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REFORMING THE TAXATION OF NON-UK DOMICILED INDIVIDUALS

Response by Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to comment on *Reforming the taxation of non-UK domiciled individuals*, including the relevant draft legislation contained in the Finance Bill[1] and the Technical Note[2] published by HM Revenue & Customs.

1.2 The primary charitable objective of the ATT is to promote the education and study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background and focusses solely on matters relating to individuals, particularly practicalities for those arriving in and leaving the UK.

1.3 Our comments build on our response[3] to the policy paper *Changes to the taxation of non-UK domiciled individuals*[4], which was published before the Autumn Budget 2024. Whilst the Finance Bill legislation has clarified some of the points raised in our previous submission, it has also raised a number of other issues, which we address below.

1.4 We have divided our response by topic, with each section divided where relevant into:

i) concerns over the principles of the measure,
ii) technical drafting points,
iii) practical issues around implementation, and
iv) areas where additional guidance is likely to be needed.

[1] https://publications.parliament.uk/pa/bills/cbill/59-01/0125/240125.pdf
[2] https://assets.publishing.service.gov.uk/media/672105124da1c0d41942a8a8/Reforming_the_taxation_of_non-UK_individuals.pdf
[3] https://www.att.org.uk/technical/submissions/att-responds-changes-taxation-non-uk-domiciled-individuals
[4] https://www.gov.uk/government/publications/2024-non-uk-domiciled-individuals-policy-summary/changes-to-the-taxation-of-non-uk-domiciled-individuals

Some of these points have been raised by ATT representatives at stakeholder meetings arranged as sub-groups of HMRC's Capital Taxes Liaison Group and Wealthy External Forum.

1.5 We have not commented on matters relating to offshore trusts and parties connected to them as these are not areas many of our members deal with often. We have chosen to leave comments on these issues to other professional bodies and interested parties with more practical experience. Our absence of commentary on these aspects of the draft legislation should not be interpreted as our agreement with the relevant provisions.

1.6 Unless stated otherwise, all legislative references are to the Finance Bill[1].

2 Relief for foreign income and gains (FIG regime)

2.1 Principle

Clause 37 adds the option to make a *foreign income claim* under new ITTOIA 2005 Part 8, Chapter 5, s845A. Clause 38 adds the option to make a *foreign employment election* under new ITEPA 2003 Part 2, Chapter 5C, s41M. Clause 39 adds the option to make a *foreign gain claim* under new TCGA 1992 Schedule D1, para 1.

Some of the effects of making the above claims are detailed under Clause 37 as new ITTOIA 2005 Part 8, Chapter 5, s845C/s845D and in new TCGA 1992 Schedule D1, para 5. The most widely applicable effects of making any of these claims as covered in those provisions are likely to be the loss of the personal allowance for income tax and the annual exempt amount for capital gains tax.

Since the three possible foreign claims/elections (*income, employment* and *gains*) are made separately, removal of entitlement to both the personal allowance and the annual exempt amount where any one of the claims is made seems unfair. For example, a taxpayer might make a *foreign income claim* and be denied an annual exempt amount to offset against their UK source capital gains, despite the two being wholly unrelated.

Equally, a taxpayer making a *foreign employment election* would be denied both a personal allowance and annual exempt amount to offset against any UK-source income and gains, despite the fact their overseas employment is unrelated to both. A taxpayer not making any of these claims/elections but with identical UK source income and gains may have a lower tax liability on those sources thanks to their personal allowance and annual exempt amount remaining available.

Like the proposed new FIG regime, the remittance basis denies entitlement to both a personal allowance and an annual exempt amount. However, the new FIG regime is more sophisticated in that claims can be made in respect of income, gains, or employment income, or any combination thereof. There is therefore scope to make the impacts of any such claims more sophisticated than under the remittance basis, to match the flexibility of the new FIG regime.

2.2 Making any of the three claims/elections in paragraph 2.1 above (*foreign income claim, foreign employment election* or *foreign gain claim)* also denies individuals the opportunity to claim relief for losses arising in respect of various overseas businesses by virtue of new ITTOIA 2005 Part 8, Chapter 5, s845C.

This seems unfair, particularly where a *foreign gain claim* or *foreign employment income claim* is made, since those sources are likely to be unrelated to any overseas business losses. Removing the ability to claim losses in respect of overseas businesses unfairly prejudices those making a *foreign gain*

claim or *foreign employment income claim.* Even those making a *foreign income claim* may only do so in respect of one out of several overseas income sources, and the overseas income in respect of which a claim is made may be wholly unrelated to any overseas businesses they operate.

2.3 Finally, making any of those same three claims/elections also denies individuals the opportunity to benefit from relief for capital losses arising in respect of overseas assets sold at a loss under new TCGA Schedule D1, para 5(b).

Whilst this is reasonable where a foreign gain claim is made (no tax charge arises on one or more overseas capital gains, so no relief is allowed for overseas capital losses), it seems unfair if a *foreign income claim* or *foreign employment election* is made, since foreign income sources will commonly be unrelated to any overseas capital losses. Removing the ability to claim capital losses in respect of overseas assets unfairly disadvantages those making a *foreign income claim* or *foreign employment election.*

2.4 To address the concerns in paragraphs 2.1-2.3 above, we suggest a separation between the effects of making a *foreign income claim*, a *foreign employment election*, or a *foreign gain claim* based on whether the claim/election affects income tax or capital gains tax. This could work as follows:

- Making a *foreign income claim* would remove entitlement to a personal allowance, and to relief for overseas business losses, but should not affect the availability of a CGT annual exempt amount or relief for overseas capital losses.

- Conversely, individuals making a *foreign gain claim* would lose their entitlement to an annual exempt amount but not to a personal allowance, and could claim relief for overseas business losses but not for overseas capital losses.

- A *foreign employment election* is an income tax measure, so would remove personal allowance entitlement. For consistency with the *foreign income claim* proposal above, relief for overseas business losses could also be denied, although the foreign employment and foreign business may be wholly unrelated. However, there should be no impact on either the individual's annual exempt amount or ability to claim overseas capital losses.

2.5 Principle

New ITTOIA 2005 Part 8, Chapter 5, s845E(2) and new ITEPA 2003 Part 2, Chapter 5C, s41S(2) confirm that an individual's adjusted net income for a year is calculated before deduction of relief for both a *foreign income claim* and a *foreign employment election*.

Despite the foreign income and/or foreign employment income then not resulting in a tax charge, its inclusion in adjusted net income adds complexity to the individual's tax affairs. The individual will be more exposed to complications such as the High Income Child Benefit Charge and pensions annual allowance tapering, whilst potentially losing entitlement to free childcare support which is only available to those with adjusted net incomes of £100,000 or less.

It would be simpler to calculate adjusted net income *after* giving relief for the *foreign income claim* and/or *foreign employment election.* The effect on personal allowance tapering is moot as no personal allowance is available to those making such claims (as explained in paragraph 2.1 above).

However, we acknowledge there is also a question of fairness to consider – those making *foreign income claims* or *foreign employment elections* could claim tax relief on amounts of overseas income which would result in full clawback of Child Benefit payments, a fully tapered annual allowance and withdrawal of childcare support if that foreign income were from UK sources.

2.6 Principle

The FIG regime is available to individuals during their first four tax years of UK residency following a period of 10 consecutive tax years where they were non-UK resident (new ITTOIA 2005 Part 8, Chapter 5, s845B).

At paragraphs 2.7 – 2.9 of our response[3] to the pre-Budget policy paper, we expressed concern that this would unfairly disadvantage internationally mobile individuals who relocate to the UK having had periods of UK residence in the previous 10 years, which risks discouraging internationally mobile individuals from coming to the UK, potentially reducing the UK's competitiveness.

We provided the example of a trainee pilot who was UK resident in 2022/23, before resuming non-residence in 2023/24 and 2024/25. That individual would lose two years' worth of potential eligibility for the FIG regime by virtue of having been resident overseas for two years following one year of UK residence.

Based on the legislation, it appears this limitation remains. As suggested in our previous response, a more reasonable position might be to deduct the number of years of UK residence in the 10 years prior to any arrival in the UK from an individual's eligibility under the 4-year FIG regime. In the example of the pilot above, they were UK resident in 2022/23 only, so would have three years' worth of possible FIG exemption remaining available if they returned to the UK in future years.

2.7 Technical

The technical note says at paragraph 43 that "The claim for the 4-year FIG regime applies on a source-by-source basis", whereas the legislation says at new ITTOIA 2005 Part 8, Chapter 5, s845A(2):

"Where an individual makes a foreign income claim for a tax year, the individual is entitled to relief for the tax year that is equal to so much of the total income of the individual for that year as—

(a) reflects qualifying foreign income (see section 845F), and

(b) is identified as such in the claim."

It is not completely clear from this that the claim must be made on a 'source-by-source basis' – it could be interpreted as the *total* relief claimed having to be specified when making a foreign income claim. The exact requirements would benefit from clarification, ideally with the legislation updated to confirm 'source-by-source' if that is the intention.

By contrast, new TCGA Schedule D1, para 2 is clearer in requiring a source-by-source claim, stating (emphasis added):

"(1) Where an individual makes a foreign gain claim for a tax year, the individual is entitled to relief for ***each qualifying foreign gain*** *accruing to the individual in that year* ***that is identified in the claim****.*

(2) The relief is given by deducting an amount equal to the ***sum of those gains*** *from the total amount of chargeable gains accruing to the individual."*

The provisions for *foreign employment elections* in new ITEPA 2003 Part 2, Chapter 5C, s41P(2) would also benefit from clarification to make it clearer whether elections have to be made on a source-by-source basis where a taxpayer has more than one eligible employment.

We would welcome the mechanisms in new ITTOIA 2005 detailing how to claim foreign income relief and those in new ITEPA 2003 concerning claims for foreign employment relief being based on their new capital gains counterparts in TCGA 1992.

2.8 Technical

The technical note confirms at paragraph 34 that income and gains which are the subject of a claim under the FIG regime can be remitted to the UK without incurring a tax charge, either in the year of the claim or later.

Whilst this flexibility is welcome, it is unclear where the legislation confirms this, other than by an absence of a statement that this flexibility does *not* exist. It would be helpful to have the position clarified in the legislation.

2.9 Practical

In some cases, computing FIG may be time consuming and complicated. Making a FIG election on such sources of income/gains would mean there is no tax payable anyway. Some taxpayers may therefore be tempted to estimate their FIG for the purposes of claiming FIG exemption, given the amounts do not affect their tax liability once an election is made.

For instance, a taxpayer with a jointly-owned overseas rental property may know that their share of gross rental profits is in the region of £20,000. To save time and effort working out their share of allowable expenses, they may claim FIG exemption on £20,000 of income. This does not represent the amount they are theoretically taxable on (absent the FIG election). What are the consequences of such an inaccurate claim? Does it, for instance, deny *any* FIG relief, or any FIG relief on that source of income, if the inaccuracy is discovered? In circumstances where the true FIG is found to be higher than the estimate reported, would the FIG exemption be limited to the amount claimed?

2.10 Practical

How will FIG elections interact with a taxpayer's obligations under Making Tax Digital (MTD) for Income Tax? For instance, a taxpayer in 2025/26 may claim FIG relief in respect of rental profits from an overseas rental property. Would the income from that property count towards their qualifying income for MTD mandation purposes, or would the FIG election reduce it to zero for MTD purposes?

2.11 Guidance

The FIG regime imposes complex record keeping requirements on taxpayers.

Making *foreign income claims, foreign employment elections and foreign gain claims* on a source-by-source basis facilitates identification and tracking for the purposes of correct tax treatment if those income or gains are remitted in later years. However, taxpayers will need to record their individual sources of income, employment and gains for each year, noting where claims/elections have been made. This will be an onerous requirement and will require taxpayer awareness from April 2025.

We acknowledge that these complexities are restricted to four years' worth of records due to the available duration of the FIG regime. In that sense, the record keeping requirements are arguably less onerous than the current remittance basis, but may affect more unrepresented taxpayers as we expect a significant number of current remittance basis users engage tax advisers to assist them.

2.12 Guidance

Under current legislation, the remittance basis of taxation can apply automatically in certain circumstances, without the need for taxpayers to claim it. By contrast, the FIG regime is only available on making a claim, and new claims will need to be made in each of the four relevant tax years and for each income/gain source an individual wishes the FIG regime to apply to. The requirement to proactively claim FIG relief will need to be publicised and highlighted in guidance, particularly that aimed at unrepresented taxpayers.

3 Relief for foreign employment income (revisions to Overseas Workday Relief)

3.1 Principle

Several of the comments in Section 2 of this submission encompass points which also relate to claims for relief on foreign employment income, in particular paragraphs 2.1 – 2.4 inclusive above.

3.2 Guidance

Paragraph 78 of the technical note confirms that:

"Employees claiming relief under OWR will be able to benefit from it whether their income is received in a UK or overseas bank account. Individuals will also be able to remit it into the UK if it was received offshore without a charge."

Whilst this is a helpful relaxation compared with the current Overseas Workday Relief (OWR) rules in ITEPA 2003 s22 and s26, it appears this relaxation only applies to earnings relating to periods after 6 April 2025. Paragraph 94 of the technical note deals with 'trailing income' – ie that relating to pre-6 April 2025 earnings, but received after that date. Paragraph 94 confirms trailing income will be taxable if remitted or paid to a UK bank account, despite it being *received* during the period when the (more relaxed) new rules apply.

There is a real danger of employers and taxpayers getting this wrong, and the legislation does not make the distinction clear. Clear guidance will be needed to reduce the risk of error in these circumstances.

3.3 Guidance

The additional flexibility to receive offshore earnings relating to periods from 6 April 2025 in the UK, or to remit them to the UK, will need to be made clear in guidance, along with covering the different position for 'trailing income' as mentioned in paragraph 3.2 above.

3.4 Guidance

OWR is necessarily being revised as part of reforming the taxation of non-UK domiciled individuals. 'New' OWR will be linked, in some cases, to the 4-year period during which the FIG regime is available. However, there are exceptions and complications – based on our understanding:

i. Employees already in the UK who are ineligible for the 4-year FIG regime will remain restricted to a total of three years' OWR.
ii. Employees already in the UK but who *are* eligible for the 4-year FIG regime can claim OWR for a total of four years from arrival.
iii. Employees part-way through their available OWR period on 6 April 2025 will be subject to the 'new' OWR regime, but without the financial limits.
iv. Trailing income is treated differently to 'new' income – see paragraph 3.2 above.

These factors make OWR considerably more complex than might first appear – employees already in the UK at 6 April 2025, in particular those who have already claimed OWR at that date, may well need professional advice in order to remain compliant.

Those unable to access professional advice will need guidance, and we would welcome the inclusion of example scenarios in the guidance covering the above complexities.

An interactive guidance tool may also be useful to help employees understand which OWR rules apply to them, and for how long.

4 Temporary Repatriation Facility (TRF)

4.1 Technical

The legislation and technical note do not appear to agree regarding whether the TRF is available only to former non-domiciled individuals who *claimed* the remittance basis, or whether it is also available where the remittance basis applied automatically (under ITA 2007 s809D or s.809E).

The technical note says at paragraph 103 (emphasis added) that *"From 6 April 2025 a new TRF will be introduced to encourage individuals to remit to the UK their FIG which arose in earlier periods and were not taxed in the UK in previous years* ***following a claim for the remittance basis****."*

In contrast, paragraph 136 (in the context of distributions from offshore structures) says (emphasis added) that: *"For individuals* ***to whom the remittance basis applied*** *for any tax year prior to 6 April 2025, the TRF will be available."*

The legislation says at Schedule 10, Part 1, Para 1(5) (emphasis added) that: *"An individual may only designate qualifying overseas capital if the individual* ***was subject to the remittance basis*** *for at least one tax year (being a tax year before the tax year 2025-26)."*

This does not suggest any previous claim to use the remittance basis is required in order to access the TRF. Schedule 10, Part 1, Para 1(11) goes on to confirm that (emphasis added):

"an individual is subject to the remittance basis for a tax year … if any of the sections 809B, ***809D or 809E*** *of ITA 2007 apply to the individual for that year".*

The technical note (paragraph 103 at least) therefore seems to be at odds with the legislation – the latter confirming that the TRF is available to previous remittance basis *users* regardless of whether or not a claim was made to use that basis of taxation.

The technical note itself also contains inconsistencies between paragraphs 103 and 136, as identified above.

The TRF position for remittance basis users to whom that basis of taxation applied automatically needs to be clarified. We strongly suggest that, in the interests of fairness, they should be entitled to make use of the TRF in the say way as those who actively claimed the remittance basis.

4.2 Guidance

Paragraph 108 of the technical note confirms that payment of the TRF charge from undesignated offshore funds will constitute a taxable remittance, noting that this differs from current treatment under ITA 2007 s809V whereby payment of the Remittance Basis Charge direct to HMRC from offshore funds is not treated as a remittance.

Given the TRF is available to former remittance basis users, this difference will need to be made clear in guidance to avoid accidental failures to designate sufficient funds to cover payment of the TRF charge as well as the funds intended for remittance.

4.3 Guidance

Paragraphs 115 and 116 of the technical note confirm that individuals using the TRF will not need to declare remittances of capital designated for TRF purposes, but that they will need to keep records of all funds designated for the TRF in case of a HMRC compliance check.

Schedule 10, Part 2, Paragraphs 8 & 9 confirm such remittances can take place in any year following designation of funds for the TRF. Guidance will therefore be needed on the required record retention period for individuals using the TRF. It may be necessary to demonstrate that funds remitted to the UK were previously subject to a TRF designation (such that no further tax charge arises on remittance). This need could feasibly arise outside the normal record retention period for Self-Assessment.

4.4 Guidance

Paragraph 120 of the technical note states that *"It will not be possible to make a designation [under the TRF] on behalf of a third party".*

Having queried this at a meeting of the HMRC Wealthy External Forum on 29 November, we understand that this is not intended to prevent authorised agents from making TRF designations when preparing tax returns on behalf of their clients, but it would be helpful if this could be confirmed in public guidance.

5 Capital Gains Tax rebasing

5.1 Principle

CGT rebasing is only available to individuals who have previously claimed the remittance basis (Schedule 11, Paragraph 1(1)(e)). Non-domiciled individuals who were taxable on the arising basis prior to 6 April 2025 will be unable to rebase their assets for CGT purposes. We question the fairness of this restriction.

Consider Taxpayers A and B, both of whom hold an asset at 6 April 2025 which has an unrealised capital gain based on its pre-5 April 2017 acquisition cost, and which had increased substantially in value by 5 April 2017. Taxpayer A claimed the remittance basis in, say, 2018/19 whilst Taxpayer B has always been taxed on the arising basis. Taxpayer A will be able to benefit from CGT rebasing to reduce their CGT liability on sale, whilst Taxpayer B will not. Their circumstances are identical, other than one year's claim for the remittance basis by Taxpayer A.

The inconsistency of treatment between Taxpayers A & B in respect of CGT rebasing complicates the position, creates confusion and appears unfair. This not only increases the risk of error among former non-domiciled individuals when reporting disposals for CGT purposes, it also does not align with the HMRC Charter standard of 'Making things easy'.

We suggest CGT rebasing is extended to former non-domiciled individuals who have only previously been taxed on the arising basis.

5.2 Technical

The technical note says at paragraph 99 that CGT rebasing will be available to (emphasis added) *"current and past remittance basis **users**"* but goes on to specify that *"They must have made a remittance basis **claim** … **This does not include years where the person has automatic use of the remittance basis without a claim being required**".*

The technical note and legislation (Schedule 11, Paragraph 1(e)) are therefore consistent in that individuals to whom the remittance basis previously applied automatically (under ITA 2007 s809D or s809E) are not entitled to CGT rebasing.

Subject to the inconsistency identified in paragraph 4.1 above between the technical note and the legislation, it appears CGT rebasing is available to a smaller population than the TRF – according to the legislation, CGT rebasing is *not* available where the remittance basis previously applied automatically, whereas (according to the legislation) the TRF *is*. We question the reasoning behind this mismatch and suggest the availability of TRF and CGT rebasing should be aligned.

As with the TRF, in the interests of fairness we suggest all former remittance basis users should be entitled to CGT rebasing, regardless of whether the remittance basis was claimed or applied automatically.

5.3 Technical

Paragraph 99 of the technical note opens with the word *"Transitionally"* but it is not clear from the legislation what this refers to. There does not appear to be an expiry date for the

CGT rebasing provisions, other than the need to have made a remittance basis claim between 2017/18 and 2024/25.

5.4 Guidance

Guidance will be needed as to how rebasing will work for TCGA 1992 s104 share pools – eg 100 identical shares bought before 5 April 2017 for 50p per share and held at 5 April 2017 might be eligible for CGT rebasing to their then market value of £1 per share. If a further 100 shares were added to the pool on 5 April 2018 at £2 per share, that later acquisition would not be eligible for rebasing. Presumably the pool would consist of 200 shares with a pooled base cost of £1.50 per share?

5.5 Guidance

Schedule 11, Paragraph 3 provides the option to elect out of CGT rebasing where it applies – ie in the absence of such an election, CGT rebasing applies automatically where the relevant conditions are met.

This automatic rebasing (in the absence of electing out) must be made clear in guidance to assist taxpayers in reporting affected asset disposals correctly.

6 Business Investment Relief

6.1 Guidance

Guidance will need to publicise the position for both existing Business Investment Relief (BIR) claims already made at 6 April 2025, and future claims.

Guidance should also be published concerning the option to designate current BIR investments under the TRF, such that no further tax charge arises in the event of a Potentially Chargeable Event (ITA 2007 s.809VH), or to move the funds offshore in accordance with ITA 2007 s.809VI.

This is another area where an interactive guidance tool could add value, allowing taxpayers to benefit from guidance tailored to their BIR circumstances.

7 Contact details

7.1 We would be pleased to join in any further discussion relating to these reforms. Should you wish to discuss any aspect of this response, please contact our Technical Team via atttechnical@att.org.uk.

The Association of Taxation Technicians

8 Notes

8.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we

contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

8.2 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.

8.3 The Association has more than 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.