

Changes To Tax Rules Relating To Domicile

November 2024

On 30th October 2024, the UK government confirmed that it will make significant changes to the UK tax system that will affect non-doms, expats and trusts and UK residents with a non-UK connection. The majority of the changes will have effect from 6 April 2025.

Irwin Mitchell are specialists in advising on complex cross-border UK tax issues. If you would like to discuss your position and possible planning, please contact:



Alex Ruffel

Partner, International

✉ alex.ruffel@irwinmitchell.com
☎ +44 (0)7702 711 388



Ashley Hill

Partner, Tax, Trusts & Compliance

✉ ashley.hill@irwinmitchell.com
☎ +44 (0)7388858507



Liz Beadsley

Partner (Non Lawyer), Tax, Trusts & Compliance

✉ liz.beadsley@irwinmitchell.com
☎ +44 (0)7795 483 235

This note contains an outline of UK tax law and proposed changes to it. You should not treat it as legal or tax advice or rely upon it when making decisions. Laws relating to residence, domicile and tax are complex and you should seek professional advice as to their effect.

Contents

| | |
|---|-----------|
| Introduction | 3 |
| When will the new rules have effect? | 3 |
| Who might be affected by the new rules? | 3 |
| What to do now? | 3 |
| What are the UK tax rules for non-doms and trusts until 5 April 2025? | 3 |
| What will be the rules for income and capital gains tax after 5 April 2025? | 4 |
| Inheritance tax after 5 April 2025 | 6 |
| Case 1: Dr X - UK domiciled individual who was once UK resident and is thinking of moving to the UK to live again | 8 |
| Case 2: Mrs A – a non-dom arriving in the UK after 5 April 2025 | 8 |
| Case 3: Mr B – non-dom who will have been UK resident for two years on 6 April 2025 | 9 |
| Case 4: Mrs C – non-dom who became UK tax resident before 6 April 2022 | 9 |
| Case 5: Mr D – non-dom who will have been UK resident for more than 10 years on 6 April 2025 | 10 |
| Case 6: Miss E – non-dom settlor of non-UK resident trust. She will have been UK resident for more than 10 years on 6 April 2025 | 12 |
| Case 7: Professor F – non-dom settlor of non-UK resident trust. He will have been UK resident for 6 years on 6 April 2025 | 12 |
| Case 8: Ms G – non-dom UK resident settlor of non-UK resident trust/company structure. She will have been UK resident for fewer than 4 years on 6 April 2025 | 13 |
| Case 9: Mr H - UK resident non-dom beneficiary of non-UK resident trust. He will have been UK resident for more than 4 years on 6 April 2025 | 14 |
| Case 10: Mr I - UK resident non-dom beneficiary of non-UK resident trust. He will have been UK resident for fewer than 4 years on 6 April 2025 | 14 |
| Case 11: the J Trust – a non-UK resident trust discretionary settled by a non-dom settlor who is now dead | 15 |
| Case 12: the K Trust – a non-UK resident discretionary trust settled by a non-dom settlor who was UK resident but left the UK before 6 April 2025 | 15 |

Introduction

In March 2024, the UK government announced that they intended to make changes to the way in which UK taxes apply to those who have a non-UK connection, such as non-UK domiciled people (**non-doms**).

On 30 October 2024, the government confirmed that changes would go ahead and produced a detailed note and draft legislation that provide much more detail. This note summarises the changes. The new rules relate only to tax – domicile will continue to exist as a concept that will be important when looking at, for example, succession laws and family law matters.

When will the new rules have effect?

The rules will have effect from 6th April 2025.

Who might be affected by the new rules?

- Anyone who is or has been a non-dom and has used the remittance basis of taxation in the past;
- Non-doms who are temporarily non-UK resident;
- Anyone who is presently 'deemed domiciled' in the UK;
- Anyone who is UK domiciled but has been or is likely to be non-UK resident for more than 10 years;
- Anyone who was resident in the UK for more than 10 years in the past but has since left;
- The settlor and trustees of non-UK resident trusts (**foreign trusts**) where the trust has or had a UK resident settlor or UK resident beneficiaries;
- The UK resident beneficiaries of foreign trusts; and
- The directors of non-UK close companies with UK resident shareholders.

What to do now?

There is a relatively short window of time for planning before the new rules come into effect and we recommend that anyone who could be affected take advice as to their possible position as soon as possible.

What are the UK tax rules for non-doms and trusts until 5 April 2025?

Individuals who are UK resident are subject to UK income tax and capital gains tax (**CGT**). However, tax is applied differently depending upon whether or not they are UK domiciled. UK domiciled individuals are taxed on the '**arising basis**', meaning that their worldwide income and capital gains are subject to UK tax.

UK resident non-doms may instead choose to be taxed on the '**remittance basis**', meaning that their UK income and capital gains are taxed but their foreign income and foreign capital gains are not taxed in the UK unless and until they are remitted (brought to) to the UK.

In order to take advantage of this, it has been common planning for non-doms to claim the remittance basis and to set aside a pot of money (**clean capital**) that does not include any income or capital gains that have arisen to them since they became UK resident. They can bring the clean capital to the UK tax-free while leaving their foreign income and capital gains overseas where they are not taxed.

In respect of inheritance tax, the worldwide estates of UK domiciled individuals are subject to inheritance tax, as are any trusts they create. Foreign assets of non-UK domiciled individuals are not subject to inheritance tax. Foreign assets in trusts that were funded by non-domiciled individuals are fully outside inheritance tax: they are '**excluded property**'.

Finally, there are **anti-avoidance provisions** (the settlor-interested trust code, the transfer of assets abroad rules and sections 86 and 87 TCGA 1992) under which foreign income and capital gains that are made by a non-UK resident trust or company can be treated as if they are made by the individual who funded the trust or company. The anti-avoidance provisions are generally disapplied where the individual is not UK domiciled as a result of specific limitations in capital gains tax law and the Protected Foreign Source Income rules (**the PFSI rules**).

UK resident beneficiaries of such structures can also be taxed on benefits they receive from foreign trusts, depending upon the income and capital gains the trust itself has made.

What will be the rules for income and capital gains tax (CGT) after 5 April 2025?

New tax rates

The rates of UK personal taxes from 6 April 2025 will be:

| | |
|---|---|
| Income tax | 0-40% on taxable income up to £125,140 |
| | 45% on taxable income over £125,140 |
| Capital gains tax (from 30 October 2024) | 24% |
| | 32% on carried interest |
| Inheritance tax | 40% on estate on death |
| | 0%-20% on certain transactions relating to trusts |

No more tax domicile

Domicile will no longer be a factor in deciding how income and capital gains made by a UK resident after 5 April 2025 are taxed. It will also (with limited exceptions) not affect whether inheritance tax applies to personal assets and trusts. The domicile-based system will be replaced with a new tax regime that is instead based on how long individuals have or have not been UK tax resident.

The test for UK residence will continue to be the statutory residence test, which is unchanged.

The FIG regime replaces the remittance basis

The remittance basis will be abolished in respect of income and capital gains arising after 6 April 2025. It will be replaced by a new regime, the Foreign Income and Gains regime (**the FIG regime**).

All individuals who are UK resident will be taxed on the arising basis on their post-5 April 2025 income and capital gains unless:

- They became UK tax resident after at least 10 years' non-residence (the year in which they become UK resident is referred to here as 'year 1'); and
- Year 1 was within the previous three tax years, so the FIG regime effectively lasts for four years. This means that, for those who are UK resident in 2025/2026, their year 1 must be after 5 April 2022; and
- They elect to use the FIG regime for the tax year in which the income and gains arise.

For example: Mr X lived in the UK between 2005 and March 2009. He then left and was not UK tax resident. He was seconded to the UK for 8 months by his employer in the tax year 2022/2023. He returns to the UK in 2025/2026. He asks whether he can claim the FIG regime for the tax year starting on 6 April 2025.

We first identify the last period when he was non-UK resident for at least 10 consecutive tax years, which is 2009/2010 to 2021/2022. We then identify his year 1, which is 2022/2023. His year 1 is within the last three years. He will therefore be able to elect for the FIG regime for 2025/2026. However, he will not be able to do so in 2026/2027, as his year 1 will then be more than three years past.

Split years will count as years in the UK when calculating whether an individual qualifies to use the FIG regime.

Individuals who have been UK resident in any tax year between 2015/2016 and 2021/2022 (inclusive) will therefore be taxed on the arising basis on their worldwide income and capital gains from 5 April 2025 if they remain UK tax resident.

If an individual can elect for the FIG regime, while it applies, they:

- Will pay UK tax on their UK income and capital gains;
- Will not pay any UK tax on foreign income and gains arising to them, whether or not they bring the foreign income and gains to the UK, if they choose that the FIG regime should apply to them. There are some exceptions to this, including foreign employment earnings (Overseas Workday Relief may apply – see below) and gains from offshore bonds;
- Will lose their entitlement to income tax personal allowances and the capital gains tax annual exempt amount. The same rule presently applies to remittance basis users.

A FIG election will be made in retrospect, after the end of the tax year to which it applies.

The technical guidance issued by the government states that individuals will be able to elect for the FIG regime to apply on a source-by-source and gain-by-gain basis, which means that they can use it for some but not all of their types of foreign income and capital gains. This may be useful if they wish to, for example, claim credits for foreign tax or foreign losses. The draft legislation itself is not entirely clear about how source-by-source claims will work for income and we will hopefully receive more details.

How will pre-2025 foreign income and gains be treated?

In respect of income and capital gains that arose before 6 April 2025 to individuals who claimed the remittance basis of taxation, the remittance basis will continue to apply but there will be a 'Temporary Repatriation Facility' to encourage them to bring monies to the UK.

The Temporary Repatriation Facility (the TRF)

The TRF is a system designed to encourage UK resident individuals who previously claimed the remittance basis and have unremitted income and capital gains outside the UK to bring them to the UK.

Where an individual previously used the remittance basis, they can designate a particular amount of their unremitted foreign income and gains to qualify for the TRF. If they designate an amount, they will pay tax on it at a tax rate of 12% if the designation is made in their tax returns for 2025/2026 and 2026/2027 or 15% if the designation is in their 2027/2028 tax return. Once an amount is designated, it can be remitted to the UK free of further UK tax.

The designation is of amounts and not particular assets, income or capital gains so can be applied to non-liquid assets, not just cash. There are complex provisions regarding the interaction of the TRF with accounts that contain a mixture of clean capital and/or foreign income and capital gains.

Rebasing

Individuals who have claimed the remittance basis in the years 2017/2018 to 2024/2025 inclusive can rebase foreign assets that they held on 5 April 2017 for CGT purposes if they sell them after 5 April 2025. This will only apply to assets they hold personally.

Non-UK trusts – income and capital gains

The anti-avoidance provisions described above (the settlor-interested trust code, the transfer of assets abroad rules and sections 86 and 87 TCGA 1992) will continue to exist after 5 April 2025. However, the rules that effectively prevented them from applying to non-doms will be changed.

In respect of UK resident settlors of foreign trusts (whether settled before or after 5 April 2025), this means that where the settlor may be able to benefit from the trust structure:

- If they do not or cannot use the FIG regime, income and capital gains that the trust makes after 5 April 2025 will be treated as the settlor's and the settlor will be taxable on them in the UK;

- If they qualify and elect for the FIG regime to apply to the foreign income and capital gains that the trust makes after 5 April 2025, they will not be liable to UK tax on them. These income and capital gains will not be removed from the trust relevant income and trust gains pools for the purposes of anti-avoidance provisions.

In respect of foreign income and capital gains that the foreign trust made before 6 April 2025, they will no longer be protected. This means that if a UK resident settlor or other beneficiary receives a benefit from the trust after 5 April 2025 that is matched to such trust income or gains:

- They may be treated as if they are receiving foreign income or capital gains (depending how much relevant income or trust capital gains there are);
- If they are using the FIG regime, they will not pay tax on the income or capital gains and can bring them to the UK tax-free but if they cannot claim the FIG regime, they will be subject to UK tax on them.

There is specific provision for individuals who have transferred assets to a person/entity abroad and who are taxed under the transfer of assets abroad rules on income that person/entity receives to reclaim that tax from the person/entity.

Business investment relief (BIR)

This is a relief from tax for remittances of money or assets to the UK that is used in a trading business. BIR will continue to apply to investments made before 6 April 2025.

New investments will only qualify for BIR if they are made before 6 April 2028.

Overseas workday relief (OWR)

From 6 April 2025, eligibility for OWR will be determined by an individual's residence and not their domicile. Where an individual qualifies for the FIG regime, they will also be eligible to claim OWR. The relief can be claimed for up to four years, compared to the current three-year limit.

The relief will be subject to an 'annual financial limit' for each year, being the lower of:

- 30% of their qualifying employment income
- £300,000

Individuals will no longer have to keep their overseas earnings outside the UK to use OWR.

If an individual receives employment income after 6 April 2025 that relates to employment duties performed pre-6 April 2025 (such as a bonus), the pre-6 April 2025 OWR rules will apply and it will be taxable on the remittance basis. This means that employment income relating to pre-6 April 2025 duties will still need to be paid into a qualifying overseas bank account and kept offshore to benefit from OWR.

Individuals who claimed OWR relief in a tax year prior to 6 April 2025 but do not qualify for FIG will still be eligible for OWR for their first three years of UK residence. Individuals who are part-way through their three-year claim at 6 April 2025 and are eligible for the four-year FIG regime, will be able to benefit from OWR for a total of four years and will not be subject to the financial limits.

Unremitted income qualifying for OWR can be nominated under the TRF and taxed at the TRF rates (as detailed above).

Inheritance Tax (IHT) after 5 April 2025

There will be a change to a residency-based system for IHT from 6 April 2025: domicile will no longer (with very limited exceptions) determine whether IHT applies to an asset or not.

Under the new rules, once a person has been resident in the UK in 10 of the preceding 20 tax years, they are a '**long term resident**' and their worldwide assets will be subject to IHT. Years before 2025 will be counted, so this will catch non-doms who have been UK resident for 10-15 years by 5 April 2025 and whose non-UK assets would previously have been outside the scope of IHT.

The rules will extend to young people under the age of 20 with modifications – parents who have children who are attending or have attended school or university in the UK should check their status.

If a person who has been a long-term resident leaves the UK, there will be a period during which they will still be subject to IHT. This is the ‘tail’. The length of the tail will depend upon how long a person has been UK resident in the last 20 tax years:

| Years in UK | Length of tail |
|----------------|----------------|
| 10 to 13 years | 3 years |
| 14 years | 4 years |
| 15 years | 5 years |
| 16 years | 6 years |
| 17 years | 7 years |
| 18 years | 8 years |
| 19 years | 9 years |
| 20 years | 10 years |

There is a special rule for individuals who are currently deemed domiciled under the existing 15/20 year tax rule but who leave the UK before 6 April 2025 and are not UK resident in 2025/2026 and subsequent tax years. Their tail will effectively be three years.

Estate tax treaties

The UK has estate tax treaties with France, Italy, India, Pakistan, Ireland, the Netherlands, South Africa, Sweden, Switzerland and the United States. The first four predate 1975 and their protections are based on common law domicile and not deemed domicile or long-term residence. It appears that this will be unaffected by the changes.

Non-UK trusts, excluded property settlements and IHT

From 6 April 2025, whether or not IHT will apply to a trust will depend upon whether its settlor is alive and whether he or she is or was a long term resident. The overall effect is that generally:

- Where the trust has a living settlor who is a long term resident at the time of an IHT event, such as a 10-year anniversary, IHT will apply to the trust’s UK and non-UK assets;
- Where the trust has a living settlor who is not a long term resident at the time of an IHT event, IHT will not apply to the trust’s non-UK assets (they will be excluded property) but will apply to its UK assets;
- Where the settlor of a trust died before 6 April 2025 but was not UK domiciled when the trust was settled, the trust’s non-UK assets will be excluded property and outside the scope of IHT;
- Where the settlor of a trust died before 6 April 2025 and was UK domiciled when the trust was settled, the trust’s UK and non-UK assets will be within the scope of IHT.
- Where the settlor of a trust dies after 5 April 2025, IHT will not apply to the trust’s non-UK assets, which will be excluded property if the settlor was not a long-term non-resident at the time the trust was settled. If they were a long-term resident at their death, IHT will apply to the trust.

Whether or not the settlor can benefit from the trust will not be relevant to deciding whether the trust itself is subject to IHT, except where a beneficiary has an interest in possession, where it may still have an effect.

In relation to settlors of trusts, if they can benefit from trusts they have created (so have made a gift with reservation of benefit) and they are long term residents when they die, the assets of the trust will be subject to IHT on their death unless the assets are non-UK assets that were added to the trust before 30 October 2024 by a non-domiciled person.

What does this mean in practice?

We have described below some common scenarios and how the new rules may apply. The scenarios are simplified versions of reality so should not be taken as the final word on the tax position in practice. In particular, they do not take into account tax treaties the UK has with many other countries, which may prevent UK tax applying or give credit for non-UK taxes.

Case 1: Dr X - UK domiciled individual who was once UK resident and is thinking of moving to the UK to live there again

Current position

As a UK domiciled person, if Dr X became UK resident, his worldwide income and capital would be subject to UK tax. His worldwide estate would also be subject to UK IHT.

How will he be taxed from 6 April 2025?

If Dr X has been non-UK tax resident for at least 10 full tax years before he returns to the UK:

- He can use the FIG regime for his first four years of UK residence. If he does so, he will not pay any UK tax on his foreign income and capital gains arising in the four years;
- He will pay UK income tax and CGT on his UK income and capital gains from when he becomes UK resident;
- His non-UK assets will be outside the scope of IHT for 10 years after he arrives in the UK but if he remains UK resident for that long his worldwide estate will then be subject to IHT if he dies.

Case 2: Mrs A – a non-dom arriving in the UK after 5 April 2025

Mrs A has not been UK resident before.

Current position

The law as it stands now will not be relevant as Mrs A will arrive in the 2025/2026 tax year, when the new tax rules will apply.

How will she be taxed from 6 April 2025?

Mrs A can elect to use the FIG regime for her first four years of UK residence. If she does so, she will not pay UK tax on her foreign income and capital gains arising in the four years and can bring them to the UK without an additional UK tax liability. Her UK income and capital gains will be subject to UK tax as they arise.

After four years, her worldwide income and capital gains will be subject to UK income tax and capital gains tax.

Any UK assets she has or acquires will be subject to IHT but her non-UK assets will not be subject to IHT until she has been resident in the UK for 10 tax years.

Planning points

Mrs A should consider maximising and realising foreign income and capital gains before she arrives in the UK or in her first four years of tax residence, when she will be able to use the FIG regime.

Case 3: Mr B – non-dom who will have been UK resident for two years on 6 April 2025

Current position

Mr B can elect to be taxed on the remittance basis. If he does so, he will not pay UK tax on his foreign income and gains unless he remits them to the UK. If he does remit them, he will pay UK tax at full rates. He must pay UK tax on his UK income and capital gains. His foreign assets will be outside the scope of IHT.

How will he be taxed from 6 April 2025?

In respect of his income and capital gains arising after 5 April 2025:

- Mr B will be liable to UK income tax and CGT if they arise in the UK;
- Mr B can elect to use the FIG regime in the tax years 2025/2026 and 2026/2027. If he does so, he will not pay any UK tax on his foreign income and capital gains arising in those years;
- If he remains UK resident, Mr B will be liable to UK tax on his foreign income and capital gains arising after 5 April 2027.

In respect of clean capital and foreign income and capital gains that arose to Mr B while claiming the remittance basis before 6 April 2025:

- He will not be subject to UK tax on his clean capital, whenever he brings it to the UK;
- He will not be subject to UK tax on his unremitted income and capital gains if he leaves them outside the UK. If he designates amounts under the TRF, he will pay 12% tax on them (rising to 15% if he designates in 2027/28). He will not have to remit the designated amounts to the UK. However, once he has designated an amount and paid the tax due, he can bring the amount to the UK tax-free.

Any UK assets Mr B has or acquires will be subject to IHT but his non-UK assets will not be subject to a worldwide IHT until he has been resident in the UK for 10 tax years.

Planning points

Mr B should continue to claim the remittance basis for now.

He should consider:

- Postponing the remittance of pre-April 2025 income and capital gains until at least April 2025 and using the TRF for some or all of them so that he can bring them to the UK at a relatively low tax charge; and
- Maximising his income and rebasing or disposing of non-UK assets between 6 April 2025 and 5 April 2027, when he can do so without a tax charge.

Case 4: Mrs C – non-dom who became UK tax resident before 6 April 2022

Current position

Mrs C will be taxable in the same way as Mr B above.

How will she be taxed from 6 April 2025?

If Mrs C remains UK resident after 5 April 2025:

- All of her UK and foreign income and capital gains arising after 6 April 2025 will be subject to UK tax, as she will not qualify to use the FIG regime;
- If she has claimed the remittance basis for at least one tax year, for CGT purposes, she can elect to rebase assets she owned on 5 April 2017 to their market value as at 5 April 2017 when she sells them;

- She will not be subject to UK tax on her clean capital (if she has any), whenever she brings it to the UK;
- Under the TRF, if she has claimed the remittance basis in the past and has unremitted pre-April 2025 foreign income and capital gains, between 6 April 2025 and 5 April 2028, she will be able to designate specific amounts (cash or non-liquid assets) on which she can pay a lower rate of tax - 12% in 2025/26 and 2026/27 and 15% in 2027/28. She will not have to remit the designated amounts to the UK. However, once she has designated an amount and paid the lower rate of tax, she can bring the amount to the UK tax-free at a later date.

Any UK assets Mrs C has or acquires will be subject to IHT but her non-UK assets will not be subject to IHT until she has been resident in the UK for 10 of the preceding 20 tax years.

Planning points

Mrs C should consider whether to remain UK resident after 5 April 2025, as her worldwide income and capital gains will be taxable in the UK after that date.

If Mrs C intends to remain UK resident, she should consider claiming the remittance basis for the tax year 2024/2025 and realising foreign income and capital gains, which she should leave outside the UK, during that year. Such income and capital gains can then be designated under the TRF and remitted to the UK after 6 April 2025 at a rate of 12%. If she does not do any such planning, any income and capital gains that arose to her before 6 April 2025 and she remits will be taxed on her at rates of up to 45% and 24% respectively.

Mrs C may also wish to change her investment strategy to prioritise capital growth over income (which is taxed at a higher rate) or use wrappers or similar arrangements to minimise taxable income and capital gains arising to her while she is UK tax resident while allowing her investments to grow.

Case 5: Mr D – non-dom who will have been UK resident for more than 10 years on 6 April 2025

Current position

Mr D's position is the same as Mr B's.

How will he be taxed from 6 April 2025?

If he remains UK resident after 5 April 2025:

- Mr D will be subject to UK taxation on his worldwide income and gains;
- If he has claimed the remittance basis for at least one tax year, for CGT purposes, he can elect to rebase foreign assets he owned on 5 April 2017 to their market value as at 5 April 2017 when he sells them;
- Under the TRF, if he has claimed the remittance basis in the past and has unremitted pre-April 2025 foreign income and capital gains, between 6 April 2025 and 5 April 2028, he will be able to designate specific amounts (cash or non-liquid assets) on which he can pay a lower rate of tax - 12% in 2025/26 and 2026/27 and 15% in 2027/28. He will not have to remit the designated amounts to the UK. However, once he has designated an amount and paid the lower rate of tax, he can bring the amount to the UK tax-free at a later date;
- He will not be subject to UK tax on his clean capital (if he has any), whenever he brings it to the UK;
- Mr D will have been resident in the UK for more than 10 years and will therefore become subject to UK IHT on his worldwide assets;
- If Mr D leaves the UK, his worldwide estate will be within the scope of IHT for up to 10 years. If Mr D leaves the UK after 13 years of UK residence, he will remain within the scope of IHT for 3 years. This increases by one tax year for each additional year of residence up to a maximum of 10 years.

Planning points

Mr D should consider whether to remain UK resident after 5 April 2025, as his worldwide income and capital gains will be taxable in the UK after that date. Departure would not change the fact that he is within the scope of IHT, but it would start the clock running for the expiry of his IHT tail (i.e. the expiry of the period during which IHT can still apply to his assets).

If he will remain UK resident, Mr D should consider realising foreign income and capital gains prior to 6 April 2025 while claiming the remittance basis. Such income and capital gains can then be remitted to the UK post-6 April 2025 at a rate of 12% if he elects to apply the TRF to them. If he does not do any such planning, any income and capital gains that arose to him before 6 April 2025 and he remits will be taxed on him at rates of up to 45% and 24% respectively.

Mr D may also wish to change his investment strategy to prioritise capital growth over income (which is taxed at a higher rate) or use wrappers or similar arrangements to minimise taxable income and capital gains arising to him while he is UK tax resident while allowing his investments to grow.

Case 6: Miss E – non-dom settlor of non-UK resident trust. She will have been UK resident for more than 10 years on 6 April 2025

Miss E has been UK resident since the 2012/2013 tax year. She settled her shares in a non-UK family company in a non-UK resident discretionary trust in April 2022. The company carries out investment activities. Miss E and her three minor children are the beneficiaries of the trust. She has no fixed date of departure from the UK – she is likely to remain at least until her youngest child finishes university.

Current position

Miss E is in a similar position to Mr B as regards her assets outside the trust.

In respect of the trust, the present position is:

- It is an excluded property trust for IHT purposes, meaning its non-UK assets are not subject to IHT;
- It is a protected trust for income tax purposes, meaning that its foreign income cannot be taxed on Miss E until she receives a benefit from the trust or ‘taints’ the trust (this has a technical meaning not explored here);
- Its capital gains are not taxed on Miss E as they arise;
- If and when Miss E or another UK resident beneficiary receives a benefit from the trust, they may be treated as receiving taxable income or capital gains, although the remittance basis may also apply to such attributed income or capital gains.

What will be the position from 6 April 2025?

Miss E will be in a similar position to Mrs C as regards her personal tax position.

In respect of the trust, from 6 April 2025:

- The trust will be subject to IHT at a rate of up to 6% on its assets at its 10th anniversary or when assets are distributed. The rate will probably be around 4.2%.
- The trust is ‘settlor interested’ as Miss E and her minor children are beneficiaries. The income and capital gains of the trust arising after 5 April 2025 will be taxed on Miss E on an arising basis whether or not she receives any benefit from the trust;
- In respect of income and capital gains that arose to the trust before 6 April 2025, they will be taxed when matched with distributions received by Miss E and other UK resident beneficiaries. Miss E will no longer be able to claim the remittance basis on such distributions.

Planning points

Miss E may wish to consider:

- Leaving the UK. If she leaves before 5 April 2025, the non-UK assets she and the trust hold will be outside the scope of IHT from that point as long as she remains non-UK resident for at least three full tax years;
- Asking the trustee to exclude her as beneficiary of the trust to prevent the attribution of its income to her after 5 April 2025 (there may still be tax charges on her if her children receive benefits from the trust). However, if her children remain beneficiaries, the trust’s gains may still be taxed on her;

- If the trust has made income and capital gains in the past, claiming the remittance basis for now and asking the trustees for a significant distribution before 6 April 2025. Between 6 April 2025 and 6 April 2027 she can then elect for the TRF to apply to the amount of the distribution. She will pay 12% tax on it but can then bring it to the UK without a further liability.

The trustees may:

- Look to rebase trust assets before 6 April 2025. The gains that are generated will not be taxed on Miss E or other beneficiaries unless and until they receive a benefit from the trust. Rebasing will reduce the amount of capital gains that can be taxed on Miss E on disposals of trust assets after 5 April 2025;
- Look to generate capital rather than income yield in future, as that will be taxed at a lower rate on Miss E, or to use wrappers that will minimise the generation of income and capital gains that can be taxed on Miss E after 5 April 2025.

Case 7: Professor F – non-dom settlor of non-UK resident trust. He will have been UK resident for 6 years on 6 April 2025

Professor F has been UK resident since the 2020/2021 tax year. He settled cash into a non-UK trust in 2023. The trust then set up a non-UK company that borrowed the money and invested it in a share portfolio. His adult nephews and nieces are beneficiaries of the trust. He is not a named beneficiary but is not excluded from benefitting (he could, for example, later be added as beneficiary under the terms of the trust as they now are).

Current position

Professor F is in a similar position to Mr B as regards his assets outside the trust.

In respect of the trust, the present position is:

- It is an excluded property trust for IHT purposes, meaning its non-UK assets are not subject to IHT;
- It is a protected trust for income tax purposes, meaning that its foreign income cannot be taxed on Professor F until he receives a benefit from the trust or ‘taints’ the trust. The UK income of the company is taxed on Professor F as it arises;
- Its capital gains are not taxed on Professor F as they arise;
- If and when Professor F or another UK resident beneficiary receives a benefit from the trust, they may be treated as receiving taxable income or capital gains, although the remittance basis may also apply to such attributed income or capital gains.

What will be the position from 6 April 2025?

Professor F will be in a similar position to Mrs C as regards his personal tax position.

In respect of the trust:

- The trust will not be subject to IHT on its non-UK assets until at least 6 April 2030;
- If Professor F remains UK resident, from 5 April 2030, IHT will apply to the trust at a rate of up to 6% on its assets at its 10th anniversary or when assets are distributed;
- The income and capital gains of the trust arising after 5 April 2025 will be taxed on Professor F on an arising basis whether or not he receives any benefit from the trust;;
- In respect of income and capital gains that arose to the trust before 6 April 2025, they will be taxed when matched with distributions received by Professor F and other UK resident beneficiaries. Professor F will no longer be able to claim the remittance basis on such distributions.

Planning points

Professor F may wish to consider:

- Leaving the UK before 6 April 2030. If he does so, he and the trust will be outside the scope of IHT from the date upon which he leaves;
- Asking the trustee to exclude him as beneficiary of the trust to prevent the attribution of its income to him after 5 April 2025;

- If he plans to remain UK resident and needs access to the funds in the trust, claiming the remittance basis for now and asking the trustees for a significant distribution before 6 April 2025. Between 6 April 2025 and 6 April 2027, he can elect for the TRF to apply to the amount of the distribution. He will pay 12% tax on it but can then bring it to the UK free of further tax;

The trustees may look to:

- Rebase trust assets before 6 April 2025. The gains that are generated will not be taxed on Professor F or other beneficiaries unless and until they receive a benefit from the trust. Rebasing will reduce the amount of capital gains that can be taxed on Professor F on disposals of trust assets after 5 April 2025;
- Look to generate capital rather than income yield in future, as that will be taxed at a lower rate on Professor F, or to use wrappers that will minimise the generation of income and capital gains that can be taxed on Professor F after 5 April 2025.

Case 8: Ms G – non-dom UK resident settlor of non-UK resident trust/company structure. She will have been UK resident for fewer than 4 years on 6 April 2025

Ms G became UK resident in the 2022/2023 tax year. She settled a portfolio of non-UK shares into a non-UK resident trust structure before she came to the UK. Ms G is a beneficiary of the trust.

Current position

Ms G's position will be the same as Miss E above.

How will she be taxed from 6 April 2025?

Ms G will be in a similar position to Mr B as regards her personal tax position.

In respect of the trust, from 6 April 2025:

- The trust will continue to be an excluded property trust for IHT purposes – its non-UK assets will be outside the scope of IHT until at least 6 April 2032;
- The trust is settlor-interested as Ms G can benefit from it. The income and capital gains of the trust arising after 5 April 2025 will be treated as Ms G's whether or not she receives any benefit from the trust. However, if she elects for the FIG regime, she will not be subject to UK tax on those income or capital gains on them until she reaches four years' UK tax residence;
- After the four year threshold is reached on 6 April 2026, Ms G will not be able to use the FIG regime. The trust's income and capital gains will be taxed on her as they arise if she is still UK resident;
- In respect of income and capital gains that arose to the trust before 6 April 2025, it appears that they will be taxed when matched with distributions received by Ms G and other UK resident beneficiaries. However, if Ms G receives distributions to her before she reaches the four year threshold and she elects for the FIG regime, she will not be taxed on them, whether or not they are remitted to the UK.

Planning points

Ms G should consider taking planning steps, including:

- Ensuring that she leaves the UK before she exceeds 10 years' UK residence;
- Claiming the remittance basis for 2024/2025;
- If the trust has made income and capital gains in the past, Ms G may wish to ask the trustees for a significant distribution to her before 6 April 2025, so that the trust is 'cleaned' at no tax cost to Ms G. She may then leave the distribution outside the UK, so she does not pay tax on it, or elect to apply the TRF, so that she can bring it to the UK at a tax rate of 12%;
- Asking the trustees to exclude her from being able to benefit from the trust which may prevent the attribution of its income and gains to her after she reaches the four year threshold.

The trustees may look to :

- Rebase trust assets before 6 April 2025. The gains that are generated will not be taxed on Ms G or other beneficiaries unless and until they receive a benefit from the trust. Rebasing will reduce the amount of capital gains that can be taxed on Ms G on disposals of trust assets after 5 April 2025;
- Look to generate capital rather than income yield in future, as that will be taxed at a lower rate on Ms G, or to use wrappers that will minimise the generation of income and capital gains that can be taxed on Ms G after 5 April 2025.

Case 9: Mr H - UK resident non-dom beneficiary of non-UK resident trust. He will have been UK resident for more than 4 years on 6 April 2025

Mr H is a beneficiary of the trust but not a settlor of it.

Current position

Mr H's personal tax position is similar to Mrs C.

In respect of the trust, under anti-avoidance provisions, if Mr H receives a benefit from the trust and it can be 'matched' with trust income or capital gains, he is treated as a having made income or capital gains himself. He is liable to UK tax on those deemed income or capital gains, subject to the remittance basis if he claims it.

How will he be taxed from 6 April 2025?

The current system of 'matching' benefits received by a beneficiary with the trust's relevant income and capital gains will continue. As Mr H will have been UK resident for more than four tax years, he will not qualify for the FIG regime. As a result, if he remains resident in the UK after 5 April 2025:

- He will not be subject to UK tax in respect of the trust unless and until he receives a benefit from it;
- When he does receive a benefit, he may be treated as if he has received income and/or capital gains on which he will be liable to UK tax;
- If he received distributions from the trust before 6 April 2025 and claimed the remittance basis in respect of them, he may be able to designate such distributions under the TRF. Under the TRF, amounts designated in 2025/2026 and 2026/2027 tax returns will be taxed at a rate of 12% and amounts designated and taxed in 2027/28 at a rate of 15%. Once he has designated an amount and paid the tax on it, he can remit it to the UK free of further tax.

Planning points

Mr H and the trustees may consider the following planning steps:

- Mr H claims the remittance basis for the tax year 2024/2025. The trustees make a large distribution outside the UK to Mr H before 6 April 2025 so that it is not taxed;
- Assuming that the TRF will be available, Mr H could bring the distribution to the UK after 6 April 2025 at reduced tax rate of 12% or 15% depending on the year of designation and tax paid under the TRF.

Case 10: Mr I - UK resident non-dom beneficiary of non-UK resident trust. He will have been UK resident for fewer than 4 years on 6 April 2025

Mr I is a beneficiary of the trust but not a settlor of it.

Current position

Mr I's personal tax position is similar to Mrs C.

If Mr I receives a benefit from the trust and it can be 'matched' with trust income or capital gains, under anti-avoidance provisions he is treated as a having made income or capital gains himself, on which he will be liable to UK income tax or capital gains tax, subject to the remittance basis if he claims it.

How will he be taxed after 6 April 2025 ?

Mr I will qualify for the FIG regime. If he elects to use it, any distributions/benefits he receives from the trust after 6 April 2025 until he reaches the four year threshold will not be subject to UK tax, whether or not he remits them.

Once Mr I has reached the four year threshold, he will be subject to UK tax on distributions/benefits from the trust insofar as they are matched with trust income or capital gains.

Planning points

Mr I and the trustees may wish to consider:

- Minimising distributions to Mr I before 6 April 2025, as they will be taxable;
- Maximising distributions to Mr I after 5 April 2025 before he reaches the 4 year threshold, as he will not pay UK tax on them if he elects to use the FIG regime.

Case 11: the J Trust – a non-UK resident discretionary trust settled by a non-dom settlor who is now dead

This case study looks solely at IHT.

Current position

The trust is an excluded property trust, meaning that its non-UK assets are not subject to IHT. Its UK assets are subject to IHT.

The position from 6 April 2025

There is no change – the non-UK assets will be outside the scope of IHT and UK assets will remain within the scope of IHT.

Case 12: the K Trust – a non-UK resident discretionary trust settled by a non-dom settlor who was UK resident but left the UK before 6 April 2025

This case study looks solely at IHT.

The settlor is also a beneficiary of the trust.

Current position

The trust is an excluded property trust, meaning that its non-UK assets are not subject to IHT. Its UK assets are subject to IHT.

The position from 6 April 2025

It will be necessary to establish whether the settlor falls within the definition of a long term resident by checking whether the settlor was resident in the UK for more than 10 years and when he left the UK.

If and while the settlor is a long term resident:

- The trust will be subject to IHT at a rate of up to 6% at its 10-year anniversaries or when assets leave the trust;
- At the time when the settlor ceases to be a long term resident because his IHT tail expires, there will be IHT at a rate of up to 6% on the non-UK assets of the trust;
- There will be no IHT charge triggered by the settlor's death.

If the settlor is not a long term resident, the non-UK assets of the trust will be outside the scope of IHT.

Planning

The trustees should consider distributions of trust assets soon after 6 April 2025 – that may be more may therefore be more tax efficient than waiting until the settlor's IHT tail expires.

If there are beneficiaries who are UK resident or may become UK resident before the settlor's IHT tail expires and can claim the FIG regime, distributions to them should be considered. These steps would reduce the value of the assets later subject to an exit charge when his tail expires.