FOREIGN INCOME AND GAINS REGIME

Table of Contents

INTRODUCTION

1. This talk will cover the new Foreign Income and Gain regime. The draft legislation for these changes is in Chapter 1, clauses 37 -39 of the Finance Bill 2024.

THE FIG REGIME

2. The FIG regime applies statutory residence-based test from 6 April 2025 and onwards.

3. A UK resident year will be counted as one of the years of the exempt period, even though it is a year during which the person is treaty non-resident, or it is a split year, so FIG relief may not be needed.

The main differences between remittance basis and the FIG regime are:

(1) Remittance basis applies to non-domiciled individuals; FIG relief applies to new qualifying residents.

(2) The cost of remittance basis was the 'remittance basis charge' and there were allowances lost; under FIG it is just the allowances that are lost.

(3) FIG relief is for a much shorter period than remittance basis.

(4) There are no flat charges in FIG, and it is more generous in providing exemption for foreign income/gains, rather than remittance basis.

(5) It applies to all new residents even those who are UK domiciled individuals.

4. When a new arrival first becomes a tax resident, for four tax years, they need not pay UK tax on their foreign income and gains arising in a tax year (irrespective of whether the funds were brought into the UK or not).

5. This depends on the condition that they have not been resident in the UK in any of the 10 consecutive years before their arrival as set out in Clause 37, section 845B of the Finance Bill.

(1) For the purposes of this Chapter, an individual is a qualifying new resident for a tax year if—

(a) the individual is UK resident for that tax year,

(b) the individual is not disqualified for that tax year, and

(c) for each of the 10 tax years before that tax year, the individualwas not UK resident.

(2) An individual is also a qualifying new resident for a tax year if—

(a) the individual is not disqualified for that tax year, and

(b) that tax year is one of the next three tax years after a qualifyingtax year in relation to the individual.

6. A tax year is a qualifying tax year as defined under 845B (3)

(1) A tax year is a qualifying tax year in relation to an individual if—

(a) the individual was a qualifying new resident for that tax year as a result of subsection (1),

(b) the individual would have been a qualifying new resident for that tax year as a result of that subsection, but was not onlyas a result of the individual being disqualified for that tax year, or

(c) the tax year—

(i) is the tax year 2022-23, 2023-24 or 2024-25, and

(ii) is a tax year to which paragraph (a) or (b) would have applied in relation to the individual had this section had effect for that tax year.

7. However, if an individual leaves the UK within the four-year period, they can still make a claim if they return to the UK within the four-year period.

8. Once the four-year period is over, relief cannot be claimed, and the individual will be subject to UK tax on their worldwide income and gains. (Currently, non-domiciled individuals can claim remittance basis for a period of 15 tax years before becoming deemed domiciled, which will no longer be the case).

9. Any foreign income or gains which arise pre-5th April 2025 will continue to be taxed under the old rules.

10. When will a full four year's FIG relief apply depending on the last year of UK residence?

Last UK resident year	First possible year of return for 4 years
2014/15	2025/26
2015/16	2026/27
2016/17	2027/28
2017/18	2028/29
2018/19	2029/30
2019/20	2030/31
2020/21	2031/32

11. When will FIG relief start for those who return to the UK (but were away for 10 years before they returned).

Last UK resident year	First possible year of return for FIG relief form 25/26	FIG relief for

2011/12	2022/23	2025/26 only
2012/13	2023/24	2025/26 to 2026/27
2013/14	2024/25	2025/26 to 2027/28

12. Difficulties with the FIG regime

(1) *Although new short-term assignees will qualify for the FIG regime, they may now have a considerable administrative burden if they have significant amounts of investment income and/or gains. This is because they will be receiving the details of their investments based, in most cases, on a calendar year. An individual arriving in say June 2025 will have to file a self-assessment tax return by January 2027. To do that, they will need details of their investment income for the 2025 and 2026 calendar year… the return in the new regime is extremely burdensome.*

(2) *There is a risk that the government may well receive less tax than under a simpler regime, because fewer assignees will be willing to come to the UK and subject themselves to what they see as an unnecessary burden even though no tax is ever going to be due on the exempt income. It is my belief that the government would raise more tax if the only requirement was to claim the OWR when due and not report any of the foreign income or gains.*[1]

HOW TO MAKE A CLAIM?

13. An individual must make a claim within the individual's self-assessment tax return for each tax year. A claim will need to be made before 31 January in the second tax year after the relevant year to which the claim relates. (section 845A (5) Clause 37, Finance Bill 2024). So, a claim for the four-year FIG regime for the 2025 to 2026 tax year will need to be made either on or before 31 January 2028.

[1] Steve Wade, Analysis – The new Overseas Workday Relief regime: worse than before? (2024) 1687 Tax Journal <The new Overseas Workday Relief regime: worse than before?> accessed 25 November 2024.

14. An individual can make a claim with respect to the 4-year FIG regime for either income or gains, or both. The claims are separate; if an individual makes a claim for one, they do not need to make a claim for the other.

15. Claiming for relief on foreign income is set out in 845A and in schedule D1 for foreign gains.

16. Clauses 37 and 39 are similar in how they are set out, and so for the purposes of these notes, I will be making references to clause 37, which sets out relief for foreign income.

    (1) An individual may make a claim for relief for a tax year under this section (a "foreign income claim") if the individual is a qualifying newresident for that year (see section 845B).

    (2) Where an individual makes a foreign income claim for a tax year, the individual is entitled to relief for the tax year that is equal to so much of the total income of the individual for that year as—

    (a) reflects qualifying foreign income (see section 845F), and

    (b) is identified as such in the claim.

    (3) The relief is given by deducting the amount of the relief in calculating the individual's net income for the tax year (see Step 2 of the calculation in section 23 of ITA 2007)

    (4) A foreign income claim must be made in a return.

    (5) A foreign income claim in relation to 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.

    (6) A foreign income claim may not be made as a consequential claim (within the meaning of section 43C(5) of TMA 1970) if the circumstances which give rise to the consequential claim result froma loss of tax brought about carelessly or deliberately by the individualor a person acting on the individual's behalf.

    (7) See also—

    (a) Chapter 5C of Part 2 of ITEPA 2003 provides for a claim for relief that may be made in respect of foreign employment income where a foreign employment election is made and

(b) Schedule D1 to TCGA 1992 which provides for a claim for relief that may be made in respect of foreign gains (a foreign gain claim).

(8) Sections 845C and 845D set out some income tax consequences of a foreign income claim, a foreign employment election or a foreign gain claim.

(9) See also section 1K of TCGA 1992, which provides for the loss of an individual's annual exempt amount for capital gains tax where a foreign income claim, a foreign employment election or a foreign gain claim is made.

(10) For the purposes of this section—

(a) "return" means a return under section 8 of TMA 1970 (personal return),

(b) references to a claim being included in a return include a claim being so included as a result of an amendment of the return, and

(c) subsections (5) to (7) of section 118 of TMA 1970 (loss of tax brought about carelessly or deliberately) apply for the purposes of this section as they apply for the purposes of that Act.

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

18. Therefore, if taxpayers have small amounts of foreign income, it is best to first calculate whether the benefit of FIG outweighs its costs.

19. Section 845F sets out the foreign income that is eligible for relief.

No.	*Description*
1	*Profits of a trade carried on wholly outside the United Kingdom (see Chapter 2 of Part 2).*
2	*A UK resident partner's share of the profits of a trade carried on by the firm wholly outside the United Kingdom.*
3	*Profits of an overseas property business.*
4	*Adjustment income (within the meaning of Chapter 17 of Part 2) in respect of a trade carried on wholly outside the United Kingdom (see that Chapter).*

5	*Income chargeable under Chapter 2 of Part 4 (interest) that arises from a source outside the United Kingdom.*
6	*Income chargeable under Chapter 4 of Part 4(dividends from non-UK resident companies).*
7	*Income chargeable under Chapter 7 of Part 4 (purchase life annuity payments) that arises from a source outside the United Kingdom.*
8	*Income chargeable under Chapter 8 of Part 4 (profitsfrom deeply discounted securities) that arises from a source outside the United Kingdom.*
9	*Income chargeable under section 579 (royalties and other income from intellectual property) that arises from a source outside the United Kingdom.*
10	*Income chargeable under Chapter 3 of Part 5 (films and sound recordings: non-trading businesses) thatarises from a source outside the United Kingdom.*
11	*Income chargeable under Chapter 4 of Part 5 (certain telecommunication rights: non-trading income) thatarises from a source outside the United Kingdom.*
12	*Income that arises from a source outside the UnitedKingdom and that is treated as arising to an individual under section 624 or 629 (income arising under settlement attributed to settlor).*
13	*Income treated as arising to an individual under section 643A (benefits paid out of protected income).*
14	*Income treated as arising to an individual under section 643A (benefits paid out of protected income).*
15	*Income chargeable under Chapter 7 of Part 5 (annual payments not otherwise charged) that arises from a source outside the United Kingdom.*
16	*Income chargeable under Chapter 8 of Part 5 (income not otherwise charged) that arises from a sourceoutside the United Kingdom.*
17	*Accrued income profits (within the meaning of Part12 of ITA 2007) made by an individual as a result of a transfer of securities if income from the securities would be qualifying foreign income.*
18	*Income treated as arising under regulation 17 of theOffshore Funds (Tax) Regulations*

	2009 (offshore income gains).
19	*Income that is treated as arising to an individual under section 721, 728 or 732 of ITA 2007 (transferof assets abroad: deemed income) and that is "foreign" for the purposes of (respectively) section726, 730 or 735 of that Act.*
20	*Pension income that arises from a source outside theUnited Kingdom (see Part 9 of ITEPA 2003).*
21	*A benefit to which section 678 of ITEPA 2003 applies(foreign social security benefits).*
22	*The foreign proportion (see paragraph 46 of Schedule2 to FA 2022) of income arising as a result of the payment of interest, or the making of a distributionor qualified distribution (within the meaning of paragraph 45(5) of that Schedule), by a QAHC (within the meaning of that Schedule).*

20. Section 845G states income that is disqualified from receiving relief from tax.

Income is disqualified income if—

(a) it is income of a settlement (within the meaning of Chapter 5of Part 5) arising in the tax year 2024-25 or an earlier tax year that is treated as arising in tax year 2025-26 or a later year as a result of section 648(3) to (5),

(b) it is income arising from a security treated as situated in theUnited Kingdom as a result of section 138ZB of TCGA 1992 (share exchanges involving non-UK incorporated close companies),

(c) it is income chargeable to income tax as a result of section 809AZB of ITA 2007 (transferred income streams),

(d) it is performance income (see section 845H), or

(e) it is income from a pension to which section 629 of ITEPA 2003 applies (pre-1973 pensions paid under the Overseas Pensions Act 1973), or

(f) it is a payment made to or in respect of—

(i) a relieved member of a relevant non-UK scheme (withinthe meaning of Schedule 34 to FA 2004), or

(ii) a transfer member of such a scheme, to which the member payment provisions (within the meaningof that Schedule) apply.

OVERSEAS WORKDAY RELIEF (OWR)

21. OWR will continue to be available to provide relief from UK tax on earnings from employment duties performed outside of the UK and not on FIG. Whilst FIG applies to all new residents, OWR only applies to OWR employees.

22. To qualify for the new regime, the individual must be a qualifying resident under section 845B, as set out in paragraph 5 of these notes. They must make an election before the end of 12 months beginning with 31 January after the end of the qualifying year (section 41M (7), (8) in clause 38).

23. From 6 April 2025, it will now be available for up to four years. However, it will be capped at the lower 30% of the qualifying employment income and at £300,000. As set out section 41R, in clause 38 of the Finance Bill.

    (11) This section sets out how to determine the limit on the amount of relief the individual is entitled to when making a foreign employment relief claim for a year for the purposes of section 41P(3).

    (12) The limit is the lesser of—

    (a) 30% of the relevant qualifying employment income, and

    (b) £300,000.

24. An OWR claim can be made independently of any other claim made for foreign income or gains. If an individual makes a claim for the 4-year FIG regime or an overseas work relief election. In that case, they will then not be able to claim any foreign income losses or foreign capital losses arising in the year of the claim.

25. Section 845D sets out the effect of claim, foreign employment election or foreign gain claim on personal allowance.

    Where an individual makes a foreign income claim, a foreign employment election or a foreign gain claim for a tax year, the individual is not entitled, for that year, to *(a) any allowance under Chapter 2 of Part 3 of ITA 2007 (personal allowance and blind person's allowance)*

(b) any tax reduction under Chapter 3 of that Part (tax reductions for married couples and civil partners)

(c) any tax reduction under Chapter 3A of that Part (transferable tax allowance for married couples and civil partners), or

(d) any relief under section 457 or 458 of ITA 2007 (payments for life insurance etc).

26. Positives of the new OWR scheme:

(1) There is no longer a need to be the need to be paid in to offshore bank accounts and to keep funds offshore.

(2) The period that OWR is available has been extended by a year, and so will be the year of arrival and the next three years.[2].

TRUSTS

27. Any protection from tax on income and gains arising within settlor – interested trust structures will not be available for non-domiciled and deemed domiciled individuals, who do not qualify for the new 4-year regime.

28. So, any foreign income or gains arising in the trust from 6 April 2025 will be taxed on the settlor on the same basis as UK domiciled settlors as is currently the case (unless the settlor is eligible for the new 4-year FIG regime).

29. Non-domiciled individuals will not be entitled to the remittance basis in terms of their worldwide trust distributions.

30. The position on foreign gains is set out in paragraph 3 and 4 of Schedule D1, summarised below in the explanatory notes to the Draft Finance Bill.

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[2] Steve Wade, Analysis – The new Overseas Workday Relief regime: worse than before? (2024) 1687 Tax Journal <The new Overseas Workday Relief regime: worse than before?> accessed 25 November 2024.

"Paragraph 3 of new Schedule D1 provides for relief where the qualifying new resident is the settlor of a non-resident trust, and the trust's gains are attributed to them. Relief is limited to qualifying foreign gains identified in the claim. It is given by disregarding the identified amount from the amount of trustees' gains attributable to the individual for the tax year and future years.

Paragraph 4 of new Schedule D1 provides for relief where the qualifying new resident is a beneficiary of a non-resident trust, and the trust's gains are attributed to them on receipt of a capital payment. Relief is limited to the capital payment amount identified in the claim. It is given by disregarding the identified capital payments from the amount attributed to the individual for the tax year and future years (and the trustees' pool of attributable gains is not reduced)".[3]

PLANNING OPTIONS POST FIG

31. Taking the example of someone who becomes a new resident from April 2025 and then stays in the UK for four years claiming relief under FIG. What should they do in their 4th or the following year once they will no longer get relief?

    (1) Leave the UK following the 4th year if they do not need to remain in the UK long-term.

    (2) Realise their income and rebase all their gains while they are still exempt within the four years. Time this strategically so that it is done while FIG applies.

    (3) Consider disposing of any assets whilst still in the 4-year bracket.

    (4) Use life insurance offshore funds if they want to stay more than 4 years but not permanently.

Shanzé Shah

Old Square Tax Chambers

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[3] Finance Bill Explanatory Notes introduced in the House of Commons on 7 November 2024 (HC Bill 125).