

REMITTANCE BASIS TREATMENT OF FOREIGN INCOME AND GAINS USED FOR LOAN COLLATERAL

Update following the 18 November 2015 meeting between HMRC and HM Treasury officials and stakeholders

Note: HMRC has seen this update note and made some comments which have been included

Re-cap on what went before

1. Finance Act 2008 introduced significant changes to the Remittance Basis. One such change related to where Remittance Basis users “use” remittance basis unremitted foreign income or gains (FIG) as collateral for a “relevant debt” (defined at ITA 2007, s809L(7)). These provisions were, in the eyes of many, less clear and effective than those they replaced.
2. HMRC guidance was published in 2010, which accepted that so long as the debt was on commercial terms:
 - the use of the unremitted Remittance Basis income and/or gains as collateral would not constitute a remittance; and
 - there would only be a remittance if unremitted Remittance Basis income or gains were used to service or repay the loan (it was explicitly stated that there would be no remittance whatsoever if the loan was serviced and repaid using clean capital)

This guidance later became [RDRM33170](#) of HMRC’s Residence, Domicile and Remittance Basis Manual.

3. HMRC announced on 4 August 2014 that the position in the previous guidance was just a concession and that its settled technical view was that:
 - there is an immediate remittance where a UK resident foreign domiciliary uses unremitted Remittance Basis income and/or gains as collateral for a relevant debt; and
 - if the loan is serviced or repaid from different foreign income or gains, the repayments of capital and the servicing payments with respect to the interest will also constitute remittances – a potential trap which could be seen as a double tax charge (though HMRC do not accept this as different FIG is involved).
4. The August 2014 announcement set down limited transitional provisions. Re-financing or repayment of the debt prior to 6 April 2016 was required in order to avoid HMRC looking to impose a tax charge and HMRC also wanted disclosure to be made prior to 31 December 2015. In response to the representations made by stakeholders during meetings and follow up correspondence HMRC issued [Revenue & Customs Brief 16 \(2015\)](#) (the Brief) on 15 October 2015. The Brief significantly extended the transitional provisions providing for grandfathering in all cases where the loan was taken out prior to 4 August 2014 and the funds were also brought into or used for UK purposes prior to then.
5. A conference call was held between available stakeholders and HMRC Officials on 16 October 2015 to discuss the immediate issues arising from the Brief. The notes from this call have been circulated to members in the CTA Newsletter and are also on the CIOT website. The call made clear that:

- Disclosure was not expected where the grandfathering applied.
 - HMRC will only consider allowing grandfathering where loaned funds have not been brought into or used in the UK prior to 4 August 2014 if: (i) the loan occurred prior to that date; and (ii) there was a binding contract for sale prior to then. Each case will be considered on its own merits and taxpayers (or their advisers) will need to approach the relevant HMRC Officials (as set down on the October Brief).
 - Guidance would be required as to what constituted a new loan (specific concern was expressed with respect to rollover loans) for these purposes, such that HMRC would argue that grandfathering was lost.
6. It was agreed that there would be a follow up face-to-face meeting to discuss the various technical issues in more depth.

The 18 November 2015 meeting and its aftermath

7. On the afternoon of 18 November officials from HMRC and HM Treasury and stakeholders met to discuss the various on-going practical issues arising from the 4 August 2014 HMRC change of technical stance on the FIG used as collateral issue.
8. The stakeholders made it clear that they felt that the legislation was sufficiently flawed that changes were required to avoid the various practical issues that the new HMRC interpretation gives rise to. It was, however, appreciated that legislative change is hard to achieve and that, whilst it was not ideal, it might be necessary to settle for providing clarity in the HMRC guidance on its views. All participants agreed that this should happen as quickly as possible.
9. Detailed technical discussions took place on a range of issues and the HMRC officials took various points away to consider. It is hoped that the stakeholders will be able to submit Q&As to HMRC for comment in the same way as was done for the Finance Act 2006 changes to the IHT treatment of relevant property trusts.
10. Issues around FIG as collateral may be relevant not just to new loans taken out and ongoing grandfathering but also to 2014/15 tax return preparation. The stakeholders raised this point and the proximity of the 31 January 2016 filing deadline. It is hoped that there will be an update from HMRC prior to 31 January 2016. Anything that comes through will be published on the CIOT website. Where FIG as collateral is an issue for the 2014/15 tax return use of the additional information box (white space disclosure) should be considered if:
- no further HMRC guidance is issued by the filing deadline and there are concerns about the tax treatment adopted and whether it is in line with HMRC's stated view;
 - further HMRC guidance is issued but it does not cover the issue, so there are concerns about the tax treatment adopted and whether it is in line with HMRC's stated view; or
 - further HMRC guidance is issued but a different technical view is taken and the tax return is prepared on that basis.
11. HMRC Officials are conscious that advice needs to be provided as soon as possible and will try to provide further guidance prior to 31 January 2016.
12. HMRC will accept provisional 2014/15 tax returns where there is uncertainty about what to enter on the return in relation to these matters, with this acceptance being subject to the return containing full and complete disclosure of potentially affected arrangements.

13. It is recognised that grandfathering and whether it has been lost may be a particular concern for taxpayers. This issue and its relevance to 2014/15 returns was discussed at length during the meeting and HMRC recognise its importance.