Tax

Felicity Cullen KC Comments on the Budget Proposals Concerning Abolition of the Remittance Basis of Taxation

Posted on 07 March, 2024 by | Felicity Cullen

The remittance basis of taxation for income and gains

The long-established (albeit frequently amended) remittance basis of taxation of income and gains is to be abolished from 6 April 2025.

This basis of taxation depends on domicile (and, in more recent years, on deemed domicile or absence of it); and the changes mean that the significance of “domicile” will be much diminished for UK tax purposes.

A new foreign income and gains regime (the “FIG regime”) which will be connected only to “residence” for tax purposes will begin in 2025/26 and will have the following key features:

- Individuals who have been non-UK tax resident for at least 10 consecutive years will, regardless of domicile status, be eligible to use the new regime.
- It appears that the regime will apply to all individuals who become tax resident in the UK whether they are UK domiciled or not.
- The new regime will be available (by election) for the first four tax years of an individual’s UK tax residence. Elections can be made (or not made) on a yearby-year basis during the four-year period.
- Non-UK income and gains (FIG) will not be taxable in the UK and can be brought to the UK without UK taxation during an individual’s four-year eligibility period.
- From the fifth year of UK tax residence onwards, an individual will be chargeable to UK income tax and capital gains tax on worldwide basis.
- The taxation of trust income and gains will also be subject to significant change (see more below).

Transitional arrangements

The scope of transitional arrangements and the opportunities provided by them will be important for short-term planning. The key features of the proposed transitional arrangements will be as follows:

- For the two tax years 2025/26 and 2026/27 individuals (current or previous remittance basis taxpayers) will be able to bring to the UK accumulated untaxed foreign income and gains from prior years at a remittance rate of tax of 12%. This rate may be thought to compare favourably with marginal income tax rates of 45% and capital gains tax rates of 20% and 24% (as well as 28% for carried interest). The decision to remit funds to the UK may depend on future UK needs including, potentially, UK IHT on foreign assets (in the light of changes to UK IHT).

- Income tax for individuals who will move onto the arising basis in 2025/26 will be charged at half of the normal rates. No similar discount will apply to capital gains tax rates. This will mean that capital gains tax rates for carried interest and residential property will (at current rates of taxation) be more expensive than effective rates of income tax in that year.

- Existing remittance basis users will have the option to rebase the value of personally held capital assets to values as at 5 April 2019 for disposals which take place on or after 6 April 2025. Rebasing will not apply to assets held in trust. Careful consideration might need to be given to timing of disposals in the light of this rule and the opportunity concerning the 12% rate noted at the first bullet point under this heading.

Trusts

The complex rules concerning protected foreign source income and gains (PFSI) will not apply to income and gains which arise after 5 April 2025.

For taxpayers who are taxable under the FIG regime, distributions from offshore trusts will not be subject to UK tax, wherever the taxpayer receives distributions. A modified 'onward gift rule' will, however, apply details of which are awaited.

On expiry of the FIG regime for an individual, he or she will pay UK tax on profits arising within a trust structure which he or she has established in the same way as UK based settlors and transferors pay such tax.

A transitional rule for trusts will protect foreign income and gains that arose before 6 April 2025 from UK taxation unless distributions are made (or benefits are provided) to persons who are not FIG regime users. This rule might, for example, encourage structures to accelerate receipts of income or accruals of gains and to make distributions or enhanced distributions while beneficiaries are FIG regime users.

Inheritance Tax

As well as changing the basis of taxation of income and gains in the manner described above, the government proposes to change the way in which the scope of UK inheritance is linked to domicile and to deemed domicile. The proposal is to link IHT to long term residence in the UK. Long term in this context is suggested to mean residence for ten years before an individual is exposed to IHT on a worldwide basis. There is also a suggestion that there should be a ten year “tail” before such exposure to UK IHT is lost. Double Tax Treaties may, of course, have a practical bearing on actual exposure to UK IHT.

The excluded property status of assets which were settled on trust before 6 April 2025 is not intended to be altered by any new rules. This provides an opportunity for non-domiciled (and non-deemed domiciled) UK residents to establish excluded property trusts before 6 April 2025. The income and capital gains tax consequences of such a course of action will, however, need to be weighed up in the light of the new FIG regime.

There has been, as yet, no mention of the UK IHT status of excluded property settlements in the broader context ie trusts established by non-resident and nonUK domiciled individuals post 5 April 2025 who subsequently acquire a UK connection. Pre arrival planning will remain essential for these individuals.

Conclusion

There will be planning to be done for individuals who and structures which are affected by the new rules. Transitional arrangements will be important and will no doubt provide planning opportunities as well as lead to disputes with HMRC.

For individuals who spend time in the UK and time outside the UK, tipping the balance in favour of non-UK residence may be key (and robust advice on residence will continue to be essential). Identifying income and gains for the purposes of the transitional rules will also be important, as will matters such as timing of actions and rebasing opportunities. The distinction between capital and income could be particularly significant in some cases, given the 50% reduction in the rate of income tax in 2025/26 with no similar discount for capital gains tax.

There will be many changes to the legislation which are consequential on the proposals, with rules such as the specific remittance basis which applies to carried interest needing amendment alongside the primary changes.

Devereux

The Devereux Tax team offers depth and breadth in this area, providing specialist advice about the remittance basis of taxation, asset holding, trust structuring, excluded property trusts and the new FIG regime.

One or more members of the Devereux Tax Team has appeared in almost every leading case on residence and domicile since 2000: members of the Devereux Tax team are extremely well placed to advise on domicile and/or residence at planning and dispute stages.

Key members of chambers with relevant expertise in one or more of these areas include:

- Felicity Cullen KC
- Akash Nawbatt KC
- Aparna Nathan KC
- Barrie Akin
- Rebecca Murray
- Marika Lemos
- Howard Watkinson
- Christopher Stone
- Kate Balmer
- Sebastien Purnell
- Georgia Hicks
- Ishaani Shrivastava
- Colm Kelly
- Joshua Carey
- Max Schofield
- Sam Way
- Matthew Bignell

Please contact our clerks for further information and assistance here.