30 Monck Street
London SW1P 2AP
T: +44 (0)20 7340 0550
E: technical@ciot.org.uk

Ref: PC International

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[redacted]
HMRC
Director - Business, Assets and International

Via email

Dear [redacted]

Thank you for your letter of 2 April setting out HMRC's view of the re-remittance issue. It is helpful to have this confirmed in writing and we are grateful to you for taking the trouble to do so.

Unfortunately we continue to disagree with your technical analysis of the correct construction of s 809P(12) prior to 5 April and attach a note giving further technical analysis on s809P(12) that we hope your legal and technical specialists can consider. Indeed we are somewhat puzzled by your statement that HMRC's interpretation is longstanding. Para 29 of the explanatory note to clause 40 and schedule 9 of the Finance Bill refers to sub para 5(11)(b) and states:

> "Sub paragraph 5(11)(b) amends subsection 809P(12) to reflect that previous remittances **need to have been charged to tax** in order for this section to apply" (**our emphasis**)

Having reconsidered the matter in the light of your letter, our view remains that HMRC's current interpretation of the old law is incorrect, fundamentally because remittance and chargeability are treated separately in the legislation. To the firsthand knowledge of CIOT committee members HMRC have settled a number of large enquiry cases on the basis of our view as to what s 809P(12) meant without comment or dispute. We are not aware of any published statement by HMRC to the contrary and would be surprised if there was one having regard to the use of the word "amend" in the Finance Bill notes.

Assuming however your letter correctly reflects HMRC's longstanding view (and that such view is right) we would like to be in a position to explain to our members why certain groups do not qualify for the relief in schedule 9 para 6. These include the following:

- Those who were non-resident for 5 years or less (but temporary non-residence rules did not apply for some reason – for example the individual was resident in fewer than 4 of the 7 years before the period of temporary non-residence).

- Those who have happened to be non-resident in 2024/25 – and who (with 3 days to go in the year) were clearly too late to reverse that status should they have wished to do so.
- Those who are planning to be non-resident in 2025/26 – noting in particular the impossible choice that this puts some people in (see below).
- Those for whom 2024/25 is a split year.

On the face of it, this seems arbitrary and inequitable. Please would you clarify how this distinction meets the policy objectives (and hence why such individuals are treated as less deserving of relief than those who do fall within paragraph 6).

For those who have re-remitted FIGs after their period of non-residence ended but before 6 April 2025 but do not qualify for para 6 relief, our view is that:

- Where the re-remittance was in the 22/23 or an earlier tax year, returns that omitted the re-remittance will nonetheless (on this issue) have been filed in accordance with prevailing practice – and therefore under s29(2) TMA 1970 HMRC will be out of time to assess?

- Re-remittances in 23/24 will also have been filed in accordance with prevailing practice, although HMRC may still be in time to enquire.

- However, in both cases it is unclear whether the re-remittance will have been "charged to tax" and therefore whether any further remittance after 6 April 2025 would then be charged under the para 5 changes (which have no other grandfathering provision)?

- It also seems likely that returns for 24/25 will be filed on different bases. Those who meet the conditions for para 6 relief may well adopt HMRC's interpretation, but we anticipate that those who do not will be advised that they continue to have a good filing position based upon the previous understanding of s809P(12).

Looking at the matter more broadly, we think there could be a number of implications if HMRC's view of s 809P(12) as it existed prior to 5 April is later proved to be wrong in a court or tribunal. We suggest these need considering ahead of such an event. In particular:

- Whether para 6 would then be otiose and incapable of applying (due to the requirement that a relevant charge has arisen in relation to the re-remittance).
- Consequently, that where those funds are re-remitted to the UK after 6 April 2025 (and the individual is UK resident) a tax charge would then arise under para 5 (due to the lack of any other grandfathering provision)
- That this would not apply if the person was non-resident in 2025/26.
- But given that residence in 2025/26 is a pre-condition for para 6 relief, this gives affected taxpayers (see above) a near impossible choice between two competing views of the meaning of s809P(12) prior to 5 April.

We recommend reconsidering whether something along the lines of our alternative suggested drafting (namely that any remittance before 6 April 2025 shall be treated for the purposes of the para 5 changes as being "charged to tax" whether or not it was) would cure these problems on either view of the existing law.

We are unclear how many individuals will be affected by the problems or possible problems outlined above but even our small sample of CIOT volunteer advisers are aware of multiple clients who are affected, indicating that this is not

limited to just a handful of cases and is generating uncertainty. Much will no doubt depend on how the various construction issues referred to in the attached note are resolved. It appears that almost all advisers we have spoken to who advise non doms have experience of clients "cleansing" their pre-departure FIGs by remittance in a period of non-residence and expecting those FIGs to remain cleansed on a subsequent re-remittance. It further appears that there is broad consensus amongst professional advisers that the recently-expressed HMRC view on the meaning of the original s 809P(12) is incorrect.

We are also concerned as to the manner in which this issue has developed. As we see it the perception has grown that goalposts have been moved and that HMRC and the government have proceeded without due consideration. We are all anxious to build confidence in the tax system. If the UK wishes to encourage foreigners to come or, if already here, stay, our very real concern is that this saga will materially damage those objectives and in particular reduce the take up of the temporary repatriation facility as there is a strong perception that the goalposts on this relief will be changed some years later. As one client put it to an adviser "if FIGs that were cleansed can now be uncleansed, what is to stop FIGs that are repatriated being taxed in a different way later because of a new HMRC interpretation as to the way in which these rules work." The same could well apply to the new 4-year FIG regime.

Given the importance (and urgency) of this issue to taxpayers and advisers, please note that CIOT intend to publish this letter (and your reply in due course unless you specifically advise otherwise). Thank you for confirming you did not have any objections to us publishing your previous letter. Equally, we would be happy to set up a meeting to discuss the issues further.

Yours sincerely

Ellen Milner
Director of Public Policy

The Chartered Institute of Taxation

The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

Our stated objectives for the tax system include:

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

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

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.

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