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CHANGES TO THE TAXATION OF NON-UK DOMICILED INDIVIDUALS

Response by the Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the policy paper[1] outlining *Changes to the taxation of non-UK domiciled individuals*.

1.2 The primary charitable objective of the ATT is to promote education and the 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.

1.3 The ATT supports the proposed move to a residence based regime for the taxation of non-UK domiciled individuals ('non-doms'), and the government's aims as stated in *Background* section of the policy paper.

1.4 The proposed changes should simplify a complex area of taxation, and remove a great deal of uncertainty in how non-doms are taxed. In particular, the UK inheritance tax position of non-doms can be unclear up to and even after death, creating unnecessary complication and stress for families affected at a difficult time.

Moving to a taxation regime for income tax, capital gains tax and inheritance tax which is based on rules set out in the Statutory Residence Test will provide greater certainty for non-doms, allowing them to better plan how long they wish to remain in the UK.

1.5 Several of the proposals are carried over from those published[2] on 6 March by the previous government, which were also due to take effect from 6 April 2025. The delay in confirming the proposals (caused by the intervening General Election), and the fact that several details will not be published until the Budget on 30 October, means that affected individuals will have very little time to prepare for these changes. This shortage of time may particularly affect some trustees, as noted under paragraphs 2.11-2.14 below.

[1] https://www.gov.uk/government/publications/2024-non-uk-domiciled-individuals-policy-summary/changes-to-the-taxation-of-non-uk-domiciled-individuals

[2] https://www.gov.uk/government/publications/changes-to-the-taxation-of-non-uk-domiciled-individuals/technical-note-changes-to-the-taxation-of-non-uk-domiciled-individuals

1.6 Our response below broadly follows the layout of the policy paper. We do not comment further on positive aspects of the proposed changes, but focus on points where we have concerns or where there is room for doubt, and clarification is required. Areas requiring clarification should be covered in the announcements made at the Budget, and accompanying legislative changes.

1.7 We attended a listening event on 15 August, at which we were able to raise some, but not all, of these points.

2 New residence-based regime for foreign income and gains

2.1 No mention is made in the policy paper of restrictions to tax allowances such as the personal allowance and CGT Annual Exemption (and others listed in ITA 2007 s809G) for individuals electing to be taxed under the 4-year foreign income and gains (FIG) regime. The previous government's position[2] was that these allowances would not be available to those electing for the FIG regime to apply, as is the case for current Remittance Basis claimants. This should be clarified.

2.2 The policy paper states:

"UK resident individuals who are ineligible for the 4-year FIG regime (or who choose not to make a claim for a tax year) will be subject to Capital Gains Tax (CGT) on foreign gains in the normal way."

This does not mention Income Tax, but we assume UK resident individuals ineligible for the 4-year FIG regime would also be subject to Income Tax on foreign income "in the normal way"? This should also be clarified.

2.3 The policy paper states:

"Any FIG that arose before 6 April 2025, while an individual was taxed under the remittance basis, will continue to be taxed when remitted to the UK, as is the case under the current rules. This includes remittances of pre-6 April 2025 FIG for those who are eligible for the new 4-year FIG regime."

We assume remittances made after 6 April 2025 from mixed funds containing FIG which arose before that date, whilst the individual was taxed on a remittance basis would be subject to the same *ordering* rules contained in ITA 2007 s809Q?

2.4 The policy paper states that individuals eligible for the 4-year FIG regime will have to "make a claim for a tax year" in which they want it to apply. By contrast, in some instances (ITA 2007 s809D) the Remittance Basis currently applies automatically. The need to make a claim in order for the FIG regime to apply must be made clear in guidance and via the Self-Assessment tax return notes.

2.5 Regarding claims for the 4-year FIG regime, we also note that the previous government's position[2] was that:

"Claims to use the new 4-year FIG regime are to be made for each year to which it is to apply. Individuals need not make a claim for every year of the 4-year period. For example, an individual who makes a claim for the new 4-year FIG regime in year 1 but chooses not to make a claim for year 2 will still be able to claim for years 3 and 4."

It should be clarified whether the claim needs to be made in respect of every year for which an individual wishes it to apply, and whether a 'gap' in claims is permitted, as in the example quoted above.

2.6 The policy paper is silent as to whether split years and years of treaty residence will be counted in the four and ten year tests applying to income and gains. The previous government's position[2] was that both would be ignored. This should be clarified.

2.7 The 4-year FIG regime is proposed to be available "for new arrivals to the UK in their first four years of tax residence, provided they have not been UK tax resident in any of the 10 consecutive years prior to their arrival".

This would unfairly disadvantage internationally mobile individuals who relocate to the UK having had periods of UK residence in the previous 10 years (tax years, we assume?).

For instance, members report that trainee pilots' contracts often result in them being in the UK for periods of time whilst training. A pilot who spent sufficient time training in the UK in 2022/23 to be UK resident that year, before resuming non-residence from 2023/24 up to and including 2024/25 would presumably not be entitled to claim any of the remaining three years of the FIG regime if they moved to the UK from 2026/27? This seems unfair given they have only been UK resident for one year out of the previous 10, and have only had one year's benefit from the FIG regime.

2.8 It appears that to benefit from the FIG regime for a full four years, an individual would need to remain resident in the UK for the four consecutive tax years from arrival. A break in UK residence within that period would deny them access to any remainder of their four year FIG exemption if they returned to the UK within 10 years, as they would then have a history of UK residency in the previous 10 years. If correct, this risks discouraging internationally mobile individuals from coming to the UK, which could reduce the UK's competitiveness.

2.9 A more reasonable position might be to deduct the number of years of UK residence in the 10 years prior to arrival 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 of FIG exemption remaining available to claim in future years.

This would better accommodate individuals with a history of occasional UK residence prior to 6 April 2025 (or their arrival in the UK, if later), whilst still preventing individuals with a long history of UK residence prior to that date from accessing the 4-year FIG regime.

2.10 The previous government proposals[2] confirmed that Business Investment Relief (BIR) would continue to be available in respect of FIG which arose pre-6 April 2025 but is remitted to the UK for investment on or after that date. The current government's policy paper is silent on BIR, but the availability of this relief after 6 April 2025 should be clarified.

We would also like to see guidance published explaining whether there is any impact of the proposed changes on previous remittances where BIR was claimed. Members have reported fears due to uncertainty from existing BIR claimants that could lead them to withdraw their investments. This could result in funding problems for businesses and reduced economic growth.

2.11 **Trusts**

Removal of protection from tax on income and gains arising within settlor-interested trust structures for settlors who do not qualify for the 4-year FIG regime will, in some cases, affect at relatively short notice arrangements which have been in place for long periods of time.

The absence of any 'grandfathering provisions' for affected trusts may be perceived as unfair, as the expected timing of these changes may not allow trustees sufficient opportunity to take appropriate action in advance of 6 April 2025.

We note that the government is considering transitional arrangements for Excluded Property Trusts in respect of IHT, but there do not appear to be any comparable easements proposed for settlor-interested trusts affected by the proposed IT and CGT changes.

2.12 Some trust structures may be affected by any changes to the Transfer of Assets Abroad legislation (TOAA). In particular, some may be reliant on the 'motive defence' currently contained in ITA 2007 s737. We note the TOAA and Settlements legislation will both be reviewed, but with any changes not expected to take effect before April 2026. We urge the government to bring forward that review and complete it well before 6 April 2025, when the changes affecting settlor-interested trusts whose settlors are not eligible for the 4-year FIG regime will take effect.

2.13 Any changes to both the TOAA and Settlements legislation could affect any action trustees of affected settlements wish to take in advance of April 2025. We note that the Temporary Repatriation Facility (TRF) may be extended to cover stockpiled income and gains, with further details to be confirmed at the Budget. This is one piece of information affected Trustees will need in order to make decisions, but the timing and nature of expected changes to the TOAA and Settlements legislation is likely to be another.

2.14 Members have reported concerns among trustees and beneficiaries of affected trusts due to the lack of time available to take action once changes proposed in the policy paper are confirmed. We have received reports of affected parties choosing to leave the UK, some moving all assets offshore, due to uncertainty over how the proposed reforms will affect them. A longer consultation and lead-in period to changes taking effect would have allowed affected parties more time to plan and take measured steps in response.

2.15 **Overseas Workday Relief**

We note from the policy paper that:

"A form of Overseas Workday Relief (OWR) will be retained … and further details will be confirmed at the Budget".

We look forward to the Budget announcements, but would point out the risk of confusion between the proposed <u>four</u> year FIG regime period and the fact that (current) OWR can apply in any of the <u>three</u> years following a period of non-residence lasting at least three consecutive years. Consideration should be given to aligning the period in which OWR can apply with the four year FIG regime.

3 Transitional measures

3.1 The TRF is likely to be an important factor in non-doms' decisions whether to remain in the UK after 6 April 2025.

We note the duration and "reduced tax rate" applying to the TRF will be confirmed at the Budget. However, the policy paper states (emphasis added):

"Individuals that have previously **claimed** the remittance basis will be able to remit FIG that arose prior to 6 April 2025 and pay a reduced tax rate on the remittance for a limited time period after the remittance basis has ended"

Would this extend to non-doms for whom the remittance basis applied automatically under ITA 2007 s809D? Also, would a non-dom be required to have claimed the remittance basis in a particular year in order to remit under the TRF any unremitted FIG which arose in that year, or would it be sufficient simply to have "claimed the remittance basis" at any point? Both points would benefit from clarification.

3.2 In respect of CGT rebasing, the policy paper states:

"Transitionally, for CGT purposes, current and past remittance basis users will be able to rebase foreign capital assets they hold to their value at the rebasing date when they dispose of them."

This suggests no *claim* for the remittance basis has to have been made in order for rebasing to be available, which differs to the wording applying to TRF, quoted in paragraph 3.1. Clarification is needed here.

3.3 Will CGT rebasing be available to (former) non-doms who were previously taxed on the arising basis? If a former arising basis taxpayer and a former remittance basis taxpayer both continue to hold assets pregnant with capital gains at 6 April 2025, it would seem unfair for the rebasing option to only be available to the one who had previously used the remittance basis.

4 Residence based regime for inheritance tax

4.1 As proposed, an individual will become liable to UK inheritance tax on overseas assets if they have "been resident in the UK for 10 years prior to the tax year in which the chargeable event (including death) arises".

It is not clear over what period those 10 years of residence could arise. We assume the proposal is based on 10 *consecutive* tax years? This would correlate with the eligibility test for the 4-year FIG regime for IT & CGT, which requires 10 consecutive years of non-UK residence to be eligible. Confirmation of this point is needed, along with whether the test relates to tax years or calendar years.

4.2 A test based on 10 *consecutive* years of residence risks creating a regime which is susceptible to manipulation. For instance, an individual who has been UK resident for 9 years would only need a one-year break in UK residence in order to 'reset' the 10 year period in which they could remain in the UK without becoming liable to UK IHT on worldwide assets.

We suggest a better test would be similar to the current deemed-domicile provisions – for instance, stating that 10 tax years of UK residence out of the previous 15 tax years would result in that individual being fully within the scope of UK IHT.

4.3 The current proposal to consider the individual's residence position for the 10 years "prior to the tax year in which the chargeable event arises" could create illogical outcomes. If an individual is UK resident for 10 years, before becoming non-UK resident in the 11th year, they would find themselves within the full scope of UK IHT from year 11, despite then being non-resident.

However, we support the proposal to ignore the residence status for the year of the chargeable event as it improves certainty. An individual's exposure to UK IHT should be immediately clear at 6 April each year, as it would not depend on their residence status for that coming tax year.

For that reason, we support the current proposal, but detailed guidance will be needed to make clear that individuals may find themselves subject to UK IHT on worldwide assets for the first time even after they have left the UK.

4.4 For individuals leaving the UK, the current proposal would "keep a person in scope for 10 years after leaving". This is significantly longer than the usual three years where a person acquires a non-UK domicile, and even the maximum under the current rules of six tax years[3] being required in some circumstances to lose UK deemed domicile status.

4.5 There could be several drawbacks if the 'tail period' during which an individual remains subject to UK IHT on worldwide assets is excessively long.

The longer the tail period, the more difficult it will be to track who remains in-scope, and to monitor and enforce IHT compliance in the event of deaths and other chargeable transfers during that tail period. It could also disincentivise individuals from relocating to the UK temporarily, for fear of long term IHT exposure if their circumstances change whilst they are here (for instance if they end up having children here).

Balanced against this, we recognise the opposite extreme of an individual who lives in the UK from birth but retires abroad. It may be desirable to keep such individuals within the scope of full UK IHT longer than someone who has been in the UK for only 10 years.

4.6 We therefore suggest a taper system may be appropriate to determine the tail period during which an individual remains liable to UK IHT on worldwide assets after leaving the UK. For instance, the tail period might be set at four tax years once an individual has been UK resident for 10 tax years, but increase by one tax year for each additional tax year of UK residence, up to a limit of, say, 10 tax years.

So, an individual who has been in the UK for 10 tax years would remain fully liable to UK IHT for four tax years after departure, someone who had been UK resident for 12 tax years would remain in-scope for six tax years, whilst someone who had lived in the UK for 60 tax years would remain fully liable to UK IHT for 10 tax years after leaving.

4.7 The policy paper is silent as to whether split years and years of treaty residence will be counted in the ten year tests applying to IHT. This should be clarified.

4.8 Confirmation should also be provided on whether the pre- and post- arrival ten year periods relate to calendar years or tax years. The current rules for the tail period following departure from the UK are mixed in this respect – the three year period in paragraph 4.4 relates to calendar years, whereas the six year period in the same paragraph is based on tax years.

4.9 **Trusts**

Our concerns raised in paragraphs 2.12 to 2.14 also apply for IHT.

4.10 We welcome the government's plans to consider ways to reduce the IHT impact for existing Excluded Property Trusts (EPTs). However, notice of proposed changes has been particularly short for EPTs, given the current government's proposed reforms are much wider-reaching than those proposed by its predecessor in respect of EPTs.

4.11 Again, members have reported concerns from affected trustees and beneficiaries in terms of the lack of clarity around proposed changes, and the time available to review trust arrangements and plan accordingly.

[3] https://www.gov.uk/guidance/deemed-domicile-rules#:~:text=Losing%20deemed%20domicile%20status

Members have reported a risk of 'knee jerk' actions being taken in response to the proposed reforms given the time pressures, and the fact that trustees will not be in a position to see the complete picture due to the review of TOAA and Settlements legislation coming later.

5 Contact details

5.1 Should you wish to discuss any aspect of this response, please contact atttechnical@att.org.uk.

The Association of Taxation Technicians

6 Notes

6.1 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.

6.2 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.

6.3 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.