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HMRC
Assets & Residence Policy | Business, Assets and International

Via email: [REDACTED]
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HMT - Oliver Haydon, Camilla Walker

Dear Daniel

Temporary Repatriation Facility (TRF): HMRC clearance facility

Introduction

Individuals who were non-UK domiciled under the pre-6 April 2025 regime and their advisers have begun analysing funds held by individuals and within trusts with a view to using the TRF facility. In many cases, taxpayers would like to use the facility with a view to remitting funds to the UK, but lack of certainty over the analysis and the potential for HMRC enquiry up to 12 years after the tax return is submitted is dissuading taxpayers from using the TRF.

The CIOT suggests that the government/HMRC consider providing an optional clearance facility so that taxpayers can agree figures with HMRC in advance of filing tax returns and/or making remittances to the UK. We anticipate that a significant number of tax returns containing TRF designations will be enquired into, and so the provision of a clearance facility would move some of the time to be spent by HMRC in considering TRF analyses from tax return enquiries into the period when TRF figures are being analysed by taxpayers and designations made.

The clearance facility would enable taxpayers and HMRC to agree, for example, that £X in a given account, or other source of funds, comprises foreign income and gains that would be taxable on remittance, and that if a payment of 12% or 15% of £X (depending on the tax year) is made, the remainder of the funds held would be clean capital and so could be remitted to the UK tax-free.

Reasons for offering a clearance facility

A clearance facility would be beneficial to taxpayers, HMRC and the government for the following reasons:

- Increased take-up of the TRF. Taxpayers are more likely to use the TRF if certainty can be obtained in advance, both in terms of tax payable (ie that the tax paid fully covers the required 12%/15% tax payment with no additional payments/unexpected tax liabilities of up to 45%) and to be confident that designations and remittances will not result in being required to deal with enquiries into their tax affairs for potentially many years into the future.
- Early information on TRF usage. If desired, taxpayers could be asked to confirm if/when they plan to remit the designated funds to the UK, given that we understand the government would be interested in this information.
- Reduction of enquiries. If a clearance facility is made available in advance and is binding on HMRC if all information required for HMRC to grant clearance is disclosed, the clearance should be binding such that no further enquiry into the nature of the funds/remitted amounts should be made. This would provide certainty to both HMRC and to taxpayers, and would also mean that finality is reached in a timely manner. There would also be a time saving for HMRC, as taxpayers would provide more information through clearance applications than would be required to be disclosed on a tax return. This means that HMRC would not need to spend time asking the right questions and corresponding back and forth with taxpayers and agents, thereby reducing the total time spent.

The reality is that, in the absence of binding clearances, we expect HMRC will enquire into remittances made and/or TRF designations. Given that by their nature all the matters to be enquired into have an offshore element, we expect that the 12 year offshore time limit for enquiries would apply. The potential for additional tax to be payable and for enquiries to occur up to 12 years after a remittance is made to the UK (which may be some years after tax is paid under the TRF) is an unattractive prospect which puts taxpayers off using the regime.

Existing pre-filing conversations

In recent years, HMRC have sought to engage in 'pre-filing conversations' with individuals on certain areas of uncertainty. We consider that providing a clearance facility for the TRF would be in line with this approach.

The pre-filing conversations that have occurred to date have been non-binding on HMRC: we consider that the TRF clearance facility should be binding subject to full disclosure being made and any remittance which is made being in line with the information disclosed to HMRC. (As an aside, we also consider that HMRC would experience better take-up of pre-filing conversations if the conversations were binding on HMRC).

Charging for the TRF clearance facility

Consideration could be given to charging a fee for taxpayers to use the TRF clearance facility. There are advantages and challenges to charging for clearances. However, the government is already considering charging for clearances relating to providing tax certainty for major projects¹ and for R&D tax relief advance clearances², so considering a charge for a TRF clearance facility would be in line with the approach which the government is taking elsewhere.

¹ Paragraph 4.2 of the [consultation document](#) on tax certainty for major infrastructure projects states that a clearance facility would be both '*voluntary and valuable*', so the government is considering charging a fee to support the '*timely and resilient delivery*' of any clearance facility which is introduced.

² <https://www.gov.uk/government/consultations/research-and-development-tax-relief-advance-clearances/rd-tax-relief-advance-clearances>

Access to the TRF clearance facility

If HMRC wish to manage demand and time spent on the TRF facility, consideration could be given to who should be eligible to apply for clearance. For example, a de minimis limit could be set so that taxpayers could only receive a HMRC clearance if a minimum amount of tax is expected to be paid if the TRF is used. This would be a relatively simple way of managing demand, and while high values do not always indicate that there is complexity, there is correlation between high values and complexity (which is recognised in the existence of the HMRC Wealthy Unit, which interacts with taxpayers who have specified levels of income and assets). Taxpayers would of course reserve the right not to make a designation if clearance is not received or, for some reason, the taxpayer decides not to go ahead with the designation (eg the taxpayer's circumstances change).

If a fee is charged for clearance that may obviate the need for a de minimis on the basis that cases will largely self-select depending whether the fee is worthwhile.

Alternative or additional facility

One of the fundamental problems with Trust TRF is the need to match to historic income and gains. This can be particularly burdensome where trustees may not have kept detailed records (as will often be the case where there is only one UK resident beneficiary). While the legislation currently requires matching to pre 2025 income and gains with difficulties then arising as outlined by CIOT and STEP, an easier alternative is to agree that the taxpayer can opt for TRF on any capital distributions made from the trust within the TRF period (if the taxpayer is otherwise eligible) and pays at the relevant fixed rate. The distribution does not reduce any relevant income or gains within the trust going forward. In that sense it is true that the Trust capital distribution might be made from proceeds representing post 2025 income and gains but it would have no effect on the pools going forward. The trustees would simply need to show that they had the available funds to distribute as at April 2025 – what it is derived from and what happens subsequently in the trust is irrelevant.

We would be pleased to discuss these suggestions.

Yours sincerely

Emma Chamberlain

Joint Chair, Private Client (International) Committee

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.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.