

# Autumn Budget 2024 & the impact on international individuals residing in the UK.



**As expected, the Government used the Autumn Budget to announce major changes to the way those who come to the UK, will be taxed in the UK. The changes ultimately seek to tax non-UK domiciles (“non-doms”) in the same manner as UK domiciles, whilst providing measures to attract continued investment of foreign sourced funds into the UK.**

The changes move away from the use of the common law concept of “domicile” to determine tax treatment and instead introduce a new regime based on residence that will be introduced from 6 April 2025.

But whilst the new proposals introduce a more efficient and simple system to tax those coming to the UK from now on, the changes are a little more complex for those non-doms already settled here.

This article will set out the Budgetary changes and consider the implications for current non-doms on their longer-term tax position in the UK and then further review the changes and implications for settlor interested offshore trusts and the changes to the Overseas Workday Relief (“**OWR**”).





## Key Budgetary Changes for the non-UK domicile, resident in the UK

- **Change in regime** - The government are abolishing the current domicile-based tax regime for the taxation of arrivers to the UK and replacing it with one based on residence as determined in accordance with the Statutory Residence Test (**SRT**).
- **4- year FIG regime** - From 6 April 2025, everyone in the UK will pay tax on their worldwide income and gains on an arising basis. However, anyone coming to the UK who has not been UK tax resident in the prior ten tax years (regardless of domicile), can claim 100% relief from tax on their foreign income and gains (**FIGs**) during their first four consecutive years of tax residence in the UK.
- If the relief is claimed, the amount of the FIGs for which relief is sought will need to be quantified and reported on a tax return but can then be brought into the UK tax-free at any time. This can include distributions from offshore trusts.
- Claiming relief will lose the ability to claim personal allowances and annual exemptions, as well as prevent the use of foreign income losses or foreign capital losses arising in the year of the claim.
- **Temporary Repatriation Facility (TRF)** - Where a current non-UK domicile is ineligible for the 4-year FIG regime, they can take advantage of the Temporary Repatriation Facility. This is a three-year window enabling designated amounts of pre-6 April 2025 FIGs to be taxed at reduced rates of tax (being 12% in tax years 2025/26 and 2026/27 and 15% in tax year 2027/28) which can then be remitted into the UK at any time with no further tax charge although trust distributions must be brought into the UK within the permitted timeframe). It will be a mechanism that can assist with potentially cleansing offshore "mixed accounts."
- **Rebasing** - Individuals currently not UK domiciled and not deemed domiciled who have claimed the remittance basis in any year between 6 April 2017 to 5 April 2025 can also elect to rebase assets to their value on **5 April 2017** (provided the asset was situated outside the UK from 6 March 2024 to 5 April 2025).
- **Limitation to excluded property** – non-UK domiciles who are resident in the UK for ten tax years out of the prior twenty tax years will become liable to UK IHT on their worldwide assets. If they leave the UK, they will remain within the IHT tax net for between three and ten years after departure, depending on how long there were UK resident.



## What is domicile?

- Domicile is a common law concept that determines where a person is from. It is generally the jurisdiction that a person considers their true home and is separate to residence, nationality and citizenship. A person can only have one domicile at any given point in time.
- A person's domicile usually follows that of their father at the time of their birth, but may change if their parent's domicile changes during minority or during adulthood where a conscious decision is made to move away from the country of their origin, permanently or indefinitely, cutting all ties with their past.
- Proving domicile can be subjective as it relies on the intention of the individual. HMRC can request substantive evidence to back up any such claims of non-UK domicile, particularly where a person has been resident for prolonged periods of time. HMRC challenges into domicile can be long and arduous.
- However, prior to 6 April 2025, those not domiciled in the UK can claim the "remittance basis of taxation", such that foreign income and gains are only taxed in the UK if they are brought into or enjoyed (i.e. "remitted") in the UK during the the first fifteen years out of 20 years of residence here (although a charge was payable to enjoy this regime after the non-dom had been resident in the UK for 7 out of the prior 9 tax years).

## The impact of the new rules

- The new rules will tax **all** UK residents on their worldwide income and gains each tax year, as it arises from 6 April 2025.

### *Considerations for new arrivals*

- Those moving to the UK who have not been tax resident in the UK at any point during the prior 10 tax years (so could include returning UK expats who have spent many years residing overseas) can claim 100% relief from tax on their FIGs for the first four consecutive years of tax residence under the provisions of the 4-year FIG regime mentioned above.
- The 4-year FIG regime will therefore apply to anyone who moved to the UK during from 6 April 2022 onwards and is UK resident under domestic legislation (so cannot be treated as non-UK resident if they are resident in the UK under the SRT but Treaty Resident



elsewhere under the terms of a Double Tax Treaty). In addition, if a person claims split year treatment in a tax year, it will be treated as a full year of UK residence for the purpose of the 4 -year FIG regime.

- It will therefore be important that arrivals to the UK have a full understanding of the terms of the SRT and that this is tested on an annual basis (please note that pre-SRT rules will apply for any years for which residence is considered prior to 6 April 2013).
- As explained above, there are various considerations to be made to determine whether claiming the relief is efficient for each taxpayer. For instance, where total worldwide taxable income is below £125,140 it may not be worth claiming the relief on FIGs, due to the 4-year FIG regime's exclusion of the personal allowance. Any claim for relief should therefore be tested annually to check appropriateness where total taxable income is around or below this figure.
- Where relief under the 4-year FIG regime is not claimed in a tax year, foreign tax credits may be available for any foreign taxes paid on the same amount. Such credits are not available where the relief is claimed since any quantified amounts are considered net of taxes. The regime cannot therefore be used to seek repayment of taxes from other jurisdictions.

#### *Considerations for existing non-doms, residing in the UK.*

- Whilst there is much talk of the remittance basis being abolished, this may be misleading, since it is only applicable for those arriving in the UK from now on and for post 6 April 2025 FIGs.
- Whilst post 6 April 2025 FIGs (not relieved under the 4-year FIG regime) will be taxed on an arising basis, pre-6 April 2025 FIGs will still be taxed as a remittance if brought into the UK by a non-dom.
- Existing non-doms in the UK, will therefore need to keep a careful track of pre- and post-6 April 2025 FIGs.
- However, the **TRF** presents a window of opportunity for designated sums of pre- 6 April 2025 FIGs to be brought to the UK cheaply.
- Whilst the particulars still need to be finalised, it does appear that the use of the TRF could also simplify the ordering rules for mixed accounts. Known as the "**mixed fund rules**," these determine that where FIGs are not clearly segregated between clean capital,



income and capital gains, the highest taxed source is always treated as being brought into the UK first.

- The use of the **TRF** will enable a round sum of pre-6 April 2025 FIGs to be designated (regardless of its source as income, gains etc) on which the TRF rate will apply. This sum does not need to be brought into the UK at that time, but when it is remitted to the UK it will then be treated as remitted first (ahead of the normal ordering rules) with no further tax liability.
- Where currently untaxed FIGs are required to source a purchase in the UK e.g. to acquire UK property, it may be worth considering delaying such a transfer until after 6 April 2025 to take advantage of the TRF.



### Key Budgetary Changes affecting offshore trusts.

- **Loss of protected status** - From 6 April 2025, offshore trusts will lose their protected status meaning that UK resident settlors of such trusts who are also able to benefit from them, will be taxed on FIGs (as well as UK income and gains) arising within the trust, regardless of whether or not they receive a distribution from the trust.
- **Loss of Excluded Property Status** – foreign situs trust assets are currently exempt from IHT where assets are settled into trust when at that date, the settlor was not UK domiciled or deemed domiciled. From 6 April 2025, non-UK situs trust assets will be subject to UK IHT where at the date of a relevant event (i.e. on the exit of an asset from the trust, or on each 10<sup>th</sup> anniversary of the settlement of the trust), the settlor has been resident in the UK for at least ten out of the prior 20 tax years.
- This means that where excluded property status is lost, a discretionary trust will be liable to UK inheritance tax at up to 6% of all trust assets on each ten-year anniversary of the date that the trust was initially settled and on each appropriation of assets out of the trust. In addition, where excluded property status is lost for an interest in possession trust, worldwide trust assets represented in the life tenant's interest will be included within their estate on death.
- **Exit charge when leaving the IHT net** – where the long term resident settlor leaves the UK, the trust will remain within the UK IHT net for a further three to ten years depending on how long the settlor was UK resident. At the point that the settlement leaves the UK tax net, a further “exit charge” will arise based on 6% of the value of that trust at that time.



## Considerations:

- Those most affected by the change to the non-domicile regime are the settlors of offshore trusts who retain an interest in them. Since 6 April 2017, when the concept of “deemed domicile” was introduced, settlors who are no longer eligible to use the remittance basis of taxation were only taxed on trust income and gains to the extent that it was matched to distributions they received from the trust (so long as the trust was not “tainted”).
- The new changes mean that from 6 April 2025, such settlors (who are not eligible for the 4-year FIG regime) will be taxed on trust income and gains as it arises, regardless of whether or not they (or other close family members) receive it.
- This may mean offshore settlor interested trusts could become extremely expensive for UK resident settlors if they produce large amounts of income and gains each year (for instance, if trust funds are invested in active portfolios). Furthermore, without accompanying distributions, the settlor will be forced to seek alternative sources to finance the arising tax liabilities. This in turn could require additional taxable remittances to meet such liabilities.
- Considerations should therefore be made as to the suitability of a such a structure, or whether sums can be distributed to the settlor and their spouse under the TRF and then the settlor and their spouse be excluded from the trust going forwards.
- Furthermore, the limitations of the excluded property trust regime means that many trust assets currently excluded from UK inheritance tax will be caught under the “relevant property regime” and subject to tax on exits of assets from the trust and on the value of those assets at each 10-year anniversary.
- If the settlor leaves the UK post 6 April 2025, the trust could remain within the UK tax net for a further 3 to 10 years depending on how long the settlor had been resident in the UK on the date of departure. As such, an offshore trust with no UK assets and no resident beneficiaries or settlor, could still be subject to UK IHT ten year charges or exit charges for up to ten years post the emigration of that settlor, if that settlor had previously been resident in the UK for 20 or more tax years (at present, the IHT “tail” on a deemed domicile person leaving the UK is four consecutive tax years of non-UK residence or from the date that person left the UK to establish a permanent domicile of choice elsewhere).
- In addition, there is a further exit charge of up to 6% of the value of the trust when the trust finally falls out of the UK IHT net at the end of the “tail”.



- These factors alone could significantly influence a UK resident settlor's decision on whether or not to continue to reside in the UK.
- Offshore trusts are a highly complex area of trust and tax law. Specialist advice should always be sought on such matters.



### Budgetary Changes to Overseas Workday Relief (OWR)

- OWR enables a UK resident new arriver to the UK to only pay tax on earnings performed in the UK and excludes non-UK earnings from PAYE.
- From 6 April 2025, OWR will remain available for internationally mobile employees but will align itself with the 4-year FIG regime so that it is available during the first four years of arrival (extending the benefit from the three-year limit imposed at present).
- OWR will be available to all arrivers into the UK who have not been tax resident here in the prior ten tax years regardless of domicile.
- Available OWR will be limited to the lower of 30% of qualifying employment income or £300,000 per year.
- The administrative process for employers regarding the application of PAYE on UK earnings is to be simplified.

- OWR is available for those coming to the UK whose duties are performed wholly or partly outside the UK. It enables the earnings that relate to those overseas duties to be excluded from PAYE.
- The new provisions largely align the existing rules with the new 4-year FIG regime. Previously, the provisions only applied to non-doms (to the extent that the earnings were not remitted into the UK). However, from 5 April 2025 the rules will be open to anyone coming to the UK who has not be UK resident in the prior ten tax years so may apply to expat UK domiciles returning to the UK after a lengthy period overseas.
- Furthermore, there will no longer be a requirement to keep the foreign element of the earnings out of the UK.



- The relief is however largely practical as in most instances, the foreign earnings remain taxable in the country in which they are performed and so the relief merely avoids a process of potentially overpaying tax and then reclaiming tax paid elsewhere via Double Tax Treaty relief on the self-assessment tax return, thereby delaying repayment of overpaid tax.



### Summary of key considerations following the Budgetary changes

- Ensure all arrivars to the UK are clear on the terms of the Statutory Residence Test which will need to be tested each tax year, particularly in the first four years of arrival.
- Where arrivars have worldwide income and gains below or around £120,000 it will be advisable to check whether claiming relief under the 4-year FIG regime is efficient due to the loss of personal allowances.
- Currently resident non-doms who are not eligible for the 4-year FIG regime will need to keep careful records of pre and post 6 April 2025 FIGs.
- Currently resident non-doms who are not eligible for the 4-year FIG regime can use the 3-year window of the TRF to effectively “cleanse” any mixed accounts holding untaxed, pre-6 April 2025 FIGs, at a low rate of tax cost. Such designated amounts of offshore FIGs need not be brought into the UK in the tax year of a claim.
- Consideration should therefore be made of delaying any upcoming spending that requires remitting offshore FIGs into the UK until post 6 April 2025 in order to take advantage of the TRF regime.
- Offshore protected settlor interested trusts should be reviewed for continued viability in light of the attribution of all trust income and gains being taxed on the settlor from 6 April 2025 (where they are not eligible for the 4-year FIG regime) and the erosion of the excluded property trust regime where settlors have resided in the UK for more than 10 tax years.
- Should a decision be made to exclude the settlor and their spouse from benefiting from the currently protected trust, depending on levels of annual attributed offshore income and gains, it may be beneficial to wait until post 6 April 2025 if a final distribution is required to be paid to them, such that it can be taxed at lower rates under the TRF.





For more information on any of the above, please contact [enquiries@hockneygrey.co.uk](mailto:enquiries@hockneygrey.co.uk)

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