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Taxation of non-domiciles: recent developments

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Summary

The UK tax system has two main concepts that determine someone's liability to direct taxes: residence and domicile. 'Residence' refers to someone's physical location during the tax year, while 'domicile' refers to the legal jurisdiction with which someone, wherever they are living, has a primary connection – broadly speaking, their permanent home.

Generally individuals who are UK-resident are taxed on the **arising basis** of taxation. The arising basis of taxation means that all an individual's worldwide income and gains will be taxable in the UK. If an individual is a UK-resident but is not domiciled in the UK, they may choose to be taxed on the **remittance basis** of taxation.

If someone in this position chooses to claim the remittance basis for a tax year, they will pay UK tax on:

- Any of their income and gains which arise in the UK.
- Any of the foreign income and gains that they, or another relevant person, brings (or 'remits') to the UK, even if that remittance occurs in a later tax year.

Since April 2008, an individual who is a non-domiciled UK-resident taxpayer with a foreign income of £2,000 or more and/or brings that money into the UK, can choose whether to be taxed on an 'arising' or 'remittance' basis. Those individuals claiming remittance basis on their self-assessment return may be liable for an annual charge - the **remittance basis charge** - depending on the length of time they have been a UK-resident.[1]

There are currently 3 different charge levels:

- £30,000 if the UK-resident non-UK domicile has been UK-resident for at least 7 of the previous 9 tax years. This was introduced in 2008 by the Labour Government following a policy over of the domicile and residence rules launched initially in 2003.
- £50,000 if the UK-resident non-UK domicile has been UK-resident for at least 12 of the previous 14 tax years (rising to £60,000 from April 2015). This was introduced in April 2012 by the Coalition Government, following a commitment to review the taxation of non-domiciles in the Coalition Agreement.
- £90,000 if the UK-resident non-UK domicile has been UK-resident for at least 17 of the previous 20 tax years. This was introduced in April 2015.

In August 2017 HMRC published a statistical survey of UK non-domicile taxpayers.[2] In 2014/15 there were 121,300 non-domiciled UK taxpayers, paying a total of £9.3 billion in income tax, NICs and capital gains tax. Of these, 54,600 were UK-residence and were taxed on the remittance basis.

Of those non-domiciles taxed on the remittance basis, 5,100 individuals were liable to pay the remittance basis charge in 2014-15. This group paid £1,393m in income tax, £304m in NICs, £129m in capital gains tax, and £226m in remittance basis charges.[3]

In the Summer 2015 Budget the then Chancellor George Osborne announced a series of reforms to the taxation of non-domiciles, including the abolition of permanent 'non-dom'

[1] For further details see, HMRC, *Residence, domicile and the remittance basis (RDR1)*, January 2018

[2] HMRC, *Statistics on non-domiciled taxpayers in the UK*, August 2017. Figures for subsequent years are intended for publication in the annual update made in July each year. (PQ136776, 27 April 2018).

[3] *Statistical commentary on non-domicile taxpayers*, August 2017 p4, p9; *Statistical tables on non-domiciled taxpayers: Table 1 & Table 3*, August 2017

status, to take effect from April 2017.[4] It was estimated that these reforms would raise about £400m a year from 2018/19 to 2021/22.[5]

Following extensive consultation, legislation to give effect to these measures was included in the *Finance Bill 2017-19*. Provision was also included in the Bill to change the rules for the Business Investment Relief (BIR) scheme from April 2017 "to make it easier for non-domiciled individuals who are taxed on the remittance basis to bring offshore money into the UK for the purpose of investing in UK businesses."[6] There have been some concerns as to the Government's case for encouraging the take-up of this relief, although the changes to BIR are not anticipated as having any substantive Exchequer cost.[7] Following consideration by the House, these provisions now form s15 (BIR) and ss29-33 (domicile reforms) of the Finance (No.2) Act 2017.[8]

4 HC Deb 8 July 2016 c325; *Summer 2015 Budget*, HC264, July 2015 paras 1.194-6
5 *Spring Budget 2017*, HC 1025, March 2017 p30 (Table 2.2 – items bk & bl)
6 *Autumn Statement*, Cm 9362, November 2016 para 4.15
7 *Non-domicile taxation: Business Investment Relief: tax information & impact note*, 5 December 2016. See also, PQ55513, 6 December 2016
8 For a commentary on these measures see, "The reforms to the taxation of non-UK domiciliaries", *Tax Journal*, 6 October 2017.

1. Introduction

1.1 Non-domicile and the remittance basis

The UK tax system has two main concepts that determine someone's liability to direct taxes: residence and domicile. 'Residence' refers to someone's physical location during the tax year, while 'domicile' refers to the legal jurisdiction with which someone, wherever they are living, has a primary connection – broadly speaking, their permanent home.

Tilley & Collison's UK Tax Guide notes that "every jurisdiction has to define the population on which its tax system will impose tax":

> The formulation most commonly used is that a tax on income is imposed on persons resident within the territory of the taxation authority and those not resident are subject to tax only on income arising within that territory.
>
> This gives a class of person who are resident in the territory for the year but whose primary connection is with another jurisdiction. Most advanced countries limit the tax charge imposed on persons falling within this category either by (i) choosing to not tax the foreign source income (the 'exemption' method); or (ii) taxing foreign source income only in so far as it is brought into the country (the 'remittance' basis).
>
> Different jurisdictions adopt different approaches to defining the category of persons that can benefit from this more favourable treatment. Some adopt a test of citizenship. Many civil law jurisdictions apply a concept of habitual residence, exempting or limiting the tax charge on those resident in the country in the year but whose habitual residence is elsewhere.
>
> The UK uses the concept of domicile and … it follows the second alternative and taxes foreign income of such persons, and capital gains arising on the disposal of foreign assets, as, and only if, it is remitted to the UK.[9]

As the authors go on to explain, individuals who are resident in the UK but who have domicile in another country may be taxed on the **remittance basis**:

> In general a UK resident is liable to tax on his or her worldwide income. If an individual is resident in the UK, but not domiciled in the UK, he or she may claim (or in some limited circumstances be automatically entitled to) the remittance basis of taxation. Specific complex rules govern the remittance basis.
>
> Broadly, the remittance basis restricts a user's actual liability to tax to:
>
> - any remittance basis charge that might be payable;
> - income and gains from UK sources or assets (taxable on the arising basis);
> - such amounts of foreign income and gains as are remitted to the UK (broadly defined); and,

[9] *Tilley & Collison UK Tax Guide 2016/17 ed* para 49.60

> - specific items of foreign income and/or gains that the remittance basis cannot apply to [for example, gains under a policy of life assurance].
>
> Subject to anti-avoidance provisions applying to temporary non-residents, individuals who are not resident in the UK are:
>
> - not liable to pay tax on foreign income; and
> - generally liable to tax only in respect of certain categories of income.
>
> … In general, a non-UK resident individual is not subject to tax on capital gains, unless these arise from assets used in a UK trade. However, gains realised or remitted by or attributed to individuals during a period of 'temporary' non-residence may be charged to tax on return under anti-avoidance provisions. From 6 April 2015, capital gains tax has been extended to disposals of UK residences by non-residents …
>
> UK domiciliaries are subject to inheritance tax on worldwide assets. In contract, foreign domiciliaries are generally liable to inheritance tax only with regard to UK situs property.[10]

In August 2017 HMRC published a statistical survey of UK non-domicile taxpayers for the first time; this included figures for the numbers of non-domiciles paying UK tax from 2007/08 to 2014/15.[11] In 2014/15 there were 121,300 non-domiciled UK taxpayers, paying a total of £9.3 billion in income tax, NICs and capital gains tax. Of these, 54,600 were UK-residence and were taxed on the remittance basis.[12]

Domicile is distinct from nationality, residence or citizenship. Its origins lie in the British Empire, as it is a concept in general law used to identify those who the law should treat as English (or Scottish or Northern Irish), wherever in the Empire they were born, lived and died. Individuals acquire a "domicile of origin" at birth, which usually follows their father's domicile. Until the age of 16, their domicile will follow that of the person on whom they are legally dependent – a "domicile of dependency". After the age of 16, an individual can acquire a "domicile of choice" by providing evidence that they intend to settle permanently or indefinitely in another country.[13]

The relevance of domicile to tax liability was established at the beginning of the 20th century: to wit, that non-domiciles living in the UK would be liable to pay UK tax on that part of their foreign income and gains remitted to the UK.[14] In 1988 the then Conservative Government reviewed the operation of these rules, noting that the concept of domicile could be "capricious in its effects":

> An individual's domicile of origin is determined by reference to that of his parents. A person may be domiciled in a country

10 *Tilley & Collison UK Tax Guide 2016/17 ed* para 49.4-5. As discussed below, there are circumstances under which individuals with foreign domicile may be deemed to have UK domicile for the purposes of UK inheritance tax.

11 HMRC, *Statistics on non-domiciled taxpayers in the UK*, August 2017. See also, "Non-doms pay average £105,000 in UK tax, data show", *Financial Times*, 31 August 2017.

12 *Statistical commentary on non-domicile taxpayers*, August 2017 p4

13 HM Treasury/HMRC, *Reviewing the residence and domicile rules as they affect the taxation of individuals: a background paper*, April 2003 para 2.7

14 "A relic of empire that created a tax colony", *Financial Times*, 20 February 2015

> which he has never visited because only one domicile is possible at any one time and a domicile of origin is difficult to shed. Thus, an individual may not be domiciled in this country even if he was born in the UK, has lived in this country all his life and holds a British passport. But he will be taxed differently from his neighbour who is in all respects the same except that he has a UK domicile.[15]

Following a policy overview of domicile and residence rules that was launched in 2003, in the 2008 Budget the Labour Government introduced a number of changes to the remittance basis, including a new annual charge of £30,000 that non-domiciles would have to pay if they had lived in the UK for a certain amount of time (specifically, at least 7 of the previous 9 tax years, prior to the year of the claim). Individuals who had lived in the UK for this long but did not wish to pay the charge would be taxed in the same way as people with UK domicile, on the 'arising basis' – that is, liable to UK tax on *all* their foreign income and gains. Non-domiciles with unremitted overseas income and gains of less than £2,000 in the tax year would not need to make a claim to pay tax on the remittance basis.[16]

1.2 Business Investment Relief (BIR)

Business Investment Relief (BIR) makes provision for individuals using the remittance basis to bring overseas income and gains to the UK without any liability to tax, when making a commercial investment. The current rules for the relief were set out in a consultation paper, published by the Treasury in autumn 2016, on possible reforms to BIR, and to the taxation of non-domiciles more generally:

> The scheme effectively treats funds brought to the UK for the purposes of making a qualifying investment as not remitted to the UK and therefore not liable to tax.
>
> The types of company in which a qualifying investment can be made under the scheme are very widely drawn. The definition includes an investment in:
>
> 1. a company carrying on a commercial trade or preparing to do so, including one whose activities consist of generating income from land
> 2. a company carrying out research and development activities
> 3. a company making commercial investments in trading companies
> 4. a holding company of a group of trading companies
>
> There are no restrictions preventing the scheme being used for investments in a company with which an investor has a separate involvement, such as being paid as a director on an arms' length basis in the ordinary course of business. Any investment must be made within 45 days of the date on which the funds are brought into the UK.

[15] Inland Revenue, *Residence in the UK – a consultative document*, July 1988 para 4.7-8. As it transpired the then Chancellor Norman Lamont took the decision to leave the regime unchanged: HC Deb 15 March 1989 cc501-2.

[16] There is more detail about this reform in a second Library briefing paper: *Taxation of non-domiciles*, CBP4604, 6 October 2017.

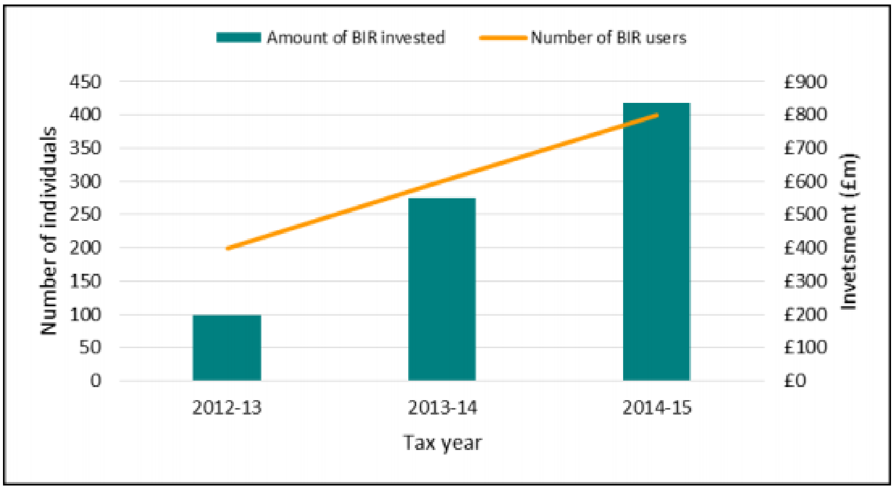
> Unlike other government schemes designed to encourage investments, there is no financial limit on the amount that an individual can invest using the scheme. However, the scheme is not available for investments to acquire existing shares nor for investments in companies which are listed on a recognised stock exchange.[17]

Statutory provision for BIR is made by ss809VA-VO of the *Income Tax Act 2007*. HMRC publish detailed guidance on the operation of this relief in *Guidance note: changes to the remittance basis*, May 2012 (see in particular section 2), and in its online *Residence, Domicile and Remittance Basis Manual* (from para 34300 on).

As part of its recent statistical survey of non-domiciles taxation, HMRC gave figures for the number and amount of BIR claimed by non-domiciled taxpayers for 2012/13-2014/15:[18]

> Figure 6.1 shows that business investment relief reached a peak of £837m in 2014-15. As of 2014-15 the cumulative value of investments in UK businesses is £1,583m. Moreover it can be seen that the number of individuals using business investment relief has grown year on year since the introduction of the measure.

Figure 6.1: Number of individuals and amount invested in UK businesses through business investment relief, 2012-13 to 2014-15.



Prior to this, there do not appear to have been any regularly published estimates of its Exchequer cost.[19] More generally, up to now the operation of the relief does not appear to have been something that has attracted very much debate in the House or attention in the press – although in the past the Chartered Institute of Taxation have raised concerns that anti-avoidance provisions which apply to BIR have hindered its take-up.[20]

17 HM Treasury, *Reforms to the taxation of non-domiciles: further consultation*, August 2016 para 5.2

18 *Statistical commentary on non-domicile taxpayers*, August 2017 p25; *Statistical tables on non-domiciled taxpayers (Table 6)*, August 2017

19 BIR is not mentioned in HMRC's estimates of the costs of various tax reliefs. One presumes that if the relief were not available, individuals would decide not to remit these funds, so that the net Exchequer effect from scrapping BIR would be nil.

20 An exchange of letters between the CIOT and HMRC on this issue over 2013-14 is at: https://www.tax.org.uk/policy-technical/submissions/business-investment-relief-ciot-comments

2. The Coalition Government's 2011 reforms

2.1 Initial consultation 2011

In 2011 the Coalition Government launched a consultation on amending the taxation of non-domiciles, and introducing a statutory definition of residence, though it did ***not*** propose reforming the broad principles underlying the basic rules. For non-domiciles, the most significant change was to be a higher £50,000 change for those applying to be taxed under the remittance basis, who had lived 12 of the previous 14 tax years in the UK.[21]

In December 2011 the Government published a summary of the responses it had had, and draft legislation, though it announced that it would delay the introduction of a statutory residence test.[22] The Government also proposed a **new incentive for non-domiciles to remit funds for business investment**.

The consultation paper set out the case for this relief as follows:

> 2.16 Under current rules, overseas income or capital gains remitted to the UK by resident non-domiciles claiming the remittance basis are liable to UK tax, regardless of the purpose for which they are used. This can be a significant disincentive for non-domiciles to invest in UK business and is a counter-productive feature of the rules. Removing this impediment would promote the UK's international competitiveness, help UK businesses to attract investment and send out a strong message to non-domiciles that the UK is a good place to invest.
>
> 2.17 In the 2011 Budget, the Chancellor announced that overseas income and capital gains remitted to the UK for the purpose of commercial investment in UK business would no longer be liable to UK tax. This consultation seeks views on the detailed design of this policy.
>
> 2.18 To ensure the policy is effective in its aim of attracting investment to the UK, the Government's objective is to design an incentive that is widely drawn and encourages active investment in a broad range of businesses and sectors. It should cater for the diverse types of commercial investment that non-domiciles want to make and at the same time support the Government's aim of fostering economic recovery based on a balanced economy.
>
> 2.19 The Government recognises that complexity can deter investment. Therefore, to make the investment incentive genuinely appealing to non-domiciles, the Government is clear that it should be free of unnecessary restrictions and be simple to use.
>
> 2.20 The Government particularly wants to promote investment where this creates new business activity or supports businesses that otherwise might find it hard to attract investment. This will help to generate jobs, tax receipts and wider economic benefits.

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21 *Reform of the taxation of non-domiciled individuals: a consultation*, June 2011

22 HC Deb 6 December 2011 cc13-14WS. See also, HMT/HMRC, *Reform of the taxation of non-domiciled individuals: summary of responses to consultation*, December 2011.

> However, the Government does not believe the incentive should be exclusively targeted on smaller and entrepreneurial businesses and welcomes investment in businesses of all sizes and maturity.
>
> 2.21 Whilst the aim is to draw the policy widely, this must be consistent with protecting Exchequer revenue and ensuring it is not open to abuse. In particular, it would be contrary to the Government's policy objectives if this incentive were used for the direct personal benefit of the individual or for other non-commercial purposes.[23]

In December 2011 the Government published a summary of the responses it had had, and draft legislation.[24] As part of this it noted that "all respondents welcomed the proposed relief for business investment and the intention to draw the policy widely", and in turn the Government confirmed its intention "to encourage active investment in a broad range of businesses and sectors" while underlining that "this must be consistent with ensuring it is not open to avoidance or used to provide a personal benefit to the individual":

> 2.20 As stated in the consultation, qualifying activities will be a business which is either a trade or which develops or lets commercial property. A trade will be defined as anything that is treated for corporation tax purposes as the carrying on of a trade. Investment in a company which combines trading activity with developing or letting commercial property will be eligible for the relief.
>
> 2.21 The Government will require all, or substantially all, of the company's activities to be qualifying activities. Investments will therefore be eligible for the relief provided any non-qualifying activities do not form a substantial part of the company's total business activities.
>
> For these purposes this will mean that the non-qualifying activities constitute no more than 20% of the company's business activities. For companies that have yet to start trading at the time the investment is made, the relief will be available where it is reasonable to expect that non-qualifying activities will not be substantial.
>
> For most companies, determining whether non-qualifying activity breaches this condition will be based on the company's turnover but this may not be applicable in all cases. HM Revenue & Customs (HMRC) will provide guidance on how total business activity should be measured.[25]

2.2 Budget 2012: new annual charge & introduction of BIR

The 2012 Budget confirmed three changes to these rules: "an increase to the annual charge to £50,000 for non-domiciles who have been UK resident for 12 or more years, a new incentive for business investment

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23 *Reform of the taxation of non-domiciled individuals: a consultation*, June 2011 pp6-7

24 HC Deb 6 December 2011 cc13-14WS

25 HMT/HMRC, *Reform of the taxation of non-domiciled individuals: summary of responses to consultation*, December 2011 para 2.13, paras 2.19-21. See also, HMRC, *Reform of taxation of non-domiciled individuals – tax information & impact note*, December 2011

and technical simplifications to some aspects of the tax regime for non-domiciles."[26] The legislation is now set out in section 47 & schedule 12 to the *Finance Act 2012*.

The provisions were the subject of a relatively short debate at the Committee stage of the Finance Bill, when some relatively technical amendments were agreed. Notably the wider question of retaining the concept of non-domicile – as it applies to UK tax law – was not raised.[27]

On this occasion Treasury Minister David Gauke gave details of the new higher annual charge, and the changes to simplify the remittance basis…

> The changes made by part 1 of the schedule will increase the annual charge to £50,000 for non-domiciles who have been UK resident in 12 or more of the preceding 14 tax years. The £30,000 charge will remain for those who have been resident in at least seven of the preceding nine tax years, but fewer than 12 years. The Government estimate that 3,500 individuals will choose to pay the higher £50,000 charge in 2012-13. The charge is not mandatory, and those who do not wish to pay can instead choose to be taxed on all their worldwide income and gains.
>
> We estimate that, as a result of introducing the higher charge, a further 3,500 individuals will choose to be taxed on their worldwide income and gains, and hence pay more tax than they do currently. Taken together, the introduction of the higher charge is expected to raise approximately £80 million a year …
>
> The changes made by part 3 of the schedule will simplify the remittance basis in two ways. The changes will simplify certain aspects of the nominated income rules that can apply to individuals who pay the £30,000 or £50,000 charge. That has been strongly welcomed during consultation. The simplifications have no cost to the Exchequer.
>
> The Government have considered and rejected other suggestions for simplification on the grounds that they would open up avoidance opportunities, create a direct cost to Exchequer or deliver insignificant benefits. However, the Government will give further consideration to a limited number of other simplifications with a view to possibly legislating in next year's Finance Bill.[28]

… and explained that the Government had modified its plans for the new business investment relief in light of the responses it had received:

> The changes will also remove the tax charge on foreign income and gains when they are brought to the UK for the purpose of commercial investment in business. The business investment incentive is widely drawn to maximise the amount of investment. That will help attract investment in businesses of all sizes across a diverse range of sectors. Foreign income and gains will continue to be liable to UK tax when they are brought to the UK for other purposes, such as personal expenditure.
>
> It is vital that the incentive is not open to abuse or used for the direct personal benefit of the investor. Therefore, the changes include clear anti-avoidance provisions to prevent such abuse, and

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26 *Budget 2012*, HC 1853, March 2012 para 2.50
27 Public Bill Committee, 12th sitting, 14 June 2012 cc420-7
28 *op.cit.* c421. For more details see, HMRC, *Guidance note: changes to the remittance basis*, May 2012.

> make certain that the incentive is used only for its purpose of generating genuine business activity.
>
> In response to consultation, the Government have made changes to improve the legislation as regards creating incentives for investment. In particular, a broader range of company structures will now qualify for investment.
>
> The schedule also includes new provision to allow individuals who take advantage of the investment incentive to retain some of the proceeds from the disposal to meet the capital gains tax liability on that disposal. Again, that follows representations made during consultation. The provision will apply only in situations where the individual might otherwise have to bring additional money to the UK to meet the CGT liability.[29]

Speaking for the Opposition Catherine McKinnell asked "non-domiciles will, obviously, be able to make qualifying investments in the UK without paying the same taxes that a British investor will be obliged to pay. Has the Minister explored whether that could put British investors at a competitive disadvantage?" In response the Minister said:

> The hon. Lady asked whether the regime would result in preferential treatment for non-dom investors over UK-domiciled investors, who have to invest their taxed income. One effect of the remittance base is that it encourages non-doms to leave their money outside the UK.
>
> By introducing the business investment incentive, the Government will remove the barriers that prevent non-doms from wanting to invest here. That is the purpose of the policy. Of course, non-doms will only be able to bring in moneys that they invest in UK business. They will continue to pay UK tax on their foreign income and gains that they bring to the UK for any other reason.[30]

Provision for the new **statutory residence test** to apply from April 2013 was made by the *Finance Act 2013* (schedule 45).[31]

Prior to this, there was no formal statutory definition of the term – so that the tax authorities and taxpayers largely relied on case law. At the Committee stage of the Bill, Treasury Minister David Gauke noted that the new test would "replicate as far as possible the residence outcomes delivered by the current rules, but will provide greater certainty." On this occasion Mr Gauke set out the new test as follows:

> The test takes into consideration the days spent in the UK and connections to the UK. It is structured in three parts. First, the automatic overseas tests determine whether the individual is automatically non-resident; if so, that is conclusive.
>
> Secondly, for those not automatically non-resident, the automatic UK test determines whether an individual is automatically resident; if so, that is conclusive.
>
> Thirdly, for those whose position is not decided by one of the automatic tests, a sufficient ties test determines residence based on a combination of the amount of time spent in the UK and the number of ties with the UK that a person has.

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29 *op.cit.* c421. For more details see, HMRC, *Guidance note: changes to the remittance basis*, May 2012.
30 Public Bill Committee, 14 June 2012 c423, c425
31 See, HMRC, *Guidance note for the Statutory Residence Test RDR3*, August 2016

The test also allows an individual who meets certain situations when coming to or leaving the UK to split the tax year so that they are taxed for most purposes as if resident for the UK part of the year and non-resident for the overseas part of the year.

Finally, the test includes anti-avoidance provisions, which treat certain income and gains arising to individuals who leave the UK temporarily as accruing in the period of return; tax is then levied at that point.[32]

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32 Public Bill Committee, 18th sitting, 18 June 2013 c617

3. The Conservative Government's reforms

3.1 Initial consultation 2014-15

In his Autumn Statement on 3 December 2014 the then Chancellor, George Osborne, announced an increase in the remittance charge for non-domiciles:

> I want to preserve the non-dom status that makes our country attractive, but I want these people to pay a fair contribution while having certainty about their future arrangements.
>
> In the next Parliament, the £30,000 annual charge will remain unchanged, but those who have been here for 12 of the last 14 years will see their payment rise to £60,000; and I am introducing a new £90,000 charge for those resident in this country for 17 of the past 20 years.[33]

Further details were given in the Autumn Statement; the report estimated the increased charge would raise £120m in 2016/17, and £90m a year in subsequent years:

> 1.253 People who are not domiciled in the UK are able to elect to pay tax on the remittance basis so that any income and gains they hold offshore are only taxable as and when they are brought into the UK. The government believes it is fair to ask those non-domiciles who elect to use these generous rules to pay a higher charge when they have been living in the UK for a long time.
>
> It will therefore increase the remittance charge for non-domiciles who have been resident in the UK for 12 of the past 14 years, and introduce a new charging point for those who have been resident for 17 of the past 20 years. The charge for those resident for 7 of the past 9 years will remain unchanged.
>
> The government will also consult on making the election to pay the remittance basis charge apply for a minimum of 3 years, so that non-domiciles are not easily able to arrange their tax affairs so as to only pay the charges occasionally.[34]

HMRC published a consultation paper that set out the Government's case for requiring claims for the remittance basis to apply for a minimum 3 year period:

> At present, the charge is paid by more than 5,000 non-UK domiciled individuals each year, with almost 9,000 individuals having paid the charge in total since its introduction in 2008. Almost 3,000 individuals have paid the charge in each year since it was introduced, with a further 1,000 individuals paying the charge in 4 of the 5 years for which data is currently available. Analysis suggests that up to 800 individuals paying the remittance basis charge in 2012-13 had stopped claiming the remittance basis in the past and were now claiming it again. This does not mean that all those individuals are planning their affairs to reduce

33 HC Deb 3 December 2014 c311

34 *Autumn Statement*, Cm 8961, December 2014 para 1.253; Table 2.1 – item 35. Provision was made by s24 of the *Finance Act 2015*. The Act was passed during the 'wash up' period before the Dissolution of the House, prior to the 2015 General Election, and subject to minimal debate.

> exposure to the remittance basis charge; it may simply reflect the fluctuation of income and gains or individuals who become temporarily non-resident.
>
> However, it has been suggested to the government that some very wealthy non-domiciles do actively plan their affairs so that they only pay the remittance basis charge every few years. This is likely to be exacerbated by the higher charges announced at Autumn Statement 2014.[35]

The 5,000 or so individuals paying the remittance charge are just a small share of the total number of non-domiciles resident in the UK taxed on the remittance basis. As noted, in August 2017 HMRC published a statistical survey of UK non-domicile taxpayers for the first time; this included figures for the numbers of non-domiciles paying UK tax from 2007/08 to 2014/15.[36] Some of these figures are reproduced overleaf.

When these figures were published the *Financial Times* noted that in 2014/15 84,500 non-domiciles resident in the UK paid £9 billion in tax – on average £105,000 each – "reflecting how many of them pay tax on large amounts of income generated in the UK."[37] In a blog for the CIOT John Barnett suggested that, "although the data is a helpful starting point, it is arguably far more revealing in what it omits or fails to say":

> We still do not actually know how many non-doms there are. The figures merely give data for those non-doms who file self-assessment returns. We do not know whether these are the same individuals each year. We do not have figures for non-doms who do not (or have no need to) file a tax return. And we do not have figures for those who could claim non-dom status, but choose not to do so and give no indication of this on their tax return …
>
> Implicit in the figures, but not drawn out, is the possible Laffer curve effect of the changes in 2007/08. Statistical analysis of such tax elasticity is notoriously difficult, so I will leave better analysis to those who know more about what they are doing. However, at face value, total receipts from non-doms fell from £8.4 billion in 2007/08 (prior to the reforms) to £7.2 billion in 2008/09 (after the reforms) – a loss of £1.2 billion … Finally, as is sadly all too normal, the statistics omit to look back at how much tax the changes in 2008 (and 2012) were supposed to bring in.[38]

The accountancy firm Moore Stephens published a survey of non-domiciles at this time that suggested that "up to 12,000" UK resident non-domiciles had left the UK in the past year, and roughly half were 'considering leaving' the UK in the context of the Government's reforms to the non-dom regime, and Brexit.[39]

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35 *Ensuring a fair contribution from non-UK domiciled individuals: consultation on a minimum claim period for the remittance basis charge*, December 2014 para 3.3

36 HMRC, *Statistics on non-domiciled taxpayers in the UK*, August 2017

37 "Non-doms pay average £105,000 in UK tax, data show", *Financial Times*, 31 August 2017.

38 Chartered Institute of Taxation blog, *Non-dom stats: important in what they don't tell us as in what they do*, 5 September 2017

39 "Non-doms take flight over threat of tax crackdown", *Times*, 25 September 2017; Moore Stephens press notice, *Half of non-doms say they have already left or are considering leaving the UK permanently*, 26 September 2017

HMRC, *Non-domicile taxpayer statistics*, August 2017

Table 1: Number of Non-domiciled Taxpayers, UK Income Tax, Capital Gains Tax and National Insurance Contributions by tax year

Amounts: £ millions

Tax Year	All Non-domiciled Taxpayers				Of which UK-resident[2]				Of which non-UK resident[2]			
	Number of individuals[1]	*Total UK Income Tax £m*	*Capital Gains Tax £m*	*National Insurance Contributions[3] £m*	Number of individuals[1]	*Total UK Income Tax £m*	*Capital Gains Tax £m*	*National Insurance Contributions[3] £m*	Number of individuals[1]	*Total UK Income Tax £m*	*Capital Gains Tax £m*	*National Insurance Contributions[3] £m*
2007-08	137,000	6,309	370	2,046	98,900	6,055	356	1,974	38,200	253	14	72
2008-09	123,100	5,530	78 [4]	1,768	88,000	5,352	76 [4]	1,723	35,100	178	1 [4]	45
2009-10	120,300	6,145	147	1,945	82,700	5,931	140	1,899	37,600	214	7	46
2010-11	115,100	6,262	165 [4]	1,855	80,900	6,096	163 [4]	1,821	34,300	166	2 [4]	33
2011-12	113,200	6,375	128 [4]	2,098	80,200	6,211	126 [4]	2,066	33,100	164	2 [4]	32
2012-13	117,000	6,487	147	2,123	81,900	6,319	146	2,091	35,100	167	1	32
2013-14	119,800	6,808	168	2,316	84,100	6,611	167	2,279	35,700	197	2	37
2014-15	121,300	6,747	252	2,253	85,400	6,533	250	2,217	35,800	214	2	35

Notes: Components may not sum to totals because of rounding. The statistics have been sourced from HMRC's live Self-Assessment system and represent the latest stable situation as at August 2017. The statistics will not contain individuals who are yet to submit a Self-Assessment form to HMRC past the statutory deadline. As such these statistics are likely to be revised in future publications especially for the most recent tax years.

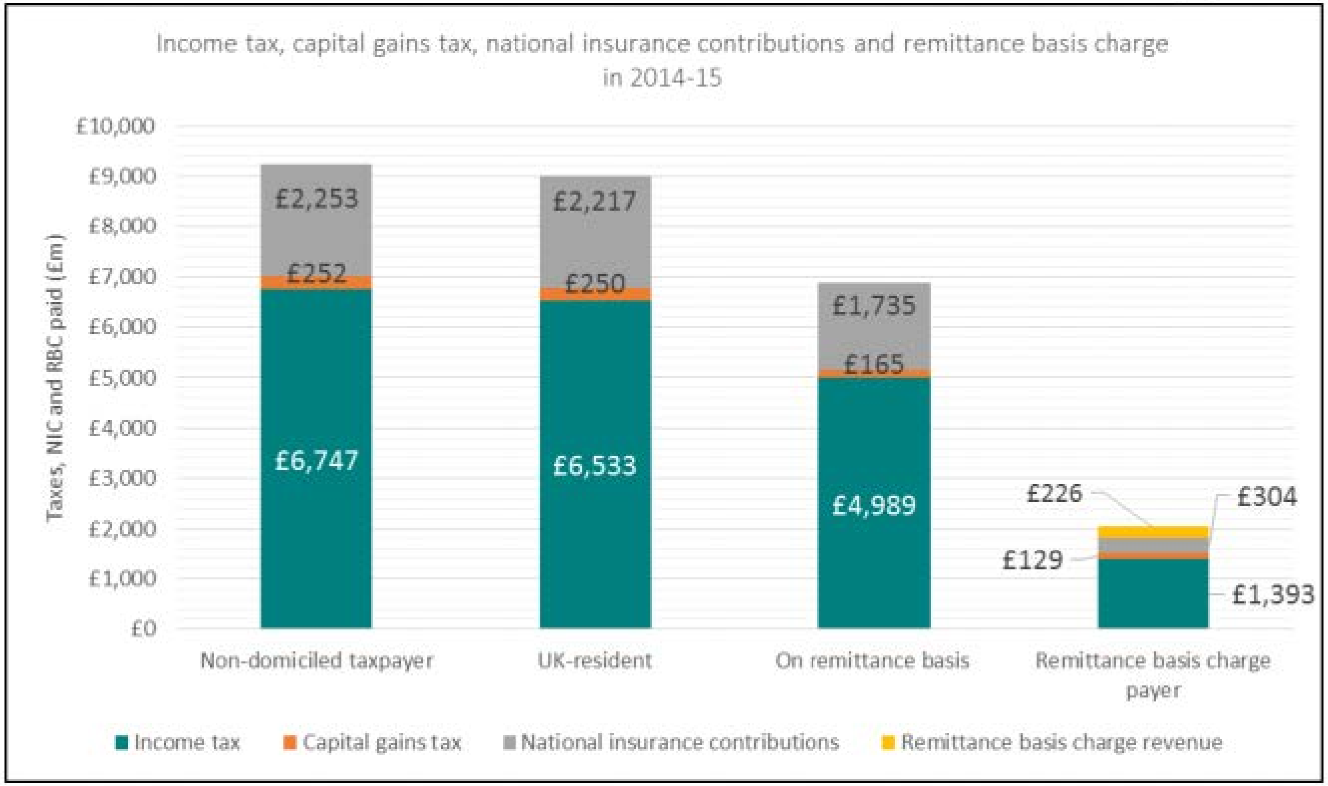
[1] Rounded to the nearest 100. [2] A taxpayer is either UK-resident or non-UK resident according to the terms of the Statutory Residence Test (SRT).

[3] National Insurance contributions (NIC) figures are annual estimates of NICs derived from Self-Assessment (SA) annual return data. These NIC estimates in the table are the sum of Class 1 primary, Class 1 secondary, Class 2 and Class 4 contributions all modelled annually. This may differ from actual NIC due to differences between modelling methods of NIC and the way some classes of national insurance contributions are charged.

[4] Capital Gains tax: Amounts of gains in 2008-09 (when taper relief was abolished and the 18% CGT rate and Entrepreneur's Relief introduced), 2009-10 and 2010-11 (when a higher rate of 28% was introduced after 23 June) are not comparable with earlier years. Amounts of gains since 2011-12 are comparable only with each other as they are the only full years when a higher rate of 28% applied to high enough gains.

HMRC, *Statistical commentary on non-domicile taxpayers*, August 2017

Key statistics on non-domiciled UK taxpayers (p4)



Prior to the publication of these statistics, estimates of the numbers of non-domicile UK taxpayers, the share being taxed on the remittance basis, and the amounts of tax they paid, were given in answer to PQs and FOI requests.[40] In an article on this issue in early 2015 Stuart Adam at the Institute for Fiscal Studies noted that HMRC's estimates of the amounts paid by non-domiciles paying the remittance charge would not fully represent the Exchequer yield from the charge being in place, "since the existence of the charge affects revenue from other taxes too: some people opt to pay tax on their worldwide income and capital gains to avoid the charge, while others decide not to live in the UK at all."[41]

Finally it is worth nothing that in answer to other PQs on non-domiciles, HMRC could not provide figures for the numbers of taxpayers who made an application for non-domicile status but were turned down,[42] nor for the numbers who claim this status based on the nationality of their father – domicile of origin – as opposed to domicile of choice.[43]

Turning back to the Government's 2014-15 consultation, in a foreword to the consultation paper Treasury Minister David Gauke underlined that the Government's support for the remittance basis:

> We understand that we're operating in a highly globalised economy, where businesses, capital and labour are all extremely mobile. We recognise the significant contribution that non-UK domiciled individuals make in the UK, creating jobs and inward investment. That is why we stand firmly behind the remittance basis of taxation, which is a unique way of taxing people.
>
> With the changes announced at Autumn Statement 2014, the UK will continue to offer a very competitive tax regime, allowing people who are not domiciled here to base themselves in the UK for a long time whilst maintaining a different tax status.[44]

3.2 Debate on the use of non-domicile status

Following the launch of the Government's consultation, there was considerable debate as to whether non-domicile status for tax purposes should simply be scrapped. Writing in *Taxation*, the then editor Mike Truman argued that even the title of the consultation document - *Ensuring a fair contribution from non-UK domiciled individuals* – was misleading:

> It's not a "fair contribution" and it never has been. It is, as I said when it was first introduced, a squalid system by which certain wealthy residents whose fathers happened to be born abroad can bribe the taxman to go away and not tax their worldwide income and gains. On what basis can a fixed charge be "fair" when it bears no relation to the actual worldwide income or gains that escape tax?
>
> To say that those who have been here seven years out of the previous nine and have overseas income of, say, £60,000 will have

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40 PQ49483, 24 October 2016 – see also, Figures given in response to FOI request: Ref.1660/14, June 2014; HC Deb 17 July 2014 c795W; PQ222440, 2 February 2016

41 "Unknown quantities: Labour's 'non-dom' proposal", *IFS Observations*, 9 April 2015

42 PQ29027, 3 March 2016

43 PQHL5072, 4 March 2015

44 *Ensuring a fair contribution from non-UK domiciled individuals*, December 2014 'Foreword'

> to pay tax on it in full, but those with exactly the same level of connection but with £6m overseas income pay tax at only 0.5% is not fair in the slightest. I wouldn't normally bother making this point because we have now had both a Labour and a Conservative government acquiesce in this 1980s tax haven behaviour … but the consultation is at "stage 1", which means that it is supposed to be about principles and options.[45]

In February 2015 there was widespread press coverage of a data leak from HSBC's private bank in Switzerland, which indicated the bank's active collusion with clients' efforts to evade tax. One aspect of the coverage was the number of individuals living in the UK with foreign domicile, who had secured assets with the bank in Switzerland, to avoid having to report them to the tax authorities. In addition it was found that the bank's chief executive, Stuart Gulliver, had retained his Hong Kong domicile despite having worked in the UK for the previous 12 years and sending his children to school in this country.[46]

An editorial in the *Financial Times* argued that "the inherent unfairness of allowing the richest in society to avoid paying their fair share of tax has become a matter of fierce public irritation", and that "Britain should sweep away the archaism that allows people to claim a domicile that differs from nationality or residence":

> Those who defend the status quo argue it promotes inward investment because wealthy non-doms build up assets in the UK simply by being here. Were it scrapped, they say, these individuals would leave, taking their enterprise and what UK tax they pay. But in reality non-doms have few incentives to engage in UK activity. The chancellor George Osborne may have introduced measures to encourage them to remit from abroad to invest. But for the most part bringing offshore cash into Britain simply ensures that it will be taxed at UK rates.
>
> As for the idea that abolition will trigger a flood of non-doms seeking sanctuary in Switzerland, some footloose individuals may leave. But the many advantages of London as a financial centre do not dissolve simply because of a change in a hitherto generous tax treatment of resident non domiciles. Low-tax cantons cannot match the City's deep pool of financial expertise or the excitement of London life. Both main political parties have recognised the indefensibility of the regime.
>
> But rather than abolish it, they have sought to raise its cost. Annual charges of £30,000 are levied on people who have been in the UK for more than seven years, rising to £50,000 (soon to be £60,000) for those with over 12 years' residence. But while these have cut the take-up, they have not dealt with the intrinsic unfairness.[47]

45 "Set fair for home", *Taxation*, 29 January 2015

46 "HSBC files reveal how UK's non-dom tax concession is being exploited", *Guardian*, 11 February 2015; "HSBC scandal shines light on privileged world of 'non-doms'" & "The FT guide to being a non-dom", *Financial Times*, 13 February 2015. See also, Treasury Committee, *Oral evidence: HM Revenue and Customs and HSBC*, HC 1071, 25 February 2015.

47 "Editorial: the madness of King George III's tax system", *Financial Times*, 2 March 2015

The tax barrister and commentator Jolyon Maugham wrote three consecutive articles on the issue,[48] in the first of these he took issue with the idea that the remittance basis was an efficient method of encouraging high net-worth individuals to live in the UK:

> The remittance basis is a fiscal sweetener – a bribe, if you like – payable to the wealthy with foreign connections to cause them to move to or remain in the United Kingdom … [Assuming] that we'd like to continue paying a sweetner .. what should that sweetner look like? To answer that you need to go back to … remittance and domicile.
>
> The concept of domicile has many problems. The question whether X is domiciled in the UK often fails to admit of a clear answer: it is to borrow an attractive phrase (from Ian Jack) "a peculiar mixture of fact and intent". Perhaps in consequence, legal challenges to domicile status are relatively rare (such that questions might sensibly be asked about whether all of those claiming the status actually have it). But most importantly of all, the line in the sand that the legal test draws is a pretty crappy way of separating out those we might want to give a sweetener to and those we might not. You might think that, after someone has put down roots, they might no longer need (or deserve) an incentive to come or remain here? But the domicile rule all but ignores that critical fact.
>
> As to the remittance basis of taxation, it's enormously complex to apply. That's a thing modestly undesirable (to all but tax advisers). But its real failing is that it disincentivises the very thing we want to incentivise. The reason we give a sweetener to get wealthy foreigners to come here is not because we like their company (although often we do). The reason is that we want them to bring their money here and spend it here. Taxing them on the income and gains that they bring into the country discourages them from doing the very thing that the sweetener is designed to encourage them to do.
>
> I don't want to suggest policy on the hoof (he said, with the inevitable air of a man about to do so anyway). But it doesn't take much imagination to think of mechanisms that might *consistently* promote the policy objective of offering a sweetener. If we are to have a tax mitigation club, what about a different one, with equally high annual subs, but that gave you a reduced rate of income tax or capital gains tax for the first, say, five or ten years of residence here? Not desperately politically palatable perhaps, but no less so than the present system properly understood, and likely to deliver far better economic results.[49]

In March the Public Accounts Committee held two evidence sessions on the publication of the HSBC data, to determine if HMRC had made sufficient efforts to use this information to tackle tax evasion. As part of this, the then Chair, Margaret Hodge, asked Edward Troup, Second Permanent Secretary at HMRC, about the origin of domicile, and HMRC's actions to ensure that individuals claiming the remittance basis did, in fact, have non-dom status:

48 *Waiting for Godot blog*: A bribe for the wealthy to move to, or remain in, the UK, 20 February 2015; Why are HMRC not challenging non-dom status?, 23 February 2015; Is the sky falling in?, 26 February 2015

49 "A bribe for the wealthy to move to, or remain in, the UK", *Waiting for Godot blog*, 20 February 2015

Q414 Chair: One of the issues that came out in the hearings with us was the non-dom status, which enables people to take advantage …

Edward Troup: … The non-dom status has existed since 1799, when the Bourbons came across here and did not want to be taxed on all their income … The arrangements effectively said that if you can show you have a domicile overseas, you only pay tax on income you earn in the UK or income and gains that you bring to the UK. That is the advantage—the so-called remittance basis. That has been watered down by successive Governments.

If you have been here for more than a certain period of time and have more than a certain income, you now have to effectively pay an annual charge in order to continue to benefit from that. A lot of non-doms do not actually claim the remittance basis. They effectively just accept that they are going to pay tax on their worldwide income, like I or any other UK-domiciled person would do…

Q415 Chair: So what limits are there on non-dom status? When can you challenge? ...

Edward Troup: …. A non-dom would almost certainly be filling in a self-assessment return if they wanted to claim it—contain a whole lot of information and facts, and effectively, have a whole lot of claims. Like all of our other business, these will be risk-assessed according to a number of judgments about what is on there, what the facts are, and whether they look as though they merit some investigation. A very significant number of the non-doms will be handled by the high net worth unit, or the affluent unit, and they get a much higher level of scrutiny than you or me … about their tax affairs, and they will be scrutinised in the normal way. A non-dom who has been here for a number of years is probably more likely to be asked questions about their status than someone who has arrived and is in their fifth or sixth year in the UK. …In total, there are around 114,000 non-doms in the UK, roughly, but only 47,000 of those claim the remittance basis …

Q420 Chair: So how long should they have lived in the country, for example, for you to think, "Oh my goodness, that doesn't sound like a non-dom to me."?

Edward Troup: You lose your domicile of origin and become domiciled in the UK once you have given up any evidence of wanting to return to your original home, to your domicile of origin. You could do that the day after you arrived. It is possible that somebody arrives in the UK, non-dommed, and it becomes perfectly clear from the moment that he or she arrives that they have no intention of returning home, and that they have given up their domicile of origin. We would challenge somebody like that more or less straight away.

Q421 Chair: Would it be your view, Mr Troup, that the definition is being used for a purpose that Parliament did not really intend, even way back in 17-whatever?

Edward Troup: 1799. The question of what Parliament intended is probably more for you and your fellow parliamentarians than it is for me.

Q422 Chair: I am asking you for the evidence ...

Edward Troup: It is more that this is so lost in the mists of time. The question for Parliament is more: given that this is what the

> non-dom status allows, do you think this is still the right policy for the 21st century? There are obviously views that there should be a different policy, but it is quite difficult to pose that in relation to the question of what Parliament intended, simply because it was so long ago … If you are making the case for wealthy people not benefiting so much from the non-dom rules, in a sense, that has partly been responded to by the policy changes, which increase from April this year the annual remittance charge to £90,000, if you have been here more than 17 years …
>
> **Q425 Chair:** For the extremely wealthy, it may just be worth their while paying it, because they still get away with having a lot of money that is not taxed at the UK rate, although they live here, work here, have British passports and their children go to school here.
>
> **Edward Troup:** And there are some policy choices for the next Administration.[50]

The next month, during the 2015 General Election campaign, the then leader of the Labour Party, Ed Miliband, gave a speech in which he announced that an incoming Labour Government would abolish 'the non-dom rule':

> Anyone permanently resident in the UK will pay tax in the same way. The rules we will introduce are modelled on what other countries do. Real temporary residents, here for a brief period, will only have to pay tax on what they earn here. Because they will be paying their taxes in their place of permanent residence. But everyone else will have to pay tax on their worldwide income."[51]

The Labour Party had suggested that the change might raise 'hundreds of millions' though writing for Channel 4 News' factcheck blog, Patrick Worrall suggested that "nobody really knows, as we don't know how wealthy non-doms would react to Labour's changes."[52] Criticising the plans the Conservatives took the position that Mr Miliband's proposal would "cause serious damage to certain sectors of the British economy, including shipping, oil & gas, and financial services",[53] while their election manifesto stated that in government the party would "increase the annual tax charges paid by those with non-domiciled status, ensuring that they make a fair contribution to reducing the deficit, and continue to tackle abuses of this status."[54]

In a commentary piece Stuart Adam at the Institute for Fiscal Studies argued that "the revenue impact of the policy would depend on details that have not yet been announced … and the amounts of foreign money involved, which are not known":

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50 Public Accounts Committee, *Oral evidence: Tax avoidance and evasion: HSBC*, HC 1095, 23 March 2015 pp39-42

51 Labour List, *Speech by Ed Miliband: the Fabric of our Country*, 8 April 2015. See also, "Labour pledges to end non-dom tax loophole" & "Has 200-year-old tax loophole met its Waterloo?", *Financial Times*, 7 April 2015 & "Labour defends plans to scrap 'non-dom' tax status", *BBC News*, 8 April 2015

52 "FactCheck Q7A: how many non-doms are dodging tax?" *Channel 4 News*, 8 April 2015. See also, "Doubts raised over costing of non-dom rule changes", *Financial Times*, 8 April 2015

53 "Ed Balls had warned non-dom changes could lose money", *Financial Times*, 8 April 2015

54 Conservative Party, *2015 Election Manifesto*, April 2015 p11

> There are three potential sources of additional revenue from Labour's proposal:
>
> 1. Abolishing the remittance basis for those currently paying the charge. The 5,000 or so people paying the remittance basis charge are presumably doing so because the charge is less than the tax they would otherwise have to pay on their unremitted income and capital gains.
>
>   This implies that there is potentially some revenue available from removing this option, but nobody knows how much because those who pay the charge do not currently have to disclose their unremitted income and gains. And the more additional tax is at stake, the more steps people will take to avoid paying it.
>
> 2. Abolishing the remittance basis for a wider group of those currently claiming it. The fact that most non-doms claiming the remittance basis have lived in the UK for less than seven years (and are therefore not liable for the existing charge) implies that the length of the grace period that Labour proposes to allow for 'temporary' residents before full tax becomes payable would be crucial in determining how many non-doms were affected.
>
>   Labour has said that it will consult on this, though Ed Balls has suggested that the period might be two to three years and that five years would be 'probably too long'.[55] The shorter this period, the more non-doms will be affected and the more potential revenue at stake, but also the less tied to the UK those affected are likely to be and the more likely they are to be deterred from coming to (or staying in) the UK, with a corresponding loss of revenue.
>
> 3. Removing some or all of the other tax advantages, such as those associated with trusts, that non-doms currently enjoy even if they do not claim the remittance basis.
>
>   This may be important as in some cases the tax advantages in question can be large, though again the number of non-resident trusts and the sums involved are unknown. But it is not clear whether Labour would seek to remove these reliefs entirely – or what current EU rules on free movement of capital would allow.

He went on to suggest that even with the reforms that had been made to the remittance basis, "the current non-dom rules look anachronistic":

> It does seem inequitable to give preferential treatment to some individuals who have lived in this country all their lives. That said, the number paying the remittance basis charge – that is, the number who have lived in the UK for at least seven years and declare substantial overseas income or capital gains – is small. And there are benefits to having highly skilled, internationally mobile individuals living and working here for periods of time.
>
> Changes which ironed out the obvious inequities whilst preserving the UK's attractiveness to mobile workers would be welcome. At a minimum, taxation should be based on objective, observable criteria such as years of residence rather than nebulous and difficult-to-prove criteria such as where one intends to reside

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55 Robert Peston, "Are non-doms bad for the UK?", *BBC News*, 8 April 2015

> permanently and the array of unsatisfactory indicators that are used to proxy that.[56]

Writing in the *Financial Times* John McDermott suggested that it was unlikely that reforming these tax rules would lead to an exodus of resident non-domiciles, as anyone whose residence was determined by their tax position would already be living somewhere else:

> We know that when the government introduced the fee it raised hundreds of millions of pounds. When it increased the fee it raised a few tens of million more. And we know that despite a tougher set of rules, the number of non-doms has not exactly plummeted …
>
> [Clearly] non-doms are motivated by more than taxation. Otherwise many would already be living in Monaco or the Isle of Man or Singapore … For those who also care about the tax yield [as well as the point of principle], as one should, then in the end the only way to find out whether the UK needs its non-dom tax status is to try life without it.[57]

3.3 Subsequent consultation 2015-16

In the Summer 2015 Budget the then Chancellor George Osborne announced that the Government would implement a series of reforms to the taxation of non-domiciles, with effect from April 2017:

> The non-domicile tax status is a long-standing feature of the UK tax system—in place since 1914—that plays an important role in allowing those from abroad to contribute to our economy before returning to their permanent home, and many countries have some version of this tax status.
>
> Simply abolishing it altogether would … probably cost the country money. Many of these people make a considerable contribution to our public life and to tax revenues, but there are some fundamental unfairnesses in the non-dom regime that I am putting a stop to today.
>
> It is not fair that people who are born in the UK to parents who are domiciled here can later in life claim to be non-doms and live here. It is not fair that non-doms with residential property here in the UK can put it in an offshore company and avoid inheritance tax. From now on they will pay the same tax as everyone else. Most fundamentally, it is not fair that people live in this country for very long periods of their lives benefit from our public services and yet operate under different tax rules from everyone else.
>
> Non-dom status was meant to be temporary, but it became permanent for some people. Not any longer. I am today abolishing permanent non-dom tax status. Anyone resident in the UK for more than 15 of the past 20 years will now pay full British taxes on all worldwide income and gains. We will consult to get the detail right. All these non-dom measures will come into effect in April 2017 and they will raise £1.5 billion in extra tax for the

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56 "Unknown quantities: Labour's 'non-dom' proposal", *IFS Observations*, 9 April 2015. See also, *Taxes and Benefits: The Parties' Plans - IFS Briefing Note BN172*, April 2016 p20, p36, p54; Jolyon Maugham, "How much might we raise if we restrict non-dom status?", *Waiting for Godot blog*, 8 April 2015.

57 "Since you asked: How to rinse the rich without washing them away", *Financial Times*, 11 April 2015. George Bull (Baker Tilly) made a similar argument at the time in the *Tax Journal*: "The Q&A: Labour Party commitment to repeal non-dom regime", 17 April 2015.

> Exchequer over this Parliament. British people should pay British taxes in Britain, and now they will.[58]

Further details were given in the Budget report:

> **Non-domiciled individuals**
>
> 1.194 Within a controlled immigration system, the government wants the UK to be a destination that will attract talented people to work and to do business. Having a tax system that is internationally competitive brings in talent and investment which contributes to the growth of the economy. The UK's rules for those who are not domiciled here are important in attracting people to live and to work here. The government remains committed to that aim. However, the government also wants the system to be fair. It believes that those who choose to live in the UK for a long time should pay taxes here like everybody else.
>
> 1.195 From April 2017, anybody who has been resident in the UK for more than 15 of the past 20 tax years will be deemed UK-domiciled for tax purposes. Furthermore, it will no longer be possible for somebody who is born in the UK to parents who are UK domiciled to claim non-domicile status if they leave but then return and take up residency in the UK. These changes will bring an end to the permanent non-domicile status. They create a fairer system while protecting the ability of the UK to continue to attract individuals to come to the UK to work and invest.
>
> 1.196 From April 2017 the government will also introduce new rules so that everybody who owns residential property in the UK and would otherwise pay inheritance tax on that property cannot avoid paying it by holding it in an offshore structure. These changes will limit abuses of the rules by people with non-domicile status who use complicated structures to make their UK homes look like offshore assets.[59]

The Budget report estimated that ending permanent non-domicile status would raise £475m in 2018/19, falling to £380m the following year, while charging inheritance tax on all UK residential property held by non-domiciles would raise £100m in 2018/19, falling to £75m the following year.[60] These estimates were updated at the time of the 2017 Budget, and are broadly unchanged.[61]

The Budget also confirmed that as a result of these reforms "the government will not introduce a minimum claim period for the remittance basis charge."[62] In a summary of this earlier consultation, published alongside the Summer Budget report, the Treasury noted that, "respondents did not support the introduction of the minimum claim period":

> They believed that it would be unfair, complex, and unnecessary because of the scale of the issue. It was felt that a minimum claim period required taxpayers to have unrealistic foresight and make assumptions about their future income and gains, which they would be unable to control or accurately predict. Responses also

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58 HC Deb 8 July 2016 c325

59 *Summer 2015 Budget*, HC264, July 2015 pp45-6

60 *op.cit.* Table 2.1 – items 21 & 22 Over the forecast period 2015-21 the changes were estimated to raise £1.51 billion in total.

61 *Spring Budget 2017*, HC 1025, March 2017 p30 (Table 2.2 – items bk, bl). Over the period 2017-22, the changes are estimated to raise about £1.7 billion in total.

62 *Summer 2015 Budget*, HC264, July 2015 para 2.65

> claimed that some non-UK domiciled individuals who don't pay the remittance basis charge every year might leave the UK in response to such a restriction, which would have a negative impact on the UK economy.[63]

In their initial response the Chartered Institute of Taxation argued, "these proposals will need to be implemented with great care to ensure that changes are effected appropriately across the tax system."[64] Writing in the *Tax Journal* Malcolm Finney suggested this would have a significant impact:

> George Osborne has finally decided that whatever cost a non-domiciliary is prepared to pay to be allowed to use the remittance basis with respect to his/her foreign income and gains, it isn't enough. The remittance basis is to be denied and the arising basis (which most of us have to suffer) is henceforth to be good enough for them too.[65]

The *Financial Times* noted that "the crackdown follows a manifesto pledge to push up charged paid by non-doms and tackle abuses in the sector … [but it falls] short of a drastic shake-up, showing the government does not want to risk damaging the country's appeal to wealthy, mobile investors."[66]

In the IFS post-Budget presentation Stuart Adam called it a "broadly sensible" reform,[67] though Jolyon Maugham argued that "the fundamental injustice of the regime remains":

> By offering those with the necessary foreign connection a different and more attractive basis of taxation – a 'fiscal sweetener' if you like – to come or stay here we discriminate against those who are UK through and through, who don't have that foreign connection. But the Tories' proposal simply ignores that charge … [In addition] one of the arguments – see this Robert Peston piece[68] – for having a non-dom regime is that all those wealthy foreigners bring work for the UK services sector – bankers, lawyers, restauranteurs and so on.
>
> But if that's what the regime wants, it has a funny way of getting it. Because an unsurprising consequence of a regime that taxes people on money that they bring into the country to spend is that it discourages people from bringing money into the country to spend. The Tories' proposals do nothing to ensure that the regime faces in a single direction.[69]

HMRC published two technical notes alongside the Budget, setting out the scope of these reforms. In the first case, this gave details of the new deemed domicile rule for long term resident non-doms ('15 year rule')…

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63 HM Treasury, *Summary of responses on minimum claim period consultation*, July 2015 para 2.7

64 CIOT press notice, *Call for non-dom changes to be coherent with other tax incentives*, 8 July 2015

65 "Comment: The hangman's noose and non-doms", *Tax Journal*, 17 July 2015

66 "Permanent 'non dom' status to be abolished", *Financial Times*, 9 July 2015. See also, "Permanent non-dom tax status to be abolished, chancellor announces", *Guardian*, 8 July 2015

67 Stuart Adam, *IFS Summer 2015 Budget: Tax Measures*, 9 July 2015

68 "Are non-doms bad for UK?", *BBC news online*, 8 April 2015

69 Labour List, *Osborne may have stolen Labour's rhetoric on non-doms, but his proposals are seriously flawed*, 8 July 2015

3.1 Long term resident non doms – the 15 year rule

This introduces a 'deemed-domicile' rule for long-term residents who nevertheless remain foreign domiciled under general law. The 15 year rule will not affect their domicile position under general law, only the UK tax treatment. Nor will it affect the domicile of the individual's children whose domicile under general law and deemed domicile for tax purposes will be tested separately by reference to the child's own individual circumstances.

3.2 Detail

Individuals who have been UK resident for more than 15 of the past 20 tax years but are foreign domiciled under general law will be deemed domiciled for all tax purposes in the UK. The government will consult on whether split years of UK residence count towards the 15 years for this purpose or whether complete tax years of UK residence are required.

This will mean that from their 16th tax year of UK residence long term residents will no longer be able to access the remittance basis and will be subject to tax on an arising basis on their worldwide personal income and gains.

At this point inheritance tax will also be paid on worldwide personal assets.

The new rules will be effective from 6 April 2017 irrespective of when someone arrived in the UK. There will be no special grandfathering rules for those already in the UK. For those who leave the UK before 6 April 2017 but would nevertheless be deemed domiciled under the 15 year rule on 6 April 2017 the present rules will apply.

Once the non-dom who has become deemed domiciled under the 15 year rule leaves the UK and spends more than 5 tax years outside the UK they will at that point lose their deemed tax domicile ('the 5 year rule'). In practice once they cease to be UK resident, their deemed tax domicile is likely only to be relevant for inheritance tax purposes. There will therefore be a longer 'inheritance tax tail' for non-doms who leave the UK than at present for IHT purposes where as noted at paragraph 3 above a 4 year rule currently applies. The government will consult on whether other provisions need to be changed such as IHTA 1984 s267ZA (spousal election to be domiciled in the UK) and the effect of the change in relation to certain old estate duty treaties.

In order to have parity of treatment between UK doms and non doms, UK doms who leave after 5 April 2017 having been here for over 15 years will also be subject to the five year rule even if they intend to emigrate permanently and settle in a particular place on the day of their departure. The government will consult on the detail of the various interactions between the new 5 year rule and the existing 3 year and 4 year rules outlined at paragraph 3 above.

If at a later date (having spent more than 5 tax years abroad) the non-dom returns to the UK for a period but still intends eventually to leave the UK and therefore remains foreign domiciled under general law they will be able to spend another 15 years as a resident for tax purposes before becoming deemed domiciled again. (This will not apply to returning UK doms who are subject to different rules set out below).

The deemed domicile of the long term resident non-dom has no effect on the domicile status of the children, whose actual and deemed domicile position is looked at independently. Thus they will take their father's domicile under general law at the date of their birth and if they are long term residents within the new rules will become deemed domiciled here. But they do not become deemed domiciled here simply because either parent is deemed domiciled here nor do they lose deemed domicile just because a parent does.

Once deemed domiciled here under the 15 year rule, non-doms will not be able to claim reliefs such as the remittance basis for overseas chargeable earnings under ITEPA 2003 s22. There will be consultation on the employment-related securities provisions.

Non doms who have set up an offshore trust before they become deemed domiciled here under the 15 year rule will not be taxed on trust income and gains that are retained in the trust and such excluded property trusts will have the same IHT treatment as at present (subject to the announcement made at Budget 2015 on UK residential property held through offshore companies and similar vehicles). However, such long term residents will, from April 2017 be taxed on any benefits, capital or income received from any trusts on a worldwide basis. The government will consult on the necessary changes to the transfer of assets regime and Capital Gains Tax trust provisions. The government recognises that this is a significant change to the current rules and that changes to trust taxation are complex and will need to be considered carefully.

Certain transitional provisions relating to trusts were introduced for non-doms in 2008 (in particular rebasing). The interaction of these rules with the new regime after the non-dom becomes deemed domiciled here will be subject to consultation.

… and the returning UK dom rule:

3.3 The UK domiciliary ('the returning UK dom')

The government wishes to make it harder for individuals who have a UK domicile at the date of their birth to claim non-dom status if they leave the UK and acquire a domicile of choice in another country but subsequently return here.

Some individuals who have a UK domicile at the date of their birth (ie a UK domicile of origin) may emigrate. They may successfully be able to show that under general law they have acquired a domicile of choice overseas as they intend to settle in the foreign country. Under current rules and in particular the 3 year rule in IHTA s267(1)(a) referred to in paragraph 3 above, they will remain UK deemed domiciled for IHT purposes for at least 3 years after they have formed the intention to settle permanently (and do settle) in the foreign country even if they have been non-UK resident for many years before reaching that decision. Once they have lost their UK domicile and deemed domicile for IHT purposes they can set up trusts and obtain favourable treatment for excluded property trusts and their worldwide estate will fall outside IHT. These rules will not change except that UK doms who leave after 5 April 2017 will also be subject to the 5 year rule set out in paragraph 17 above.

However some of these individuals later return to the UK for some years and still maintain they have a foreign domicile of choice. In these circumstances, the new rules will mean that they are taxed

> as UK domiciled for tax purposes on their return irrespective of their domicile status under general law.
>
> Irrespective of their actual intentions, such an individual (the returning UK dom) will become UK domiciled for tax purposes once they become UK resident. In addition, while UK resident after their return here, the returning UK domiciliary will not benefit from any favourable tax treatment in respect of trusts set up while not domiciled here (whether inheritance tax treatment or otherwise). The government will consult on the detail of these proposals.
>
> On departure the returning UK dom can lose their UK tax domicile in the tax year after departure but only if both the following conditions are satisfied:
>
> 1. they have not spent more than 15 tax years here, and
> 2. they have not acquired an actual domicile in the UK under general law during their return
>
> If (a) applies but not (b) they are subject to the 5 year rule in paragraph 17 above which requires 5 years' non-UK residence.
>
> If (b) applies but not (a) they are subject to the 3 year rule in paragraph 3 and will remain UK domiciled for IHT purposes until more than 3 years after they have acquired (or reacquired) a foreign domicile of choice as a matter of law.
>
> If both (a) and (b) apply they are subject to both the 5 year and 3 year rules and can lose UK tax domicile only on the later of those events.
>
> This measure will affect all returning UK doms from 6 April 2017, including those who returned prior to April 2017. The 5 year rule will affect UK doms leaving after 5 April 2017. It will also affect trusts set up while such individuals were not UK domiciled if they are UK resident on or after 6 April 2017. In these circumstances, an individual will be taxed on all income and gains arising in such trusts under the same rules as any other UK domiciliary. The IHT treatment of such trusts will also be the same as for UK tax payers who have never lost a UK domicile.
>
> The government intends to consult further on the interaction of the various deemed domicile rules for both UK doms and non doms and also in relation to the tax treatment of trusts.[70]

A second technical note gave details of the policy design underpinning the changes to be made liability of UK residential property to inheritance tax:

> **Policy design**
>
> The IHT charge on indirectly held UK property will be based on the Annual Tax on Enveloped Dwellings (ATED) rules, though these proposals will go further than ATED. ATED is limited to properties with a value of £1m and over (reducing to £500,000 and over from April 2016) and is not charged on properties held by offshore companies (and by certain other entities) that are let at arms' length to unconnected parties. The scope of the IHT charge

[70] *Technical briefing on foreign domiciled persons changes announced at Summer Budget 2015*, July 2015

will have no such minimum threshold and the various ATED reliefs will not be applicable here.[71]

The intention is that broadly the same properties currently covered by the non-residents Capital Gains Tax (CGT) legislation introduced in Finance Act (FA) 2015 will be subject to IHT.[72] The definitions of UK residential property and the definition for persons chargeable as enacted in FA 2015 for non-residents CGT will be used as a starting point for these reforms with any necessary adaptions where appropriate. As with non-residents CGT, diversely held vehicles that hold UK residential property will not be within the scope of the IHT charge but any closely controlled offshore company, partnership or similar structure will be within the new provisions.

IHT will therefore be imposed on the value of UK residential property owned by the offshore company on the occasion of any chargeable event. This would include:

1. the death of the individual wherever resident who owns the company shares
2. a gift of the company shares into trust
3. the 10 year anniversary of the trust
4. distribution of the company shares out of trust
5. the death of the donor within 7 years of having given the company that holds the UK property away to an individual
6. the death of the donor or settlor where he benefits from the gifted UK property or shares within 7 years prior to his death - the reservation of benefit rules will apply to the shares of a company owning UK property in the same way as the rules currently apply to UK property held by foreign doms and generally to UK doms

This will require a change in the legislation to provide that shares of offshore companies or similar structures are not excluded property to the extent that they derive their value directly or indirectly from UK residential property (as defined for non-residents CGT) or to the extent that the value of those shares is otherwise attributable to UK residential property. There will be no change to the taxation of UK property held by corporate structures which are owned by UK domiciled individuals or trusts that are not excluded property. The relevant property regime will also need to be amended in certain respects.

UK residential property may not be the only asset owned by the offshore company. The company may beneficially own non UK assets such as foreign land or equities or own UK commercial property which is not subject to the change. Moreover offshore companies holding UK land may be held in more complex structures involving groups. Further complications will arise where the non-dom individual or excluded property trust does not wholly own the company.

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71 This annual charge on residential property owned by certain 'non-natural' persons, such as companies, was introduced in 2013, following concerns of the scale of tax avoidance by individuals owning property through corporate 'envelopes'; guidance on the ATED rules is on Gov.uk.

72 Following consultation over 2014, *Budget 2015* confirmed that non-UK resident individuals, trusts, personal representatives and narrowly controlled companies would be subject to CGT on gains from the sale of UK residential property from 6 April 2015 (*Budget 2015*, HC 1093, March 2015 para 2.100).

> The government will consult on the details of these proposals so as to ensure that it is only the value of the UK residential property that is subject to tax (less any borrowings taken out to purchase such UK property).
>
> It is intended that the same reliefs and charges will apply as if the property was held directly by the owner of the company. Hence a deceased individual who owned the company shares directly will have the benefit of spouse exemption if the company shares are left to a spouse. However, spouse exemption will not generally be available if the offshore company shares are held by trusts other than qualifying interest in possession trusts and the settlor is taxed on death under the reservation of benefit provisions.[73]

In September 2015 the Government published a full consultation document on its proposals to abolish the permanency of non-domicile status, and to prevent individuals born in the UK, with UK domicile at birth, to be able to claim at some future point foreign domicile for tax purposes while living in the UK. The original intention was that legislation to this effect would be included in *Finance Bill 2016*, while statutory provision regarding UK residential property and inheritance tax would be made in *Finance Bill 2017*.[74]

This attracted limited press coverage, though the *Financial Times* noted the Government's intention to "leave many offshore trusts outside the UK tax net":

> The proposals would also mean that a non-dom living in Britain would be deemed to have acquired a UK domicile after 15 years residence, making their overseas income and capital gains subject to UK taxation. But if they set up an offshore trust before that point, its income and gains would be untaxed unless any of their family receive a benefit from the trust …
>
> Mark Davies, of advisory firm Mark Davies & Associates, said the proposed rules on offshore trusts amounted to a "welcome reprieve" as it provided for a proportionate tax charge on the benefits received and not the taxpayer's worldwide income and gains. Arabella Murphy, head of wealth at law firm Maurice Turnor Gardner, warned that the technical difficulties of drafting the offshore trust rules would potentially end up with the detailed legislation being delayed until the 2017 finance bill. "The intention is excellent. The reality is it will be a bit of an uphill task to do the drafting."[75]

The consultation document set out the Government's approach to treat offshore trusts as follows:

> The government thinks it is fair to ask any individual who becomes deemed-domiciled in the UK to pay tax on benefits they receive from any offshore trust and any underlying entities.
>
> However, the government does not intend that non-domicilliaries who become deemed-UK domiciled should have to pay UK tax on income and gains in offshore structures which were set up before

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73 *Technical briefing on foreign domiciled persons/Inheritance Tax residential property changes*, July 2015

74 HM Treasury, *Reforms to the taxation of non-domiciles*, September 2015 para 1.3

75 "George Osborne's non-doms tax plan excludes offshore trusts", *Financial Times*, 30 September 2015. See also, "New proposal", *Taxation*, 8 October 2015; "The Q&A: Consultation on the tax reforms to non-domiciles", *Tax Journal*, 9 October 2015; "In or out", *Accountancy*, February 2016.

they became deemed-domiciled simply because the individual was the settlor of the trust or was considered a transferor under the Transfer of Assets Abroad legislation. As a part of these reforms, the government will ensure that any individual who becomes deemed-UK domiciled will continue to be protected from UK tax on offshore trusts that they have settled while neither they nor their spouse or children receive any benefit from the trust.

The government intends to base the new rules on the taxable value of benefits received by the deemed domiciled individual without reference to the income and gains arising in the offshore structure. This will be a very significant change to the way that the income and gains arising in offshore trusts and their underlying entities are taxed and it means that there will be no need for trustees to have to recreate the history of the income and gains in the trust for tax purposes once an individual becomes deemed-UK domiciled.

Once a non-dom becomes deemed-UK domiciled, it will no longer be relevant whether a benefit is received in the UK or overseas; the value of that benefit will be treated as taxable regardless. However, UK source income will be taxable on the arising basis, as it would be under the existing rules if either the settlements legislation or the transfer of assets legislation applied.

The government is considering whether the new regime should apply to all non-domiciled individuals who are resident in the UK rather than being limited to those who become deemed-domiciled, though while an individual is not deemed-domiciled, benefits will be taxable only when remitted here. This would give greater consistency and would avoid the complexity of transitioning to new rules when an individual has been resident for 15 years.[76]

In the run-up to the 2016 Budget there was some press coverage that individuals with non-domicile status were making plans for leaving the UK, though, as with previous reforms, the evidence seems to have been anecdotal, if not contradictory.[77] The Chancellor did not mention the issue in his Budget statement, though the Budget report confirmed a delay in implementation: all three elements to the reform would be included in the *Finance Bill 2017*:

2.44 Non-Domicile taxation – The government is undertaking a major reform to non-domicile taxation. As announced at Summer Budget 2015, from April 2017 non-UK domiciled individuals (non-doms) will be deemed UK domiciled for all tax purposes after they have been UK resident for 15 of the past 20 tax years.

Additionally, individuals who were born in the UK and who have a UK domicile of origin will revert to their UK domiciled status for tax purposes whilst resident in the UK. The government will also legislate to charge inheritance tax on all UK residential property indirectly held through an offshore structure from 6 April 2017. As set out at Summer Budget 2015, non-doms who have a non-UK resident trust set up before becoming deemed domiciled in the UK will not be taxed on income and gains retained in the trust.

The government will legislate all non-dom reforms in Finance Bill 2017. Budget 2016 confirms that non-doms who become

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76 *Reforms to the taxation of non-domiciles*, September 2015 para 3.2
77 "Flight of the non-doms?", *Financial Times*, 9 March 2016

> deemed-domiciled in April 2017 can treat the cost base of their non-UK based assets as being the market value of that asset on 6 April 2017. Individuals who expect to become deemed UK domicile under the 15 out of 20 year rule will be subject to transitional provision with regards to offshore funds to provide certainty on how amounts remitted to the UK will be taxed.[78]

In August 2016 the Treasury published a *second* consultation document, stating that, "post EU referendum, the aspiration for a tax system that balances fairness and international competitiveness remains the same, and the government believes it is still appropriate to proceed with these reforms." [79]

The consultation document also invited comments on how the rules for Business Investment Relief might be amended to encourage non-domiciles to remit monies to invest in UK businesses:

> The government believes that the BIR can be amended and expanded to make an even greater contribution to inward investment by encouraging non-doms to invest their overseas funds in the UK.
>
> The consultation therefore seeks views on how this could be done so that BIR allows greater investment in UK businesses. The government is keen to see increased take up of the scheme and recognises that those who have practical experience of using it are likely to have valuable views on this issue.
>
> The government is therefore keen to hear suggestions and comments on what changes might be made to the scheme to increase its effectiveness as an investment incentive and would particularly welcome innovative ideas on how this could be achieved. The government would also be very interested in evidence that any proposed changes would have a real impact on the level of UK investment.[80]

There was some commentary in the technical press on this second consultation. Arguably the central point of this paper, as noted by practitioner Mark Davies, writing in *Taxation*, was that "unsurprisingly, the consultation confirms the introduction of the '15/20 test' which is the cornerstone of the reforms:

> Deemed UK domicile is a new concept for income tax and capital gains tax. In practice it will limit the number of years for which a non-dom can continue accessing the remittance basis. Until now, use of the remittance basis by long-term UK resident non-doms (those who have been resident in more than seven of the previous nine tax years) has been curtailed only by the requirement to pay the remittance basis charge (RBC). Once deemed UK-domiciled a non-dom will have to pay taxes on their personal worldwide income and gains as they arise.
>
> The inheritance tax legislation already treats non-doms as deemed UK-domiciled once they have been UK resident in 17 of 20 tax years. From 6 April 2017, deemed domiciled status for inheritance tax will be triggered sooner, under the same 15/20 test that

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78 *Budget 2016*, HC 901, March 2016 p99

79 HM Treasury, *Reforms to the taxation of non-domiciles: further consultation*, August 2016 "Introduction".

80 *op.cit.* par 5.2, 5.4

> applies for income tax and capital gains tax. There is some logic to having three taxes, one rule.
>
> One side-effect of the 15/20 test is that the £90,000 RBC applicable to non-doms UK resident in 17 of the previous 20 tax years will no longer exist. The £90,000 RBC will be consigned to history as a two-year phenomenon applicable in 2015-16 and 2016-17 only.[81]

Both this commentary, and a second piece in the *Tax Journal*, highlighted the Government's decision to drop the proposal for a 'benefits charge'[82] – in brief, that non-domiciles that obtained 'deemed domicile' status would be liable to tax on any distribution they received from an offshore trust; the consultation paper gave a short explanation for the change in the Government's approach:

> Responses to the consultation made clear that stakeholders were very concerned about the impact of a benefits charge. Most respondents said that they were concerned about the complexity of having two different regimes for UK domiciles and for non-doms.
>
> More fundamentally, respondents thought that the benefits charge was punitive for non-doms who settle assets into and receive benefits from a trust which has minimal or no income and gains. Respondents thought it was unfair that UK domicilliaries would continue to be taxed only when there were income or gains in the trust whilst non-doms who became deemed-domiciled would have a tax treatment which could be more punitive in some circumstances.
>
> The government understands the concerns raised by respondents and does not intend to introduce a charge which could in some circumstances have a punitive effect on non-doms compared to UK domiciles. The government has therefore decided not to pursue such a benefits charge but instead to legislate the protections without introducing an entirely new regime.[83]

3.4 Autumn Statement 2016

The Autumn Statement in November 2016 confirmed that the Government would proceed with these reforms, as well as amending the rules for BIR to incentivise inward investment:

> **Non-domiciled individuals**
>
> 4.15 Reforms to the taxation of non-domiciled individuals – Individuals who live in the UK and make use of public services should pay their fair share of tax. The following reforms to the taxation of non-domiciled individuals make the tax system fairer for everybody:
>
> - As previously announced, the government will end the permanency of non-domiciled tax status. From April 2017, non-domiciled individuals will be deemed UK-domiciled for tax purposes if they have been UK resident for 15 of the past 20 years, or if they were born in the UK with a UK domicile of origin.

81 "Coming and going", *Taxation*, 6 October 2016
82 "The further consultation on non-dom reforms", *Tax Journal*, 2 September 2016
83 *Reforms to the taxation of non-domiciles: further consultation*, August 2016 para 3.17-18

As previously announced, non-domiciled individuals who have a non-UK resident trust set up before they become deemed-domiciled in the UK will not be taxed on income and gains arising outside the UK and retained in the trust

- From April 2017, inheritance tax will be charged on UK residential property when it is held indirectly by a non-domiciled individual through an offshore structure, such as a company or a trust. This closes a loophole that has been used by non-domiciled individuals to avoid paying inheritance tax on their UK residential property.
- The government will change the rules for the Business Investment Relief (BIR) scheme from April 2017 to make it easier for non-domiciled individuals who are taxed on the remittance basis to bring offshore money into the UK for the purpose of investing in UK businesses. The government will continue to consider further improvements to the rules for the scheme to attract more capital investment in British businesses by non-domiciled individuals.[84]

The Government's detailed response to the consultation was published alongside draft provisions for the *Finance Bill 2017*, on 5 December.[85] Provisions for offshore trusts were not included in this package of draft legislation; at the time the Government stated that "the draft legislation for the income tax arrangements for offshore trusts will be published no later than the date for the publication of the 2017 Finance Bill."[86]

There was not any discussion of these proposals in the House, and only limited commentary in the technical press.[87]

Details of each measure were given in three tax information & impact notes published alongside the draft legislation.

Two points are worth highlighting. First, the Government had published updated costings of both the deeming provisions and the changes to IHT rules in Budget 2016, and these were unchanged, with one exception: in the case of the deeming provisions, HMRC noted that "the transitional protections, including the ability to rebase offshore assets for CGT purposes, are expected to cost the Exchequer approximately £20 million per annum from April 2018."[88] Second, the reforms to BIR are estimated to have a 'negligible' Exchequer impact; apparently, "since BIR was launched in April 2012 it has been used by around 200 to 400 individuals each year."[89]

Proposals for reforming BIR

With regard to BIR the Government noted that "this scheme has so far incentivised non-doms to invest over £1.5 billion in UK business",

84 *Autumn Statement*, Cm 9362, November 2016 para 4.15
85 Some draft clauses were published the following month: HMRC, 26 January 2017.
86 HM Treasury, *Reforms to the taxation of non-domiciles: response to further consultation*, December 2016 para 1.1
87 For example, "Analysis: Finance Bill 2017 – the non-dom reforms", *Tax Journal*, 20 January 2017
88 *Income Tax, Inheritance Tax and CGT: deemed domicile rule: tax information & impact note*, & *Inheritance Tax: overseas property whose value is attributable to UK residential property: tax information & impact note*, 5 December 2016
89 *Non-domicile taxation: Business Investment Relief: tax information & impact note*, 5 December 2016

although "concerns had been raised that the scheme was overly complex and that the anti-avoidance provisions in the legislation overreached themselves and put off potential investors."[90] In the light of these responses the Government set out a number of changes to BIR in a tax information note published at this time,[91] which notes that the reforms are not anticipated to have any substantive Exchequer cost – a point picked up in a PQ at the time:

> **Asked by Jonathan Reynolds** : To ask Mr Chancellor of the Exchequer, with reference to paragraph 4.15 of the Autumn Statement 2016, what estimate he has made of the cost to the public purse of the changes to business investment relief relating to non-domiciled individuals.
>
> **Answered by: Jane Ellison** : As announced in the Autumn Statement 2016 document, the changes to Business Investment Relief are expected to have a negligible Exchequer cost, as the scheme encourages non-domiciled individuals to bring money into the UK to invest in UK business that would otherwise would have been left offshore.[92]

In this context it is worth repeating that as part of its recent statistical survey of non-domiciles taxation, HMRC gave figures for the number and amount of BIR claimed by non-domiciled taxpayers, showing a substantive rise in the annual amount of BIR invested over the three years 2012/13 to 2014/15.[93] In an article on these figures the *Financial Times* quoted Lucy Brennan, a partner at Saffery Champness, who said one of the most striking aspects of this data was "the larger-than-expected £1.6bn of investment in UK companies since April 2012 by non-doms using Business Investment Relief."[94]

The Government's formal response document to the consultation gives a more detailed analysis of its proposals to reform BIR, and a number of extracts are reproduced below.

First, in its consultation paper the Government had asked how the scheme could be reform to encourage greater take-up, and in light of responses, proposed changes to the scheme's anti-avoidance rules, and its criteria. It also indicated that it would look at the case for widening the scheme in the longer term:

> **4.1 Expansion of the scheme**
>
> **Question 10: In what ways might the current scheme be changed to encourage greater investment in the UK?**
>
> This question brought forward many wide-ranging responses. Responses covered a variety of issues such as suggestions for ways in which the various anti-avoidance rules could be better targeted, changes to the requirements of the scheme and ways to radically widen the scope of the scheme. Many issues were raised and

90 *Reforms to the taxation of non-domiciles: response to further consultation*, December 2017 para 1.2.4

91 *Non-domicile taxation: Business Investment Relief: tax information & impact note*, 5 December 2016

92 PQ55513, 6 December 2016

93 *Statistical commentary on non-domicile taxpayers*, August 2017 p25; *Statistical tables on non-domiciled taxpayers (Table 6)*, August 2017

94 "Non-doms pay average £105,000 in UK tax, data show", *Financial Times*, 31 August 2017

several common themes for change were identified. Overall, respondents wanted the rules to be less complex with more incentives and wider opportunities to invest via the scheme.

As a result, the government has now decided to make changes to the rules in the following areas:

4.1.1 Avoidance issues

Summary of responses Respondents generally disliked the extraction of value rule. This rule is breached if an investor receives a benefit that is directly or indirectly linked to their investment. An extraction of value can be either money or money's worth received by or for the benefit of the investor. If a breach of the rule occurs, the recipient of the benefit will be treated as having made a taxable remittance on the whole investment unless they take the appropriate mitigation steps. Many respondents believed that it was too punitive, particularly when accidental errors were made. It was felt that instead of the "all or nothing" nature of this rule, a de-minimis threshold could be used for the value of any benefits received, above which the rule would be breached.

Other respondents mentioned the issues around associated companies which is closely connected to the extraction of value rule. Currently this rule is breached if an investor receives any benefits directly or indirectly from the target company or any company associated with it, whether or not the benefit is connected to the investment. The target company is the company where the investment is planned to be made. Again respondents felt it was unfair to penalise an investor if they receive a benefit from an associated company that they have not actually invested in. Many felt the reference to an associated company should be removed from the extraction of value rule altogether.

Government response The revised legislation will remove any reference to an involved company in the extraction of value rules. This change means that the legislation will instead treat the rule as having been breached where a benefit is received from anyone in circumstances directly or indirectly attributable to the investment. This change will remove some of the disincentive for using the scheme and ensure that the anti-avoidance rules do not put people off from making an investment.

4.1.2 Criteria of the scheme

Summary of responses Respondents felt that the current 45 day time limit to make an investment in a UK business after funds have been remitted to the UK is too short. They suggested that the time limit could be extended to 6 or 9 months without damaging the integrity of the scheme. A number of responses looked at the various time limits for carrying out mitigating steps. The general feeling was that they were too short and so did not give investors sufficient time to either decide what to do next with their funds or to remove them offshore. Some respondents asked for the time limit for investing in a company before it starts trading to be increased from the current two years. They felt this would be beneficial for investing in companies involved in major infrastructure projects such as building a new rail link or power station. For many businesses it takes much longer than two years to go from start up to production.

Government response The government will make the following changes to simplify and broaden the criteria for BIR:

1. a new "hybrid" company category will be added to the investment company definitions. This will enable a company that is both trading and a stakeholder company to attract BIR in future. Previously a company had to be either one or the other rather than a mixture of both to attract relief

2. the time limit for investing in a company before it starts to trade will increase from the current two years to 5 years

3. the rules will be changed to extend the definition of a qualifying investment to also make relief available on the acquisition of existing shares as well as on the acquisition of new shares in qualifying target companies

4. the grace period for a potentially tax chargeable event will be increased to enable any income or gains to remain in a non-operational company for a period of up to two years after the date upon which the investor becomes aware that the target company has become non-operational

When BIR was introduced, the rules specifically prevented the relief from applying to investments in partnerships. It has been the government's position from the outset that this exclusion extends to corporate members of partnerships and HMRC have consistently refused claims for BIR on investment in such corporate members. However, respondents have suggested that the legislation is not clear on this point. The legislation which defines a trading company for BIR purposes has therefore been amended to further clarify the position on corporate partners. The changes make clear that a company which is a partner in a partnership is not to be regarded as carrying on the trade of the partnership, meaning that unless the target company is carrying on a commercial trade in its own right, it will not qualify for BIR.

4.1.3 Widening the scheme

Summary of responses Many of the respondents also expressed their belief that the BIR rules should be changed to encourage investors to keep their funds as clean capital in the UK once their investment had ceased. Timelines of between two and 10 years length for investing were suggested to enable this to happen. Several responses suggested broadening the scope of BIR qualifying investments to include government debt, family-provided funds, Venture Capital Trusts, hybrid companies, UK fund vehicles and unincorporated businesses. In addition, a large number of responses asked for BIR to be extended to include partnerships – particularly offshore structures and sole traders, including LLPs which own UK listed companies. Respondents felt that more people would use the BIR scheme if they were able to diversify their investments, facilitated by a professional manager overseeing the allocation into a portfolio of unquoted trading companies.

Government response Going forward, the government is prepared to look further at some of the suggestions. Some were potentially promising but would need careful consideration and could not be legislated in time for Finance Bill 2017. The government will consider further changes to BIR for a future fiscal event.[95]

95 *Reforms to the taxation of non-domiciles: response to further consultation*, December 2017 pp25-7

Second, the Government had asked for evidence to show how amending the scheme would boost UK investment, although respondents were unable to provide anything specific:

> **4.2 Impact on investment**
>
> **Question 11: Are you able to provide any evidence which might indicate that these changes will lead to a significant increase in UK investment?**
>
> **Summary of responses** The majority of the respondents were unable to provide any specific evidence to support their suggested changes. However, many tax advisors said that the complex rules and risks around the scheme, particularly around the extraction of value, made them hesitant to recommend the scheme to their clients. Others suggested that HMRC should widen the rules and hold an amnesty period to allow anyone who had got things wrong to amend their affairs.
>
> **Government response** The government believes that the changes to the BIR scheme announced above will be welcomed by both potential and current investors and will have the desired effect of leading to an increase in the use of the scheme.[96]

Third, the Government had asked how the BIR rules might be simplified to improve take-up:

> **4.3 Simplification of the scheme**
>
> **Question 12: What aspects of the scheme might usefully be simplified while maintaining its policy objective and encourage greater take up?**
>
> **Summary of responses** The majority of the responses mirrored the suggestions received for the previous question. Many respondents called for a relaxing of the rules around receiving benefits from an investment. Stakeholders also suggested a review of the various tax chargeable events and the rules around receiving a benefit from an associated company as again they were considered too wide– ranging and open to unintentional breaches. Respondents also made the point that the time allowed for taking corrective action before facing a taxable charge if any rules were breached should also be increased.
>
> Many responses asked for consideration to be given to increasing the various time limits around the scheme. These included increasing the time allowed to keep an investment in a company that becomes non-operational whilst consideration is given on what to do with that investment. Respondents also suggested that the time limit for the requirement on a company to start trading should be increased.
>
> **Government response** The government is mindful of the general concerns raised around the receipt of benefits, particularly where there is an involved company. The new changes will ensure investors do not accidentally breach the rules. Likewise the extension to some of the scheme timetables will allow:
>
> 1. the time limit for investing in a company before it starts to trade to increase from the current two years to 5 years and
> 2. the grace period for a potentially tax chargeable event to be increased to enable any income or gains to remain in a non-operational company for a period of up to two years

96 *op.cit.* p28

> after the date upon which the investor becomes aware that the target company has become non-operational.
>
> This will support investments in companies that are involved in long-term projects and allow investors more time to make decisions.[97]

And finally, the Government asked for views on the effectiveness of the rules to prevent the exploitation of BIR for the purposes of tax avoidance:

> **4.4 Tax Avoidance**
>
> **Question 13: What changes would you make to ensure the anti-avoidance provisions are properly targeted to prevent tax avoidance?**
>
> **Summary of responses** Overall, most respondents wanted fewer avoidance rules that would be made simpler and more focussed. Many suggested the extraction of value rules should be replaced with a Targeted Anti-Avoidance Rule. Others felt there was no real need for any anti-avoidance rules as HMRC already had the General Anti-Avoidance Rule.[98]
>
> **Government response** Whilst the government is keen to expand the rules of the scheme to encourage additional investment, it is also mindful that any changes do not result in the opportunity to use the scheme in a way that was not intended. The BIR rules will continue to need anti-abuse rules in place. However, the government will bring in new rules on benefits received from an investment and will clarify investment through a corporate partner. These changes should balance the worry of being caught accidently whilst protecting the scheme from widespread abuse.[99]

There does not appear to have been any substantive discussion of these proposals in the House at this time, and only limited commentary in the technical press.[100]

3.5 Budget 2017

In the Spring Budget the Government confirmed it would proceed with these reforms:

> **1.26. Reform of domicile rules and Inheritance tax**
>
> As announced at Summer Budget 2015, from April 2017 non-UK domiciled individuals ("non-doms") will be deemed domiciled in the UK for tax purposes where they have been UK resident for 15 of the past 20 tax years. Additionally, individuals who were born in the UK with a UK domicile of origin, but have acquired a domicile of choice elsewhere, will be deemed UK domiciled for all tax purposes while they are UK resident. Non-doms who set up a non-UK resident trust before becoming deemed domiciled in the

97 *op.cit.* pp28-9

98 [A Targeted Anti-Avoidance Rule (TAAR) is a statutory provision which aims to prevent the exploitation of part of the tax code for tax avoidance purposes, rather than a provision to deal with a particular transaction or arrangement. A General Anti-Avoidance Rule (GAAR) allows for the tax authorities to challenge any specified tax avoidance scheme – and statutory provision for a UK GAAR was made in 2013. For more details see, *Tax avoidance: a General Anti-Abuse Rule*, Commons Briefing paper CBP6265, 11 December 2017.]

99 *op.cit.* p29

100 For example, "Analysis: Finance Bill 2017 – the non-dom reforms", *Tax Journal*, 20 January 2017. The piece does not mention the changes to be made to BIR.

> UK will not be taxed on any income and gains retained in that trust.
>
> As previously announced at Summer Budget 2015 and following further consultation on draft legislation published in December 2016 on charging IHT on UK residential property, the limit below which minor interests in UK property are disregarded has been increased from 1% to 5% of an individual's total property interests. As first announced at Summer Budget 2015, from April 2017 inheritance tax (IHT) will be charged on all UK residential property even when indirectly held by a non-dom through an offshore structure.
>
> As announced at Budget 2016, non-doms will be able to segregate amounts of income, gains and capital within their overseas mixed funds to provide certainty on how amounts remitted to the UK will be taxed. Following consultation on the draft legislation this will be extended by government amendment to income, gains and capital held in mixed funds from years before 2007/08, as well as those from subsequent years. Those who become deemed domicile in April 2017, excepting those who were born in the UK with a UK domicile of origin, will be able to treat the cost base of their non-UK based assets as the market value of that asset on 5 April 2017.
>
> The government will legislate these reforms in Finance Bill 2017 to have effect from 6 April 2017.[101]

In the case of BIR the Government confirmed that no amendments would be made to the legislation as originally drafted.[102]

Provisions to this effect were included in the *Finance Bill 2017* published on 20 March – specifically, clauses 41-4 (domicile) and clause 28 (BIR).

The following day HMRC published a short note on this reform, explaining that the Government would introduce the provisions regarding income tax arrangements for offshore trusts in a *future* Bill:

> Summer Budget 2015 announced proposals to reform the taxation of foreign domiciled persons. These changes will affect foreign domiciled persons who have been resident in the UK for 15 of the past 20 years and will be effective from 6 April 2017.
>
> The government also announced that provisions would be put in place to ensure that income and gains arising in overseas trusts created by foreign domiciled persons before they become deemed domiciled under the 15/20 test will not be taxed if they are retained in the trust or its underlying entities. Draft legislation setting out these trust protections was published at Autumn Statement with further details published on 5 December 2016 - Draft legislation and 26 January 2017 - Draft legislation: deemed domicile - Income Tax, Capital Gains Tax and Inheritance Tax.
>
> The draft legislation on the trust protections was consulted on between 5 December 2016 and 22 February 2017. Stakeholders were advised that where the legislation was incomplete or incorrect, the necessary amendments would be made no later than the date for the publication of the Finance Bill. However, it has not been possible to make all of these changes in time and

[101] HM Treasury, *Overview of tax legislation & rates*, March 2017 para 1.26. Notably HMRC did not update the impact assessments published in December 2016.

[102] HM Treasury, *Overview of tax legislation & rates*, March 2017 para 1.26, para 1.48

> consequently, the government has taken the view to defer publication of the provisions affected.[103]

The issue does not appear to have featured very much in the press coverage of the Budget, although the *Financial Times* had a short story, suggesting the reforms would hit a significant number of Britons currently working in Hong Kong and Singapore:

> Thousands of British expats face significant bills if they return to the UK after new "non-dom" tax rules come into force in April …
>
> Carlo Gray, head of Buzzacott, an accountancy firm in Hong Kong, said: "We have had a flurry of inquiries recently in respect to Brits returning to the UK for work or for their children's education and these new rules are resulting in them having to think very carefully about the implications and their long-term plans." …
>
> Martin Rimmer, head of tax for south-east Asia at the Fry group in Singapore, said the reforms would affect expats who had to return to Britain unexpectedly, perhaps because their parents were unwell. "Life throws curve balls," he said. "I think it will affect thousands, if not tens of thousands, of people whether they know it or not."… Mr Rimmer said more than 100,000 British citizens emigrated every year but changes to the domicile rules would affect only a small proportion. "The extent to which it matters depends on wealth and the extent to which they know there is a weapon that protects them from tax," he said. People who were not "tremendously wealthy" would tend to use simpler strategies to reduce their tax bills.[104]

Similarly these changes were not debated at any length in the House.[105] As with earlier inquiries into the Budget, the Treasury Committee invited evidence from the four main professional bodies on the tax measures that had been announced – and specifically, if they met a number of key principles of tax policy: that they should be fair, support growth and competitiveness, certain (i.e. legally clear, targeted and simple), stable, practical, and coherent.[106]

In their evidence the Institute of Chartered Accountants criticised the decision to implement these changes from April 2017:

> It was confirmed in the Spring Budget that the changes to the legislation to make long term UK residents deemed UK domiciled after 15 out of 20 years in the UK will go ahead as planned from April 2017. The Finance Bill 2017 contains extensive complex legislation extending deemed domicile for inheritance tax to income tax and capital gains tax.
>
> The draft legislation published on 26 January 2017 was still work in progress and although to HMRC's credit there has been extensive and helpful consultation, the Bill itself still contains problems and some unresolved issues. While we appreciate the

103 HMRC, *Non-domicile taxation: technical briefing on overseas trusts – guidance*, 21 March 2017

104 "'Non-dom' tax change to hit thousands of returning expats", *Financial Times*, 25 March 2017. See also, "Finance Bill 2017: the non-dom reforms", *Tax Journal*, 7 April 2017

105 With one small exception: Lord McColl asked three grouped PQs about the reform at this time: PQs HL6535-7, 19 April 2017.

106 For more details see, Treasury Committee, *Principles of tax policy*, HC 753 of 2010-12, 15 March 2011

> underlying policy intentions, we believe it is wrong in principle to introduce such complex legislation effective from 6 April 2017 while much of it is in draft, and while there is no adequate guidance to assist taxpayers to put their "house in order" before the changes take effect.[107]

In its submission the CIOT also flagged up concerns, suggesting that the consultation process had been "lengthy but disjointed":

> 4.3.1 The government announced its intention to reform the non-UK domiciliaries ('non-dom') regime in Summer Budget 2015. The objective was 'to create a fair and competitive tax regime' by:
>
> 1. ending permanent non-dom status,
> 2. preventing those who are UK born with a UK domicile of origin from claiming non-dom status,
> 3. applying inheritance tax (IHT) to all non-dom owned UK residential property, and
> 4. reforming Business Investment Relief (BIR).
>
> 4.3.2 The proposals have been through a lengthy but disjointed consultation, with elements of draft legislation published in tandem with consultation documents. On 5 December 2016 the government published further (but not yet complete) Finance Bill consultative clauses (together with a response to the further consultation issued in August 2016), and further clauses again on 26 January 2017.
>
> 4.3.3 A significant element of the reforms is the legislative protections for overseas trusts created by non-UK domiciliaries before they become deemed domiciled under the fifteen out of twenty year tests. The draft legislation on the trust protections was consulted on between 5 December 2016 and 22 February 2017. However, the government has indicated that it has not been possible to make all of these changes in time and consequently has deferred publication of some anti–avoidance provisions. HMRC issued a technical briefing on 21 March 2017 to explain what measures will be published in the Finance Bill 2017 and those which will be published in a future (unspecified) Finance Bill.
>
> 4.3.4 Assuming that the deferral allows more time to ensure that the new provisions, once enacted, will operate coherently with the existing code, the deferral is positive on that score.
>
> 4.3.5 The policy intention of creating fairness in the tax system is welcome. However, even as currently drafted the rules are incredibly complex, and the delays in finalising the legislation will inevitably give rise to some uncertainty in the interim period, and bring into question the stability of the new regime.[108]

3.6 *Finance (No.2) Act 2017*

Following the Prime Minister's announcement, on 18 April, of the Government's intention to call a General Election on 8 June, the House completed all of the remaining stages of the Bill in the Commons on 25 April and the *Finance Act 2017* received Royal Assent on 27 April. With cross-party support the Government removed a series of clauses from

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107 Treasury Committee, *Budget 2017 inquiry: ICAEW - written evidence (B170001)*, 19 April 2017

108 *Budget 2017 inquiry: CIOT - written evidence (B170002)*, 19 April 2017

the Bill, with the intention of legislating for these at the start of the new Parliament – *including* these provisions.[109]

On 13 July the Government confirmed, in a written statement, that a Finance Bill would be introduced to this effect "as soon as possible after the summer recess"; the statement underlined that "where policies have been announced as applying from the start of the 2017-18 tax year or other point before the introduction of the forthcoming Finance Bill, there is no change of policy and these dates of application will be retained. Those affected by the provisions should continue to assume that they will apply as originally announced."[110]

At this time HMRC published a list of all provisions that would continue to apply from the start of the 2017 to 2018 tax year – including provisions regarding deemed domicile and BIR. HMRC also published a number of amended draft clauses which included amended provisions regarding deemed domicile.[111] Subsequently the *Tax Journal* published some analysis of these amended clauses, which makes some specific comments about the provisions regarding non-domiciles:

> **Reform of domicile rules**
>
> Changes to the taxation of non-UK domiciled individuals were originally announced in Summer Budget 2015 and are due to take effect from 6 April 2017. The rules seek to deem a UK domicile on certain otherwise non-UK domiciled individuals for all tax purposes, with special rules for foreign income and gains arising in offshore trusts established by non-UK domiciled individuals prior to becoming deemed-domiciled in the UK.
>
> The draft legislation has been amended from a largely technical perspective to ensure the rules operate as expected. However, there has been some uncertainty regarding whether the rules allowing the cleansing of mixed funds would apply to income and gains arising before 6 April 2008 and the revised clauses appear to suggest that they will.
>
> For those looking to take advantage of the transitional provisions in respect of loans to protected settlements and the cleansing of mixed funds, the final dates for action also remain unchanged. This means that the window of opportunity will have been shortened by the period of uncertainty following the withdrawal from the pre-election Finance Bill.
>
> **Inheritance tax on UK residential property**
>
> The rules broadly provide that UK residential property held via an interest in a non-UK close company or partnership will no longer be excluded property and so will be subject to UK inheritance tax. Similar rules apply to interests in loans made where the loan is used to finance the acquisition, maintenance or enhancement of UK residential property. Minor technical changes have been made to some of the anti-avoidance provisions, including updates to the calculation of a person's interest in a close company or

[109] HC Deb 25 April 2017 c1013.
[110] *Finance Bill: Written Statement*, HCWS47, 13 July 2017
[111] HMRC, *Deemed domicile: Income Tax and Capital Gains Tax – updated legislaton*, 13 July 2017

> partnership for the purpose of the 5% de minimis test, below which the new rules would not apply.[112]

In turn this second Finance Bill was published on 6 September, including these provisions: specifically, clauses 29-33 (domicile reforms), and clause 15 (Business Investment Relief).[113]

Prior to the formal presentation of the Finance Bill, the House has to agree a series of 'Ways and Means' Resolutions, relating to the measures that will be in the Bill. Normally this occurs at the end of the Budget debates that the House has after the Budget statement – as happened on 14 March 2017. As the Government's second Finance Bill was a new one, the House approved a second series of resolutions on 6 September, and during this debate there was some mention of the proposals regarding BIR. Speaking for the Opposition Peter Dowd said:

> The sieve-like measures on non-doms [in the Bill] … are perforated even further by the plan to loosen the rules on business investment relief. That measure will allow non-doms to remit funds into the UK without paying the usual taxes. There is little evidence that such relief has been effective in encouraging greater investment in business, so expanding it is only a giveaway to non-doms.
>
> If any of us wish to invest, we have to pay the appropriate taxes. There should not be different rules for a privileged few, which maintains the Government's view that the UK can only ever be attractive as a tax haven. The Government's race to the bottom begins in earnest and enthusiastically.[114]

Speaking for the SNP Kirsty Blackman also expressed concern over this change:

> Whereas the Government's changes [to the non-dom regime] … intend to make it more difficult for non-doms to benefit from their tax status [the revisions to BIR] … will make it easier for them to do so in a way that their next-door neighbour may not. Now, I would be less concerned about that if the Government had provided appropriate evidence to show why the scheme is a good thing. They have made it clear that they want to increase the use of the scheme, but I have not seen any evidence to explain why. They have not shown me that the scheme is working as it was intended to work, nor that it is having a particularly positive impact on the businesses that are receiving funding from it.
>
> I understand that 200 to 400 people take part in the scheme every year, which means that a pretty significant amount of legislative effort and time is being put into making a change that enables a very small number of people to make this investment. I would be interested to see more of the Government's figures.[115]

Concluding the debate for the Opposition Annaliese Dodds observed, "as many others have mentioned, the Government have provided no indication of which sectors or businesses are benefiting from [BIR] … Without that information, it is unclear why the Government have

112 "Analysis – Revised measures to be included in Finance (No. 2) Bill 2017", *Tax Journal*, 21 July 2017
113 *Finance Bill 2017 - Explanatory Notes* (Bill 102 – EN), September 2017
114 HC Deb 6 September 2017 c205-6
115 *op.cit.* c212. Other Members mentioning this issue included Ruth George (cc243-4), and Steve McCabe (c247).

chosen to extend its remit."[116] In response the Financial Secretary Mel Stride acknowledged that BIR was to be made "more flexible for those who have non-domiciled status", but went on to say "that should not be criticised. This is money coming into our country to invest in businesses, in British jobs, in wealth creation and in creating the taxes that, in turn, will fund the public services on which we all depend."[117]

The wider reforms to the non-domicile regime were mentioned when the Bill received a Second Reading on 12 September – first, by the Financial Secretary to the Treasury when he opened the debate:

> This is a Bill that abolishes permanent non-dom status. Those who are non-domiciled for tax purposes pay about £9 billion each year in tax and national insurance, which is a huge contribution to our public finances. Lest we forget, it is £1 billion more per year than they paid 10 years ago under the Labour party; more, in fact, than they paid in any year during which the Opposition were last in power. The Government, however, are now putting an end to an unfairness whereby people living in the UK could claim that they were non-doms on a permanent basis.
>
> That is something that the Labour party failed to end in 13 years of government. Yes: under Labour, many people who had been living here for over 25 years, clearly settled in the United Kingdom, still technically claimed to be non-doms, and while they did make an important contribution, it was not necessarily a fair one. It is this Government who are changing that.[118]

By contrast Ruth George expressed doubts that this package of reforms would raise the sums expected by the Government, or that amending the rules for BIR would attract productive investment:

> The Government claim to be acting on non-doms, but the limit is only 15 out of the last 20 years for someone to be deemed a domicile. Even then … the Government have given them a loophole of two years to transfer their money to an offshore trust. That shows the attitude the Government take towards non-domiciles and tax avoidance by people who can afford to pay it. The Government claim that they will raise £1.6 billion from that measure, but they have no idea how much will be raised because they have created a loophole that I am sure non-doms and their advisers will be all too keen to take advantage of.
>
> The Bill increases the scope of business investment relief "to make it easier and more attractive to potential investors to bring their money in from overseas." That includes investments in commercial property … We do not want those properties to be snapped up for tax relief purposes by non-doms who are simply seeking to make a quick buck. That will push up prices, making it harder and more expensive for companies seeking to trade in the UK to create real jobs and wealth in our country.
>
> Again, there is an extension of the time limit for those non-doms to avoid any clawback of their business investment relief when a company comes to the end of its profitability or to the end of an investment. That is not a plan for investment in viable UK businesses; it is yet another loophole for the super-wealthy.[119]

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[116] *op.cit.* c249
[117] *op.cit.* cc255
[118] HC Deb 12 September 2017 c668
[119] *op.cit.* c721

Closing the debate Treasury Minister Stephen Barclay acknowledged Ms George's concerns, but argued that the reforms were fair and would protect tax revenue:

> The hon. Member for High Peak (Ruth George) raised the issue of non-doms. Let me be clear: this Bill abolishes permanent non-domiciled status. When people live in the UK permanently, it is right that they should pay UK tax. Non-doms already contribute over £9 billion a year to the Exchequer, and we expect the Bill to raise a further £1.6 billion over the next five years. So this Finance Bill will deliver fairness and protect revenue. This is a balanced approach, and one that has been subject to extensive consultation.[120]

The Exchequer impact of these changes were reiterated in a written answer at this time:[121]

> **Asked by Frank Field :** To ask Mr Chancellor of the Exchequer, what estimate he has made of the potential effect on tax revenue of abolishing non-domicile status.
>
> **Answered by:** Mel Stride : No estimate has been made of the potential effect on tax revenue of abolishing the entire special tax regime for non-domiciled individuals.
>
> However, this government has introduced legislation that will change the taxation of non-domiciled individuals by ending permanent non-domiciled tax status. This is part of a wider package of reforms. The full package is expected to raise £1.6 billion in revenue over 5 years.
>
> The figures for the full package are set out in Table 2.2 of Spring Budget 2017 under two rows: "Non-domiciles: abolish permanent status" and "Non-domicile: IHT on UK residential property. They have been certified by the Office for Budget Responsibility.

Measure	2017 to 2018	2018 to 2019	2019 to 2020	2020 to 2021	2021 to 2022
Non-dom: abolish permanent status	-£20m	£410m	£330m	£315m	£310m
Non-dom: IHT on UK residential property	£25m	£80m	£50m	£55m	£65m

> Non-domiciled individuals make an important contribution to the UK, including £9.3 billion per year in income tax, capital gains tax and National Insurance contributions.

Clause 15 (BIR) was one of the minority of clauses selected for debate on the floor of the House on 11 October, when the Opposition moved a new clause to require a review of this relief and the impact the Bill would have on its cost and its potential beneficiaries. Speaking for the SNP Kirsty Blackman noted that HMRC's impact note "said there was likely to be a negligible impact on the public finances, but that does not explain what is actually going to happen. It also says that between 200 and 400 individuals a year benefit from business investment relief, but again that does not really explain the impact of this relief." For the

[120] *op.cit.* c756
[121] PQ105931, 16 October 2017

Opposition Annaleise Dodds argued that "this is not a relief that has a proven beneficial impact."[122] In response Treasury Minister Mel Stride said that "the Government are confident of the effectiveness of this scheme":

> Investment using BIR increased from £197 million in 2012-13 to £837 million in 2014-15. In only three years, that has meant total investments of more than £1.6 billion in our economy since the scheme was first introduced … The independent OBR has certified that these changes do not have any cost to the Exchequer. In other words, this is money coming to this country which would not otherwise have done so. I am sure that these are investments in our country that the whole House wants to see—investment in British businesses right across the country.[123]

The Minister went on to argue that any further review of BIR was unnecessary, in the light of HMRC's statistical publication on non-domiciles, and the Opposition's new clause was negatived, by 309 votes to 274.

The Bill's provisions to end permanent non-domicile status were debated and agreed, without a division, in Committee on 19 October. Speaking for the Opposition Peter Dowd was critical of the extended consultation that had led to this reform, arguing that "the delayed timetabling of the measures will … have an impact on their effectiveness." Mr Dowd also argued that the Government should "remove the exemption for offshore trusts", and moved a new clause to review the impact of this aspect of the reform.[124]

In response to Mr Dowd's first concern, Treasury Minister Mel Stride noted that the changes would be introduced "as we have always indicated, in April this year. In that sense, they are retrospective in a way in which I am sure he will approve."[125] The Minister went on to give a summary of these clauses …

> The changes being made by clause 29 will bring an end to the permanent non-dom status for the purposes of both income tax and capital gains tax. That means that from April 2017 anyone who has been resident in the UK for 15 or more of the previous 20 years can no longer be treated as a non-dom for tax purposes. They will instead be taxed in the same way as everybody else and pay tax on their worldwide income and gains. Likewise, anyone who was born here with a UK domicile of origin will also become deemed domiciled whenever they are resident in the UK …
>
> Clause 30 sets out how the deeming rules apply for the purposes of inheritance tax, ensuring that all those who become deemed domiciled under the new provisions are liable for UK inheritance tax in the same way as UK residents. Clause 31 ensures that individuals who become deemed domiciled under the new provisions pay the right amount of tax on any benefits they receive from overseas trusts that they set up while they were domiciled outside the UK. Finally, clause 32 ensures that a double

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122 HC Deb 11 October 2017 c387, c389
123 *op.cit.* cc392-3
124 Public Bill Committee, Fourth Sitting, 19 October 2017 c90
125 *op.cit.* c93

> charge is prevented by excluding gains that represent carried interest from the trust charging provisions.

… and address Mr Dowd's second concern as to offshore trusts:

> The provisions outlined in schedule 8 relate to trusts that were created before an individual became deemed domiciled under the new rules. As I am sure members of the Committee will appreciate, many non-doms will have set up family structures in their home country long before they ever considered moving to the UK. That is an important point. The Government believe that it would be unreasonable to expect individuals in such circumstances to pay UK tax on all the money in such a structure as it arose. The provisions therefore protect such trusts from unintended consequences and ensure that the UK remains an attractive place for those individuals to live and work.
>
> Let me be clear: even with those protections in place, those non-doms who do become deemed UK-domiciled will only be protected on income and gains that remain inside the trust. Any moneys withdrawn, or benefits provided, will lead to a tax charge.
>
> The Government recognise that non-doms make an important contribution to the UK's economy. In terms of tax alone, as I have already stated, they contribute more than £9 billion to the Exchequer per year. It is therefore vital that these changes are not introduced in a way that would drive non-doms out of the UK altogether.[126]

The Opposition's new clause was debated a second time at Report Stage when it was negatived by 309 votes to 279. On this occasion the Government tabled one amendment to correct a 'minor inaccuracy' to these provisions, which was agreed without a vote.[127] Further to the *Finance (No.2) Act 2017* receiving Royal Assent, the impact of these measures do not appear to have been debated in the House.

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[126] *op.cit.* cc93-4, c97. The Opposition's new clause was formally put at the end of the Committee stage and negatived by 10 votes to 9 (PBC, Sixth Sitting, 24 October 2017 c159).

[127] HC Deb 31 October 2017 cc720-747

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