



Ensuring a fair contribution from non-UK domiciled individuals: consultation on a minimum claim period for the remittance basis charge

ICAEW welcomes the opportunity to comment on the consultation paper [*Ensuring a fair contribution from non-UK domiciled individuals: consultation on a minimum claim period for the remittance basis charge*](#) published by HM Treasury on 22 January 2015.

This response of 16 April 2015 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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INTRODUCTION

1. We welcome the opportunity to comment on the consultation paper *Ensuring a fair contribution from non-UK domiciled individuals: consultation on a minimum claim period for the remittance basis charge* published by HM Treasury on 22 January 2015.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. On 26 February 2015 we attended a meeting with HM Treasury in which we were able to put forward some key comments and concerns and discuss aspects of the consultation document.

KEY POINT SUMMARY

4. The budget of 1914 introduced UK tax on worldwide income for UK residents but with an opt out for UK residents who were not UK domiciled they could continue to pay UK tax on just their UK income.
5. After many years maintaining this status quo for the tax treatment of UK resident non-domiciliary significant changes were made with effect from April 2008 and since then there has been significant tinkering leaving taxpayers and advisers wondering when the next change will be introduced. This uncertainty tends to deter foreign investors and wealth makers who require certainty to make their long term plans.
6. At present about 5,000 people pay the remittance basis charge (RBC) with a further 100,000 plus claiming the remittance basis without charge. Before making further changes to the regime for non domiciliary we suggest that a rigorous cost-benefit calculation be undertaken to ensure the effects of the changes are well understood before they are made.
7. We measure any proposals to change the tax legislation against our Ten Tenets as listed at Appendix 1. Comparing the proposals to the ten tenets it fails on several grounds:
 - it is not simple vis a vis the proposals for subsequent claim periods and the proposals for when claims do not span three consecutive years
 - it is not constant
 - it is not easy to calculate when the RBC may still apply and when not
 - it is not certain, the consultation envisages taxpayers making a choice and then changing it within the one year period allowed for amendments.
8. When it was introduced the RBC was justified as a non creditable tax (in most cases other than remittance of all overseas funds) on the grounds that an election would be possible year on year. This proposal is a fundamental change, although it may not appear so drastic. if the election is to be restricted the RBC ought to be more fundamentally reconsidered.
9. At present (and notwithstanding inadequate reliefs for business investment) remittances are subject to additional tax and remittances are thus discouraged – whereas a sensible policy would be quite the opposite. Remittances ought to be encouraged, and business investment relief in particular needs to be extensively revised if it is to achieve the objective of encouraging inward investment.
10. An alternative approach would be to have a minimum opt out period rather than a minimum opt in period. This would allow the taxpayer to opt out of the remittance basis whenever they chose but they could then not opt back in until a certain period had expired. This would ensure they were not locked into paying say £270,000 if their circumstances had suffered a life changing event such as divorce or bankruptcy. This may be perceived as less of a revenue raiser, but it is far more consistent with the principle that the remittance basis is an exception, to the basic principle of worldwide taxation of UK residents.

11. As conceded by Lloyd George's government there is an argument that wealth accumulated offshore by a non UK domiciled individual whilst living outside the UK should not result in taxation in the UK and this is recognised to an extent by allowing the remittance basis without charge for the first seven years residency in the UK. However, after being long term resident in the UK should there be a deemed UK domicile for income and capital gains tax as there is for inheritance tax. This would add some simplicity and certainty to the regime. An alternative would be to have a cut off after a fixed number of years UK residence with the count starting once the non UK domiciliary ceases being active in UK business. A further alternative would be to require the individual to prove they remain non UK domiciled in order to claim remittance basis.
12. In our experience the reason why individuals choose to pay the RBC again after a period of non-payment is based on decisions which either centre on developments in their personal lives or are based around commercial decisions. If the RBC is more than the tax on the unremitted income then the decision will be taken to pay the tax and vice versa.
13. We have no evidence that as a group UK resident non-UK domiciled taxpayers are actively engaged in planning their affairs with the aim of reducing their exposure to the remittance basis charge. It is possible that such behaviour is more easily visible amongst those taxpayers who cannot readily afford the remittance basis charge, and where the decision to make an election is finely balanced.
14. We do not think that the proposed minimum claim period strikes the right balance. Since the introduction of the remittance basis charge by the Finance Act 2008, the structure of the remittance basis charge has been remodelled several times. and the level of tax suffered by some UK resident non-UK domiciliary has already increased substantially. As a result we consider that the current proposals are unnecessarily stringent. The proposal envisages the three year period being fixed except in the case of death, there should also be opt outs where there has been a life changing event such as divorce, or a market collapse, or the overseas assets being seized by the regime in power where the assets are located
15. The consultation document sets out two options following the first minimum 3 year period. The first option proposes a series of three year rolling elections. The second introduces an annual election following the initial 3 year 'starter period'. However, should the taxpayer have a 'break year' in which no election was made, the three year starter period is triggered again when he or she makes another election. In our view the first option is far too restrictive, whereas in the case of the second the taxpayer should be allowed to decide whether to make an election as they feel fit once the initial 3 year period has ended and do so on a year by year basis. However, we still think that the initial 3 year period in both cases is unnecessarily severe and should not be adopted.
16. We can see no merit in progressively extending the minimum period in which an election is to apply any further as proposed. It will simply make the UK an unattractive location for some individuals.
17. The effect of the proposals for UK resident non domiciliary for whom payment of the remittance basis charge is already marginal, will be to deter them from making an election.
18. UK resident non-UK domiciled individuals already make a significant contribution to the UK economy and pay significant levels of taxation. The proposals set out in the consultation document seem to be less concerned with fairness than with raising revenue.

GENERAL COMMENTS

19. It appears from the questions raised in the Consultation Document that there is a perception that UK resident non domiciliary do not contribute a fair measure of tax to the UK government in order to access the remittance basis. It is of course entirely open to the government to raise tax in whatever manner it sees fit, but there must come a time when the costs and the

accompanying complexity of the tax rules operate more as a deterrent than in a manner conducive to raise tax yields. Our perception is that the current proposals are not so much concerned with fairness as with raising revenue, and that the way they are framed is likely to discourage long term resident but non-UK domiciled individuals from electing to be taxed on the remittance basis as regards their foreign income and gains. If this is the real driver behind the proposals, we would consider it to be far more transparent for the consultation document to have made this clear.

RESPONSES TO CONSULTATION QUESTIONS

Q1: Based on your experience, what are the reasons for individuals choosing to pay the remittance basis charge again after a period of non-payment?

20. In our experience the reason why individuals choose to pay the remittance basis charge again after a period of non-payment is based on decisions which either centre on developments in their personal lives or are based around commercial decisions. For example, a wealthy non-UK domiciliary might decide that they no longer want to retain the use of one or more of their foreign possessions, and might decide to elect for the remittance basis to apply during the tax year when foreign gains are realised. This approach would be equally applicable where major foreign investment assets are sold.

Q2: To what extent are individuals actively planning their affairs with the aim to reduce exposure to the remittance basis charge? How do they do this?

21. We have no evidence that as a group UK resident non-UK domiciled taxpayers are actively engaged in planning their affairs with the aim of reducing their exposure to the remittance basis charge. It is possible that such behaviour is more readily visible amongst those taxpayers who cannot readily afford the remittance basis charge, and where the decision to make an election is finely balanced. You ask how such planning is accomplished. We have already alluded above to cases where foreign transactions are timed to be undertaken during a period where the remittance basis charge applies. You have already identified at point 3.3 of the consultation document cases where some taxpayers use offshore bonds.

Q3: Does the proposed minimum claim period strike the appropriate balance, noting the opportunities to mitigate the potential uncertainty?

22. We do not think that the proposed minimum claim period strikes the right balance. Since the introduction of the RBC by the Finance Act 2008, the structure of it has been remodelled several times. Originally there was a £30,000 charge for UK resident non-UK domiciled individuals who had been resident on the UK for 7 out of the preceding 9 years. A two tier charge was introduced from 6 April 2012 when the charge was increased to £50,000 for those non domiciliary who had been resident for 12 out of the last 14 years. From 6 April 2015 the £50,000 increases to £60,000 and a new bracket is introduced, a charge of £90,000 for those present in the UK for 17 out of the last 20 years. This means there has already been much change in this area, and the level of tax suffered by some UK resident non domiciliary has already increased substantially. As a result we consider that the current proposals are unnecessarily stringent. If the intention is simply to raise revenue, it would be more straightforward, and arguably fairer, just to increase the level of the tax charge in relation to long term non-UK domiciliary. The proposals are also very inflexible. Locking taxpayers into a three year cycle fails to take into account that their circumstances might change and they could no longer afford to pay the extra charge.

Q4: How should subsequent claim periods be treated?

23. The consultation document sets out two options following the first minimum 3 year period. The first option proposes a series of three year rolling elections. The second introduces an annual election following the initial 3 year 'starter period'. However, should the taxpayer have a 'break year' in which no election was made, the three year starter period is triggered again when he

or she makes another election. We think that the first option is far too restrictive, whereas in the case of the second we think that the taxpayer should be allowed to decide whether to make an election as they feel fit once the initial 3 year period has ended and do so on a year by year basis. However, we still think that the initial 3 year period in both cases is unnecessarily severe and should not be adopted. A fairer approach would be to allow taxpayers to make an election on a year by year basis, in the knowledge that if they fail to elect the next year they will be unable to elect for a further 2 tax years so that their worldwide income will be assessed on the arising basis for a total of 3 tax years. For example, if a tax payer made an election in 2016-17, but failed to do so in 2017-18, he or she would be unable to claim the remittance basis in 2018-19 and 2019-20.

Q5: Do you believe there would be merit in introducing further increased minimum claim periods based on the number of years that an individual has been resident? If so, how should that be structured?

24. We can see no merit in progressively extending the minimum period further as proposed. It will simply make the UK an unattractive location for some tax payers.

Q6: Are these appropriate ways to deal with circumstances where an individual stops being resident in the UK? If not, how would you recommend dealing with them?

25. The proposals suggested at 3.5 are in line with the approach of the consultation document. Overall we do not think that the proposals are necessary because we do not think that the approach set out in the consultation document should be followed.

Q7: Are there other special circumstances when it might be inappropriate for the claim period to span 3 consecutive years? If so, how would you recommend dealing with those circumstances?

26. Safeguards would have to be introduced to ensure that taxpayer were not required to meet the tax charges if he or she can no longer afford to make the payments due. For example, assuming that a 3 year rolling claim period is introduced, a taxpayer makes an election in 2018-19 to cover 2018-19, 2019-20 and 2020-21. He or she suffers a financial crisis in the latter part of 2018-19, and can no longer afford to meet the tax due for the balance of the 3 year claim cycle. Is it necessary for the tax payer to become formally bankrupt to avoid the liability to tax ? Or is it envisaged that he or she would have to plead hardship?

Q8: Please explain if and how individuals resident in the UK will plan their affairs in response to the introduction of a minimum claim period.

27. There is a category of UK resident and non-UK domiciled taxpayers who are wealthy enough to be able to pay the additional charges that are being introduced on 6 April 2015 and who will also be able to make elections on a 3 year rolling basis if that is what they decide to do. There are also potentially larger number of taxpayers for whom payment of the remittance basis charge is only marginally beneficial and they are likely to decide not to elect in future, especially if they have to make an open ended decision to elect for 3 years at a time. The first category of non-UK domiciled taxpayers will not take steps to plan their affairs in response to the proposed changes. The second category of taxpayer is likely to plan their affairs by not electing to be taxed on the remittance basis. There is a third category that is able to choose where to base their operations and they may well choose to base themselves outside the UK.

Q9: Are there alternatives to the minimum claim period that would ensure greater fairness in the contribution made by non-UK domiciled individuals? Or is there complementary action that should be taken in conjunction with the minimum claim period?

28. UK resident non-UK domiciled individuals already make a significant contribution to the UK economy and pay significant levels of taxation. The proposals set out in the consultation

document seem to be less concerned with fairness than with raising revenue. Alternatively they appear to be designed to deter most long term UK resident non-UK domiciliary from accessing the remittance basis.

- 29.** An alternative approach would be to have a minimum opt out period rather than a minimum opt in period. This would allow the taxpayer to opt out of the remittance basis whenever they chose but could then not opt back in until a certain period had expired. This would ensure they were not locked in to paying say £270,000 if their circumstances had suffered a life changing event such as divorce or bankruptcy. This may be perceived as less of a revenue raiser, but it is far more consistent with the principle that the remittance basis is an exception, to the basic principle of worldwide taxation of UK residents, and it would be an effective deterrent to switching for any who would not then as a consequence be required to disclose worldwide income and gains for at least a period of time thereafter.
- 30.** There is an argument that wealth accumulated offshore by a non UK domiciled individual whilst living outside the UK should not result in taxation in the UK and this is recognised to an extent by allowing the remittance basis without charge for the first seven years residency in the UK. However, after being long term resident in the UK should there be a deemed UK domicile for income and capital gains tax as there is for inheritance tax. This would add some simplicity to the regime.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).