Written evidence submitted by the Chartered Institute of Taxation for Finance Bill 2025-26 Public Bill Committee (FB10)

Clauses 42 – 45, Schedule 3Non-UK residents

Executive Summary

These clauses amend the new foreign income and gains (FIG) rules and temporary repatriation facility (TRF) introduced in Finance Act 2025. They also introduce minor changes to the taxation of non-UK residents, and changes to the PAYE notification process for globally mobile workers.

While the new FIG regime is an improvement on the remittance basis for non-UK domiciles, the practicality of claiming it is far from simple. We believe tax rules created to help make the UK an attractive destination for overseas wealth should be easy to understand and apply.

The TRF offers a time-limited opportunity to encourage former remittance basis users to pay a reduced tax rate if they bring their historic FIG to the UK. We consider that this should be extended to allow non-UK residents and trusts to pay tax on their unremitted FIG, rather than encourage them to keep it out of the UK. We also suggest an amendment to prevent individuals paying tax on historic FIG that has since reduced in value.

In relation to PAYE processes, we suggest two improvements that would ease the administrative burden for employers, by allowing earlier applications and for those applications to roll-over to subsequent years provided there has been no change in circumstances.

1. Clause 42 - Abolition of notional tax credit on distributions received by non-UK residents

1.1 *Overview of the measure*

The notional dividend tax credit was abolished for UK residents on 6 April 2016, so this clause removes a perceived unfair advantage for non-UK residents. The disregarded income regime remains in place, limiting the tax paid by non-UK residents in certain circumstances.

1.2 *CIOT comments*

We question whether the very low numbers stated to be impacted by this change (fewer than 1,000 non-resident individuals) can be accurate based on our members' experiences and wonder whether non-resident trust taxpayers were considered. However, we agree that those impacted will be a very small the minority of the non-resident taxpayer population and the change is a welcome simplification to tax calculations.

2 Clause 43 - Non-resident and previously non-domiciled individuals

Clause 43 introduces Schedule 3 of the Finance Bill, which makes various changes to the new foreign income and gains regime brought into effect by Finance Act 2025 from 6 April

2025. This regime replaced the previous regime relating to the taxation of people resident but not domiciled in the UK (non-doms).

We comment on the detail of Schedule 3 further below.

Schedule 3, Part 1 (relief for new residents on foreign income and gains)

2.1 *Overview of the measure*

Under the foreign income and gains (FIG) regime, in simple terms those who become newly resident in the UK do not have to pay tax on their FIG for the first 4 years they are here if they make a valid claim in their tax return each year.

Part 1 of Schedule 3 proscribes that the deductions required in respect of each item of FIG for a valid claim may only be deducted from qualifying FIG (as opposed to, say, UK income, which could produce a lower tax liability).

This part also makes minor updates to definitions and cross-references.

2.2 *CIOT comments*

We have no comments on these particular changes.

However, on a broader point, as we commented in relation to Finance Act 2025, the mechanism for claiming this tax relief is complex, administratively burdensome, and contains traps for the unwary.

We believe improvements can be made to the process, for example by:

- removing the requirement to report every possible item of FIG as part of the claim and instead making relief from UK tax on FIG the default position;
- extending the relief to the personal representatives of a deceased individual who themselves qualified; and
- simplifying the legislation by aligning the income tax position on trust distributions with the capital gains tax position

Our proposals are set out in more detail in our previous submissions.[1]

Schedule 3, Part 2 (temporary repatriation facility)

2.3 *Overview of the measure*

Historically, non-UK domiciled individuals were able to claim the remittance basis of tax; they paid tax on their UK income as normal but only on their foreign income and gains (FIG) if they brought it into (remitted it to) the UK. This created an incentive for those individuals to keep their FIG offshore. The temporary repatriation facility (TRF) provides a time-limited opportunity for untaxed remittances to be brought to the UK at an attractive tax rate of 12% in 2025/26 and 2026/27 or 15% in 2027/28 (the TRF charge).

These measures clarify how remittances to the UK under the TRF should be matched to the original source (e.g. as untaxed foreign income or untaxed foreign gains or clean capital).

2.4 *CIOT comments*

[1] Finance Bill 2024-25 Briefing (31 Jan 2025) - [Non-domicile taxation reforms]
Pro-active submission to HMRC (25 June 2025) - [Non-domicile taxation reforms]

Our concern is that there are several paragraphs within this schedule that do not appear to work as intended and/or produce unintended consequences. We summarise these below.

2.5 *Paragraph 9 (designations of offshore income gains)*

We believe that, as drafted, the new offshore income gains paragraph introduced here leads to an anomaly in the way trust distributions are matched where a trust has generated offshore income gains. This results in trusts with surplus pre-6 April 2025 capital gains being treated differently to those without, which we do not believe to have been the government's intention.

The CIOT has produced a detailed technical analysis of the draft legislation and suggested improvements for review by HMRC and their legal team. Our proposed solution is to retain paragraph 4 of schedule 10 (and include a parallel provision dealing with offshore income gains matched under schedule 4C TCGA 1992), leaving new paragraph 7A to deal only with distributions matched against post-5 April 2025 offshore income gains.

2.6 *Paragraph 10 (value of amounts of qualifying overseas capital)*

This deals with the situation where an individual has FIG that has previously benefitted from the remittance basis and where the individual has invested that FIG outside the UK. If the investment (derived from the FIG) has grown in value, paragraph 10 ensures that the amount on which the TRF charge is paid is the original value of the FIG.

However, there is currently no recognition that the investment may have fallen in value. The TRF, being a voluntary tax charge, is unlikely to be attractive to individuals if they have to pay 12% or 15% on an amount greater than the current value of their investment.

We suggest for simplicity that the lower value will only apply to the value on 6 April 2025 (the first day of the TRF) to prevent manipulation of values.

We suggest amending as follows:

Schedule 3, page 271, line 26, leave out "is the value of the amount when it first arose to the individual" and insert "is the lower of (i) the value of the amount when it first arose to the individual and (ii) its value on 6 April 2025."

Explanatory statement: This amendment provides that where an investment derived from foreign income and gains has fallen in value the TRF charge is paid on the reduced value of the investment at the point the TRF opened.

The interaction of this provision with the individual's capital loss position may need further thought. If necessary (although not provided for by this amendment), the legislation could provide that, where advantage is taken of this loss in value, no further capital loss may be claimed on the investment.

2.7 *Paragraph 18 (commencement of this part)*

In some circumstances, it is possible that a single payment from a trust to a beneficiary may be derived from both the settlor's FIG (with which the trust was originally funded, say) and matched with the trust's subsequent FIG. It was originally unclear whether HMRC would apply the TRF charge twice on this single payment.

Paragraph 13 (capital payment derived from FIG) now provides that there will be a double charge in these circumstances. However, the commencement provisions mean that this has retrospective effect for those trusts where capital payments were made after 6 April 2025 but before the publication of the Finance Bill.

Retrospective legislation, while within the power of Parliament, is generally reserved for situations of obvious and egregious tax avoidance. Here, there is no tax avoidance. Trustees are specifically incentivised to make capital payments to beneficiaries to take advantage of the TRF. But, having done so in reliance on Finance Act 2025, retrospective legislation may now double the tax charge that beneficiaries in receipt of such payments assumed would be paid.

We propose the following amendments to limit the double charge only to situations where the capital payment is made on or after 26 November 2025:

Schedule 3, page 275, line 38, leave out "paragraphs 9 to 16" and insert "paragraphs 9 to 12 and 14 to 16".

Schedule 3, page 276, line 3, at end insert -
"(3) The amendments made by paragraph 13 of this Schedule have effect where the matched capital payment referred to in sub-paragraph 8(2C)(b) Finance Act 2025 [as inserted by paragraph 13 of this Schedule] is made on or after 26 November 2025."

Explanatory statement: These amendments provide that a double tax charge created by paragraph 13 shall not apply retrospectively.

Alternatively paragraph 8(2C) itself could be amended to the same effect.

2.8 *New paragraph – availability of TRF to non-residents*

The TRF is only available to UK resident individuals but it is unclear to us why HMRC should not accept a voluntary tax payment from non-residents.

Such a payment is not as unlikely as it sounds. Those who are non-resident for a period of five or fewer tax years (known as temporary non-residents) may have to pay tax on the income, gains and remittances they make while temporarily non-resident – the tax charge arises in their year of return to the UK. In some situations this means that remittances that could have qualified for the TRF had the individual been resident, will not do so – even though the individual would like to take advantage of the facility and will instead be forced to pay tax in their year of return, which may be after the TRF window has expired.

We suggest the following amendment –

Schedule 3, page 275, line 20, at end insert -
"*TRF available to non-residents*

15A Omit sub-paragraph 1(7)."

Explanatory statement: This amendment provides that the Temporary Repatriation Facility is available not just to UK residents, but also to non-residents.

Alternatively, the TRF could be expanded only to temporary non-residents. In that case, we propose the following wording:

Schedule 3, page 275, line 20, at end insert -
"*TRF available to returning temporary non-residents*

15A At the end of paragraph 1(7) insert - "but where an individual is a temporary non-resident during the whole of the tax years 2025/26, 2026/27 and 2027/28 and could, if UK resident, have made a designation election, such individual may make a designation election in the year of return. Such an election shall be treated for the purposes of this schedule as though it were made in the year 2027/28.""

Explanatory statement: This amendment allows temporary non-residents to use the TRF.

2.9 *New paragraph – availability of TRF to offshore trust beneficiaries*

The TRF applies a 12% or 15% tax rate to the personal FIG of individuals who had previously used the remittance basis as well as certain capital payments from offshore trusts (matched to the trust's FIG) – encouraging the winding-up of foreign trust structures. However, the latter only applies where the beneficiary of the trust in receipt of the capital payment could themselves have used the remittance basis personally (the 'RBU' requirement). This leaves a number of offshore trusts that have outlived their purpose, but where UK tax rules make it prohibitive to wind them up.

As an example, imagine a non-dom sets up an offshore trust for his two non-dom UK resident adult children and that trust has accumulated FIG. One child has earned substantial wealth overseas and sheltered it from UK tax by way of remittance basis claims. The other has always paid UK tax on their worldwide income. If the trust makes a capital payment to both children in the UK, only the remittance basis user can benefit from the TRF, influencing the trustees' decision to wind up the trust and bring all funds to the UK.

We propose an amendment to remove the requirement that the beneficiary of the trust could themselves have used the remittance basis personally , thus extending the TRF to all offshore (or formerly offshore) trusts, allowing such trusts to be wound up during the three tax years 2025/26, 2026/27 and 2027/28 at the TRF rates of tax. Although the amendment removes the RBU requirement for both trust and non-trust situations, in non-trust situations the TRF can only apply to income and gains that have benefitted from the remittance basis anyway.

We propose the following amendment:

Schedule 3, page 268, line 19, at end insert –
"*Removal of requirement that individual must have been subject to the remittance basis for a past year*

8A Omit sub-paragraph 1(5)."

Explanatory statement: This amendment enables offshore trust beneficiaries who have not themselves used the remittance basis to use the TRF.

2.10 *New paragraph – availability of TRF to trusts*

The TRF as it applies to trusts can only operate where a payment is made out of the trust to a beneficiary. We propose allowing the trustees themselves to pay the TRF charge and thus allowing the trust to pay UK tax on its past FIG without having to make capital payments to the beneficiary. This may be appropriate where the trust wishes to take advantage of the opportunity but for non-tax reasons (for instance succession planning or vulnerable beneficiaries) it is not appropriate for value to pass out of the trust.

The suggested drafting that follows provides for comparable treatment to the TRF and leaves the detailed drafting to regulations to be subsequently promulgated by the Treasury:

Schedule 3, page 268, line 19, at end insert -
"*Trustee designation*

8A (1) After paragraph 1 insert –

'*Trust cleansing facility charge*

1A (1) The Trustees of a settlement may in the tax year 2025/26, 2026/27 or 2027/28 make a claim in relation to any or all of the following ("trust income or gains") –

(a) a section 1(3) amount of the settlement for any tax year before 2025/26,
(b) an OIG amount of the settlement for any tax year before 2025/26,
(c) a section 1(3) amount in a schedule 4C pool of the settlement for any tax year before 2025/26,
(d) protected foreign source income or transitional trust income of the settlement for the purposes of s643A ITTOIA 2005,
(e) any relevant foreign income of the settlement for any tax year before 2025/26 that would, if remitted, be treated under s648(3) ITTOIA 20025 as arising only if and when remitted, and
(f) foreign relevant income of the settlement for the purposes of chapter 2 part 13 ITA 2007 (transfer of assets abroad) for any tax year before 2025/26.

(2) On the making of such a claim the Trustees shall be subject to the TRF Charge and paragraph 1(8) shall apply to the Trustees as it applies to an individual.

(3) The amount of trust income or gains of the settlement for the category or categories in respect of which a claim is made shall be reduced accordingly.

(4) The provisions of this Schedule shall apply with appropriate amendments to any claim made by Trustees under paragraph 1A(1) and the Treasury may be regulations make provision modifying this Schedule for these purposes."

Explanatory statement: This amendment enables trustees to pay a TRF charge on the trust's past FIG while retaining the funds within the trust.

Schedule 3, Part 3 (temporary non-residence)

2.11 *Overview of the measure*

The temporary non-residence rules are anti-avoidance measures designed to tax certain UK income and gains that would otherwise be outside the scope of tax. They apply to UK resident individuals who go abroad but return within 5 years.

The changes in Part 3 extend the scope of the anti-avoidance rules to include distributions and other benefits from close companies in certain situations. Essentially, this is where it is reasonable to suppose the benefit is intended to avoid tax that would be payable on, for example, a straightforward dividend paid directly to the individual.

2.12 *CIOT comments*

We recognise the need for anti-avoidance tax legislation to be reviewed regularly to keep up with abusive practices as they come to light. However, the added length and complexity of the legislation (this section takes up 6 pages) is likely to lead to more ordinary commercial transactions being inadvertently caught due to lack of awareness.

To aid taxpayers in self-assessing whether these expanded anti-avoidance rules apply, we recommend updated HMRC guidance is published covering a range of examples and their interpretation of what it is 'reasonable to suppose' is intended to avoid tax.

It is unclear what some clauses mean in Schedule 3 part 3 which is not merely an amendment in relation to post departure profits. Para 20 new s408A(4B) covers a situation where a close company (say owned by a discretionary trust) makes a payment to any person other than the individual in the temporary period e.g. company declares a dividend to a non-settlor interested discretionary trustee and an individual beneficiary later receives an amount or benefit of the payment as a result of arrangements. Para (b) states that *if the company had made a dividend to the individual at that time it would have been a dividend within subsection (3).* Then the individual is to be treated as actually having received the dividend up to the amount of the value of the relevant receipt.

However, if the company had made a dividend to the individual, it would not have been a dividend within s408A(3) as that person isn't in real life a participator or associate of the trustees. Nor in fact was that person a participator at the relevant time specified in para 3 at all. There seem some missing words in (b) e.g. *if the company had made a dividend to the individual at that time <u>and on the assumption that they had been a participator then</u> it would have been a dividend within subsection 3.*

In a situation where trustees receive a dividend from a company now which is later partially distributed out to a non-resident discretionary beneficiary who then returns within 6 years (the dividend also being received in the non-resident period by the trustees) is it intended to stop this? And is it intended to catch all payments made by companies to trusts e.g. what about payments of interest?

3 Clause 44 (trust protections etc: minor amendments and transitional protection)

3.1 *Overview of the measure*

The amendments in this clause widen the anti-avoidance matching rules where an individual benefits from a transfer of assets abroad, provide limited transitional rules for 2024-25 benefits and clarify certain definitions.

3.2 *CIOT comments*

We have no comments on this clause.

4 Clause 45 and Schedule 4 (PAYE for treaty non-residents)

4.1 *Overview of the measure*

This clause and schedule extend the PAYE notification process for globally mobile employees to individuals who are treaty non-resident. It also introduces consideration of the Overseas Workday Relief (foreign employment relief) 30% financial limit as part of the PAYE notification process and makes other small amendments to the PAYE notifications process in sections 690, 690A, 690B, 690C and 690D of ITEPA 2003

These amendments will take effect from the 6 April 2026.

4.2 *CIOT comments*

We welcome putting relief for treaty non-resident cases on a statutory footing. This is sensible and will improve administration of the tax system.

Treaty non-resident describes a person who, although considered UK-resident under UK domestic law, is treated as non-resident for the purposes of a Double Taxation Agreement (DTA) because the treaty's tie-breaker rules assign their residence to another country.

The changes made to the taxation of 'non-domiciled individuals' in the previous Finance Act included changes to Overseas Workday Relief for foreign earnings. This included a limit on relief which was to be claimed through the Self-Assessment return process. This extends the overriding 30% limit on relief on foreign earnings to the point at which employers apply PAYE deductions. This appears to be a sensible amendment to the legislation to prevent excessive relief being given and having to be reclaimed through the Self-Assessment process.

Following these amendments section 690A(6)(aa) of ITEPA 2003 will read "as a result of a change in the employee's circumstances, the proportion specified in the notice ceases to be a reasonable estimate of the non-PAYE proportion". This means that a further notification must be sent to HMRC if, for example, the proportion of earnings on which PAYE is to be applied that is specified in the 'Section 690 direction' is no longer correct, or if the employee's residence position changes. We think this places a huge potential administrative burden on employers, who will not necessarily know where employees work day-to-day. Guidance will need to be very clear on what sort of review / monitoring employers have to do as regards potential changes in circumstances.

We also think there is an opportunity for further improvements to be made to the "Section 690 directions" notification process to remove unnecessary administrative burdens from employers. For example, it should be possible to submit applications prior to the start of a tax year (many payrolls close weeks before pay day, so allowing advance applications from, say, February onwards would ensure that employers can apply the correct tax deductions from the first pay day of a tax year). Additionally, rather than requiring employers to re-apply at the start of every tax year, an approved application should continue from one tax year to the next (subject to the overriding limit on claiming Overseas Workdays Relief) so long as there has been no change in the employee's circumstances since the original (or most recent) application was made. We also think it would be helpful if applications could be backdated to the start of the tax year or the date from which the circumstances applied if later.

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The Chartered Institute of Taxation
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