Representation from the Chartered Institute of Taxation
for Finance Bill 2024-25 Public Bill Committee

Part 2 Finance Bill: report stage amendments for non-domicile changes

Executive Summary

Amendments 11 to 14 – these welcome changes extend the circumstances in which matched capital payments from offshore trusts are brought into scope of the 4-year new arrivals window

Amendments 21 and 22 – these relate to the definition of 'remittance'. They are welcome but there is an area where greater clarity would be helpful

Amendment 24 – this relates to relief for amounts remitted again on becoming UK resident. We welcome the apparent intention but the drafting is incorrect and fails to achieve its objectives, falling short in a number of respects

Amendments 31 to 37 – these changes concern the Temporary Repatriation Facility (TRF). They ensure that offshore trusts repatriated to the UK can benefit from it. They also clarify the way in which the TRF rules will work in relation to unremitted income and gains contained in trusts. They are welcome but we do not think amendment 31 will work as intended in some situations. These changes are very technical and we believe there may be other problems with the drafting of some of these amendments.

Amendments 56 to 66 – these concern amendments to the IHT provisions and are mainly technical in nature apart from two substantive changes

Other minor amendments have been made, but these are largely corrective, minor, or technical changes

In our view it is a missed opportunity not to extend the TRF to non-residents. It is hard to see why HMRC would object to a non-resident paying TRF. Otherwise they will simply have to remain non-UK resident

Our concerns highlight the need for a proper consultation on the remittance basis rather than poorly drafted legislation being rushed through without proper scrutiny

1 Overview

1.1 Part 2 of the Bill removes the concept of 'domicile' from the UK tax system, with effect from the 2025-26 tax year. Chapter 1 puts in place a new regime for taxing the foreign income and gains (FIG) of new UK residents ("Qualifying New Residents"). Chapter 2 ends the special tax regime for those who are resident but not domiciled in the UK, with a temporary facility to encourage people to bring historic FIG into the UK over the next three years. Chapter 3 applies the changes to trusts. Chapter 4 introduces a residence-based system for inheritance tax. For more on these measures see our briefing '[Finance Bill 2024-25: Replacement of special rules relating to domicile]'.

1.2 The government has tabled 57 report stage amendments to Part 2 and its related schedules (government amendments 5-17 and 21-64). The most significant of these cover four broad areas:
(a) the definition of what constitutes a remittance in schedule 9,
(b) inclusion of migrating offshore trusts (i.e. trusts which were offshore and which are now resident in the UK) within the provisions of the 4-year exemption window and TRF,
(c) changes to the way in which the TRF works in relation to distributions from offshore trusts,
(d) certain IHT changes.

1.3 Unfortunately there still remain problems in schedule 9, some of which we refer to below. This creates uncertainty (which is unhelpful if the intention is to encourage non doms to stay rather than leave).

Whilst we do not consider it appropriate to be making significant changes to the remittance rules in circumstances where the remittance basis of taxation is being abolished, if there are to be changes, we strongly advocate for a proper consultation on any new definition of remittance, rather than amendments being introduced only weeks before the changes take effect. A consultation, the outcome of which would take effect from, say, 6 April 2026, would, in our view, have as much deterrent effect as actual changes and would itself encourage take up of the TRF in 25/26.

1.4 Our comments below are in chapter order, which mostly corresponds to the numerical order of amendments. Consequential amendments (for example amendments 5, 9 and 15 in relation to amendment 6) are generally ignored, as are minor amendments such as those correcting cross-references.

2 Amendments to Chapter 1 – New rules for foreign income and gains (FIG) of individuals becoming UK resident

Amendment 6 - Effect of claim, foreign employment election or foreign gain claim: costs of dwelling-related loan

2.1 Amendment 6 corrects an anomaly within the legislation to ensure no relief is allowable for an offshore dwelling-related loan if the taxpayer is making a claim for exemption within the 4-year new arrival window. This seems sensible.

2.2 Sub-section 3 means there is no carry-forward available after that claim. This could be seen as being harsh in a situation where the taxpayer has a carried forward amount, then leaves the UK for 10+ years, and then comes back and qualifies for the new 4-year arrival regime. In this scenario they appear to get their historic carried-forward amount wiped out as well as the amount targeted by this amendment. It may be that the government deem this a fair price for benefiting from the exemption but it would be helpful if the minister could clarify whether this is intentional.

Amendments 7 and 10 - Effect of claim on relief for contributions to registered pension schemes

2.3 These two amendments mean that where an individual has made a foreign income or foreign employment claim, any relief for contributions to registered pension schemes to which the individual is entitled is reduced by the amount of the relief obtained as a result of the foreign income or employment claim so far as the relief reflects income that is relevant UK earnings (but not below the basic amount).

2.4 We have no comments on these amendments.

Amendments 11-14 – New arrivals exemption and migrating trusts

2.5 Amendment 12 brings into the scope of the 4-year FIG exemption for new arrivals migrating trusts with accrued capital gains under s.87 (and s.89(2) due to its migration) of the Taxation of Chargeable Gains Act (TCGA) 1992. Amendments 11, 13 and 14 change the wording of the Bill to accommodate amendment 12.

2.6 By migrating trusts we mean here trusts that were formerly non-UK resident and have now become UK resident. Gains realised when the trusts were non-resident could be matched to capital payments received now by UK beneficiaries and now these same matched gains can benefit from relief under the 4-year exemption.

2.7 This is something that we called for, so is welcome. Amendments 31-37 also cover this area in the context of the TRF.

3 Amendments to Chapter 2 – Ending the special treatment of individuals not domiciled in the UK

Amendments 21 and 22 - Definition of remittance

3.1 These amendments attempt to correct problems in the drafting of schedule 9. This is the schedule which abolishes the 'remittance basis' in respect of FIG from tax year 2025-26 onwards.

3.2 Amendments 21 and 22 correct the new definition of remittance where intangible property is situated outside the UK for TCGA 1992 purposes, which was previously much too wide. It now appears only to apply if the asset's situs has <u>changed</u> from non-UK to UK and does not apply to debts (other than judgment debts) such as non-UK bank accounts. This is welcome.

3.3 Subsection 9A being inserted into section 809L of the Income Tax Act 2007 defines the scope of 'property being brought to the United Kingdom'. Subsection 9A(b) (coupled with paragraph 9C) now curtails the wholesale previous incorporation of the CGT situs rules because, for CGT purposes, a debt is generally situated where the creditor is resident (TCGA 1992 s 275(1)(c)). The effect of subsection (b) if it had remained unamended would have been that a remittance basis user would 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. For example, the remittance basis user deposits funds in a non-UK bank which are then converted into sterling in the same non-UK bank - such a deposit is a debt owned by the depositor and would be a taxable remittance. The amendment now limits the scope of the CGT situs rules (and therefore the deemed remittance) to a judgment debt and not to ordinary bank accounts.

3.4 CIOT welcomes amendment 21. However there is some confusion as to when an intangible asset would 'become' situated in the UK, in particular whether the purchase of a UK situated asset using FIG is intended to be caught. For instance if FIG money is used to buy UK situated shares, is it thought that the money has 'become' the shares? The shares have 'replaced' the money, but – except on a very colloquial reading of the legislation – we do not think it can be said that the money has become the shares. Whilst we believe the intention of the amendment is to ensure that the new provision only applies if the location of an intangible asset is somehow changed (and not if the asset itself is changed), it would be helpful to have clarity from the government on this point.

Amendment 24 - Relief for amounts remitted again on becoming UK resident

3.5 The government's explanatory statement states that amendment 24 "gives relief to individuals who have remitted foreign income and gains during an extended period of non-residence, but remit them again on becoming UK resident before the end of tax year 2024-25." (This might happen for example if funds are transferred to a UK bank account whilst non-resident but then transferred back to a non-UK account before being brought back to the UK to meet UK expenses after resuming UK residence.) However we do not believe the amendment achieves its objective.

3.6 The explanatory statement suggests that the amendment (along with related amendments 16, 17 and 23) may be a response to the concern set out in our committee stage briefing that "someone who previously brought historic non-taxable FIGs to the UK (for instance because they were resident when the FIG arose, but non-resident when it was remitted) will now find that they could now (if resident again) be charged to tax on that FIG" (paragraph 3.10). We welcome that the government seem to have sought to address this concern, but we do not believe they have done so effectively. The amendment fails to hit the mark and falls short in a number of respects.

3.7 The text of the amendment seems to provide that if the taxpayer has remitted something once, then remitted it again <u>before 6 April 2025</u>, and the second remittance (the 'repeated remitted amount') gives rise to a tax charge, then that tax charge is treated as not having arisen.

However, the whole of schedule 9 only applies to tax year 2025/26 onwards in any event (see clause 40(4) of this Bill), while under current law s809P(12) of the Income Tax Act 2007 will prevent a relevant charge arising, so remitting funds before 6 April 2025 could not, so far as we can see, give rise to a tax charge as the legislation currently stands. This is not changed by the fact that paragraph 5A is deemed always to have had effect (see amendment 17) as it does not make any amendment to s809P(12) of the Income Tax Act 2007.

3.8 Meanwhile the amendment excludes second remittances which takes place on or after 6 April 2025. We cannot see any reason why this should be the case, as long as the first remittance took place before that date (or before 30 October 2024 if the government are concerned about avoidance). It is also difficult to see why it should matter if the taxpayer remains non-resident in 2024/25 or 2025/26.

3.9 The central point is that if the funds have been remitted before these changes are brought in, there should not be a tax charge if they are remitted a second time before, on or after 5 April 2025.

3.10 Additionally the reference to "a period that exceeds five years" in 5A(1)(a) makes no sense to us. Is this intended to refer to someone who was not a temporary non-UK resident? What if they were never within the temporary non-resident rules in the first place (because they had only been here for, say, three years) but remitted historic FIGs received in that period of residence in the year of non-residence. More than five years could mean five years and a day but that person could still be temporarily non-resident.

3.11 We suggest that paragraph 5(11)(b) of schedule 9 in the Bill and this amendment are scrapped and further thought is given as to what HMRC want to achieve in this area (which has not been clearly explained).

Wider issues with remittance basis

3.12 Notwithstanding the amendments being introduced at this stage, our view is that there remain considerable problems with Schedule 9.

3.13 For example para 5(3) has not been amended. This provides that there is a remittance where money or other property is used outside the UK directly or indirectly for the benefit in the UK of a relevant person. 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.

3.14 A more substantial example concerns a debt owed by an individual remittance basis user which is owed by him 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? The policy here seems misplaced.

3.15 In addition, while subsection 9A(b) is amended by amendment 21, subsection 9A(a) is unamended and provides that sending property from outside the UK to a non-relevant person in the UK is a taxable remittance where the taxpayer receives no benefit from the funds, e.g. a gift to a UK charity. It remains unclear to us why HMRC would want this to be a taxable remittance at all. It can be avoided by the well advised who will make the transfer to a non-UK account of the recipient. But if the gift is from the individual's account to a charity or other third party and no benefit is being received in the UK by the individual making the transfer why is this an issue?

3.16 Our concerns about amendment 24 and these wider issues highlight the need for a proper consultation on the remittance basis rather than poorly drafted legislation being rushed through without proper scrutiny potentially causing problems of interpretation and litigation.

Amendments 31-37 – TRF and trusts

3.17 Alongside amendment 12 (see above), these amendments aim to bring matched gains from migrating trusts (i.e. trusts that were non-UK resident that become UK resident) and offshore income gains within the scope of the TRF. The amendments also clarify how the TRF works more generally in respect of trust distributions.

Amendment 31 deals with the matching of capital benefits received within the three TRF years against pre-2025 trust gains. Amendment 34 supplements the provisions dealing with designation of income arising by virtue of the Transfer of Assets Abroad (TOAA) rules in those three years as qualifying overseas capital and allows benefits which would otherwise be matched with income arising after 5 April 2025 to be matched instead against pre-2025 trust gains so as to be qualifying overseas capital. Amendments 36 and 37 ensure that income treated as arising under the TOAA rules will not be subject to tax other than under the TRF and, if it has been taxed under the TRF, cannot be taxed again in future years.

3.18 The CIOT welcomes the aim of these changes. Unfortunately, while the intent behind amendment 31 is right, we do not think that it will work as intended in some situations.

3.19 In relation to amendment 31, the government appear to have tried to cater for the situation where payments come out of a trust to multiple beneficiaries and not all of them use the TRF on these payments. This might be, for instance:
- because some of the beneficiaries are non-resident
- because some of the beneficiaries are resident but have never previously used the remittance basis, so are ineligible for the TRF
- because some of the beneficiaries are eligible for the TRF, but choose not to use it (for instance because the amount is within annual exemption)

3.20 In simple cases, we suspect that the provision works, but we aren't convinced that it does so in more complex cases when calculating the matched gains and where you have a mix of some beneficiaries who can and some who cannot use the TRF.

3.21 There are also some specific drafting points:
- the words "for which the individual is a beneficiary" in 3(1)(a) are redundant and don't interact properly with the onward gifting and close family member rules;
- 3(1)(b) also looks redundant given 3(2);
- 3(7) is confusingly drafted and we aren't convinced ensures proper interaction of the TRF with mainstream s87.

Amendments 45-46 – Nominated income and gains ordering rules

3.22 These amendments apply to ensure that income already nominated for the four year exemption window cannot be subject to the TRF.

3.23 The rushed introduction of these amendments has meant the professional bodies have not had time to review these and other changes in detail. Amendments 31-37 are extremely complex and technical and we have concerns that they do not operate as intended. We strongly encourage the minister to keep the workings of the TRF under close review and allow parliamentary time for the (retrospective) correction of gremlins and mismatches in future legislation. It would be welcome if an undertaking to do this could be given during debate. This will enable more use to be made of the TRF in trust situations and increase the amount of tax paid.

4 Amendments to Chapter 3 – Trusts, etc.

4.1 We have no comments on the amendments to schedule 12.

5 Amendments to Chapter 4 – Inheritance tax

Amendments 56-57 - Excluded property trusts

5.1 Amendments 56-57 relax the test for determining whether an excluded property trust that is within the transitional regime would be subject to a charge on the life tenant or settlor's death.

5.2 The transitional provisions in what is para 9(3) and para 31 provide that if the property was excluded property immediately before 30 October 2024 (so the settlor was foreign domiciled when the property was settled and the property was foreign situated immediately before 30 October 2024) there will not be an IHT charge on the death of a settlor who reserves a benefit or on the death of a life tenant with a qualifying interest in possession.

5.3 The original requirement was that the trust assets had to be foreign situated not only as at October 2024 but at all times thereafter. This second requirement has now been dropped: the settled property must be foreign situated immediately before 30 October 2024 and the settlor must be foreign domiciled but it is no longer necessary to keep it foreign situated at all times thereafter. Provided the settled property is foreign situated at death then it is protected from a charge on death (although not from ten year relevant property charges if the settlor is a long term UK resident at the relevant chargeable event).

5.4 This is a helpful change.

Amendment 58 - Double taxation conventions operating by reference to deemed domicile

5.5 Amendment 58 ensures that for the relevant (post-1975) Double Tax Treaties, references to domicile shall be deemed to be met by those who are long-term UK resident. The special domicile provisions for the treaties with: India, Pakistan, France and Italy remain unaffected (as deemed domicile does not apply on these treaties).

5.6 This means for example that a person who dies a US national and US domiciled but is also a long term UK resident will also be treated as UK domiciled under the treaty and the tiebreaker provisions will then apply.

5.7 This is a helpful change which aligns the operation of the relevant treaties with the time at which a person becomes liable to IHT on a worldwide basis.

Amendments 62-64 – Technical amendments

5.8 We welcome the greater clarity brought by these three amendments, which were suggested by CIOT.

Points not addressed

5.9 Beyond the amendments tabled by the government, there are a number of other points made by the CIOT in our submission regarding the IHT changes which have not been adopted. These particularly include a number of unresolved anomalies in relation to the spousal election provisions and in particular that a spouse who makes a death election can apparently never lose their status of being a long term UK resident even after ten years. This means the surviving spouse has to ensure they make a lifetime election which doesn't qualify as a death election.

5.10 Additionally paragraph 27 of schedule 13 has a misreference to section 267A which does not exist.

6 The Chartered Institute of Taxation

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The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

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