

Written evidence submitted by the Association of Taxation Technicians (ATT) (FB07)

Finance Bill 2024-25

Clauses 37, 38 and 39: Effects of claiming relief on foreign income, foreign employment income or foreign gains

Executive Summary

Clauses 37, 38 and 39 create the new Foreign Income and Gains (FIG) regime for eligible individuals, allowing them to make three claims or elections to relieve relevant overseas income, overseas employment income or capital gains from UK tax.

These claims/elections are independent and are made separately. However, making any one of them results in the loss of entitlement to both a personal allowance for Income Tax purposes and the annual exempt amount for Capital Gains Tax.

The ATT thinks that, in the interest of fairness, the effect of making a claim/election should be isolated to the relevant tax regime. Claims/elections for relief from income tax should only deny the claimant a personal allowance, whilst claims for relief from capital gains tax should only remove entitlement to an annual exempt amount.

1. Background

- 1.1. Clauses 37, 38 and 39 create new rules for foreign income and gains of eligible individuals in their first four years of UK tax residence. Collectively, these measures are referred to as the *Foreign Income and Gains (FIG) regime*.
- 1.2. Clause 37 adds the option to make a *foreign income claim* under new Income Tax (Trading and Other Income) Act (ITTOIA) 2005 Part 8, Chapter 5, s845A. Clause 38 adds the option to make a *foreign employment election* under new Income Tax (Earnings and Pensions) Act (ITEPA) 2003 Part 2, Chapter 5C, s41M. Clause 39 adds the option to make a *foreign gain claim* under new Taxation of Chargeable Gains Act (TCGA) 1992 Schedule D1, para 1.
- 1.3. Making a foreign income claim, a foreign employment election, a foreign gain claim, or any combination thereof will allow an eligible individual to benefit from relief from UK taxation for their relevant overseas income and/or foreign capital gains.

2. Restrictions introduced by Clauses 37, 38 and 39 for individuals claiming relief on foreign income, foreign employment income or foreign gains

- 2.1. Some of the effects of making the above claims/elections are detailed under Clause 37 as new ITTOIA 2005 Part 8, Chapter 5, s845C/s845D and in new TCGA 1992 Schedule D1, para 5.

- 2.2. The most widely applicable effect of making any one of these claims/elections is likely to be the loss of the personal allowance for Income Tax and the annual exempt amount for Capital Gains Tax.
- 2.3. Since the three possible claims/elections are made separately, removing entitlement to both the personal allowance and the annual exempt amount where any one of them is made seems unfair, particularly as the overseas income and gains covered by these measures are commonly unrelated either to each other, or to UK source income and gains, or both.
- 2.4. Making one of the claims/elections will result in any UK source income and gains suffering a higher effective rate of tax due to the loss of both personal allowance and annual exempt amount. Denying those in the FIG regime both a personal allowance and an annual exempt amount on the basis of one claim/election therefore seems unfair.
- 2.5. For example, a taxpayer might make a foreign income claim in respect of an overseas investment portfolio and be denied an annual exempt amount to offset against their UK source capital gains on selling a UK rental property, despite the two being wholly unrelated.

Equally, a taxpayer making a foreign employment election would be denied both a personal allowance and an annual exempt amount to offset against any UK-source income and gains, despite the fact that their overseas employment is unrelated to both.

A taxpayer with identical UK source income and gains but who does *not* make any of these claims/elections may have a lower tax liability on their UK income/gains sources thanks to their personal allowance and annual exempt amount remaining available.

3. Recommendation

- 3.1. The FIG regime will replace the remittance basis of taxation, which determines liability to UK tax on both overseas income and overseas gains together – it is not possible to claim the remittance basis only in respect of income, or only in respect of capital gains. Anyone taxable on the remittance basis is not entitled to a personal allowance or an annual exempt amount.
- 3.2. Whilst consistency with the current remittance basis may appear beneficial in terms of easing the transition for taxpayers, the FIG regime offers scope to be more flexible and fairer to eligible individuals. Unlike the claim for the remittance basis, the three possible FIG regime claims/elections are freestanding and each need to be made separately. This provides scope to restrict the impact of making a claim/election under the FIG regime based on the tax in question, which would present a fairer outcome.
- 3.3. We suggest the effects of making a foreign income claim, a foreign employment election, or a foreign gain claim should be separated based on whether the claim/election affects Income Tax or Capital Gains Tax.

This could work as follows:

- Making a foreign income claim is an Income Tax matter, so would remove entitlement to a personal allowance, but should not affect the availability of a CGT annual exempt amount.

- Making a foreign employment election is an Income Tax matter, so would remove entitlement to a personal allowance, but should not affect the availability of a CGT annual exempt amount.
- Making a foreign gain claim is a Capital Gains Tax matter, so would remove entitlement to a CGT annual exempt amount, but should not affect the availability of a personal allowance.

Association of Taxation Technicians

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Note:

The Association of Taxation Technicians

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Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.