Expat-ily ever after?

Andy Wood asks: are the changes announced in the Autumn Budget 2024 a fairy tale for long-term expats?

Once upon a time – so the fairytales start – the UK tax system had broadly two major buckets (or should that be pails?) in to which individuals might be placed:

- UK domiciled; and
- Non-UK domiciled

Indeed, it had (almost) ever been thus.

A UK domiciled individual being subject to UK income and tax on worldwide income and gains. In addition, he or she would be subject to UK IHT on worldwide assets.

Being non-domiciled was the fiscal equivalent of being the frog who got snogged and turned into a prince. This magical basis of taxation availing the taxpayer of some pretty attractive benefits, broadly as follows:

- **Income tax and capital gains tax (CGT):** foreign income and gains only subject to UK income and CGT if actually brought to the UK or otherwise enjoyed in the UK (the remittance basis of tax). It should be noticed that some people still get confused about this. The remittance basis only affords one the privilege of leaving foreign income and gains offshore. Once utilised in the UK, they will likely be taxable; and
- **Inheritance Tax (IHT):** A non-domiciled individual's exposure to UK IHT being limited to UK assets, with ample opportunity for tax planning with most UK assets until one became 'deemed domiciled' (see below).

Domicile is a concept of general law[1]. One usually acquires your domicile of origin from your father at birth. Generally, this is only replaced by a domicile of choice in another location if one both physically resides there and has an intention to stay there permanently or indefinitely.

As such, the domicile of origin is a sticky old thing.

Assuming one did not become UK domiciled under general law, one could benefit free of charge and without time limit until 2008[2]. However major changes in 2008 and 2017 led to a position where:

- One had to pay a tax charge after, broadly, being resident in the UK for seven years; and
- a long stop date was introduced which meant that one could no longer benefit from the remittance basis after 15 tax years in the UK

When it came to IHT, an effective long stop date for benefits already existed – if one had been in the UK for 17 tax years. This was brought into line with the 15 years for the remittance basis.

The remittance basis was part of the UK tax system for centuries, subject to many changes by Parliament over the years (so, love 'em or hate 'em, the rules were absolutely not a loophole) and undoubtedly attracted a lot of highly mobile wealthy individuals.

But every dog has its day (or century or two). In March 2024, it was determined, firstly, by the Jezza of Oz, that the remittance basis of tax should be abolished. This edict was confirmed by Rachel Reeves, the Wicked Witch of the Left, following the July election and the Autumn Budget.

But this is an article on the potential Cinderellas of these changes. Expats.

Will those who have lived outside of the UK for a long period of time benefit from these changes?

Could they live Expat-ily ever after?

Expats who continue to stay away

Introduction

[1] It should be noted that the changes referred to in this article only refer to tax. Domicile will be retained for all manner of other legal purposes – including succession and will also be relevant for double tax treaties.

[2] I've done my research and can't see any examples in fairytale lore where our amphibian's transmogrification was temporary or came at a charge. I seem to recall the King in Shrek reverted back to froggy form. But that's different.

I mentioned above that a domicile of origin is sticky. It needs to be replaced by a domicile of choice This tenacity might benefit the non-native of the UK when he or she moves there as, in the absence of forming an intention to stay permanently or indefinitely, he or she will retain their domicile of origin.

However, on the other side of the coin, this stickiness also applies to those with a domicile of origin in the UK.

Historically, this has meant that, even a long-term expat, has lived in a state of purgatory. Unless they could obtain some certainty over the fact they had acquired and maintained a domicile of choice outside of the UK – technically difficult and practically more so – their IHT exposure on worldwide assets would remain.

Of course, and this is something I have found out first-hand, ignorance of this purgatorial existence[3] is quite common. It will often be news to a long-term expat in, say, the UAE that they have an exposure to UK IHT on their overseas assets. For instance, those who might have done well from the UAE's explosive real estate market might be somewhat blindsided by the fact that this will be in their estate.

Special – or extra 'sticky' – cases

Particular jurisdictions might present some extra difficulties. For example, I sit writing this in the UAE. It is highly unlikely, at present, that an expat will get permanent residence or citizenship here (other than in exceptional cases). This might change, of course.

Can one form an intention to say somewhere permanently or indefinitely where there is no pathway to permanent residence?

This is not a point that I can see much case law on. However, the bankruptcy case of Barlow Clowes International provides us with a rather unhelpful authority in this regard. However, it needs to be said that this was a case more to do with the ensuring a fleeing bankrupt faced the music rather than having anything to do with tax.

The fairy dust

So, what is the magic dust?

Well, the tax changes remove the sticky goo of domicile when it comes to determining one's IHT exposure. This is because, not only do the changes abolish the remittance basis, but also seek to break the nexus between domicile and tax more generally. This includes for IHT purposes.

As we know, IHT's main connecting factor is domicile. As such, the (previous and) current Government's plans would have a significant impact in this area.

Instead of domicile, the appropriate nexus from April 2025 will be whether the person is 'long-term UK resident'. The world will therefore be divided as follows:

- **A Long-Term (UK) Resident (LTR):** Subject to IHT on worldwide assets; and
- **A Non-Long-Term (UK) Resident (Non-LTR):** UK assets only.

As such, there are clear advantages of being Non-LTR.

I can hear the expats ears pricking up as I write this. So, let's take a look.

Who is a long-term UK resident – and who isn't?

So, who's in – and who isn't in – the UK IHT tax net on worldwide assets?

Under the new rules, a person will be LTR in a given tax year if they have been UK tax resident in 10 or more of the preceding 20 tax years.

So, a person will be LTR with effect from 6 April 2025 if they have been UK tax resident in 10 or more of the tax years between 2005/06 and 2024/25 inclusive.

Further, the most obvious example of someone becoming LTR will be from the beginning of the 11th year after 10 consecutive tax years of being UK tax resident. However, the mechanics of the test does mean that those with gaps between years of UK tax residence can also be in scope.

Planning opportunities for continuing expats

For the long-term expat, this opens up some interesting IHT planning opportunities.

Firstly, if one dies overseas, then there will be no UK IHT on those assets – including UK authorised unit trusts. Further, this treatment is certain, and not the house of sticks or straw that a claim of being non-UK domicile might provide.

---

[3] Indeed, I have found many expats that have been somewhat surprised they even have a UK IHT exposure on UK assets!

Importantly, this treatment is certain. It is not the house of sticks or straw that a claim of being non-UK domicile might provide. In addition, moving from say France to Spain will not set the IHT position back to square one (unlike at the moment, where the domicile of origin would simply revert).

However, where you have one spouse who is Non-LTR and one who is LTR, there will be complications[4] around the spousal exemption. A gift made by an LTR spouse to a Non-LTR (i.e. the one potentially benefiting from IHT) will be subject to the cap (which currently applies where there is a similar gift to a non-dom spouse). It is possible for the Non-LTR spouse to elect to be treated as LTR.

What about trusts?

I talk about the trust changes a little more in my article "Every dog has its day… or centuries: The end of the remittance basis, etc., for non-doms". As such, I will provide the highlights here, but this is impossible without some additional colour (see box below).

From an income tax and capital gains tax point of view, a trust that is established by a non-UK resident settlor should not be taxed on any non-UK income and should only suffer UK CGT on, broadly, direct and indirect interests in UK real estate.

It is perhaps the IHT status of trusts that is more interesting.

If the settlor is Non-LTR when the trust is established then this will mean that any non-UK assets within it will be excluded property and outside the scope of UK IHT.

However, the longer-term benefit of any trust will significantly depend on whether the expat is returning to the UK or not. The fluid nature (rather than the current 'set in stone' basis) of excluded property under the new rules will be a massive consideration going forward for tax and estate planning. I will pick this up in the next section.

If our newly enchanted Non-LTR expat is only subject to UK IHT on UK assets, what about swapping UK assets for foreign ones? Would this be the OG Fairy Godmother move?

From a tax perspective at least, I think this must be a sensible plan. Certainly, to the extent that those UK assets do not qualify for IHT reliefs, etc..

Alternatively, if one wants to retain UK assets, say, then one could achieve this relatively straightforwardly (though one would need to consider other taxes such as UK CGT). However, I'm not going to go into this here. You can't expect a Fairy Godmother to reveal all their tricks, can you?

On a final note, It is important to note, if not abundantly clear, in the absence of reliefs and exemption, then everyone is subject to UK IHT on UK assets. Even if never set foot in the UK. Capiche?

Retiring overseas?

The new rules perhaps, when it comes to tax considerations, underscore the benefits of packing one's long service carriage clock and retiring overseas.

For example, with its OECD model treaty, a resident of the UAE being paid a UK pension would not be taxable in the UK (despite being a UK source,) due to the pensions article, and would not suffer any local taxes either. Other jurisdictions will give different results.

However, under the new rules there will be a clear IHT benefit of retiring overseas if one can divest oneself of UK assets, and ensure that one clears the 10-year hurdle to become Non-LTR. I have discussed these consequences above.

Of course, I look at this through a purely tax lens. A retiree may have many other considerations, including the location of family, including young grandchildren. It is also noted that one might not totally be in control of one's mortality – even in this article of fairy tales!

Coming back to the UK

Introduction

So, after living overseas for many years, the pull of four different seasons of bad weather and a Greggs steak bake has become too much to resist. Like Dick Whittington, you've checked the cat's passport is up-to-date, and you're heading back.

But, when it comes to your tax position, will the UK's pot holes really be made of gold? Or will it all be a bit Grimm?

The new four-year Foreign Income and Gains (FIG) regime

---

[4] Some might say complications in the marriage too. Others might say the key to a successful marriage (not me, obviously).

With the remittance basis of tax banished from the Magic Kingdom, we might wonder what, if anything, stands in its place?

Indeed, Jeremy Hunt suggested a replacement regime which has been largely adopted as was by the new Labour Government.

So, is this new regime akin to Rumpelstiltskin spinning gold from straw? Or is it more like Jack trading the family's prize heifer for, well, some Heinz Baked Beans (other beans are available).

Well, in truth, we are probably somewhere in the middle. Sadly, we didn't get anything quite as attractive as the regime on offer in Italy. But we did get something.

So, how exactly will the UK be letting down its golden hair for newly arrived, wealthy individuals?

Firstly, in line with the decision to largely banish domicile from the tax code, a residence-based regime will take effect from 6 April 2025.

Individuals who elect for this regime will not pay UK tax on foreign income and gains (FIG) for the first four years of tax residence.

It should be noted that this will only apply to those who are coming to the UK for the first time or, at least, have not been resident in the UK in any of the previous 10 tax years.

For those who became resident for tax purposes in 2022/23, 2023/24 and 2024/25 tax years (i.e. less than four years) they will be allowed to benefit from the regime until they have been resident for the balance of their first four years.

In a key, and positive, difference to the remittance basis, there is no separate charge on bringing those funds to the UK.

The FIG regime is also an 'opt in' one. A taxpayer needs to claim it. Further, it is possible to claim one year and not the next. As part of that claim, one must set out in the tax return all foreign income and gains which the taxpayer wants to fall within the FIG exemption.

Alas, making a claim does have some negatives. Firstly, the taxpayer will lose the ability to claim the personal allowance. Secondly, they will also lose the ability to benefit from the CGT annual exemption.

As well as choosing on an annual basis whether one wants to claim, you can also choose which items of foreign income and gains you want it to apply to. You might exclude some income from the exemption, for instance, if one's position was better under a double tax agreement.

However, any claim will result in the loss of the personal allowance and annual exemption.

The pot of FIGs at the end of the rainbow?

As such, if one is a long-term expat (resident outside of the UK for more than 10 tax years) before becoming UK resident again, then the FIG regime will also be available to you.

There is nothing similar to this under the current rules.

So, for instance, it would perhaps not be quite so imperative for someone returning to the UK to take up residence to ensure all of their tax planning was done beforehand.

If our taxpayer has been resident in the UAE for more than the past 10 tax years and has made substantial, unrealised gains on UAE real estate he or she would essentially have four years in which gains could be crystallised with no UK CGT being payable. In addition, rents could be received from those properties and not be taxable for those four years[5].

Clearly, any return or interest on non-UK investments and foreign pensions income would not be taxable.

IHT

In addition, the reforms also give those who are planning to return to the UK an attractive window of opportunity to make lifetime gifts of non-UK assets.

They will be able to make gifts without any reference to the seven year clock this whilst they remain Non-LTR. It does not matter if they subsequently become LTR.

The point about the spousal exemption, where there is a mismatch between statuses, is discussed above.

The question is whether there is an analogous play when it comes to trusts. In other words, should our intrepid taxpayer look to settle trusts with non-UK assets prior to them becoming LTR?

Certainly, I can see the logic. Under the current rules, setting up an excluded property before becoming UK deemed domiciled is a very sensible thing to do. It essentially creates a tax efficient war-chest that is sheltered (other than, broadly, value relating to UK residential property) in perpetuity from UK IHT.

But what of the new rules?

---

[5] In both cases, FIG would need to be claimed and the personal allowance and CGT exemption would be lost.

I am afraid that our logical approach of transposing the old rules to the new does not work here. The problem is that, if we set up the excluded property trust whilst Non-LTR, we might well have a beautiful horse drawn carriage at the outset – but, after being in the UK for a maximum of 10 years, we end up with a pumpkin pulled by a handful of rats[6]

This is because, under the new rules, there is no freezing of the 'excluded property' status in perpetuity like under those old rules. The status of the trust will change with the status of the settlor.

We're a long way from Kansas.

Conclusion

So, what is the conclusion to this fiscal fable?

Firstly, if one looks at the new residence based regimes in isolation, using residency as the main nexus for determining a tax liability rather than domicile will provide greater certainty to most taxpayers, including expats.

Of course, the way in which the abolition of the remittance basis has been introduced for UK resident non-doms has, as predicted, seemingly left the UK at the mercy of other jurisdictions – who have eagerly taken on the role of Pied Piper, leading away mobile HNWIs away from the UK.

However, in the context of this article, and particularly when it comes to certainty around the IHT position for British expats, the position is much more positive.

Additionally, an ability to benefit from the four-year FIG regime for those returning to the UK is perhaps the icing on the cake.

So, perhaps, our expat friends will live 'expat-ily ever after' after all.

• Andy Wood is a barrister at Mosaic Chambers, based in Dubai, UAE

Autum Budget 2024 changes

- **Long-term expats staying overseas:** Certainty around UK IHT exposure, now there will be a residence based test and not one of domicile;
- **Long-term expats returning to the UK:** Can benefit from the new four-year FIG regime and a period of grace to make certain gifts; and
- **Thinking of retiring overseas?** Added IHT benefits might make this look more attractive.

Changes for trusts

Income tax and CGT

- The concept of a 'protected trust' is gone from 6 April 2025;
- Protected trusts broadly meant that – trusts established by non-dom/non-deemed dom settlors were not subject to foreign income and gains arising within the trust until distributions were made to UK resident beneficiaries.
- **UK resident settlors who claim the new four-year FIG regime (discussed below):** No affect, but only whilst the claim is in place.
- **UK resident settlors who can't/don't claim four-year FIG regime:** In principle, could become taxable on an arising basis depending on the trust provisions (is the settlor excluded?) and the investments held by the trusts
- **Beneficiaries claiming FIG:** Someone claiming the four-year FIG regime can receive distributions from a non-UK trust free of UK income tax and CGT.

IHT

---

6 I could add a niche joke here about RATS and trusts. If you understand it, you get a gold star.

● Under the current rules, trusts established by non-domiciled individuals benefit from the excluded property regime – a broad, beneficial IHT status that applies to non-UK assets held by the trustees;
● Under the new rules, the settlor must be a non-LTR to benefit from excluded property status;
● This means that the IHT status of a trust will be more fluid, moving in and out of the relevant property/excluded property regime – notably, when it leaves the relevant property (RP) regime then it will be subject to an IHT exit charge;
● **Trusts already in existence at 30 October 2024 (and no more funds added):** When settlor becomes LTR in RP regime but not Gift with Reservation of Benefit ("GWROB") provisions
● **Trusts established and created after 30 October 2024:** In both RP and GWROB regimes.
● **Trusts with Non-LTR settlors under new rules:** Excluded property trust in relation to non-UK assets.