the relevant property regime? We assume that HMRC accept that future transfers between trusts makes no difference now to the status of the settled property under the relevant property regime which is solely determined by whether the settlor is a LTR at any future chargeable event.

9. New IHTA 1984, s 53(4A). The proposed new IHTA 1984, s 53(4A) operates by reference to "the settled property" and it is not wholly clear how it will apply in a situation where some, but not all, of the settled property meets the conditions in subsections (a) to (d). Presumably, the intention is that a charge under s 52 will be precluded insofar as the settled property meets those conditions. We recommend that s 53(4A) is amended as follows, to make this clear: *"(4A) Tax shall not be chargeable under section 52 above if and to the extent that – […]"*

10. It should be confirmed that references to the settled property do not preclude changes in the composition of the settled property provided the settled property is foreign situs. Ie. the same property does not need to be held throughout to retain the transitional provisions. (Guidance could usefully confirm this as there seems to have been some concern– the same is true of new FA 1986 s102(7A).

11. It would be helpful to state in s53 that there is no charge under s52 even where the life tenant is a long term resident if the settlor died before April 2025. Similarly in s54 – does this need to make it clear that where the settlor died before April 2025 not domiciled here the life tenant is not chargeable on death provided it is excluded property. In short, the transitional in s54(2C) is only applicable and needed for trusts where the settlor has not died before April 2025? The wording used in amended s64(1BZA) is clearer in this respect.

12. Would s53(4A) be better inserted as s53(2B) as it does not relate solely to reversion to settlor/spouse?

13. Under para 30 the ROB provisions are disapplied altogether if the settled property was foreign situs and within the transitional provisions immediately before 30 October 2024. (Guidance should make it clear that these provisions do not apply to returners within Condition A who had been UK resident more than one year as at 24/25.) Is it intended that if the settled property is appointed out to a beneficiary the same transitional protections should continue to apply provided that the property never becomes UK situated? On one reading the condition in s102(7A) could simply require the property to be settled prior to Oct 2024 irrespective of what happens to it subsequently even if it becomes non-settled.

14. The provisions on income and accumulations in s64 need further consideration or at least clarification. As amended, income arising when a settlor is a LTR cannot be excluded property and is relevant property from the time it arises (but is not subject to a ten year anniversary or exit charge unless retained as income for more than five years). So if the settlor was a LTR for two years before the income arose it is only relevant property from the time that it arose. However, if it is accumulated then it would appear that it then becomes comprised in the settlement at the earlier date when the capital was originally settled and will therefore be deemed relevant property two years earlier when the settlor became a LTR. Is this intended as what was a relief seems to have been turned into an additional tax charge?

15. Section 65(8ZA) may need further consideration. It would appear to allow a trust to escape an exit charge if the trust invests in say gilts just before the settlor loses LTR. There would be no charge on investment in gilts while the settlor was LTR and if the settlor then ceases to be a LTR at a time when the trust is still invested in gilts there is no exit charge provided there are no UK resident beneficiaries. Indeed s65(7) may also need amendment in this respect more generally as otherwise a trust could move into UK situated property while the settlor is a LTR just before an exit charge in say April 2028 (thereby losing the transitional protection against ROB), there would be no exit charge on 6 April 2028 when the settlor ceases to be a LTR and then the trust could invest in foreign situated property.

16. Further consideration is required to the IHT enforcement provisions as many more trusts will be subject to an exit charge at the point the settlor ceases to be a LTR even if the property is foreign situated. Equally trustees will now have to track the status of all settlors. Similarly, how will the foreign executors of an individual who has emigrated and may have retained no UK property or connections here be made aware of their IHT obligations if the individual dies within 10 years? Given their personal liability, relatives of the individual who act as executors may well be quite exposed as they are likely to be unaware of any continuing UK IHT liability if the estate is foreign and the individual left the UK some years before. The problem will only arise for those who leave after April 2025.

17. Given many trusts may opt for instalment relief in relation to the ten year charge on which interest will be payable, does HMRC accept that an instalment or part of the total tax due can be paid early and interest will stop running on that instalment or part payment without the whole IHT having to be discharged? Currently some compliance officers in the IHT office argue that once an election is made to pay in instalments under s227 it is not possible to pay some instalments early and stop interest running on that part of the principal. The whole principal outstanding must be paid off.