

Non-Doms: Out With the Old, in With the New

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In the United Kingdom, there is a specific tax system that applies to non-doms — this refers to individuals who are UK tax residents but are not UK-domiciled or deemed domiciled. The topic of non-doms has frequently come up in political discussion, and recently, there has been increasing pressure to modify the regime or even get rid of it altogether.

In the Spring Budget this year, Jeremy Hunt made an unexpected announcement that the non-dom regime would be abolished and replaced by a new foreign income and gains (FIG) regime. It had been widely expected that if Labour were elected in the forthcoming election this would be a top priority for them, but the Chancellor beat them to it.

Post-Brexit, the government has pushed a narrative of ensuring that the United Kingdom maintains a competitive edge and continues to be an attractive location for investment as well as for high-net-worth individuals.

Any new regime must therefore strike the balance of encouraging high-net-worth individuals to come to the United Kingdom but also take on board the criticism that the existing regime has faced, including unfairness and complexity.

Existing rules

Before considering the new regime, it is worth noting the existing regime, which is still in place until 5 April 2025. The references to the non-dom regime are really shorthand for referring to the remittance basis, which allows those who are not UK-domiciled (nor deemed domiciled) and who have not been UK tax residents for more than 15 of the past 20 years UK tax relief on non-UK income and gains which they do not remit to the United Kingdom.

Their UK source income and gains, as well as any non-UK source (i.e., foreign) income and gains that they do remit to the United Kingdom, are subject to UK income tax and capital gains tax.

Using the remittance basis is free for the first nine years, thereafter it is £30,000 a year if the person has been a UK tax resident for at least seven of the past nine tax years, then £60,000 if the person has been a UK tax resident for at least 12 of the past 14 tax years. The government highlights that the number of non-domiciled taxpayers paying on the remittance basis was 37,000 in the tax year ending 2021.

New rules

The new FIG regime allows individuals to not pay UK income tax and capital gains tax on their foreign income and gains whilst being a UK tax resident for up to four tax years.

Qualifying individuals can opt into the FIG regime so that they will not be subject to UK tax on their FIG, irrespective of whether that FIG is remitted to the United Kingdom.

Individuals will be able to qualify for this regime if they have been tax residents in the United Kingdom for less than four years (after 10 consecutive years of non-UK tax residence). After these initial four years, the option to elect will be lost and the tax relief will no longer be available.

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.

Claims to use the FIG regime are made for each year to which it can apply — individuals may choose not to elect for every year. An individual who makes a claim for the FIG regime in year one but chooses not to make a claim in year two will still be able to claim in years three and four. Therefore, the four-year threshold is not assessed on a cumulative basis (as the current remittance basis is).

If an individual chooses to be taxed under the FIG regime, they will lose entitlement to personal allowances and the capital gains tax annual exempt amount — again, this is the same as under the current remittance basis.

The transitional rules

Individuals, who on 6 April 2025 have been tax residents in the United Kingdom for less than four years (after a period of 10 consecutive years of non-UK tax residence), will be able to use this new regime for any tax year of UK tax residence in the remainder of those four years.

Separately, there are specific provisions for those who have already utilised the remittance basis and do not qualify for the four-year FIG regime. Seemingly, these rules were introduced to potentially soften the impact of the new provisions:

- For the year 2025/26, those transitioning from the existing remittance basis to the new arising basis will only pay UK tax on 50 percent of their foreign income. This exemption will not apply to chargeable gains. Labour has announced that if they were to win the next election, they would amend the government's proposed FIG regime to "close the loopholes". One of the ways in which they would amend the regime is by abolishing this transitional rule.
- For 2025/26 and 2026/27 only, there will be a two-year "temporary repatriation facility". This will mean that any FIG that is remitted to the United Kingdom in 2025/26 and 2026/27, where that FIG arose to the individual personally in a year when the individual was taxed on the remittance basis and was a UK tax resident, will be taxed at 12 percent. This does not apply to foreign income and gains arising within offshore trust structures. From 6 April 2027, remittances of pre-6 April 2025 FIG will be taxed at the normal rates.
- For 2025/26, non-dom individuals who have previously used the remittance basis have the option to rebase foreign assets to their value as of 5 April 2019 in relation to any disposals, which occur on or after 6 April 2025. This rebasing relief will only apply to non-UK situs assets held personally and not to assets held within non-UK resident trusts.

Overseas workday relief

Overseas workday relief (OWR) is currently only available for non-doms employed in the United Kingdom if they were non-residents for the previous three consecutive UK tax years. It operates by providing relief on earnings for employment duties performed outside the United Kingdom.

This relief is available for the initial year of residence in the United Kingdom and the two following tax years.

For those qualifying individuals under the new regime, OWR will be available. Like the current rules, the new OWR will not provide relief from National Insurance contributions (NICs).

Trusts

From 6 April 2025, individuals who do not qualify for the new FIG regime will no longer receive protection from taxation on income and gains arising within settlor-interested trust structures. 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 are taxed at present, unless the settlor is eligible for the new four-year FIG regime.

Inheritance tax

Inheritance tax (IHT) is currently a domiciled-based system. The government intends to move IHT to a residence-based system from 6 April 2025, and this will be subject to consultation.

It is envisaged that the new rules will involve charging IHT on worldwide assets owned outright when a person has been a resident in the United Kingdom for 10 years (the "residence criteria"), with a provision to keep a person in scope for 10 years after leaving the United Kingdom (the "tail provision").

As for property held in trusts, it is envisaged that the new rules for chargeability of assets comprised in a settlement will depend on whether a settlor meets the residence criteria or is within the "tail provision" at the time the assets are settled and/or when charged, such as 10-year anniversary charges or exit charge arises.

Labour have outlined that they disagree with this plan for the applicability of IHT to foreign assets held in offshore trusts, claiming that all foreign assets held in offshore trusts should be subject to UK IHT irrespective of when the trust was set up (rather than being limited to trusts created after 6 April 2025, as currently planned).

Conclusion

The new regime is certainly quite a change given that non-doms will only benefit from UK tax relief for four years — rather than the current system which affords UK tax benefits for up to 15 years.

Statistics published by the government show that in the tax year ending in 2022, the number of non-domiciled taxpayers who stayed for a second year in the United Kingdom had been lower than previous years.

This could indicate that the non-dom demographic is typically not staying in the United Kingdom for the full 15 years and so a change to a four-year system may have limited impact.

Additionally, the new regime does appear to be simpler in that it focuses much more on tax residence. However, the UK Statutory Residence Test is notoriously complex, and if it is going to be so heavily relied upon for the new FIG regime, the government might consider amending the test to make the process for identifying UK residence more straightforward.

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