Written evidence submitted by the Chartered Institute of Taxation (FB12)

Finance Bill 2024-25 Public Bill Committee

Part 2

Replacement of special rules relating to domicile

(Updated version to reflect government amendments)

Executive Summary

Chapter 1 – new rules for foreign income and gains (FIG) of individuals becoming UK resident. While the new regime which provides relief from taxation on FIG is simpler than the current regime, one reservation is the requirement to make a claim for the regime to apply. We consider that it would be preferable for the Qualifying New Residents regime to apply automatically. If a claim is required, it should not require itemisation of FIG to which it is to apply.

Chapter 2 – ending the special treatment of individuals not domiciled in the UK. Clause 41 and schedule 10 outline a proposed Temporary Repatriation Facility (TRF) to encourage former remittance basis users to bring their historic FIG into the UK, subject to a flat rate of tax. We welcome the extension to eligible trust distributions. The facility is currently limited to UK residents and we consider that non-UK residents should also be eligible. The extended definition of what constitutes a remittance is unnecessary and goes much too far.

Chapter 4 (and schedule 13) – Inheritance tax (IHT). The changes within the Bill are an improvement from the original proposals in the Spring, particularly with regard to the length of the IHT 'tail' varying depending on duration of UK residence. However, we have concerns around the imposition of exit charges on trusts where individuals have left the UK before 6 April 2025.

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.

1.2 An individual is domiciled in the UK if they 'belong' in the UK and it is their home. This is usually established through their parents' (usually father's) domicile at the date of the individual's birth, or by making the UK their permanent home and following this through in how they live. Domicile is not the same thing as a person's nationality, residence or ethnicity.

Under current rules, after being resident for 15 years in the last 20 in the UK you become 'deemed domiciled' here for tax purposes.

1.3 As things stand (that is, ahead of the proposals in the Bill being implemented), people who are both UK domiciled and UK resident are taxed in the UK on their worldwide income and capital gains (subject to mitigations and reliefs designed to avoid double taxation). (This is known as being taxed on the 'arising' basis.) However if someone is UK resident, but not UK-domiciled (commonly known as being 'non-dom'), then they can choose for any non-UK income and gains to be taxed on the 'remittance' basis for a number of years, meaning they are only taxed on FIG in so far as that FIG is 'remitted' (i.e. brought into) the UK. They will still be subject to UK tax on any UK income and gains.

1.4 Although the rules around remittance are complicated, current rules enable non-doms subject to the remittance basis (generally pretty wealthy people) to live in the UK without remitting much, if any, of their FIG. Of course, depending on the tax rules in the country in which they have generated that income or gains (or occasionally in their country of domicile) (which may or may not be the same), they may be paying tax there.

1.5 Domicile is a general law concept, applicable in a number of legal contexts including succession law, jurisdiction claims and the validity of wills. The concept will remain in UK law for these purposes. The changes in the Finance Bill simply remove domicile as a relevant factor for most tax purposes.

1.6 There is more on the concept of domicile in the CIOT's June 2024 explainer published at https://www.tax.org.uk/non-doms-election-2024-explainer and an earlier, more detailed, March 2024 explainer published at https://www.tax.org.uk/non-doms-explainer-march-2024. There is further background in a short guide to the concept of 'domicile' and its tax implications (https://www.tax.org.uk/domicile-a-guide) which was produced by members of the CIOT's Private Client (International) Committee and was published in December 2023.

CIOT comments

1.7 Moving from domicile to residence as the basis for taxing people who are internationally mobile makes sense. As well as being a major simplification, it is a fairer and more transparent basis for determining UK tax. Residence is determined by criteria far more objective and certain than the subjective concept of domicile.

1.8 The current system is flawed both for HMRC and non-doms. It is difficult to determine domicile, it is complex, and the process of 'remitting' non-UK income can actually discourage people from investing in the UK, as foreign income investment and gains are taxed if they are brought into the country but not if they are left outside or invested elsewhere. The proposed reforms address some of these problems.

1.9 We are pleased that many of the recommendations made by CIOT after these changes were announced in March by the last government have been taken on board and are reflected in the legislation.

1.10 In addition to this briefing for parliamentarians CIOT has made a detailed technical submission to HMRC on these clauses: https://www.tax.org.uk/ref1442. This 35 page submission provides further detail on some of the points raised in this briefing.

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

2.1 This chapter puts in place, with effect from April 2025, a new income and capital gains tax regime for individuals ('qualifying new residents') who are within their first four tax years of UK residence, having been non-UK resident for at least the ten preceding tax years. During this period they will be able to make a claim to relieve their FIG from UK taxation. However, in following tax years, and during the first four years if no claim is made, they will (like all other UK resident individuals) be subject to UK taxation on worldwide income and gains.

2.2 From April 2025, the taxation of FIG will no longer be dependent on whether those monies are remitted or not. Currently the remittance basis can apply to non-UK domiciled individuals, such that FIG is only taxable if remitted to the UK, but as a transitional rule pre-6 April 2025 FIG to which the remittance basis has applied ("historic FIG") will continue to be taxable on remittance.

2.3 Clause 38 and schedule 8 provide that Overseas Workday Relief will continue to provide tax relief on qualifying earnings that relate to employment duties performed outside the UK. Individuals will now be able to benefit from Overseas Workday Relief for their first four years of residence instead of three and their foreign employment income can now be brought to the UK.

CIOT comments

2.4 The CIOT commends the move away from the concept of domicile to residence as a means of taxing FIG, however the requirement to itemise and actively make a claim within the four-year window seems an unnecessary step. We would prefer a blanket exemption to be the default position for the treatment of FIG within that four-year window without any requirement to specify the components of the FIG on an 'item-by-item' basis, unless the individual opts in to doing so.

2.5 The problems with making such a claim are:

1. Some individuals new to the country may not realise that a claim has to be made – even if they do it could be very difficult or impractical to identify the components of their remittance;
2. If a claim is made incorrectly (very possible, even for experienced agents) any FIG omitted from a claim may be ineligible for relief from UK taxation, given the short deadline for making a claim (the end of the tax return amendment window – the second 31 January following the end of the tax year) compared with HMRC having up to 12 years to issue a compliance check into the claim made. Even 'careless' errors (which can easily be made) bar a taxpayer from amending their return and making a 'consequential' claim during the course of an open enquiry, which we feel is unduly harsh. This will give rise to additional taxation, plus interest and penalties, as well as the potential for claims for damages against the agents in extreme cases.

2.6 For those individuals without access to professional advice or support the need to make a claim could be particularly challenging. Furthermore, there is no proposed replacement to the £2,000 de minimis which results in the remittance basis applying automatically (i.e. without the need for reporting), so those with small amounts of FIG will need to submit claims if the amount of FIG exceeds the savings and dividend nil rate bands.

2.7 In respect of Overseas Workday Relief changes, government amendment 19 confirms that existing s.690 determinations[1] will be effectively revoked by the new law and process. It would be helpful if HMRC could urgently provide guidance on what the new process will be so that employers understand what they need to do for employees affected by the change and ensure that where s.690 continues to apply that applications can be made in good time.

2.8 Currently, s.690 directions can cover up to three tax years in line with the length of existing Overseas Workdays Relief claims. We would welcome clarification from the minister whether it will be possible to make a s.690 notification under the new regime in advance, for the subsequent three years in line with the FIG period under the new non-dom regime? Or, if it is not anticipated that this will be needed, then confirmation of this? Our reading is that it will be an annual process, but we are unclear whether this is what is intended.

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

3.1 Clause 40 and schedule 9 of the Bill abolish the 'remittance basis' in respect of FIG from tax year 2025-26 on.

3.2 To encourage new residents to remit previous years' FIG which would give rise to a tax charge on remittance to the UK, clause 41 and schedule 10 put in place a 'temporary repatriation facility' (TRF). This enables former remittance basis users to designate 'qualifying overseas capital' and pay a 12% 'charge' on that nominated amount for 2025-26 and 2026-27, or 15% for 2027-28. This can also apply to certain distributions received from a trust. The TRF is only available to UK residents who have previously paid tax on the remittance basis.

3.3 Clause 42 and schedule 11 allow former remittance basis users to substitute the value of a personally held foreign asset at 5 April 2017 for its earlier allowable costs for Capital Gains Tax (CGT) purposes where certain conditions are met. This is called 'rebasing'.

3.4 Schedule 9 paragraph 5 introduces some changes to the definition of "remittance" - tightening up that definition considerably where historic FIG is remitted after 6 April 2025.

CIOT comments

3.5 We welcome the idea of nominating a fixed amount to be remitted through the TRF and paying tax on that, rather than having to nominate and remit specific FIG (especially within mixed funds) – this was a suggestion the CIOT had made shortly after the original proposals by the last government.

3.6 We consider that non-UK residents should also be able to utilise the TRF – we do not see why only UK residents should be able to use it. Non-UK residents who have previously been UK resident who expect to be UK resident in the future may wish to make use of the TRF while overseas, to enable themselves to remit funds while UK resident. This is consistent with our understanding that the policy intent is to encourage individuals to remit funds to

[1] Section 690 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) legislates the process for an employer to operate PAYE only on the proportion of earnings they believe relates to UK duties where a non-resident employee (or an employee who qualifies for split-year treatment) performs duties both in the UK and abroad. Clause 21 of this Bill amends s.690 to allow employers to immediately operate PAYE in this way, rather than having to wait for HMRC to approve their application.

the UK in exchange for a fixed tax charge, so we consider that the TRF should be extended to non-residents.

3.7 We also consider that remittances of FIG to pay the TRF should not attract a further tax charge; under the current regime there is an exemption from tax of any remitted FIG used to pay the remittance basis charge, we would recommend a similar exemption for TRF payments.

3.8 The term ‘qualifying overseas capital’ is potentially confusing though as the intention behind TRF is to utilise it for foreign income, as well as capital gains. We suggest that “qualifying overseas **funds”** would be a better term.

3.9 We query why the definition of “remittance” is being amended (for remittances of historic FIG) at the same time that the remittance basis is being abolished for future FIG. The changes seem unnecessary. But they are, in any event, badly drafted and as a result catch many situations that could not – on any reasonable view – be considered to be a remittance. For instance, as drafted, lending foreign income and gains to a foreign relative outside the UK (which the foreign relative then keeps outside the UK) would now be treated as a remittance. Arguably even having money in a foreign bank account would now amount to a remittance!

3.10 Further, someone who previously brought historic FIG to the UK non-taxably (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 again on that FIG.

3.11 As a minimum this new definition of remittance should not be retroactive. Anything that has been brought to the UK before 6 April 2025 should not be capable of being subject to a tax charge under the new rules.

3.12 However, we would recommend that, if this new definition is to proceed, it should be delayed by a year for proper drafting and consultation. It seems that one of the reasons for the much stricter definition may be to encourage people to use the TRF. That purpose could just as well be achieved by a consultation (anticipating further changes to the definition) rather than actually making those changes now.

4 Chapter 4 (and Schedule 13) – Inheritance Tax (IHT)

4.1 Currently, an individual’s exposure to IHT is determined based on their domicile position. Individuals who are legally UK domiciled are within the scope of IHT on worldwide assets. Non-UK domiciled individuals are deemed to be UK domiciled for tax purposes in some circumstances – principally after 15 years of residence.

4.2 IHT applies to trusts that own UK assets, either on an ongoing basis (for relevant property trusts) or on the death of a beneficiary with a right to receive trust income (for qualifying interest in possession trusts). Most of those trusts are subject to the ‘relevant property regime’, which imposes IHT charges of up to 6% every 10 years on the value of the trust and again when capital leaves the trusts.

4.3 The IHT exposure of non-UK property held on relevant property trusts currently depends on the domicile position of the settlor. If the settlor is either legally or deemed to be UK domiciled when assets are settled on trust, the trust is within the scope of UK IHT.

Otherwise, foreign property is not subject to UK IHT, unless it is within a defined class of foreign property that derives value from UK residential property. In broad terms, trust property owned by qualifying interest in possession trusts are within the estate of the individual entitled to trust income and IHT applies accordingly on death of that individual.

4.4 From April 2025 IHT is to move to a residence-based system, with IHT being applicable to the worldwide estates of individuals who have been UK resident for 10 of the last 20 tax years. These individuals are referred to as 'long-term residents'. Individuals will remain within the scope of UK IHT on worldwide assets after leaving the UK for up to 10 tax years. Shorter periods of non-UK residence will cause the 'IHT tail' to break earlier in some cases, notably so that the less time an individual has been UK resident, the less time that individual will remain subject to UK IHT on worldwide assets. For example, an individual who has been UK resident for 10 years would need to be non-UK resident for 3 years for the IHT tail to break, whereas an individual who has been UK resident for 20 years would need to be non-UK resident for the full 10-year period.

4.5 From April 2025 the IHT status of offshore trusts will follow the long-term residence status of the settlor, with the trust's IHT position changing if the settlor's IHT position changes. Notably, for relevant property trusts, if the settlor is alive and is not a long-term resident, only UK assets and certain foreign assets that derive value from UK residential property will be within the scope of IHT. If the settlor is a long-term resident, worldwide trust assets will be within the scope of IHT. If the settlor ceases being a long-term resident, the trust will incur an exit charge which will result in IHT being payable as it moves from being within the scope of IHT on worldwide assets to (broadly) UK assets.

4.6 If the settlor dies, the trust's IHT position will be fixed based on the settlor's long-term residence position at the date of death. As a transitional measure, where settlors have died before 6 April 2025, the trust's IHT position will be fixed based on the settlor's domicile position under the existing regime.

CIOT comments

4.7 We are pleased to see a tapering of the 10-year tail, which was something the CIOT had suggested during earlier consultations. However, an anomaly (whether intentional or not), is that certain individuals who have already left the UK before the new regime begins on 6 April 2025 will be long-term residents on 6 April 2025 and so within the scope of IHT on worldwide assets, and as a result trusts they have settled will incur an IHT exit charge when the settlor's long-term residence status ends. It seems unfair for individuals who have already left the UK to have an exit charge due to legislation that comes into effect following their departure from the UK.

5 The Chartered Institute of Taxation

5.1 The CIOT is the leading professional body in the United Kingdom concerned solely with 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. 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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 20,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA' and 'CTA(Fellow)', to represent the leading tax qualification.

The Chartered Institute of Taxation
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(Updated to reflect government amendments)