THE TEMPORARY REPATRIATION FACILITY AND HISTORIC INCOME

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1. Introduction

1.1. There are many issues arising out of the Clauses in FB 2025 to cause consternation for non-UK domiciliaries and their advisors. However, I am delighted that I get to talk about one of the more helpful parts of the proposed regime: the temporary repatriation facility.

1.2. In this talk I am going to talk about the following:

1.2.1. The temporary repatriation facility ("**TRF**")

1.2.2. Operation of the charge to tax

1.2.3. TRF and settlements

1.2.4. Mixed funds

2. The TRF

2.1. The overview of the TRF in the "Reforming The Taxation of Non-UK Individuals" document (the "**Technical Note**") published alongside the Budget explains:

> 103. From 6 April 2025 a new TRF will be introduced to **encourage individuals to remit to the UK their FIG[2] which arose in earlier periods and were not taxed in the UK** in previous years following a claim for the remittance basis.
> 104. The **TRF will be available for 3 tax years, from 6 April 2025**. Designated amounts will be **charged to tax at a rate of 12% in tax years 2025 to 2026 and 2026 to 2027 with the rate rising to 15% in tax year 2027 to 2028** (the TRF charge).
> 105. The **TRF charge will be payable on the designation, but once a designation has been made, no further UK tax will be payable, regardless of the tax year of remittance**. There is no requirement for amounts to be remitted during the tax year in which it is designated, or in any later tax year. A "remittance" takes its ordinary meaning in line with section 809L Income Tax Act (ITA) 2007.
> 106. To use the **TRF taxpayers will make a designation on an amount, which can include amounts derived from FIG on which the remittance basis has been claimed**. It will not be possible to set any foreign tax paid against the TRF charge because designated amounts are treated as being net of tax.
> 107. **Individuals will be able to make a designation on FIG that they remit in the year of the claim and also on amounts that they may wish to remit in the future**.
> 108. Where a TRF charge is paid with designated amounts no further tax charge will arise. Unlike remittance basis charge payments, **where a TRF charge is paid out of undesignated FIG, this will constitute a taxable remittance, even where the payment is made direct to HMRC by cheque or electronic transfer**.

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[2] FIG is used in the Technical Note to refer to "foreign income and gains". What this constitutes in the context of the TRF is discussed further below.

(Emphasis added).

2.2. This adequately summarises the outline of the regime. Unusually, the terms of the TRF are fairly straightforward, as currently drafted. The rules apply in the context of the withdrawal of the remittance basis. The withdrawal of the remittance basis is made by FB 2025, Clause 4, which provides:

> (1) Amendments made by paragraph 1 of Schedule 2 have the effect that the remittance basis is not available for tax year 2025-26, or for subsequent tax years.
> (2) But provisions relating to the remittance of income and gains will continue to have effect in relation to income and gains subject to the remittance basis in previous tax years.
> (3) Other provision is made by that Schedule (including provision amending the Income Tax Acts and TCGA 1992)—
> a. In consequence of ending the availability of the remittance basis,
> b. clarifying the circumstances in which amounts are remitted (see paragraph 5), and
> c. in connection with otherwise ending the relevance of domicile to income tax and capital gains tax.
> (4) Subject to subsection (5), the provision made by that Schedule has effect for the tax year 2025-26 and subsequent tax years.
> (5) The amendments made by paragraphs 7 and 8 of Schedule 2 (residence of personal representatives) have effect where the deceased person died on or after 6 April 2025

2.3. The TRF is found in Schedule 3. Paragraph 1 provides:

> (1) This Part of this Schedule sets out a charge on amounts of qualifying overseas capital of individuals previously subject to the remittance basis.
> (2) The charge is to be known as the temporary repatriation facility charge, and is referred to in this Schedule as the "TRF charge".
> (3) Paragraphs 2 to 4 set out when amounts are, or are to be treated, as qualifying overseas capital
> …

2.4. Thus there are – at the outset – the following requirements:

2.4.1. There must be an amount of qualifying overseas capital ("**QOC**");

2.4.2. Of an individual;

2.4.3. Who previously qualified for the remittance basis.

2.5. These are not the only requirements. Paragraph 1 continues:

> …
> (3) Paragraphs 2 to 4 set out when amounts are, or are to be treated, as qualifying overseas capital.
> (4) Amounts of qualifying overseas capital of an individual are subject to the TRF charge only if the individual designates them in accordance with this Part of this Schedule.
> (5) An individual may only designate qualifying overseas capital if the individual was subject to the remittance basis for at least one tax year (being a tax year before the tax year 2025-26).

(6) An individual designates qualifying overseas capital by making an election (a "designation election") in a return for the tax year 2025-26, 2026-27 or 2027-28 (see paragraph 5 for further provision about designation elections).
(7) A designation election may only be made in a return if, for the tax year to which the return relates, the individual is UK resident for the purposes of income tax or capital gains tax (see Schedule 45 to FA 2013).
…
(11) For the purposes of this Part of this Schedule—
(a) an individual is subject to the remittance basis for a tax year—
(i) in relation to the tax years 2008-09 to 2024-25, if any of sections 809B, 809D or 809E of ITA 2007 apply to the individual for that year, or
(ii) in relation to any tax year before 2008-2009, if any income or gains of the individual for that year were subject to the remittance basis (including any income or gains that would have been regarded as arising in the tax year but were not as a result of the application of the remittance basis), and
(b) "return" means a return under section 8 of TMA 1970 (personal return for income tax and capital gains tax).

3. **<u>Designation</u>**

3.1. Thus in addition, in order to use the TRF there are the following additional requirements:

3.1.1. The individual must designate the relevant QOC;

3.1.2. An individual is only eligible to designate amounts of income and capital as QOC where they were subject to the remittance basis for one year prior for at least one tax year prior to the year 2025/26;

3.1.3. Designations can only be made in tax returns for tax years 25/26, 26/27 and 27/28 (so, a three year period in which it can be used, however, the rate payable on QOC designated in 27/28 is higher than in the previous two years – see further below);

3.1.4. The individual must be resident under the SRT in order to make a claim to designate QOC and claim the reduced tax rate.

3.2. Paragraph 5 explains the nature of the designation:

(1) A designation election for a tax year must be made before the end of the period of 12 months beginning with 31 January after the end of that tax year.
(2) The designation must—
(a) set out the total amount designated,
(b) identify which (if any) of the amounts designated have been remitted in the tax year to which the return relates.
(3) An individual may designate an amount where it has not yet been determined whether the amount is qualifying overseas capital.
(4) An amount designated that is determined to not be qualifying overseas capital is to be nevertheless treated as designated qualifying overseas capital, other than for the purpose of paragraph 7 (exemptions).
(5) Where an amount is designated, it is treated as designated qualifying overseas capital from the beginning of the tax year to which the return in which it is designated relates.
(6) An individual who makes a designation election must keep a record of each amount designated

3.3. Sub paragraph (3) allows for the designation of amounts where the exact amount of income and gains that are in fact capable of being QOC is not known, though only amounts that are QOC can in fact be exempted. However, the amount is treated for other purposes of QOC. It is therefore helpful if possible to identify the exact amount. In relation to designating the QOC, the Technical Note says:

> 114. To make a designation under the TRF, an election must be made in a Self Assessment return for the relevant tax year. As the TRF will operate for 3 tax years, the relevant deadlines will be 31 January 2027, 2028 and 2029 respectively. An election under the TRF must be made no later than 31 January in the second tax year after the relevant tax year to which the election relates.
> 115. **After a designation has been made, individuals will not be required to declare remittances of the amount designated in subsequent years**.
> 116. Individuals will be **required to keep their own records of the designations on which the TRF charge has been paid**, whether made from a mixed fund[3] or a fund containing just one source. Individuals will not be required to submit these records to HMRC, unless they are needed as part of a compliance check.
> 117. Where an individual is unable to identify the content of a mixed fund, it will still be possible to make use of the TRF without having to identify each source of FIG contained within the fund.
> 118. Individuals can choose the amount they would like to designate and there is no obligation for an individual to designate the total of their unremitted FIG, meaning that **partial designations can be made**. **The designation can be of more than the individual's total unremitted FIG but the amount designated will be the amount charged at the TRF rate.**
> 119. Once a designation has been made, the **amounts will be available for remittance in priority to all other income and gains held overseas**. A designation will also impact the order in which remittances from a mixed fund are made, this is covered further below.
> 120. A designation under the TRF must be made by the individual that would be chargeable were the amounts to be remitted. **It will not be possible to make a designation on behalf of a third party**.
>
> (Emphasis added).

3.4. Presumably the highlighted portion of paragraph 113 is based on paragraph 5(3). However, paragraph 113 is not wholly consistent with the contents of that Clause.

3.5. The Technical Note also states:

> 126. Designations will not be limited to cash held overseas. Individuals that have reinvested income or the proceeds received from capital gains, received whilst they claimed the remittance basis in previous years, could be in a position where their funds are not readily available. As such it will be possible to make designations on the amounts used to purchase non-liquid assets. Designations will not be impacted by a fall in this asset's value below the original amount of any income or gain invested. A claim to rebase an asset to its 2017 value for CGT (see paragraphs 98 to 102) will also not impact the amount of the original investment that can be designated. As with any other designation, the designated amounts will rise to the top of the ordering rules and will be remitted in priority to any other funds contained within a purchased asset when disposal proceeds are remitted.

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[3] Mixed funds are discussed further below.

3.6. Finally it deals with designation of a joint account, saying:

> 129. The TRF will apply to amounts in joint accounts, or jointly held property (for example, artwork acquired using FIG).In cases where assets or accounts are held jointly by one or more individuals that have claimed the remittance basis, it will be necessary to analyse the account in order to determine which transfers from the mixed fund are taxable remittances, and to determine which account holder is liable to pay any tax due using the most pragmatic approach that best reflects the reality of the situation

3.7. There is obviously room for a great deal of disagreement with HMRC around what constitutes the "… *most pragmatic approach that best reflects the reality of the situation*".

4. **<u>The definition of QOC</u>**

4.1. The key definition in the TRF is that of QOC. Paragraph 2 provides for the "main cases":

> (1) An amount of capital is "qualifying overseas capital" of an individual if it falls within sub-paragraph (2), (5) or (8).

4.2. The first of these primarily in sub-paragraph (2), is the following:

> …
> (2) An amount of capital falls within this sub-paragraph if—
> (a) it is an amount that arose in the tax year 2024-25 or an earlier tax year as income or as a gain,
> (b) the amount has not been remitted to the United Kingdom, and
> (c) the amount, if remitted to the United Kingdom, would have the effect mentioned in sub-paragraph (3)(a) or (b).
> (3) That effect is that—
> (a) the individual becomes chargeable to income tax by reference to the amount remitted in accordance with section 22, 26, 41F or 554Z9 of ITEPA 2003 or section 832 of ITTOIA 2005 (income charged on remittance basis), or
> (b) a gain is treated as accruing to the individual by reference to the amount remitted in accordance with paragraph 1(2) of Schedule 1 to TCGA 1992 (gains charged on remittance basis)
> …

4.3. In short, the provisions referred to relate to the following types of income (when subject to the remittance basis):

4.3.1. General earnings that are chargeable overseas earnings;

4.3.2. General earnings of an employee where the taxpayer has recently arrived in the UK or is returning after a significant period of non-residency;

4.3.3. Amounts in relation to employment-related securities that are treated as employment income where the international mobility conditions are met;

4.3.4. Value of a relevant step for ITTOIA, Part 7A and the relevant employment is foreign[4]; and

4.3.5. Relevant foreign income of a remittance basis taxpayer.

4.4. The gains in question are those arising from a foreign asset and that are remitted to the UK.

4.5. The relevant point at which the amount in question must not have been remitted is the end of the relevant tax year (see Schedule 3, paragraph 2(4)).

4.6. The second "main case" is in paragraph 2(5), which provides:

> (5) An amount of capital falls within this sub-paragraph if—
> (a) it is an amount that arose in the tax year 2024-25 or an earlier tax year as income or as a gain,
> (b) the amount is remitted to the United Kingdom in the tax year 2025-26, 2026-27 or 2027-28, and
> (c) that remittance has the effect mentioned in sub-paragraph (3)(a) or (b).
> (6) An amount that is qualifying overseas capital falling within sub-paragraph (5) (and that has not previously been designated as result of the amount falling within sub-paragraph (2)) may only be designated in a designation election for the tax year in which it was remitted

4.7. Thus the first two "main cases" are foreign income and gains that have been relevantly remitted and as such would be chargeable and amounts not remitted that would be so treated. Sub paragraph 7 provides:

> (7) For the purposes of sub-paragraphs (2)(c) and (5)(c), a remittance is to be treated as having the effect mentioned in sub-paragraph (3)(a) or (b) if it would have that effect ignoring—
> (a) paragraph 4 (exemption for designated qualifying overseas capital),
> (b) section 279 of TCGA 1992 (foreign assets: delayed remittances),
> (c) section 842 of ITTOIA 2005 (claim for relief for unremittable income),
> (d) section 809VA of ITA 2007 (business investment relief), and
> (e) section 809X of that Act (exempt property)

4.8. This ensures that income of a similar kind already subject to a form of relief is not thereby excluded from the TRF.

4.9. The third case is set out in sub paragraph 8, which provides:

> (8) An amount of capital falls within this sub-paragraph if—
> (a) it does not fall within sub-paragraph (2) or (5),
> (b) it was held by the individual immediately before 6 April 2025,
> (c) it was situated outside the United Kingdom—
> (i) immediately before it was most recently acquired by the individual before that date, and
> (ii) throughout the period beginning with the time referred to in sub-paragraph (i) and ending with that date.

[4] The conditions in question are complex, and it is strongly suggested that ITTOIA, section 554Z9 is read in full before it is relied upon (of course this should always be done, however, it is particularly so in the case of complex provisions like this one).

5. **<u>The charge to tax</u>**

5.1. Paragraph 1 continues:

> (8) The amount of the TRF charge on qualifying overseas capital designated by an individual is
> (a) in the case of amounts of qualifying overseas capital designated in a return for the tax year 2025-26 or 2026-27, the amount equal to 12% of the amount of that capital, and
> (b) in the case of amounts of qualifying overseas capital designated in a return for the tax year 2027-28, the amount equal to 15% of the amount of that capital
> …

5.2. This is subject to:

5.2.1. Application of exemptions and reliefs for income tax and capital gains in Part 2 of the Schedule; and

5.2.2. Amendments and modifications to rules for remittances where QOC has been designated.

5.3. Where there is QOC a variety of exemptions and reliefs apply. Schedule 3, paragraph 7 provides:

> (1) No liability to income tax arises on the remittance of an amount of designated qualifying overseas capital.
> (2) No liability to income tax arises on an amount of income treated as qualifying overseas capital (as a result of the application of paragraph 4) if the amount is designated.
> (3) This paragraph has effect for the tax year 2025-26 and subsequent tax years

5.4. In relation to gains, paragraph 8 provides:

> (1) No gain is treated as accruing under paragraph 1(2) of Schedule 1 to TCGA 1992 on the remittance of an amount of designated qualifying overseas capital
> (2) Sub-paragraph (3) applies where—
> (a) chargeable gains are treated as accruing to an individual in a tax year under section 87(2) of TCGA 1992 as a result of a capital payment made to an individual by the trustees of a settlement, and
> (b) an amount of that capital payment is qualifying overseas capital that has been designated by the individual.
> (3) The gains are to be reduced by the amount of that designated qualifying overseas capital.
> (4) Sub-paragraph (5) applies where—
> (a) an individual is charged to capital gains tax by virtue of the matching (under section 87A of TCGA 1992) of a capital payment with the section 1(3) amount for the tax year 2024-25 or any earlier tax year,
> (b) section 91(2) of TCGA 1992 (increase of tax where capital payment matched to section 1(3) amount for earlier tax year) would (ignoring sub-paragraph (5)) apply in relation to the capital payment mentioned in paragraph (a),
> (c) an amount of a capital payment (which may or may not be the payment mentioned in paragraph (a)) is qualifying overseas capital that has been designated by the individual, and

(d) the amount designated is qualifying overseas capital as a result of the fact it would, in accordance with paragraph 3(1)(c), be matched with the section 1(3) amount mentioned in paragraph (a).
(5) Section 91(2) of TCGA 1992 does not apply to capital gains tax payable by the individual in respect of so much of the capital payment mentioned in sub-paragraph (4)(a) as is matched with the amount of the section 1(3) amount as would also, in accordance with paragraph 3(1)(c), be matched with the amount of a capital payment mentioned in sub-paragraph (4)(c).
(6) In sub-paragraphs (4) and (5) "section 1(3) amount" has the meaning it has in section 87 of TCGA 1992.
(7) This paragraph has effect for the tax year 2025-26 and subsequent tax years

5.5. The charge is paid through the income tax system. Paragraph 6 provides:

(1) An amount of designated qualifying overseas capital is chargeable to the TRF charge for the tax year to which the return in which it is designated relates.
(2) Amounts of TRF charge are to be charged as if they were amounts of income tax.
(3) Section 23 of ITA 2007 (calculation of income tax liability) applies in relation to a person liable to the TRF charge as if paragraph 1(8) were included in the lists of provisions in section 30(1) of that Act (amounts of tax added at Step 7).
(4) For the purposes of the collection and management of the TRF, all other enactments applying generally to income tax apply to the TRF charge.
(5) Those enactments include—
(a) those relating to returns of information and the supply of accounts, statements and reports,
(b) those relating to the assessing, collecting and receiving of income tax,
(c) those conferring or regulating a right of appeal, and
(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law of any part of the United Kingdom.
(6) But section 59A of TMA 1970 (payments on account of income tax) does not apply in relation to amounts of TRF charge.
(7) For the purposes of section 12B of TMA 1970 (as applied as a result of sub-paragraph (4)), the records required to be kept as a result of paragraph 5(6) are to be regarded as records that must be kept for the purposes of enabling an individual to make and deliver a correct and complete return

6. <u>The TRF and settlements</u>

6.1. Certain amounts chargeable on individuals under anti-avoidance provisions – such as TCGA, section 87 and 87A. Schedule 3, paragraph 3 provides:

(1) This paragraph applies where—
(a) an individual—
(i) is the **beneficiary of a settlement**, and
(ii) **receives a capital payment from the trustees in the tax year 2025-26, 2026-27 or 2027-28**,
(b) section 87 of TCGA 1992 applies to the settlement for that tax year, and
(c) under section 87A of that Act (if it applied also for this purpose) **the capital payment would be matched (in whole or in part) with the section 1(3) amount for the tax year 2024-25 or any earlier tax year if the section 1(3) amount for each tax year after the tax year 2024-25 were nil**.
(2) So **much of the capital payment as would be matched with the section 1(3) amount for the tax year 2024-25 or an earlier tax year in accordance with sub-paragraph (1)(c) is an amount of qualifying overseas capital of the individual**.

(3) In this paragraph—
"section 1(3) amount" has the meaning it has in section 87 of TCGA 1992;
"settlement" is to be construed in accordance with section 68A of that Act.

(Emphasis added).

6.2. When will this apply? It should apply when:

6.2.1. There is a beneficiary of a settlement;

6.2.2. The capital payment is received in one of the years to which the TRF applies;

6.2.3. The capital payment would be matched with the section 1(3) amount for 24/25 or an earlier year (i.e. years to which the previous regime applies) (there is a legal fiction applied in determining this that there is no section 1(3) amount in the current tax year); and

6.2.4. The amount of the capital payment that would be matched with the section 1(3) amount for the non-TRF tax year is treated as QOC.

6.3. Schedule 3, paragraph 4 provides:

(1) This paragraph applies—
(a) where an individual is treated as having an amount of income as a result of section 643A of ITTOIA 2005 (benefits paid out of protected foreign-source income or transitional trust income) for any of the tax years 2025-26, 2026-27 or 2027-28,
(b) where an individual would have been treated as having an amount of income as a result of any other provision of Chapter 5 of Part 5 of ITTOIA 2005 (settlements: amounts treated as income of settlor or family) in the tax year 2024-25 or an earlier tax year but was not only as a result of the application of section 648(3) of that Act (relevant foreign income treated as arising under settlement only if and when remitted), or
(c) where—
(i) an individual is treated as having an amount of income for any of the tax years 2025-26, 2026-27 or 2027-28 as a result of section 732 of ITA 2007 (individuals receiving a benefit as a result of relevant transactions),
(ii) under section 735A of that Act (if it applied also for this purpose) that amount would be matched with relevant income that arose in the tax year 2024-25 or an earlier tax year, and
(iii) that amount would have been treated as relevant foreign income of the individual if it had been treated as accruing in the tax year 2024-25 and the individual had been subject to the remittance basis for that tax year.
(2) An amount of income falling within paragraph (a), (b) or (c) of sub-paragraph (1) is to be treated as an amount of qualifying overseas capital of the individual.
(3) An amount of income treated as qualifying overseas capital falling within sub-paragraph (1)(a) or (c) may only be designated in a return for the tax year in which the income was treated as arising to the individual
(4) For the purposes of this paragraph "relevant foreign income" has the meaning it has in the Income Tax Acts.

6.4. This paragraph deals with several things:

6.4.1. Income to which ITTOIA, section 643A applies (the part of the settlement provisions that addressed benefits form protected foreign source income or transitional trust income[5]);

6.4.2. Amounts of income chargeable to tax under the settlement provision on the settlor but which were not chargeable because the settlor was a remittance basis taxpayer;

6.4.3. Where there is income arising in 24/25 or earlier that is matched with a payment to a beneficiary under ITA, section 732 if it would have been treated as relevant foreign income if it is treated as accruing in 24/25 and the individual had been a remittance basis payer for that year.

6.5. These deal with the effects of the remittance basis on the settlement and transfer of asset abroad regimes. Their intended effect is to ensure that amounts that have not previously been charged under these regimes because of the domicile status of the settlor in question are now brought within the TRF.

7. **Nominated income rules**

7.1. These are disapplied in the TRF years. Paragraph 9 provides:

> Section 809I of ITA 2007 (remittance basis charge: income and gains treated as remitted) does not apply for a tax year in relation to an individual if the tax year is tax year 2025-26, 2026-27 or 2027-28 and—
> (a) the individual makes a designation of qualifying overseas income for that tax year, or
> (b) the individual has made a such a designation for a previous tax year

8. **Mixed funds rules**

8.1. The mixed fund rules are modified by the TRF. The Technical Note explains:

> 121. Where a TRF election is made, the mixed fund ordering rules (section 809Q ITA 2007) will be modified in two ways.
> (1) Designated amounts will automatically rise to the top of the mixed fund ordering and will always be treated as remitted to the UK in priority to any other amounts, regardless as to which year these amounts relate.
> (2) Rather than a transaction-by-transaction approach, when analysing accounts containing designated amounts, it will be possible to use an annualised approach for the TRF period. Individuals will be able to review their overseas accounts at the end of the year and accumulate their total remittances and overseas transfers which are deemed to take place on 5 April (including for accounts which closed before the end of the tax year).

8.2. I do not set out the legislation for these amendments. This is because those using mixed funds are likely to wish to take advantage of the provisions that provide for nomination of a "TRF capital account". ITA, section 809ZRB provides for nomination of a QOC account. It provides:

> (1) An individual may by notice to the Commissioners nominate an account to be a TRF capital account (and more than one nomination may have effect at any time).

[5] These are both former regimes dealing with trusts. The protected trusts regime is being abolished with these changes, and this allows formerly protected income to be part of the TRF.

(2) The notice must specify the qualifying date for the account
(3) "The qualifying date" for the account is the first date on which there is paid into the account sums falling within subsection (4) which (in total) are more than £10.
(4) A sum falls within this subsection if it is TRF capital.
(5) The individual may withdraw the nomination by giving a further notice to the Commissioners, specifying the date with effect from which the nomination is withdrawn.
(6) A notice under subsection (1) or (5) must be in writing and include such information as the Commissioners may reasonably require.
(7) A notice under subsection (1) or (5) must be given no later than
(a) 31 January in the tax year following the tax year in which falls, as the case may be—
(i) the qualifying date for the account, or
(ii) the date with effect from which the nomination is withdrawn, or
(b) such later date as the Commissioners may allow.
(8) If an individual nominates an account under this section, the account is a "TRF capital account" of the individual throughout the period
(a) beginning with the qualifying date, and
(b) ending with the date before the earliest of the following dates—
(i) the date on which the account is closed or ceases to be an ordinary bank account held by and for the benefit of the individual (alone or jointly with others);
(ii) the date with effect from which the nomination is withdrawn under this section;
(iii) 6 April in a tax year in which there is a breach of the TRF deposit rule which is not remedied or cannot be remedied
(9) The account is not to be a TRF capital account at all if
(a) at any time on the qualifying date, the account is not an ordinary bank account held by and for the benefit of the individual (alone or jointly with others), or
(b) immediately before the qualifying date, the account has a credit balance of more than £10
(10) Where the account has a credit balance immediately before the qualifying date (which must be £10 or less), that balance is to be treated as TRF capital for the purposes of this Chapter
(11) Where interest is payable on TRF capital held in the TRF capital account, any such interest paid into the account is to be treated as TRF capital for the purposes of this Chapter
(12) The account is not to be a TRF capital account at all if the qualifying date falls in a tax year in which there is a breach of the TRF deposit rule which is not remedied or cannot be remedied
(13) Subsection (8)(b)(iii) or (12) (as relevant) is to be ignored if the breach occurs on or after a date falling within subsection (8)(b)(i) or (ii)
(14) For the purposes of this section an account is an "ordinary bank account" if it is a cash account in a bank (whether a current or savings account) where sums standing to the credit of the account from time to time represent a debt owed by the bank to the account-holder
(15) In this section, and in sections 809RZC and 809RZD, a reference to anything "paid into" an account includes anything credited to the account by whatever means.

8.3. This means that an account can be established to hold QOC. However, it appears to be the case that it cannot be an existing account (unless one with less than £10 in it) since it must have no more in it than that at the date of nomination (the "qualifying date"). The conditions are not difficult to fulfil or decipher, however, they do preclude the nomination of a non-liquid account, since only cash accounts can be TRF capital accounts.

8.4. ITA, section 809RZA makes provision for transfer to such accounts, providing:

> (1) Subsection (2) applies to a transfer made from a mixed fund if
> (a) it is made from a mixed fund that contains TRF capital,
> (b) the transfer is to a TRF capital account,
> (c) the amount of the transfer does not exceed the amount of TRF capital in the mixed fund at the time of the transfer.
> (2) The transfer is to be treated as a transfer of TRF capital.
> (3) Where subsection (2) would apply to a transfer but does not because of paragraph (c) of subsection (1)
> (a) that transfer is to be treated as two separate transfers occurring one immediately after the other, and
> (b) the first of those transfers is to be treated as being in the amount of TRF capital in the mixed fund (and accordingly subsection (2) will apply to that deemed transfer but not the second, which may result in the TRF capital account ceasing to be a TRF capital account).
> (4) Section 809RZB makes provision about the nomination of an account as a TRF capital account (and see sections 809RZC and 809RZD for the effect of making a transfer that contains amounts that are not TRF capital)

8.5. Thus there is a need to clearly identify the amount of QOC in the mixed fund before making the transfer, since making a transfer without this information risks losing the identity of the account that it is transferred to as a "TRF capital account". ITA, section 809RZC will provide:

> (1) There is a breach of the TRF deposit rule if one or more prohibited sums are paid into a TRF capital account on the qualifying date or any day after the qualifying date.
> (2) A breach of the TRF deposit rule is remedied if, within 30 days beginning with the day on which the prohibited sums are paid into the account, the required amount is transferred out of the account by way of a single one-off qualifying transfer.
> (3) A transfer is "qualifying" if it does not result in the remittance of any amount to the United Kingdom.
> (4) "The required amount" is an amount equal to the total of the prohibited sums paid into the TRF capital account on the day of the breach.
> (5) If there are 2 days on which the TRF deposit rule is breached in any tax year, subsection (2) does not apply to any breach on any subsequent day in the tax year (and accordingly any breach occurring on any day after the second day in the tax year on which there has been a breach cannot be remedied).
> (6) A "prohibited sum" is anything other than a sum that is TRF capital.

8.6. This is unnecessarily complicated. However, it can be summarised as follows:

8.6.1. There is a breach if anything other than TRF Capital is paid into the account;

8.6.2. There is a grace period of 30 days in which such breach can be remedied by the transfer out of an amount representing the prohibited sum, that does not result in that amount being remitted to the UK; however,

8.6.3. The option of remedy is only available twice in any one tax years. A third breach is incapable of remedy[6].

8.7. ITA, section 809ZRD provides:

[6] I have considered whether the wording of ITA, section 809ZRC(5) means that if there is a breach that is not remedied within 2 days, no further breach can be remedied. However, I consider the better reading is that "breached" means the act of breaching (which occurs on transfer in, and therefore occurs on a single day) rather than days for which the condition of containing prohibited income is met (i.e. days on which a former breach has not been remedied).

(1) This section applies if the required amount in relation to a breach of the TRF deposit rule was transferred out of the account in accordance with section 809RZC(2).
(2) Sections 809Q and 809R have effect as if
(a) the intervening transactions had never taken place, and
(b) each prohibited sum represented by the required amount had instead been transferred directly (at the time that sum was paid into the TRF capital account) into the account or other property into which the required amount was transferred by virtue of the single one-off transfer.
(3) Each of the following is an "intervening transaction"
(a) each payment into the TRF capital account of a prohibited sum represented by the required amount, and
(b) the single one-off transfer out of the TRF capital account

8.8. Thus the remedy is a complete and retrospective one, i.e. the TRF capital account will be treated as if it had never held prohibited sums. However, before transferring an uncertain amount the following should be taken into account:

8.8.1. Whether it will be possible to resolve any uncertainty within 30 days;

8.8.2. Whether it is likely to be necessary to make further uncertain transfers; and

8.8.3. Whether HMRC is likely to accept an analysis of the funds in the mixed fund from which the amount is being paid so that it can be relied upon (since it is unlikely that any view of HMRC's position will be obtained in 30 days, if at all).