

## **FB2025 - Abolition of remittance basis and the newly resident individual**

**(Lecture P1473 – 18.06 minutes)**

The proposed changes to the taxation of currently non-domiciled individuals are brought into the Finance Bill as Clauses 37 – 46 and Schedules 8 – 13. A substantial proportion of this legislation is repealing (or limiting) the previous rules.

The main current advantage of having non-domiciled status is the ability to claim remittance basis on foreign income and gains and the exclusion from UK inheritance tax of non-UK situs assets.

The first part of the legislation relates to the changes for income tax and capital gains tax purposes. As an introduction, the main purpose of this legislation is to remove remittance basis for non-domiciled individuals so that all individuals are taxed on their income and gains on an arising basis. This will apply from 6 April 2025.

However, a relief is being introduced, generically referred to as the 'Foreign Income and Gains' regime or 'FIG' which allows a newly resident individual to claim relief from taxation in the UK on their foreign income and gain for a period of four years. It is the detail of this new regime which is outlined in the Finance Bill.

### **Foreign income**

Clause 37 inserts various new sections into ITTOIA 2005.

S845A ITTOIA 2005 states that an individual may make a 'foreign income claim' if they are a 'qualifying new resident'. If such a claim is made, the individual gets relief equal to the 'qualifying foreign income' which is identified in the claim. Effectively, they are not taxed on the income included in the claim. There is no obligation to keep that income outside the UK so this can still be claimed even if the money is remitted to the UK, either in the tax year or subsequently.

This claim can be made for the first four years of residence and once this period has elapsed all income will be taxed on an arising basis.

It is an important point to note that the legislation necessitates the foreign income being identified in the claim to be eligible for relief. This is a significant deviation from the remittance basis regime which might have been applicable before, beyond having to identify income or gains where the remittance basis charge was being paid. The guidance notes make it clear that failure to quantify the income on which the relief is claimed will invalidate the claim such that the income will be subject to tax on those amounts.

This does, however, create the opportunity to make the claim on a source-by-source basis so you could claim in relation to some overseas income but not all. It is unclear whether there are any circumstances where this might be advantageous since the impacts outlined below (such as loss of personal allowances etc) will apply if any claim is made.

The relief is given by deducting the qualifying foreign income from calculation of net income in Step 2 of s23 ITA 2007.

The claim must be made in a return or an amendment to a return and must be made before the end of the 12 months beginning with the filing date for the tax return i.e. the 31 January following the end of the tax year.

There are various legislative provisions which allow claims (referred to as a 'consequential claim') to be made outside of the normal time limit, for example where a discovery assessment is raised for a tax year. However, it is made clear that a consequential claim under these provisions cannot be made if the action which theoretically allows such a claim to be made results from a loss of tax brought about carelessly or deliberately by the individual or any person acting on the individual's behalf.

It is clear from the legislation that the claim relates to the tax year so it will be possible to make claims on a year-by-year basis.

The guidance notes on these measures confirm the obvious point that the residency status will be determined according to the statutory residency test. A split year under these provisions will still count as a full year for these purposes. It also confirms that treaty non-residence under a Double Tax Treaty tiebreaker will not be relevant and would not mean that an individual is treated as non-resident under these provisions.

S845B ITTOIA 2005 defines a qualifying resident, being an individual who is resident for a tax year, is not disqualified for that tax year and who was not resident for each of the ten years before that tax year. This is then extended for the three years after that initial tax year. Although this legislation was not in effect during 2022/23, 2023/24 and 2024/25, those years can be considered for the purposes of establishing whether a claim can be made in 2025/26 or later years.

An individual is disqualified for a tax year if they are a member of the House of Commons or House of Lords for any part of the tax year.

The guidance notes make it clear that if an individual leaves the UK temporarily during the four-year period, they can claim any remaining years out of the four once they return.

S845C ITTOIA 2005 specifies that anyone who makes a claim under s845A (or a foreign employment election or foreign gain claim which are covered later on in the notes) and has losses from a business carried on wholly outside the UK will not be able to claim relief for that loss in the year of the claim or any other tax year. Businesses affected by this include trade, professions or vocation as well as property businesses.

S845D ITTOIA 2005 outlines that anyone making a foreign income claim, a foreign employment election or foreign gain claim will not be entitled to claim the personal allowance, blind person's allowance, married couple's allowance, transferrable personal allowances or certain reliefs under s457 or 458 ITA2007.

S845E ITTOIA 2005 states that when calculating the adjusted net income under s58 ITA 2007, the foreign income claim will be ignored. This is relevant in various areas including abatement of the personal allowance where income exceeds £100,000 and the high income child benefit charge.

S845F ITTOIA 2005 states the income which can be treated as qualifying foreign income:

- Profits from a trade carried on wholly outside the UK;
- The share of profits for a UK partner of a partnership whose trade is carried on wholly outside the UK;
- Profits of an overseas property business;
- Adjustment income within Chapter 17 Part 2 ITTOIA 2005;
- Interest arising from a source outside the UK;
- Dividends from non-UK companies;
- Purchased life annuity payments which arise from a source outside the UK;
- Profits from deeply discounted securities arising from a source outside the UK;
- Royalties and other income from intellectual property arising from a source outside the UK;
- Non-trading income from films and sound recordings arising outside the UK;
- Non-trading income from telecommunications rights arising from a source outside the UK;
- Income arising under a settlement which is treated as the income of the settlor under s624 or 629 ITTOIA 2005 which arising from a source outside the UK;
- Income arising to an individual under s643A ITTOIA 2005 (being benefits paid out of protected income);
- Estate income arising from a source outside the UK;
- Annual payments not otherwise chargeable which arise from a source outside the UK;
- Income not otherwise charged (so treated as miscellaneous income) arising from a source outside the UK;
- Profits under the accrued income scheme arising from a transfer of securities where the income from the securities themselves would be qualifying foreign income;
- Offshore income gains;
- Income arising under the transfer of assets abroad regime;
- Pension income arising from a source outside the UK;
- Foreign social security benefits;
- The foreign proportion of income arising as a distribution by a Qualifying Asset Holding Company.

This would also cover any income received under a life interest trust which is treated as the income of the beneficiary.

S845G ITTOIA 2005 disqualifies the following income:

- Income of a settlement arising in 2024/25 or earlier which is treated as arising in 2025/26 due to remittance to the UK by a remittance basis user;
- Income arising from shares treated as situated in the UK because of the anti-avoidance provision relating to share-for-share exchanges (s138ZB TCGA 1992) which deems a foreign company to be treated as situated in the UK;
- Income chargeable to income tax under the transferred income streams provisions (s809AZB ITA 2007);
- 'Performance income' (see below);
- Income from a pre-1973 pension paid under the Overseas Pensions Act 1973;
- Payment being treated as a member payment under Schedule 34 FA2004 in relation to a non-UK pension scheme.

S845G ITTOIA 2005 defines performance income as the income chargeable to UK income tax by an entertainer or sportsman which relates to the relevant activity by that individual (whether performed in the UK or not).

There are then various amendments to the legislation to give effect to the above provisions including:

- Amendment to s24 ITA2007 (which specifies reliefs available in calculating net income) to include the relief for qualifying new residents;
- Amendment to s38 ITA 2007 (which gives entitlement to personal allowance and blind person's allowance) to show that there is no entitlement where there is a foreign income claim, a foreign employment election or a foreign gain claim made;
- Amendment to s55A ITA 2007 (which gives entitlement to transfer the tax allowance between married couples and civil partners) to show that no entitlement exists where there is a foreign income claim, a foreign employment election or a foreign gain claim made;
- Amendment to s460 ITA 2007 which gives relief under s457 or 458 to show that no entitlement exists where there is a foreign income claim, a foreign employment election or a foreign gain claim made;
- Amendment to s809EZA ITTOIA 2005 (which charges disguised investment management fees to income tax) is amended to reflect the mechanism for calculating the tax charge where a foreign income claim has been made;
- Amendment to s989 ITTOIA 2005 which contains various definitions to include a definition of 'foreign income claim' and 'qualifying new resident';
- Amendment to Para.46 Sch.2 FA022 (relating to qualifying asset holding companies) to enact these provisions.

*Example*

Fleur comes to the UK to work for a UK company, having never previously visited the country.

She will earn £51,200 per annum including benefits.

She is renting out her previous main residence in her home country as she is intending to return after a period of working in the UK. The net rent is likely to be around £10,000 per annum.

She also has some interest on a saving account held in the same country of around £3,000 per annum.

No tax is paid on this in her home country.

Without making a foreign income claim, the tax payable in the UK is as follows:

	£
Employment	51,300
Property	10,000
Interest	<u>3,000</u>
Total	64,300
Less PA	<u>(12,570)</u>
	51,730

Tax to pay:

37,700 @ 20%	7,540
14,030 @ 40%	<u>5,612</u>
Total	13,152

If a foreign income claim were made, the tax payable in the UK is as follows:

	£
Employment	51,300
Property	Exempt
Interest	<u>Exempt</u>
Total	51,300
Less PA	<u>Nil</u>
	51,300

Tax to pay:

37,700 @ 20%	7,540
13,600 @ 40%	<u>5,440</u>
Total	12,980

There is a small tax saving as the foreign income is around the level of the personal allowance.

*Example (cont.)*

The situation is the same as in the previous example except that tax is paid in the home country. The rate of tax is 20% on rental income and 10% on interest so that her total tax liability is £2,300.

Without making a foreign income claim, the tax payable in the UK is as follows:

	£
Employment	51,300
Property	10,000
Interest	<u>3,000</u>
Total	64,300
Less PA	<u>(12,570)</u>
	51,730
Tax to pay:	
37,700 @ 20%	7,540
14,030 @ 40%	<u>5,612</u>
Total	13,152
Less DTR	<u>(2,300)</u>
Net UK liability	10,852
Total tax paid	13,152

If a foreign income claim were made, the tax payable in the UK is as follows:

	£
Employment	51,300
Property	Exempt
Interest	<u>Exempt</u>
Total	51,300
Less PA	<u>Nil</u>
	51,300
Tax to pay:	
37,700 @ 20%	7,540
13,600 @ 40%	<u>5,440</u>
Total	12,980

No DTR can be claimed as none of the overseas income is subject to UK tax, but this still remains payable in her home country so her total tax liability is £12,980 + £2,300 = £15,280.

## Foreign gains

New Sch.D1 is inserted into TCGA 1992 by Clause 39 of the Finance Bill.

This largely mirrors the provisions outlined above for foreign income. As such:

- An individual may make a foreign gain claim for a tax year if they are a qualifying new resident for that year;
- The claim must be included within the return and the time limit is the same as for a foreign income claim;
- A consequential claim under s43C(5) TMA 1970 cannot be made if there is a loss of tax brought about carelessly or deliberately by the individual or someone acting on their behalf;
- Where the claim is made, relief is given by deducting the relevant gains from the total chargeable gains accruing to the individual;
- Relevant gains are qualifying foreign gains;
- The gain must be identified in the return, so again opening up the possibility of claiming for only some gains to fall within these provisions.

Gains which are attributable to a settlor of an offshore settlement under s86 TCGA 1992 can be identified by that individual in their return and be treated as a foreign gain. The gain would then be disregarded, as would any qualifying foreign loss that had accrued to the trustees in that tax year.

Gains which are attributable to a beneficiary of an offshore settlement under s87 TCGA 1992 or where there are transfers of value relating to a Sch.4C pool where the beneficiary receives a capital payment during a tax year, can also be included in a foreign gain claim if identified by the beneficiary in their return. However, the amount received will not be matched to any 'unmatched' gains within the settlement (whether accrued from UK or non-UK assets). If no trust gains have yet arisen, any benefits will not be taxed or matched to future trust gains.

For the purposes of these provisions, a qualifying foreign gain means:

- A chargeable gain accruing on the disposal of a qualifying foreign asset being an asset situated outside the UK which does not derive at least 75% of its value from UK land;
- A chargeable gain attributed under s3 TCGA 1992 being a gain of a non-UK close company on the disposal of a qualifying foreign asset;
- A qualifying QAHC gain (being the foreign proportion of chargeable gain accruing on the disposal of shares in a QAHC).

This does not include pre-2025/26 gains which are subject to tax having been remitted to the UK.

Qualifying foreign loss is also defined as being a loss accruing on disposal of an asset that is a qualifying foreign asset. S16 TCGA 1992 is amended to show that a qualifying foreign loss is not an allowable loss if it accrues in a tax year where a foreign gain claim, a foreign income claim or a foreign employment election is in place.

An individual who has made a foreign gain claim, a foreign income claim or a foreign employment claim will not be entitled to the annual exemption for capital gains tax purposes.

### **Remittance basis**

Clause 40 confirms that remittance basis is no longer available for 2025/26 onwards. However, provisions relating to remittance of income and gains will continue to apply where remittance basis has applied in earlier years. Schedule 9 includes provisions relating to this transition.

Most of these amendments simply insert provisions to show that remittance basis is only relevant for 2024/25 or earlier or changing the tense of provisions to show that they no longer apply. This legislation will need to remain on the statute books for an uncertain period due to the fact that it is still going to be relevant for individuals remitting income arising in earlier years where remittance basis was claimed.

In the employment legislation, the use of the phrase 'internationally mobile employee' replaces 'remittance basis' in headings to legislation.

S16ZA TCGA 1992 (relating to losses for non-UK domiciled individuals) is repealed.

Some amendments are made to the remittance basis provisions themselves which are not necessarily consequential on the other changes.

S809L ITA2007 defines the meaning of remitted to the UK. S809L(2) defines condition A (which has to be met along with Condition B for a remittance to have occurred). It currently states that:

- (a) Money or other property is brought to, or received or used in, the UK by or for the benefit of a relevant person or
- (b) A service is provided in the UK to or for the benefit of a relevant person.

A third alternative is being introduced being:

- (c) Money or other property is used outside the UK (directly or indirectly) for the benefit in the UK of a relevant person.

S809L(4) currently states that condition C (which if met would mean a remittance is treated as made) is that qualifying property of a gift recipient is:

- (a) brought to, or received or used in, the UK, and is enjoyed by a relevant person;
- (b) consideration for a service that is enjoyed in the UK by a relevant person; or
- (c) used outside the UK (directly or indirectly) in respect of a relevant debt.

The first is amended so rather than 'is enjoyed by a relevant person' the legislation will say 'either (i) the property is enjoyed by a relevant person or (ii) as a result, a benefit is enjoyed by a relevant person'.

A further possibility is also introduced as (ba) being 'is used outside the UK (directly or indirectly) and as a result a benefit is enjoyed in the UK by a relevant person.

S809L(5) outlines condition D (which, again, if met would mean a remittance is treated as made). This uses the same conditions as in C above except the property is that of someone who is not the relevant person or a gift recipient where there are connected operations. The same amendments are made to the wording as outlined above.

S809L(9) states currently that reference to property being used in respect of a debt would include cases where property is used to pay interest on a debt. This is to be expanded to cover also cases where the property is used to secure the debt.

A new subsection (9A) is introduced which clarifies when property is treated as brought to the UK.

Amendments are made to s809N and s809O to facilitate the changes above. Both now excludes enjoyment by relevant persons which is no more than negligible.

The whole of Chapter 1A, Part 14 ITA 2007 which gave exemption for persons not domiciled in the UK is repealed.

S834 defines the residence of the personal representatives of a deceased person where there are one or more persons who are UK resident and one or more persons who are not. In this case, residence is currently determined by whether the deceased was UK resident or domiciled in the UK at the date of death. If they were not, then the personal representatives are treated as not resident. This will be replaced by 'UK resident or a long-term UK resident within the meaning of IHTA 1984'. For CGT purposes, s62 TCGA 1992 states that the personal representatives are treated as having the deceased's residence and domicile at the time of death. This is replaced with the personal representatives being UK resident if the deceased was UK resident or a long-term resident within the meaning of IHTA1984 at the date of death.

S475 ITA2007 defines the residency status of trustees. If there are trustees who are resident in the UK and trustees who are not resident in the UK, then the residency considers whether the settlor was UK resident or domiciled at the date the settlement arose. The reference to domicile is removed unless the settlement arose or was created before 6 April 2025 in which case domicile will continue to be relevant. Equivalent changes are made for the purposes of capital gains tax, by amendment to s69 TCGA 1992.

There are further amendments to primary legislation in relation to:

- Deemed employment income
- Pension schemes
- Domicile of overseas electors
- Situs of debt
- Trust reporting requirements
- Trusts with vulnerable beneficiaries

- Disposals of deeply discounted securities
- The accrued income scheme

There are also amendments to secondary legislation relating to MTD. MTD was not going to apply to a person's foreign business if they were not domiciled in the UK. This is repealed. This would seem to imply that a foreign business for someone who is not a newly resident individual will have to comply with MTD.

### **Temporary repatriation facility**

Clause 41 and Schedule 10 provide for a temporary repatriation facility for those who have previously claimed remittance basis.

This is designed to minimise the ongoing impact of the remittance basis by allowing a beneficial tax rate to apply to amounts which are, or can be treated as, qualifying overseas capital.

This will be known as the temporary repatriation facility (TRF) charge. The provisions are described in brief below, before the specific detail is considered.

An individual can designate income as qualifying overseas capital by making an election in their return for 2025/26, 2026/27 and 2027/28. This election can only be made if the individual is UK resident in the relevant tax year. These amounts do not have to be actually remitted to the UK. If income is designated under the TRF, no tax charge will arise when they are actually remitted.

An individual must have been subject to the remittance basis for at least one tax year before 2025/26 to be able to elect. This can be where remittance basis applied by making of a claim, or where unremitted income and gains were less than £2,000 or the other cases where remittance basis applied without a claim.

The rate of tax is 12% in 2025/26 and 2026/27 and 15% in 2027/28.

The TRF is available where an individual has 'qualifying overseas capital'.

Capital falls within this section if any of the following three situations apply:

1. The amount is income or capital which arose in 2024/25 or earlier, has not been remitted to the UK and would have been chargeable to income tax or capital gains tax if it had been remitted.
2. The amount is income or capital which arose in 2024/25 or earlier, is remitted to the UK in 2025/26, 2026/27 or 2027/28 and would be chargeable to income tax or capital gains tax when remitted. If this applies, the latest year in which the income can be designated is the year in which it is remitted. Provisions which would exempt an amount from being treated as a remittance are ignored.
3. The capital does not fall within either of the above provisions but is held by the individual immediately before 6 April 2025 and situated outside the UK immediately before it was acquired by the individual and throughout the period from acquisition to 6 April 2025.

An individual who is beneficiary of a settlement who receives a capital payment from the trustees in the tax year 2025/26, 2026/27 and 2027/28 where s87 TCGA 1992 would apply by matching previous gains arising for 2024/25 or earlier to those capital payments can treat those capital payments as qualifying overseas capital. This is also the case for chargeable gains treated as accruing by reference to capital payments as a result of the application of Sch.4C TCGA 1992 where gains arose in 2024/25 or earlier.

There are provisions relating to protected foreign source income. This was introduced to mitigate changes to the taxation of non-domiciled individuals with effect from 6 April 2017. Foreign source income arising from a non-resident settlement which was settlor-interested where the settlor was non-domiciled or not deemed domiciled in the tax year was not taxable where the money was not extracted from the settlement. This was extended so that the exemption was not available where benefits were provided to the settlor or close family members out of protected income and to prevent benefits being funnelled through persons who then made onward payment to the settlor or family member. Where charges would arise under these provisions and relate to income which arose in 2024/25 or earlier, these can be qualifying overseas capital. The income can only be designated in a return for the tax year in which the income is treated as arising to the individual.

The election must be made by 12 months from the filing date for the tax return (so 31 January following the end of the tax year). It must set out the total amount designated and identify the amounts which have been remitted in the tax year to which the return relates.

Where foreign tax has been paid (or is payable) in respect of any amounts, only the amount after deduction of the relevant foreign tax paid may be designated.

It is possible to designate an amount where it has not been determined if it is qualifying overseas capital or where it is not known what the relevant foreign tax is. If the amount is determined to not be qualifying overseas capital or should not have been designated due to the amount of foreign tax paid will still be treated as designated qualifying overseas capital, other than for the purpose of exemptions.

Anyone who makes an election must keep a record of each amount designated.

The TRF charge is treated as if it is an amount of income tax for the relevant tax year. It is included as an amount of tax added at Step 7 of s23 ITA 2007. All enactments relating to the collection of income tax will apply to the TRF charge. However, payments on account will not have to be made by anything which arises under the TRF charge.

No tax charge arises (either as income tax or capital gains tax) on the subsequent remittance of anything designated under the TRF.

Where a beneficiary of an offshore trust receives a capital payment, this may be matched against gains of the trust and there is an additional tax charge where there is a delay in receiving that money (being a supplement of 10% of the CGT for each year there is a delay after the first, up to a maximum of 6 years). This supplement does not apply to amounts which are designated under the TRF.

There are complex rules to determine the income or gains which are treated as being remitted under the remittance basis provisions. This is particularly true of the mixed fund rules which determine the order of remittances from sources which contain income or gains from mixed sources or multiple years but also in relation to nominated income for the purposes of the remittance basis charge.

These are partially overridden by the TRF provisions, in that they do not apply for any year where a designation election applies. For mixed funds, the amount which has been designated under the TRF will be treated as remitted in priority to other amounts up to the total of the designated income.

Where there is an offshore transfer out of a mixed fund, there is deemed to be a transfer of an appropriate proportion of each kind of income or capital within that fund. This legislation is amended so that TRF capital is treated as its own kind of income or gains for these purposes and not included as any other kind of income or gains. It will also be possible to create a 'TRF capital account' by transfer from a mixed fund in a fund which is deemed to only contain TRF capital and which will effectively be treated as a UK bank account. This then overrides the pro-rating of amounts taken from the mixed fund. It will also be possible to nominate an existing account as a TRF capital account.

The rules relating to the TRF capital accounts are complex and the level of detail is beyond the scope of these notes. However, if prohibited sums are paid into his account the situation can be remedied if they are withdrawn within 30 days.

Finally, for the purposes of the TRF, the mixed fund rules will be done on an annualised basis, rather than having to look at each transaction individually. This will apply for 2025/26, 2026/27 and 2027/28.

*Example*

Clarence has been claiming remittance basis for many years and has significant amounts of unremitted income and gains.

He is thinking that he might like to bring some of these funds into the UK over the next few years and identifies the following amounts:

1. Gain of £200,000 on which no tax was paid in the source country
2. Income of £250,000 which suffered 10% tax in the source country
3. Income of £550,000 which suffered 30% tax in the source country.

He is an additional rate taxpayer. What is the tax charge under the TRF or if it was taxed on remittance?

Source	Tax under TRF	Tax under remittance
1	$£200,000 \times 12\% = £24,000$	$£200,000 \times 45\% = £90,000$
2	$(£250,000 - £25,000) \times 12\% = £27,000$	$£250,000 \times 45\% = £112,500$ less DTR (£25,000) =

		£87,500
3	$(£550,000 - £165,000) \times 12\%$ = £46,200	£550,000 x 45% = £247,500 less DTR (£165,000) = £82,500

Net income under each option:

Source	Net after TRF	Net after remittance
1	£176,000	£110,000
2	£198,000	£137,500
3	£338,800	£302,500

### Rebasing of assets

Clause 42 and Schedule 11 introduces rebasing of assets for individuals who have previously claimed remittance basis.

Rebasing is available where:

- An asset is disposed of on or after 6 April 2025;
- The asset was held by the individual on 5 April 2017;
- The asset was not situated in the UK at any time in the period beginning with 6 March 2024 and ending with 5 April 2025;
- The individual was not domiciled nor deemed domiciled in the UK at any time in a tax year before 2025/26; and
- The individual has made a claim for remittance basis in at least one year from 2017/18 to 2024/25 and remittance basis did not apply automatically.

If those conditions are met, the gain or loss will be calculated as if the asset had been purchased at market value on 5 April 2017.

Assets are not treated as being in the UK (for the purposes of the third condition) when they meet various remittance basis exemptions such as public access, repairs, to sell or put up for sale, for the person use of the individual or their family or the temporary importation rule applies.

The individual may elect for this not to apply; such an election would be irrevocable. Rebasing under the deemed domicile provisions is replaced with these provisions for 2025/26 onwards.