NON-DOMS AFTER THE BUDGET

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These lecture notes draw on the forthcoming 2024/25 edition of my Taxation of Nonresidents and Foreign Domiciliaries *and references in footnotes are to that edition*

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A1.1 Information available

The information available is:

Spring Budget 2024 and Spring Budget 2024: Policy Costings[1]
HMRC: Spring Budget 2024: Overview of tax legislation and rates (OOTLAR)[2]
HMRC Technical note: Changes to the taxation of non-UK domiciled individuals Updated 7 March 2024[3]

The Technical Note covers everything in the other two papers, except for estimates of yield, so that is all that one needs to study.

A1.2 FIG relief for new residents

A1.2.1 *FIG relief*

The Technical note provides:

> **3.1 4-year FIG regime overview**
> From 6 April 2025, a new regime for personal FIG [foreign income & gains] will be available to individuals for the first 4 tax years once becoming UK tax resident after a period of 10 years non-UK tax residence. Eligible individuals will not pay tax on FIG arising in the first 4 years, where a claim is made, and will be able to remit these funds to the UK free from any additional charges....

I coin the following terminology:

Term	Meaning
New Resident	Individual who comes to UK after 10 years non-residence
Exempt Period	First four years of tax residence
FIG relief	Relief for first 4 years of tax residence

It appears that the New Resident will need to dispose of foreign assets during the Exempt Period, to obtain CGT relief, there is no rebasing at the end of it.

Life insurance might be an attractive investment vehicle for those staying in the UK for more than 4 years, but not permanently.

1 *https://www.gov.uk/government/publications/spring-budget-2024*

2 *https://www.gov.uk/government/collections/spring-budget-2024-tax-related-documents*

3 *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*

Will the foreign income/gains qualify for DT relief? Article 4(1) OECD Model second sentence provides:

> This term ["resident of a Contracting State"], however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.[4]

What about capital losses? Losses on disposals of foreign assets during the 4 year period will not be allowable, will losses on disposals after that be allowable? What will be the effect of existing capital-loss elections?

It may be useful to set out an aide memoire of when FIG relief can apply:

Last year of UK residence	**FIG relief applies to return in or after:**
2014/15	2025/26 *(First year of FIG regime)*
2015/16	2026/27
2016/17	2027/28
2017/18	2028/29
2018/19	2029/30
2019/20	2030/31
2020/21	2031/32
2021/22	2032/33
2022/23	2033/34
2023/24	2034/35

A1.2.2 *Counting residence years*

The Technical note provides:

> The Statutory Residence Test will be used to determine tax residence for any one tax year. Treaty residence or non-residence and split years will be ignored.

Those thinking of returning to the UK in the course of a year would do well to defer their return until the following year (avoiding a split year), if that is possible.

A1.2.3 *Claim for relief*

The Technical note provides:

> 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

4 See 9.8 (Liable to source tax only).

> 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.

Will the claim have to specify the amount of the foreign income and gains?

The Technical note provides:

> If an individual chooses to be taxed under the new 4-year FIG regime, they will lose entitlement to personal allowances and the CGT annual exempt amount.

If one ignores the CGT annual exemption, now trivial, a claim is worthwhile if the individual has foreign income above the personal allowance, but that now a modest £12,570 (and frozen to 2028). The income would have to be larger if a foreign tax credit was available. Taxpayers with small amounts of foreign income will need to do the computation to check the benefit matches the cost.

A1.2.4 *Non-residence in Exempt Period*

The Technical note provides:

> If an individual leaves the UK temporarily during the 4-year period they will be able to make a claim under the 4-year FIG regime for any of the qualifying tax years remaining on their return to the UK. For example, if someone becomes non-UK resident in year 2 and 3 but is UK resident again for year 4, they will be able to use the new 4-year FIG regime for year 4.
>
> Individuals who on 6 April 2025 have been tax resident in the UK for less than 4 years (after a period of 10 years non-UK tax residence) will be able to use this new regime for any tax year of UK residence in the remainder of those 4 years. For example, an individual who became resident in the UK in 2022-23, after a 10-year period of non-residence, will have been resident in the UK for up to three tax years on 6 April 2025. They will be able to claim under the new 4-year FIG regime for 2025-26 because this is their fourth year following a period of 10 years non-UK tax residence.

A1.2.5 *FIG relief/rem. basis compared*

The main differences between the new FIG relief and the old remittance basis are as follows:

Topic	**Remittance basis**	**FIG relief**
Relief	Remittance basis (on FIG)	Exemption (on FIG)

Who qualifies	Non-doms	New Residents
Cost of claim	Rem.basis charge + allowances lost	Allowances lost (only)

FIG relief is for a shorter period than the remittance basis, but:

(1) it is much more generous (exemption for foreign income/gains, rather than remittance basis); no flat charges

(2) it is more widely targeted (applying to all New Residents, including UK domiciled individuals)[5]

A1.3 Offshore trusts

The Technical Note provides:

> **3.3 Trust Protections**
> From 6 April 2025, the protection from tax on income and gains arising within settlor-interested trust structures will no longer be available for non-domiciled and deemed domiciled individuals who do not qualify for the new 4-year FIG regime. FIG arising in the trust (whenever established) from 6 April 2025 will be taxed on the settlor on the same basis as UK domiciled settlors at present, unless the settlor is eligible for the new 4-year FIG regime.
> From 6 April 2025 the matching of pre-6 April 2025 FIG to trust distributions will continue, but UK resident non-domiciled individuals will no longer be entitled to the remittance basis in respect of worldwide trust distributions. Beneficiaries and settlors who are within the 4-year FIG regime will also be able to receive benefits from 6 April 2025 free from any UK tax charges whether or not the benefits are received in the UK. However, such benefits are not matched to trust income and gains and will be subject to a modified onwards gift rule.

The best course will sometimes be to wind up the trust, but there will be IHT and many other matters to consider.

A1.4 Non-dom transitional reliefs

This is covered in the next lecture.

A1.5 Overseas Workday relief

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5 The pre-2025 regime, particularly once the remittance basis charges applied, was restricted to very top of the income distribution. According to Advani, Burgherr & Summers, "Taxation and Migration by the Super-rich", IZA DP No. 16432, 29% of those claiming the remittance basis were in the top 0.1% income range. See *https://docs.iza.org/dp16432.pdf*

A1.5.1 *Who qualifies for OWR*

The Technical Note provides:

> **3.2 Overseas Workday Relief**[6]
> Relief will continue to be available for employees who opt to use the new 4-year FIG regime. The new Overseas Workday Relief (OWR) will be like that currently available, providing relief on earnings for employment duties performed outside the UK.
> The new OWR will be available for the first 3 tax years of UK residence.
> Employees who are eligible for OWR in 2023-24 or 2024-25 for their first year since returning to the UK should still be able to claim OWR for the full three years. However, those re-entering from 2025-26 will not be able to claim OWR, if they are not eligible for the FIG regime.

Thus differences between OWR and FIG relief include:

Topic	FIG relief	OWR
Relief for	FIG (not employment income)	Foreign employment income
Duration of relief	4 years	3 years
Applies to	All New Residents	OWR Employees
Transitional rules	2023/4 & 2024/5 OWR users	New Residents only

A1.5.2 *Effect of OWR*

The Technical Note provides:

> The new OWR will provide relief from income tax whether or not these earnings are brought to the UK. As under the current rules, the new OWR will not provide relief from National Insurance contributions (NICs), so any NICs liabilities on these earnings will be determined as usual.

A1.6 IHT domicile reform

The Technical Note provides:

> **5. Inheritance tax**
> Inheritance tax (IHT) is currently a domicile-based system. The government intends to move IHT to a residence-based system, subject to consultation and applying this only from 6 April 2025.

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6 See 34.22 (Overseas workday relief).

A1.6.1 *Non-settled property post-2025*

The Technical Note provides:

> **5.3 The position from 6 April 2025 – Property owned outright**
> It is envisaged that the new rules will involve charging IHT on worldwide assets owned outright when a person has been resident in the UK for 10 years (the "residence criteria"), with a provision to keep a person in scope for 10 years after leaving the UK (the "tail" provision). The design of the system (including consideration of further criteria such as other connecting factors) will be subject to consultation. UK situs assets will remain in charge on the same basis as at present, regardless of residence.

In the following discussion, a **"IHT-chargeable person"** is an individual who
(1) been resident in the UK for 10 years, and
(2) if they have left the UK, have not achieved 10 year's non-residence

There will be winners and losers. The winners may include UK domiciliaries who are not IHT-chargeable persons.[7] They will fall outside the scope of personal IHT under the new regime. The losers are non-dom IHT-chargeable persons who will fall within the scope of personal IHT.

Losers will outnumber winners. For some there will be a strong incentive not to become an IHT-chargeable person, or to cease to be one, ie to leave the UK (or not to come).

Important commencement issues are currently unanswered. If a long term resident leaves in 2024/25, they should avoid the 10 year tail, but that remains to be seen.

The restriction on the IHT spouse exemption will operate differently. Expect gifts from H to W to be PETs, not exempt, (and within GWR) if H is an IHT-chargeable person and W is not; subject to a domicile election.

A1.6.2 *Post-2025 settlements*

The Technical Note provides:

> **5.4 The position from 6 April 2025 – Property held in trust**
> It is envisaged that the new rules for chargeability of assets comprised

7 Depending on the (unidentified) "other connecting factors".

> in a settlement will depend upon whether a settlor meets the residence criteria or is within the tail provision at the time the assets are settled and/or when charges such as 10-year anniversary charges or exit charge arises.
> The design of the system (including consideration of further criteria such as other connecting factors) will be subject to consultation. UK situs assets will remain in charge on the same basis as at present, regardless of residence.

It appears that if the settlor becomes an IHT-chargeable person, a post-2025 settlement will fall within the scope of IHT, and (unless the settlor is excluded) GWR. What will happen after the death of the settlor?

The reference to "other connecting factors" is intriguing, but it is impossible to say what it might mean.

Settlement will move in and out of the IHT net from time to time. The 10 year tail means that trusts which fall within the IHT net will generally suffer at least one 10-year charge.

A1.6.3 *Pre-2025 settlements*

The Technical Note provides:

> The treatment of non-UK assets that are settled by a non-UK domiciled settlor and become comprised in a settlement prior to 6 April 2025 will not change. For these settled assets:
> - provided the assets in the settlement continue to meet the legislative requirements to be excluded property under current legislation, and subject to any future anti-avoidance provisions, there will be no IHT charges; and
> - the interaction between the gift with reservation provisions and excluded property trust rules will also remain, meaning excluded property will not be brought into charge on the settlor's death even if the settlor retains a benefit in the trust assets.

This seems a generous transitional rule, but it would have been difficult or impossible, in some cases, to backdate a 10-year residence rule, as residence records may not be available. So domicile is not abolished for IHT purposes. It is *prospectively* abolished. Domicile will remain important for the duration of pre-2025 settlements, ie for about a century.

> The exception to this is that the treatment of non-UK property comprised in a settlement that currently comes back into scope where the settlor is a formerly domiciled resident (see above) will be subject to consultation.

It is impossible at present to say what will be the position of a settlement made by a formerly domiciled resident, but perhaps it will remain as at present.

A1.6.4 *IHT consultation questions*

The Technical Note provides:

> **5.5 The IHT consultation**
> The IHT consultation will deal with the design of a new residence based system to apply from 6 April 2025. There are a number of detailed issues and interactions that will be consulted on such as ...

The Technical Note identifies the following:

Issue	**JK Comment**
Transitional provisions	
Length of the residence criteria	
Length of the tail provision	
Connecting factors other than residence	
Gifts with reservation	
Domicile elections	See 5.14 (Election-domicile)
Formerly domiciled residents	
Calculation of trust charges	

One can add to this list. What about existing IHT DTAs?

A1.6.5 *Comments on IHT reforms*

The IHT proposals are at an early stage, and the final rules may be significantly different from the sketch in the Technical Note.

If a 10-year tail applies to those who are UK resident for 10 years, there would in some cases be a significant incentive to leave within 10 years (in other cases an IHT DT relief may apply; in other cases (younger individuals, especially if married) the effective IHT exposure could inexpensively be covered by insurance or ignored (self-insured). The individual would still need advice in connection with lifetime giving for 10 years (essentially the need to avoid chargeable transfers, and the risks of PETs and, perhaps, GWR)

A1.7 Amounts raised and policy issues

A1.7.1 *Amounts raised*

Spring Budget 2024 provides estimates, combining into one figure 3 distinct matters: the abolition of the nondom regime, the FIT regime which replaces it, and transitional reliefs.

Sensibly, the estimates ignore the IHT reforms, though these may well increase Revenue receipts.

2024-25	**2025-26**	**2026-27**	**2027-28**	**2028-29**
+0m	+185m	+2,805m	+3,675m	+2,715m

The Warwick/LSE paper estimated the saving from abolishing the remittance basis as £3.2 billion *without any short term residence relief.*[8] The cost of FIG relief can hardly be less than that.

Spring Budget 2024 states that the Temporary Repatriation Facility "is expected to bring in an additional £15 billion of foreign income and gains onshore to the UK and raise over £1 billion in additional tax receipts." [9] Assuming the £1billion is spread equally between 2025/26 and 2026/27, that equates to £500m receipts in each of the two years. It is not clear if those sums are included in the figures above. But while the TRF will affect the timing of receipts, it is not obvious why someone should chose to remit and pay the tax if there is a viable alternative of not remitting.[10] The TRF will not raise significant *additional* tax receipts.

My own guess would be no net gains to the Revenue at all, and more likely than not a net loss, except for additional receipts:

(1) For 2025/26, because of additional income timed to take advantage of 2025/26 50% IT relief

(2) for 2025/26 and 2026/27, because of remittances to take advantage of the Temporary Repatriation Facility

Those receipts will be outweighed by lower receipts in other years.

A1.8 Policy issues

A1.8.1 *Tax competitive*

Spring Budget 2024 claims the new system will remove a rule "that incentivises individuals to keep income and gains offshore in the current

8 See 1.4.3 (Warwick/LSE paper).

9 Para 2.36.

10 Unless the UK tax charge is covered by DTA relief.

system".[11] That is very broadly correct, though it does not mention that the new relief will continue to incentivise individuals to realise income and gains offshore in the four year Exempt Period, that IHT may also continue to provide a similar incentive, and that the incentive will continue to apply to pre-2025 FIG (mitigated to some extent by the Transitional Relief Facility).

A1.8.2 *Simplicity*

The sketch in the Technical Note is simple. The final law will not be simple; FIG relief and transitional provisions will need 3 schedules and I guess about 100 pages of legislation.

The Technical Note says:

> Under the new regime individuals will not be required to track the movement of their FIG through investments in the way they are required to do now under the current regime. This will make the new 4- year FIG regime much simpler than the remittance basis regime.

The law for post 2025 FIG will be simpler than the present law, because the remittance basis has become so very complicated (mainly a result of the 2008 and 2017 reforms). But the remittance basis, with all its complications, will remain for a generation, as it will continue to apply to unremitted income/gains before 2025/26, though mitigated by the TRF, and after a couple of decades will gradually fade into insignificance.

Simplicity is multi-faceted. The abolition of protected trusts (certainly a simplification) means that attention will need to be given to the ToA and CGT s.3 motive defences, and reliefs such as SSE, which might not have had to be considered for protected trusts.

A1.9 Some uncertainties

Some non-doms will leave the UK as a result of the reforms, (and some will chose not to come). But how many?

Others will be attracted to the UK, but how many and will they stay?

We will know a little more in a decade, when figures for the early years of the FIG regime are available and academics have studied them.

Macfarlanes say:[12]

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11 Box 2C, p.40.

12 *https://www.macfarlanes.com/what-we-think/in-depth/2024/non-uk-domiciliary-regime-an-analysis* (March 2024)

> we would anticipate that individuals who are planning a major exit from a business within that four-year period will be attracted to the UK. In this sense, the regime is better than Italy, because in Italy there can be significant problems with disposals of major private company shareholdings in the first five years of residence.

It remains to be seen what view the next government take. It was Labour policy to abolish the remittance basis and replace it with a new residents relief. On that basis one can expect the FIG regime to survive for now. The transitional reliefs might be restricted or abolished even before they take effect.

The Technical Note does not mention forestalling rules, but such rules may emerge (under the current government or the next) and it may be desirable for taxpayers to act sooner rather than later. We will only know with the benefit of hindsight.

The new law will not be enacted in the F(no2) Bill 2024. It is a matter of politics whether it will be in FA 2025, or in a F(no.3)A 2024, though there is not enough time to do a good job in 2024 and anything enacted in 2024 will be reviewed in 2025.

The IHT reforms can only go in the FA 2025. The timetable might slip to 2026 but I would not plan on that.

A1.9.1 *Will IT/CGT regime be stable*

The law will no doubt be amended a few times in the next few years, as issues emerge. After that, will the new law be stable? It seems unlikely. A government in need of funds might:

(1) Cut the Exempt Period to 2 or 3 years, or
(2) Impose a FIG relief claim charge comparable to the remittance basis claim charge.

That is especially likely if, as I would guess, the published figures underestimate the cost of FIG relief.

On the other hand, there will be pressure to increase the Exempt Period. Macfarlanes say:[13]

> ... the four-year period is really very short, especially when looked at in the international context. The Irish remittance regime does not have a

13 *https://www.macfarlanes.com/what-we-think/in-depth/2024/non-uk-domiciliary-regime-an-analysis* (March 2024)

> time limit, the Italian and Greek regimes are each available for 15 years, a French inbound regime lasts for eight years and the Spanish "Beckham" law lasts five years.
> A four year period is significantly less attractive. Such a short period could also be said to encourage what might be termed "fiscal nomadism". Individuals who choose to benefit from the regime are likely to leave a limited footprint in the UK. After all, why would they purchase a property, or invest in the UK, if they only choose to be in the UK for four years?

That is not comparing like with like. FIG exemption while it lasts is more generous than a remittance basis, is uncapped, and does not incur a significant flat tax payment. The length of the Exempt Period is only part of the picture.

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NON DOMS AFTER THE BUDGET

TRANSITIONAL PROVISIONS AND TRANSFER OF ASSETS ABROAD CHANGES

Rory Mullan K.C.

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INTRODUCTION

1. In its budget of 6 March 2024 the government announced the third major overhaul of the regime for taxation of foreign domiciliaries since 2008. As explained in the previous talk from the 2025/26 tax year foreign domiciliaries will no longer benefit from the remittance basis, nor will offshore trusts settled by foreign domiciliaries be protected. That leaves a question as to what happens to foreign income and gains ("FIG") to which the remittance basis applied before the 2025/26 tax year. In this talk I will look at what we have been told about the transitional provisions which are to be put in place.

2. I will also address the draft legislation amending the transfer of assets abroad ("ToAA") regime in light of HMRC's loss in Fisher v HMRC [2023] UKSC 44. While dealing with a different legislative scheme, these changes also have a potential impact for foreign domiciliaries who have now been brought within the scope of ToAA.

AREAS OF UNCERTAINTY

3. There are a number of areas of uncertainty when considering the new regime at this time. This is a major overhaul of the legislation which has been undertaken without any sort of consultation or clear statement of what it hopes to achieve (assuming a rationale which goes beyond political calculation).

4. There appear to be a number of different considerations at play such as:

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(i) The idea that fairness requires that all residents of the UK should be taxed on the same basis.

(ii) The idea that the tax regime can be effective in encouraging investment into the UK.

(iii) The idea that the tax regime should be simple and understandable.

5. Views on each of these (and other) considerations may vary considerably. That is relevant given that these changes were announced by a Conservative government. An election will be held by 28 January 2025 at the latest. This means that, based on current polling, it is likely that there will be a change of government before the date on which the changes are intended to come into effect.

6. While there may be consensus on abolishing the current regime for taxing non-UK domiciled individuals, that does not mean that there is consensus on the reasons for doing so and/or the detail of what a new regime should look like. In particular, there may be considerable difference in views as to what appropriate transitional provisions should look like, and the extent to which further relief should be available to those who benefitted under the previous regime.

7. Furthermore, we have limited detail as to what the new regime will look like. There is no draft legislation much less legislation which has been considered and commented upon. What we have are documents published following the budget including the technical note "*Changes to the taxation of non-UK domiciled individuals*" ("the Technical Note") which was

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updated on 7 March 2024.

8. While the Technical Note (which appears to cover the points addressed in other documents) does provide a reasonable level of detail allowing us to know how the legislation is intended to operate in practice it is likely that further details will emerge when legislation is published and (hopefully) comments are addressed. Indeed this is expressly acknowledged (§1):

> *This note does not describe the detailed consequential changes that will be required because of moving to a residence based tax system. These will be covered in further updates and draft legislation that will be published later in the year for technical comments. Some points of detail concerning inheritance tax will be settled after consultation with representative bodies and other interested parties.*

9. That does give some comfort that there will be an opportunity for a level of comment, even if limited to technical matters.

FIG ARISING BEFORE 2025/26

<u>FIG arising to individuals</u>

10. FIG which arose to an individual in respect of which a remittance basis claim was made will continue to be subject to the remittance basis, that is to say will be subject to tax if remitted on or after 6 April 2025 in the same way (although subject to the temporary repatriation facility discussed below).

11. Business investment relief will continue to be available for qualifying investments of such

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FIG, that is to say the relief will be available in respect of investments made after 6 April 2025 with FIG which qualified for the remittance basis under the old regime. Alongside this, relief will continue to apply to existing investments.

12. No mention is made of other reliefs but it would seem likely that they will also still apply.

<u>FIG arising within protected trusts</u>

13. FIG which has previously been subject to the protected trusts regime will be taxed on settlors or beneficiaries if they are matched to benefits provided from the trust (that is subject to charge undersection 643A ITTOIA 2005, section 731 ITA 2007 and section 87 TCGA 1992) unless the recipient of the benefit is within the 4-year FIG regime.

14. Where the recipient is within that regime the Technical Note states that a modified onwards gift rule will apply.

15. Where the recipient of the benefit is not within the 4-year FIG regime then any benefit received will be taxable, regardless of where that benefit is received. That is to say that the remittance basis will no longer apply to relieve a charge as is currently the case.

16. Subject to any forestalling rules which might be introduced, this may encourage distributions qualifying for the remittance basis in anticipation of this change. Such distributions could be enjoyed overseas without a tax charge even after 5 April 2025. Of course there is a tension between such an approach and the inheritance treatment of what

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is currently excluded property (see below).

Temporary repatriation facility ("TRF")

17. A one off relief in the form of a new 12% rate of tax will be introduced for remittances of certain FIG made in tax years 2025-26 and 2026-27. This is referred to as the temporary repatriation facility ("TRF"). The purpose is to encourage remittance of FIG which is currently held offshore. It may also encourage foreign domiciliaries to remain in the UK.

18. The Technical Note states that this will only apply where the FIG arose to the individual personally in a year when the individual was taxed on the remittance basis and resident in the UK. This would appear to exclude FIG which is deemed to arise to an individual (see for example section 735 ITA 2007). Care should therefore be taken to keep such FIG separate. It does, however, appear to include FIG which arose to persons who became deemed domiciled as a result of the 2017 changes and not merely those impacted by these most recent changes.

19. The Technical Note also makes reference to a relaxation of the mixed fund ordering rules so as to make it easier for individuals to take advantage of the TRF. Examples given are if there is FIG in a mixed fund or the taxpayer is unable to precisely identify the quantum of the FIG. This is presumably a recognition that compliance with what are complicated rules may be a constraint on remittance, particularly where record keeping is less than complete.

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20. The TRF is expected to result in an extra £15 billion, raising over £1 billion in additional tax receipts. The missing £0.8 billion presumably reflects double taxation relief which, where available, may mean an effective 0% rate.

REDUCTION IN INCOME SUBJECT TO TAX IN 2025/26

21. Individuals who move from the remittance basis to the arising basis on 6 April 2025 and are not eligible for the new 4-year FIG regime will, for 2025-2026 only, pay tax on 50% of their foreign income.

22. This reduction applies to foreign income only; it does not apply to foreign chargeable gains. For 2026-27onwards, tax will be due on all worldwide income in the normal way.

DISPOSALS AFTER 2025/26

23. Capital gains tax relief in the form of a rebasing to 5 April 2019 will apply where an individual who (i) has claimed the remittance basis (ii) was neither UK domiciled nor UK deemed domiciled by 5 April 2025 and (iii) disposes of a personally held foreign asset after 5 April 2025 that (iv) they held at 5 April 2019. An election must be made to claim the relief.

INHERITANCE TAX

24. The inheritance tax changes are subject to consultation but the stated intention is that

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excluded property which becomes comprised in a settlement prior to 6 April 2025 will remain excluded property.

25. It would appear to be the intention that property held individually which was previously excluded property will become subject to inheritance tax where the individual meets the relevant residence requirements (10 years in the UK). There has been no mention of any transitional relief in respect of such assets.

TOAA CHANGES

26. Clause 22 of the Finance (No.2) Bill 2024 (set out in full at the end of these notes) contains provisions amending the ToAA code where a transfer is made by a close company. The explanatory notes explain:

> *This clause introduces a provision to ensure that UK tax cannot be avoided where a UK resident close company, or a non-resident company that would be close if it were UK resident ("a closely-held company"), is used to avoid the transfer of assets abroad (ToAA) provisions. The provision will apply to income arising on or after 6 April 2024.*

27. Those explanatory notes go on to explain that the clause is "closing a loophole in the ToAA provisions", explaining that:

> *The ToAA legislation is a wide-ranging anti-avoidance provision designed to prevent individuals from transferring ownership of income-generating assets to an overseas individual or entity while still being capable of benefitting from the income they generate. The legislation prevents individuals from using closely-held companies to move assets into offshore structures in a way that would remain outside the scope of the ToAA provisions.*

28. This gives an impression that the legislation is aimed at preventing a company being used as a device to transfer assets overseas, thereby avoiding application of the ToAA provisions.

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It is not, however, clear that the provisions are so limited nor, given the associated operations provisions, that a provision of this type is necessary. It may, however, simply reflect a tendency to equate a company with its shareholders.

Fisher v HMRC [2023] UKSC 44

29. Surprisingly no mention is made of Fisher v HMRC [2023] UKSC 44 the result of which the clause would appear to be designed to reverse.

30. Fisher was concerned with the sale of a telebetting business by one company, Stan James Abingdon Ltd ("SJA") to another company, Stan James (Gibraltar) Ltd ("SJG"), for a market value consideration. Both companies were owned by the four members of the Fisher family (albeit in different shares).

31. The reason for the sale was that the UK telebetting market had been massively disrupted when a competitor had moved offshore and began offering bets free of betting duty. The directors of SJA had determined that it was no longer possible to run a telebetting business in the UK. Furthermore, they were advised that they could be committing a criminal offence if they were to operate the business overseas through a branch or subsidiary of SJA.

32. Of the four Fishers, three were assessed (as one was not UK resident). One of the three, Anne, was not actively involved in the decision, although she was a director of SJA.

33. HMRC argued (and the FTT and CA agreed) that although the sale was to save the

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telebetting business it was so bound up with avoiding betting duty that the motive defence was not available.

34. SJA was a long established company so there was no question of a transfer having been actually made by any of the Fishers with a view to the sale taking place. An issue was whether this mattered and it is that issue which was decided by the Supreme Court.

35. The Court first determined that the ToAA code only applied to individuals:

> *"In my judgment, however, section 739 construed as part of the overall ToAA code is limited to charging individuals who are ordinarily resident in the United Kingdom and who transfer the assets which generate the income which is then deemed to be their income under section 739(2) or which generates the capital triggering the charge under section 739(3)" (§55).*

36. As to whether a transfer by a company could be imputed to an individual:

> *"What is, however, clear is that the shareholders of a company, even if they are also the directors, are not quasi-transferors and do not procure the transfers made by the company" (§86)*

37. On this basis, the Fishers succeeded in their appeal. The transfer by SJA could not be imputed to them.

Proposed section 720A ITA 2007

38. The starting point of the new section 720A ITA 2007 is that it extends the scope of section 720 ITA 2007 by providing that:

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> *(1) The charge under section 720 also applies for the purpose of preventing the avoiding of a liability to taxation by means of a relevant transfer carried out by a closely-held company in which an individual has a qualifying interest.*

39. It applies where an individual has a "qualifying interest" in a "closely-held company". It will not therefore apply where the transferring company is held in trust.

40. It is not entirely clear how this provision meshes with section 720 and 721 ITA 2007. It would appear that the intention is that they are to apply as if references to the individual in those sections are references an individual with a qualifying interest. This would appear to mean that the individual with the qualifying interest will be liable in respect of 100% of the income arising as a result of the relevant transfer, regardless of the size of the qualifying interest. There is, however, no new provision to address apportionment of income.

41. Notably, there is nothing in the new provisions providing for apportionment of relevant income among numerous shareholders or the approach to be adopted in doing so. Presumably HMRC take the view (as they did in Fisher) that this can be dealt with under section 743 ITA 2007 at their discretion.

Closely-held company

42. A closely held company is defined in a new section 719A by reference to Part 10 CTA 2010, including a company that would be a close company if UK resident. In that respect section 439(1) to (3) CTA 2010 provides the basic definition:

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> *(1) For the purposes of the Corporation Tax Acts, a "close company" is a company in relation to which condition A or B is met.*
>
> *(2) Condition A is that the company is under the control–*
>
> *(a) of 5 or fewer participators, or*
>
> *(b) of participators who are directors.*
>
> *(3) Condition B is that 5 or fewer participators, or participators who are directors, together possess or are entitled to acquire–*
>
> *(a) such rights as would, in the event of the winding up of the company ("the relevant company") on the basis set out in section 440, entitle them to receive the greater part of the assets of the relevant company which would then be available for distribution among the participators, or*
>
> *(b) such rights as would, in that event, so entitle them if there were disregarded any rights which any of them or any other person has as a loan creditor (in relation to the relevant company or any other company).*

…

Qualifying interest

43. The term 'qualifying interest' is defined in the section 720A(3) ITA 2007:

> *(3) An individual has a qualifying interest in a closely-held company if the individual, or a nominee of the individual, is a participator in–*
>
> *(a) the closely-held company, or*
>
> *(b) the first closely-held company in a chain of two or more closely-held companies where each company in the chain is a participator in the next company in the chain, of which one such company is the closely-held company that carried out the relevant transfer.*

44. Here 'participator' takes its meaning from section 454 CTA 2010. Subsection (1) and (2) of that section provides:

> *(1) For the purposes of this Part, "participator", in relation to a company, means a person having a share or interest in the capital or income of the company.*
>
> *(2) In particular, "participator" includes–*
>
> *(a) a person who possesses, or is entitled to acquire, share capital or voting rights in the company,*

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> *(b) a loan creditor of the company,*
>
> *(c) a person who possesses a right to receive or participate in distributions of the company or any amounts payable by the company (in cash or in kind) to loan creditors by way of premium on redemption,*
>
> *(d) a person who is entitled to acquire such a right as is mentioned in paragraph (c), and*
>
> *(e) a person who is entitled to secure that income or assets (whether present or future) of the company will be applied directly or indirectly for the person's benefit.*
>
> *…*

Conditions for application

45. In addition to the basic conditions that the transfer is by a closely-held company in which an individual has a qualifying interest the section introduces two further conditions: (i) involvement in the company ("the involvement condition") and (ii) and what is referred to as the avoidance condition ("the avoidance condition"). Section 720A(2) provides:

> *(2) But the charge only applies in those circumstances if—*
>
> *(a) the individual is involved in the company, and*
>
> *(b) the avoidance condition is met.*

The involvement condition

46. The concept of being involved with the company is explained in section 720A(4):

> *(4) For the purposes of this section, an individual with a qualifying interest in a company is to be treated as being involved in the company unless the individual satisfies an officer of Revenue and Customs that neither the individual nor (in a case where the individual is not the relevant participator) the relevant participator has any direct or indirect involvement in the decision making of the company.*

47. For these purposes a "relevant participator" is defined as being either the individual or where a nominee is the participator, the nominee.

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48. The reference here is to direct or indirect involvement in the decision making of the company. While it might be assumed that the decision making of the company being referred to is that relating to the relevant transfer with which the section is concerned, the subsection is not limited in that way. It simply refers to 'the decision making of the company'.

49. Given the test in is drafted so widely a number of questions arise.

    (i) When should the involvement take place? It seems extreme to suggest that any involvement ever with a decision of the company would make a person involved with a company. What for example if an individual was actively involved but has retired before the decisions concerning the relevant transfer were made?

    (ii) What level of involvement is required? Does approving the annual accounts as shareholder suffice?

50. The position is further confused by section 720A(7) which provides:

> *(7) Any arrangements to secure that a person has no direct or indirect involvement in the decision making of a company are to be disregarded if the main purpose, or one of the main purposes, of the arrangements is to secure that the condition in subsection (2)(a) is not met.*

51. If arrangements (which is its normal wide tax meaning) are disregarded what is the consequence of that. Either the individual is involved or he/she isn't. If an individual deliberately decides not to be come a director in order to ensure that the provision does not apply, what is the consequence of disregarding that decision? It is a stretch to suggest that it means that he/she must be taken to be involved in the decision making of the

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company if he/she is not otherwise involved.

52. It may be that what the draftsman wanted to say was that the involvement condition will be treated as being met if the reason why it is not met is the existence of such arrangements. This may be clarified as the legislation makes its way through Parliament.

53. The provision perhaps makes more sense if the question of being involved with the company are addressed to being involved in relation to the decision surrounding the relevant transfer. It would be no answer for an individual to remove him/herself from the company's decision making apparatus with a view to not being involved in that particular decision. The problem is that this is not what subsection (3) says.

The avoidance condition

54. The avoidance condition is defined in section 720A(5):

> *(5) The avoidance condition is met if–*
>
> *(a) the relevant participator did not object to the making of the relevant transfer, and*
>
> *(b) it is reasonable to draw the conclusion, from all the circumstances of the case, that the relevant participator was aware, or ought reasonably to have been aware–*
>
> *(i) of the transfer, and*
>
> *(ii) that one of the direct or indirect consequences of the transfer is the avoidance of a liability to taxation.*

55. For these purposes taxation has the same wide meaning as in section 737 ITA 2007 and includes any tax under the management of HMRC.

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56. There are two elements to this, either of which will prevent ToAA from applying as a result of the company's transfer.

    (i) Firstly, it will be an answer for the relevant participator to object to the making of the relevant transfer.

    (ii) Secondly, (and this may be an answer to the problems around the involvement condition), it must be reasonable to conclude that the relevant participator was or should have been aware of both (a) the transfer and (b) that a consequence of it would have been the avoidance of liability to taxation (taxation having the same wide meaning as in section 737 ITA 2007).

57. This means that it will be an answer for a person to object to the making of the relevant transfer. In that respect, however, it is not entirely clear how the section is intended to interact with section 175 of the Companies Act 2006 which provides:

> *(1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.*
> …

58. Will it be sufficient for a director to recuse him/herself from a decision on the basis of a conflict of interest and object to the transaction by reason of that conflict? For example, in Fisher it was clearly in SJA's interest to obtain a sale price for an asset which would be worthless in several months time. Would it have been consistent with the directors fiduciary duties to forego that sale in the interests of personally avoiding a punitive tax bill?

59. Section 720A(8) contains another provision for the disregard of arrangements:

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(8) Any arrangements that would result in the avoidance condition not being met are to be disregarded if the main purpose, or one of the main purposes, of the arrangements is to secure that the avoidance condition is not met.

60. The same point about disregarding arrangements not making a lot of sense applies here.

61. Presumably one situation which this is aimed at is one where multiple directors are appointed to vote through a decision, allowing participants to vote against it. It is again difficult to see what the effect of disregarding the appointments would be in that situation. Again, this may be picked up as the legislation moves through Parliament.

Charge under section 727 ITA 2007

62. An identical provision in section 727A ITA 2007 is to be introduced for the purposes of the charge under section 727 ITA 2007.

Apportionment

63. As noted there is no provision for apportionment. This is presumably being left to HMRC's discretion under section 743 ITA 2007 (which reflects HMRC's position in Fisher)..

64. A problem here, however, is that there is an arguable issue as to whether HMRC can apportion less than 100% of the income as section 743 ITA 2007 is concerned with preventing duplication of charges. A provision expressly addressing the issue would be

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preferable rather than continuing the pretence that section 743 ITA 2007 was intended for that purpose.

Associated operations

65. A reason why the implications in Fisher were limited was the associated operations rule. Where an individual transferred assets to a company which in turn made a transfer to a third person abroad the initial transfer would in most cases be a relevant transfer as it is a transfer as a result of which (with an associated operation – the transfer by the company) resulted income becoming payable to a person abroad.

66. The introduction of the new section 720A ITA 2007 opens an argument as to whether such analysis can continue to apply. Parliament having specifically legislated for the circumstances in which transfers by companies come within the scope of the ToAA code, there must at least be an argument that it does not.

Commencement

67. Clause 22(10) contains the commencement provision for the amendments:

> *The amendments made by this section have effect in relation to income arising on or after 6 April 2024.*

68. It is surprising that the draftsman has not avoided ambiguity by expressing that the amendments apply to income arising after 6 April 2024 *regardless of when the transfer took*

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place. That would, however, seem to be the intention in referring to income rather than transfers.

Comment

69. The draft legislation is very clearly a response to HMRC's loss in Fisher. It is not, however, clear that it is needed. The issue was raised in Inland Revenue Comrs v Pratt [1982] STC 756 and has not been addressed sense. It is also notable ToAA had no impact on or application to any of the other betting firms who moved their business to Gibraltar at the same time as the Fishers. As a means of addressing these types of issues it is an arbitrary one.

70. If, however, something is needed to be done then rather than focussing on the particular case, it would perhaps be more sensible to take a step back and consider the problem in the round, and in that context determine how it is best dealt with. This is preferable to adding an additional layer of complexity to what are already complicated legislation. The current draft suggests that instead there has been a knee jerk reaction to the loss of a case which arguably should not have been brought in the first place.

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21 March 2023

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CLAUSE 22 FINANCE (NO.2) BILL 2024

22 Transfers of assets abroad

(1) Chapter 2 of Part 13 of ITA 2007 (transfer of assets abroad) is amended as follows.

(2) After section 720 (charge to tax on income treated as arising under section 721) insert—

> **"720A Transfers by closely-held companies**
>
> (1) The charge under section 720 also applies for the purpose of preventing the avoiding of a liability to taxation by means of a relevant transfer carried out by a closely-held company in which an individual has a qualifying interest.
>
> (2) But the charge only applies in those circumstances if—
>
> > (a) the individual is involved in the company, and
> >
> > (b) the avoidance condition is met.
>
> (3) An individual has a qualifying interest in a closely-held company if the individual, or a nominee of the individual, is a participator in—
>
> > (a) the closely-held company, or
> >
> > (b) the first closely-held company in a chain of two or more closely-held companies where each company in the chain is a participator in the next company in the chain, of which one such company is the closely-held company that carried out the relevant transfer.
>
> (4) For the purposes of this section, an individual with a qualifying interest in a company is to be treated as being involved in the company unless the individual satisfies an officer of Revenue and Customs that neither the individual nor (in a case where the individual is not the relevant participator) the relevant participator has any direct or indirect involvement in the decision making of the company.
>
> (5) The avoidance condition is met if—
>
> > (a) the relevant participator did not object to the making of the relevant transfer, and
> >
> > (b) it is reasonable to draw the conclusion, from all the circumstances of the case, that the relevant participator was aware, or ought reasonably to have been aware—
> >
> > > (i) of the transfer, and

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(ii) that one of the direct or indirect consequences of the transfer is the avoidance of a liability to taxation.

(6) For the purposes of subsections (4) and (5) the "relevant participator" means—

(a) in a case where the individual's qualifying interest arises as a result of a nominee of the individual being a participator in a company, the nominee, or

(b) otherwise, the individual.

(7) Any arrangements to secure that a person has no direct or indirect involvement in the decision making of a company are to be disregarded if the main purpose, or one of the main purposes, of the arrangements is to secure that the condition in subsection (2)(a) is not met.

(8) Any arrangements that would result in the avoidance condition not being met are to be disregarded if the main purpose, or one of the main purposes, of the arrangements is to secure that the avoidance condition is not met.

(9) In this section—

"arrangements" include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"taxation" has the meaning it has in section 737."

(3) After section 727 (charge to tax on income treated as arising under section 728) insert—

"**727A Transfers by closely-held companies**

(1) The charge under section 727 also applies for the purpose of preventing the avoiding of a liability to taxation by means of a relevant transfer carried out by a closely-held company in which an individual has a qualifying interest.

(2) But the charge only applies in those circumstances if—

(a) the individual is involved in the company, and

(b) the avoidance condition is met.

(3) An individual has a qualifying interest in a closely-held company if the individual, or a nominee of the individual, is a participator in—

(a) the closely-held company, or

(b) the first closely-held company in a chain of two or more closely-held companies where each company in the chain is a participator in the next company in the

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chain, of which one such company is the closely-held company that carried out the relevant transfer.

(4) For the purposes of this section, an individual with a qualifying interest in a company is to be treated as being involved in the company unless the individual satisfies an officer of Revenue and Customs that neither the individual nor (in a case where the individual is not the relevant participator) the relevant participator has any direct or indirect involvement in the decision making of the company.

(5) The avoidance condition is met if—

(a) the relevant participator did not object to the making of the relevant transfer, and

(b) it is reasonable to draw the conclusion, from all the circumstances of the case, that the relevant participator was aware, or ought reasonably to have been aware—

(i) of the transfer, and

(ii) that one of the direct or indirect consequences of the transfer is the avoidance of a liability to taxation.

(6) For the purposes of subsections (4) and (5) the "relevant participator" means—

(a) in a case where the individual's qualifying interest arises as a result of a nominee of the individual being a participator in a company, the nominee, or

(b) otherwise, the individual.

(7) Any arrangements to secure that a person has no direct or indirect involvement in the decision making of a company are to be disregarded if the main purpose, or one of the main purposes, of the arrangements is to secure that the condition in subsection (2)(a) is not met.

(8) Any arrangements that would result in the avoidance condition not being met are to be disregarded if the main purpose, or one of the main purposes, of the arrangements is to secure that the avoidance condition is not met.

(9) In this section—

"arrangements" include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"taxation" has the meaning it has in section 737."

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(4) In section 721(1), after "720(1)" insert "or 720A(1)".

(5) In section 728, after "727(1)" insert "or 727A(1)".

(6) After section 719 (meaning of "associated operation") insert—

"**719A Other definitions**

In this Chapter—

"closely-held company" means—

(a) a close company for the purposes of the Corporation Tax Acts (see Part 10 of CTA 2010), or

(b) a company that would be a close company if section 442(a) of CTA 2010 were ignored (non-UK resident company not to be treated as close);

"nominee", in relation to an individual, means a person—

(a) who possesses any rights or powers on behalf of the individual, or

(b) who may be required to exercise any rights or powers on the individual's direction or behalf;

"participator" is to be construed in accordance with section 454 of CTA 2010."

(7) In section 749 (restrictions on particulars to be provided by relevant lawyers)—

(a) in subsections (2) and (4), for "a body corporate to which subsection (6) applies" substitute "a closely-held company whose business does not consist wholly or mainly of the carrying on of a trade or trades", and

(b) omit subsection (6).

(8) In section 750 (restrictions on particulars to be provided by banks), in subsection (3), for "a body corporate to which section 749(6) applies" substitute "a closely-held company whose business does not consist wholly or mainly of the carrying on of a trade or trades".

(9) In section 751 (the tribunal's jurisdiction on appeals), before paragraph (a) insert—

"(za) section 720A(4) or 727A(4) (whether individual treated as involved in closely-held companies),".

(10) The amendments made by this section have effect in relation to income arising on or after 6 April 2024.

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NON-DOMS AFTER THE BUDGET

CASE STUDIES / PLANNING

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Case study 1

1. A is UK non-resident, and has never been UK resident before. A is going to move to the UK in May 2024, so as to become UK resident. However, A will not become UK domiciled, because the reason for moving to the UK is that A's employer is wanting A to spend five years in its London office before returning to A's existing office.

2. In 2024/25, A will be UK resident for part only of the year, under the split year rules. A will be entitled to split-year treatment for income tax and capital gains tax purposes. A will have to decide whether to claim the remittance basis. This is as per the existing rules. The choice should be fairly straightforward: A should claim the remittance basis. There is no charge in the (split-) year of arrival in the UK.

3. From 6th April 2025, A will be within the new FIG regime. So any foreign income and gains in 2025/26, 26/27 and 27/28 will be exempt.

4. What about 28/29? The technical note says:

   'Qualifying individuals will not pay tax on FIG ***arising in the first 4 tax years after*** becoming UK tax resident'.

5. A arrives in the UK in tax year 24/25. So if 'first 4 tax years after' means 'first 4 full tax years after', then 28/29 should also see A within the FIG regime.

6. It probably will mean this. The Technical Note says:

   'The Statutory Residence Test will be used to determine tax residence for any one tax year. Treaty residence or non-residence and ***split years will be ignored***.' On its face, this seems to say that any split year is just left out of account in working out whether an individual has been UK resident for four tax years. On the other hand, it might mean that the fact that a year is split will be ignored, so that it is simply counted as a tax year of residence. But the legislation will doubtless clarify the position. In any event, if there is a choice about whether to become UK resident in (say) March 2025 or May 2025, it's probably best to go for May.

7. There is a lack of clarity as to overseas workday relief. The technical note says that overseas workday relief will be available for employees 'who opt to use the new 4-year FIG regime'. In other words, if A does not make a claim for the FIG regime to apply, then A gets no overseas workday relief. So A must not only be eligible for the new FIG regime, but must also claim it, even if, apart from employment income within the overseas workday relief provisions, A has no overseas income or gains.

8. Apart from that, overseas workday relief is going to be available only 'for the first 3 tax years of UK residence'. Again, the first question is whether this means 'first 3 full tax years' or not.

9. Planning points:

10. If A has latent gains in non-UK assets, and the assets cannot be realised before A becomes non-UK resident, then consider whether to delay realising the assets until 2025/26 (or later, until 28/29 at the latest). This is because foreign gains realised within 24/25 are subject to the remittance basis, and so will either have to stay outside the UK,

or be taxed at 12% if remitted in 25/26 or 26/27, or be taxed at the full CGT rate if remitted thereafter. This not only creates a tax charge, but also requires additional record-keeping.

11. The same applies to income. So, for example, consider delaying distributions from any companies until 25/26; and consider using money in an interest-bearing bank account to purchase a bond that will pay mature / pay interest not until 25/26.

Case study 2

1. Same as case study 1, except that A was resident in the UK up till 10th June 2017 (so non-UK resident for more than five years on returning in May 2024).

2. A gets the remittance basis in 2024/25. No gains / income received while non-resident crystallised on return. Because A has been non-resident for only 7 years, won't get new regime from 6th April 2025 onwards. So best to accelerate any gains / income in 2024/25 to before becomes UK resident; and in any event realise them before 6th April 2025. Then either keep them offshore, or bring them onshore in 2025/26 or 26/27, to get benefit of transitional rules.

3. Change this slightly so that A UK resident up to 10th June 2019 (so will have been non-UK resident for less than five calendar years on returning in May 2024). A is in temporary non-resident regime in tax year of return, 2024/25.

4. A gets remittance basis until 5th April 2025. But not within new FIG regime, because was not non-UK resident for 10 years before arriving in May 2024.

5. The remittance basis is useful, because all offshore gains made during the temporary period of non-residence, and income other than employment income, are deemed to be made in the year of return, but if kept offshore are out of UK tax. They can then be brought in (if needed) in 2025/26 or 26/27 to get taxed at the transitional 12%.

Case study 3

1. Same three scenarios as above, but A is UK domiciled (as e.g. A has grown up and started career in UK, but been away for a period of working abroad, and now coming back to UK).

2. Domicile is important in year of return 24/25, but will be irrelevant to new regime.

3. So there is no remittance basis claim in 24/25.

4. But first scenario – coming to UK after 10 years non-residence – gives entry to the new FIG regime for 2025/26 onwards, for four tax years.

5. Second and third scenarios – where A has been in the UK before, and the period of non-residence is less than ten years – the new FIG regime is unavailable.

6. So if UK domiciled, and more than 10 years non-residence, then aim to realise income or gains from 6th April 2025 onwards. If A can't do that, then before coming to the UK in May 2024, though in the third scenario, where temporary non-residence rules apply, that will not achieve much.

Case study 4: inheritance tax

1. A is UK resident, but neither actually domiciled nor deemed domiciled in the UK.

2. If A has been UK resident for ten years or more in 2024/25 (but fewer than 15, as would otherwise be deemed domiciled), A is liable to IHT only on UK assets. But from 6th April 2025, A will become liable to UK IHT on A's worldwide assets where held directly. If A's comes to have been UK resident for ten years only in 2025/26 or later, then it's only from the ten year anniversary of residence beginning (unless the rule is ten full tax years, in which case it is only at the end of the tax year in which the 10th anniversary falls).

3. If A then ceases being UK resident, A remains liable to UK IHT on worldwide assets for ten years thereafter; again, it remains to be seen whether it's ten calendar years or only ten full tax years. That seems a bit excessive, but I dare say it will be tempered to an extent by double taxation conventions, giving primary taxing rights to the state of actual residence at death.

4. The arrangements are to be consulted on, but I'd expect that, if A become UK resident once more within the ten-year tail, A will be liable to UK IHT on worldwide assets until (if ever) ceasing to be UK resident again, and a further ten years expiring (rather than there being any gap between the date the first ten-year tail is over, and the tenth anniversary of A taking up UK residence again).

5. Trusts that are already excluded property will remain such, but from 2025/26 onwards being UK non-domiciled won't count as sufficient to meet the settlor condition for an excluded property trust. But it looks like an excluded property trust will be able to be created by a new resident during the ten years up till becoming liable to UK IHT on worldwide assets.

6. Planning points:

7. If a non-dom client has already been resident for ten years, or will have been by 6th April 2025, consider whether to set up an excluded property trust now, or at least pre-6th April 2025. Otherwise, then the client has until the tenth anniversary of arrival to set up such a trust. But the latter depends on the legislation actually enacted, so better to set up sooner as a non-dom if possible.