2023/24

Tax Planning Bulletin

RAWLINSON & HUNTER

Welcome to the 2024 edition of the Rawlinson & Hunter Tax Planning Bulletin.

There is an element of uncertainty over the outlook for the UK private client tax regime. We understand that the Prime Minister has ruled out a January 2025 poll, so 2024 will be a General Election year. There is a distinct possibility of a new government, and consequent changes in tax policy, significantly to the remittance basis of taxation available to foreign domiciliaries.

The Chancellor's Autumn Statement on 22 November last year announced reductions to national insurance contributions, but made no mention of inheritance tax, nor of capital gains tax, stamp duty land tax, VAT or income tax rates. There is speculation that pre-election tax cuts, possibly to inheritance tax, may be announced in the Budget, now fixed for Wednesday 6 March 2024.

That said, some changes which will take place on 6 April 2024 are known. In any event, the weeks leading up to the end of the tax year on 5 April are a good time to take stock, and consider planning which may be available. We hope that this publication will assist.

Readers may also wish to refer to our **Tax Factsheets**. They cover subjects such as the tax implications of making lifetime gifts, domicile, trusts and what is a remittance, and the Statutory Residence Test, family limited partnerships and family investment companies.

For fuller detail on any aspect, please speak to your usual Rawlinson & Hunter adviser, or any of the partners listed on the last page.

1 Income Tax

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Tax rates and allowances

1.1 The threshold at which the top rate of tax is payable is £125,140 from 6 April 2024, unchanged from the previous year. The figure of £125,140 might appear to be an unusual choice, but it links in with the withdrawal of personal allowance, described below.

1.2 The top rate of income tax will remain at 45% in England; for Scotland the current top rate of 47% will increase to 48% from 6 April 2024. In addition, it was announced on 19 December 2023 that a new 45% Scottish advanced rate income tax band will he introduced, for people with taxable income between £75,000 and £125,140, from 6 April 2024.

1.3 A Welsh income tax rate of 10% has applied for Welsh taxpayers since 6 April 2019. There is a corresponding reduction of 10% in the UK rates, so that the total tax liability remains unchanged. Although the Welsh government has the power to vary the rate of income tax charged on non-savings income of Welsh taxpayers, to date it has not done so.

1.4 The current £1,000 dividend allowance (dividend income falling in this band is taxed at 0%) will reduce to £500 from 6 April 2024.

Utilising allowances and lower rate tax bands

1.5 If your income for 2023/24 is between £100,000 and £125,140 your personal allowance will be incrementally withdrawn and you will suffer a 60% marginal income tax rate on the income for which the personal allowance is withdrawn. If you are an employee, consider swapping salary for benefits (such as employer pension contributions or childcare vouchers) to take your taxable income below the £100,000 threshold. You may also wish to consider making charitable donations or pension contributions (on which see below) or deferring income or investing for capital growth to reduce your tax liability.

1.6 If your income is likely to be between £50,000 and £60,000, and nothing is done, you will be subject to the High-Income Child Benefit Charge (in effect a claw back of child benefit received by you or your partner). If both parents keep their annual taxable income under £50,000 there is no clawback of the child benefit.

1.7 Is your spouse or civil partner making full use of their £12,570 personal allowance and lower rate tax bands? If not, consider transferring/splitting ownership of income-producing assets or putting savings in joint names. In addition, an individual may transfer 10% of their personal allowance to their spouse or civil partner, provided both are not liable to income tax above the basic rate.

1.8 Where spouses/civil partners own assets (other than close company shares and furnished holiday lets) jointly, for tax purposes the income in the first instance is deemed to be split 50/50 regardless of the beneficial/legal ownership. Where 50/50 does not reflect reality a declaration can be made so the spouses/partners are taxed in accordance with the ratio of actual ownership. Where a 50/50 split is not beneficial it is important that the declaration is made in a timely manner.

1.9 Is there a family business? If so consider paying a salary to your spouse/civil partner or children (provided they are old enough). For Scottish taxpayers particularly, avoiding higher tax rates from 6 April 2024 by paying a bonus now could be beneficial. Could the business justify paying employer pension contributions? Consider dividends as well, see Section 4.

1.10 Consider the position of your children and grandchildren (and anyone else that you wish to provide for) who are not making full use of their Income Tax personal allowance, and/or lower rate bands. Beware, however, of anti-avoidance rules with respect to gifts to minor children (but not grandchildren) where income in a tax year from the gift exceeds £100.

1.11 Take advice to devise a lifetime giving strategy that is efficient across the various taxes. This could include:

- Giving funds so family members can acquire income-producing assets that are likely to appreciate in value (providing scope to utilise the donee's personal allowance, lower rate bands and their CGT annual exemption).
- If there is a family discretionary trust, distributions of income could be made to ensure the full use of the personal allowances and lower rate bands of beneficiaries. Capital distributions might also be considered.

1.12 Take advice before 5 April 2024 if you think that you may have mistakenly overpaid tax in earlier tax years.

Reliefs that can reduce total income

1.13 Certain reliefs work by reducing an individual's total income. These reliefs can result in very significant tax savings. The savings achievable on a number of key reliefs are, however, limited by a cap (the higher of £50,000 and 25% of the taxpayer's total adjusted net income for the tax year).

1.14 The key reliefs impacted by the cap include the offsetting against general income of trading losses, reliefs for certain interest payments (such as interest on a loan taken out to buy shares in a close company or to provide capital to a partnership) and income tax relief for capital losses on the disposal of shares in unlisted trading companies (though note that the cap does not apply where EIS or SEIS relief is attributable to the shares, which is another reason why those reliefs can be so valuable). Take advice if you think the cap may apply to you.

1.15 The cap does not apply when computing the Income Tax relief available with respect to charitable giving, whether one is considering Gift Aid (gifts of cash) or gifts of qualifying property (land or qualifying securities).

Scottish Income Tax

1.16 Scottish Income Tax is charged on income other than savings income (savings for this purpose including dividend income). That is, in the hands of a Scottish taxpayer, the following is subject to Scottish Income Tax: employment income, self-employment income, pension income and rental income.

1.17 Broadly, a Scottish taxpayer is an individual resident in the UK (this is a fundamental principle - if the individual is not UK resident he cannot be a Scottish taxpayer) who meets one of the following three tests:

- he is a Scottish Parliamentarian (member of the Westminster Parliament for a Scottish constituency, or the Scottish Parliament);
- he is an individual who has a close connection to Scotland as a result of either: (i) having his sole UK residence in Scotland and for at least part of the tax year the individual lived in that residence; or (ii) having his main residence in Scotland for a least as much time in the tax year as he has had a main residence in another part of the UK (considered separately); or
- he does not have a close connection with England, Wales or Northern Ireland and (counting midnights, with the transit exemption) spends more days in Scotland than in any other part of the UK.

1.18 There are currently five bands, charging income tax at rates ranging from 19% to 47%. The bands for 2023/24 are as set out below.

Income Tax Rate	Scottish Rate	Rest of UK Rate
Starter rate	19% (taxable income up to £2,162)	N/A
Basic rate	20% (between £2,163 and £13,118)	20% (taxable income up to £37,700)
Intermediate rate	21% (between £13,119 and £31,092)	N/A
Higher rate	41% (between £31,093 and £150,000)	40% (between £37,701 and £150,000)
Top rate	46% (over £150,000)	45% (over £150,000)

Taxable income is after deduction of personal allowance of up to £12,570, where applicable. This allowance is reduced across the UK by £1 of every £2 of income in excess of £100,000.

1.19 With the difference in rates it is more important than ever to identify Scottish taxpayers. HMRC has been trying to do this. However, under self-assessment the final onus is on the taxpayer to identify their residence status. The position needs to be considered in detail. For example, where there are two properties, one being in Scotland and one elsewhere in the UK, having an English correspondence address does not necessarily mean the taxpayer is not a Scottish taxpayer, and vice versa.

2 Capital Gains Tax

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2.1 The current annual exemption of £6,000 will be reduced to £3,000 from April 2024. So far, no change to CGT rates has been proposed.

Have you used your £6,000 annual exemption? If not, consider doing so by:

- Selling investments standing at a gain. If the same investment is to be re-purchased in your personal capacity remember to avoid the bed and breakfasting anti-avoidance rules (which will negate the planning). There must be at least 30 days between the date of sale and the date of acquisition. However, the bed and breakfast rules are not triggered if the repurchase is by your spouse or within an ISA or trust.
- Giving assets that are standing at a gain to your children (or anyone else that you wish to provide for).
- Transferring investments standing at a gain to a trust, though take advice on the IHT consequences of doing so.

2.2 If you have available basic rate band, consider transactions (such as the sales or gifts discussed above) that would be taxed by reference to the unused amount. The efficacy of this tactic will depend on whether in future years you will expect to pay CGT at the higher rate, rather than the lower rate. If you remain a lower rate taxpayer such steps would be counterproductive as they would simply accelerate the tax payment point.

2.3 The present CGT rates for 2023/24 remain low. The main rates for individuals are 10%/20% (depending on the availability of surplus basic rate band). Even the 18%/28% higher rates on the disposal of non-exempt residential property and carried interest are significantly lower than the 40% higher and 45% additional Income Tax rates. Structuring returns to be capital as opposed to income in nature remains important.

2.4 Is your spouse/civil partner making use of their annual exemption, basic rate tax band and/or capital losses? If not, consider transferring/splitting ownership of assets standing at a gain.

2.5 Have you already realised gains which exceed the annual exemption and which will be subject to CGT? If so, review your investments and see if: (i) you can sell assets standing at a loss; or (ii) you own an asset that has become worthless (meaning that you may be able to make a 'negligible value' claim).

2.6 Negligible value claims must be made within two years of the end of the tax year during which the asset is claimed to have become of negligible value. This means that 5 April 2024 is the deadline for claims that assets became of negligible value in 2021/22.

2.7 Is it possible to defer disposals that are going to realise a gain (in excess of your available annual exemption and any unutilised capital losses) until after 5 April 2024? If so, this would generally defer the due date for payment of the tax for one year thus giving you a cash flow benefit. The exception is residential property, for which any tax is payable within 60 days of completion of the sale. However, be careful where you would pay CGT at the lower rate on a disposal now, as a deferral may result in CGT being payable at the higher rate in later years.

2.8 Business asset disposal relief (BADR) can currently save an individual up to £100,000. Maximisation of BADR should, therefore, be considered at every stage in the life cycle of a business. The qualifying conditions for BADR have changed, and so consider a review of your position. For disposals on or after 29 October 2018, the definition of personal company is amended so that the taxpayer must have either a 5% interest in the company's distributable profit or assets on a winding up or be entitled to at least 5% of the proceeds on sale of the entire share capital. A two year qualifying period applies from 6 April 2019 and it is now possible to make a claim to preserve relief from 6 April 2019 where an issue of shares has diluted a holding to below the required 5% level.

2.9 Care should be taken where there are to be transfers between spouses/civil partners, as for BADR purposes the transferee spouse/civil partner does not take over the qualifying period of the transferor spouse/civil partner. Transferring qualifying business assets from a qualifying spouse to a non-qualifying spouse prior to a disposal could be a costly error.

2.10 If you have not done so already, the deadline for claiming capital losses realised in tax year 2019/20 is 5 April 2024 (4 years after the end of the tax year). This is also the deadline by which business and gift holdover relief elections should be made.

3 Inheritance Tax (IHT) and Trusts

3 Inheritance Tax (IHT) including Trusts

General points

3.1 IHT applies to taxable estates exceeding the nil rate band of £325,000 (including gifts in the seven years before death) with any unused nil rate band being available to transfer to a surviving spouse/civil partner. A tax efficient Will coupled (where necessary) with a judicious lifetime giving strategy (using trusts, family investment companies etc where appropriate) can reduce the impact of IHT significantly.

3.2 In addition to the standard nil rate band, individuals have a residence nil rate band of £175,000, where a home is passed to direct descendants. There will, however, be a tapered withdrawal of the band for estates valued at more than £2 million. Where the value of your estate will not exceed £2 million the residence nil rate band will allow at least part of the value of the family home to pass tax free to younger generations. The operation of the relief is however highly complex, and specific advice should be sought. As with the standard nil rate band, any unused residence nil rate band will be transferable to a surviving spouse or civil partner.

3.3 You should ensure you have a Will and that it is as tax efficient as possible. It should be reviewed regularly to ensure it remains in keeping with your wishes and continues to be tax efficient.

- Ensure IHT favoured property (such as assets qualifying for Business Property Relief) is left to chargeable legatees rather than a spouse or other exempt beneficiary, to avoid the relief being wasted.
- Where there is an exempt residuary legatee, such as a spouse or charity, take specialist advice to avoid grossing up on gifts to other beneficiaries.
- Will trusts will be desirable in some cases but not all.

3.4 Debts and loans can be IHT efficient in reducing the value of a taxable estate. However, specific advice should be taken as anti-avoidance provisions can apply to disallow the deduction. For example, a deduction will only be given against the death estate for a liability to the extent that it is subsequently repaid (subject to an exemption for genuine commercial arrangements).

3.5 Where an individual has died without a Will or where the Will is not tax efficient, a Deed of Variation can often rectify the situation and achieve tax savings; there is a two year time limit. Where a Deed of Variation results in a gift to charity, the charity must be notified of the Deed of Variation.

3.6 Whether made on death or as part of a lifetime giving strategy the following transfers are exempt from IHT:

- gifts to charity;
- gifts to most mainstream political parties (though not gifts with respect to a referendum campaign);
- transfers between spouses/civil partners of the same domicile for IHT purposes (that is taking deemed domicile into account, and a deemed domicile spousal election can be made to benefit from the exemption).

Absolute lifetime giving

3.7 Consider making gifts so as to use your £3,000 annual exemption from IHT. If you did not use last year's exemption, you can avoid wasting it by making gifts of up to £6,000 by 5 April 2024.

3.8 Small gifts (£250 or less per donee each tax year) are exempt from IHT, as are certain gifts in consideration of a marriage/civil partnership (for example each party to the marriage can give up to £2,500 and parents can give up to £5,000). Where the parties to the marriage wish to give each other more expensive gifts it would be more efficient to wait until after they are married so the transfer is exempt (rather than merely potentially exempt).

3.9 Regular gifts out of income may be exempt. This is an important but often overlooked relief. Advice should be taken to ensure gifts qualify for the relief and that appropriate evidence is retained to prove this.

3.10 Where the above exemptions do not apply, absolute lifetime gifts to individuals are potentially exempt and remain free of IHT if made over seven years before the donor's death. Furthermore, the tax payable on death is reduced where the donor dies in the period from three years to seven years after the gift (the relief being greater for every additional year that the donor survives).

3.11 During their lifetimes spouses/civil partners have their own separate IHT annual exemptions and nil-rate band. They can also independently make the various exempt gifts detailed above. Co-ordinating giving strategies may be appropriate.

Special IHT reliefs

3.12 There are special reliefs from IHT, which apply to qualifying business property, agricultural property and woodlands. The relief for business property is particularly favourable and currently extends to shares in qualifying trading companies that are listed on the Alternative Investment Market ("AIM"). The reliefs can be complex (particularly where there is a group structure or a partnership) and advice should be taken in advance to ensure that the qualifying conditions will be met.

3.13 Remember that new debts/loans taken out on or after 6 April 2013 where the funds are used to acquire assets that qualify for agricultural or business property relief will, regardless of what property the liability is secured against, for IHT purposes be taken first to reduce the value of the qualifying agricultural or business property (similar provisions apply to trusts when calculating the decennial charge). Pre-6 April 2013 loans are grandfathered and individuals who have such loans secured against other property should take advice before doing anything that will alter the terms of such loans. Similar restrictions apply in relation to loans used to acquire excluded property; see below.

3.14 Generally speaking, (but there are special rules in relation to UK residential property), foreign assets owned by individuals who are not UK domiciled for IHT purposes will be outside the scope of IHT as excluded property. Subject to limited exceptions, no deduction is allowed for IHT purposes in respect of a liability relating to the acquisition of excluded property, irrespective of when the liability was incurred.

3.15 There is a special reduced 36% IHT rate on death where at least 10% of a person's net estate is left to charity.

Trust Planning

3.16 Trusts can be a sensible method of preserving family wealth. However, it is recommended to seek detailed advice before:

- establishing a trust;
- varying an existing trust; or
- making provision for a trust within a Will.

The need for advice is particularly acute where a lifetime trust is to be established which will be settlor-interested (that is, the settlor or his or her spouse or civil partner can benefit from the trust), as various anti-avoidance provisions apply to such trusts. In addition, it is not possible to defer (hold over) the tax on the deemed gain triggered on the transfer of a chargeable asset to a settlor-interested trust, meaning that both CGT and IHT may be payable on creation.

3.17 Most lifetime trusts established since 22 March 2006 are within the IHT relevant property regime. Broadly this means that (i) there may be an immediate 20% charge to IHT on the value transferred into trust in excess of the nil-rate band and (ii) there may be a charge of up to 6% every 10 years and an exit charge when property leaves the trust. Prior to 22 March 2006, this treatment only applied to discretionary trusts.

3.18 The establishment of a trust is still a valuable tool where:

- The settlor is neither UK domiciled nor deemed UK domiciled, as an excluded property trust can be created (specific advice should be taken).
- The amount settled falls within the nil-rate band, (for example the establishment of a discretionary trust by grandparents or settling property which has a low value but significant capital appreciation prospects).
- Tax favoured property is settled (such as qualifying business property).
- It is desirable to tie up capital for the long term (as the 6% decennial charge IHT rate is significantly lower than the 40% tax rate on death).

3.19 As mentioned in section 1 the income and capital distribution strategy should be reviewed prior to 6 April 2024. This is particularly the case if the terms of the trust deed mean that income will be regarded as added to capital if not paid out prior to then.

3.20 Whilst not a pre-6 April 2024 point, the issue of paying out non-accumulated income also has to be considered prior to the decennial charge. This is because deeming provisions mean that for IHT purposes the 6% IHT charge applies to all income within the settlement immediately before the ten year anniversary where, at that time, the income has been retained by the trustees for more than five years.

3.21 Section 7 below includes further notes on foreign domicile, IHT and offshore trusts.

Alternatives to trusts

3.22 A Family Limited Partnership might be a viable tax efficient alternative to a trust, or a Family Investment Company (an increasingly attractive vehicle in the right circumstances). Specialist advice should be taken.

4 Investments including property

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Tax is only one of a number of considerations when making investments. Before any investment decision is made specific financial advice should be taken from someone with the appropriate regulatory standing.

General points

4.1 Consider the following tax mitigation or deferment strategies:

- Investing for capital growth - the current 20% higher CGT rate is considerably lower than the 45% additional Income Tax rate.
- Wrapper products – these can provide a mechanism for tax deferral during times when tax rates are high. However, specific (and potentially penal) tax regimes can apply and specialist tax advice should be taken both prior to investment and before any encashment. Family investment companies are of increasing prominence and we can provide advice on these as required.
- Dividend tax rates increased by 1.25% from 6 April 2022. For dividends above the £1,000 allowance, amounts falling with the basic rate band are taxed at 8.75%; the corresponding rates for the higher and additional rate bands are 33.75% and 39.35% respectively.
- Payments of dividends may benefit from the current dividend allowance of £2,000. Where you have portfolio dividends you will have no control over when the dividend is paid out. With a family company, if the 2022/23 allowance has not been utilised it might be possible to pay an interim dividend prior to 6 April 2023. It may be more tax efficient to take dividends as opposed to salary from the company. If you have a loan from a family company, the company may face a 33.75% tax charge if the loan is not repaid in full within nine months from the end of the company's accounting period.

4.2 Where you hold shares in unlisted trading companies which have become worthless, consider whether you could make a claim for the loss against your income for the year (though note the potential impact of the cap on such reliefs – see section 1).

ISAs

4.3 There are now a variety of different ISA products (see below). Unless you are a Crown servant you must be UK resident to benefit from an ISA product. ISAs are a tax-free wrapper for Income Tax and CGT purposes and the income and gains do not need to be declared on self-assessment tax returns. The income and gains arising in the fund are tax-exempt during your lifetime; the value of your ISA investments will however form part of your death estate for IHT purposes.

4.4 The ISA allowance for the current year is £20,000, the Junior ISA and Child Trust Fund allowances are £9,000. These amounts will remain the same for the year commencing 6 April 2024.

The deadline to use the 2023/24 annual allowance is 5 April 2024. If the allowance is not used it is lost.

4.5 There are no restrictions on the mix of cash/investments in a standard ISA (that is the ISA can be entirely in cash, entirely in stocks and shares, entirely in innovative finance products or a mix of all of these). Funds paid into a Lifetime ISA, see below, count towards this £20,000 allowance with a cap on annual savings in a Lifetime ISA being set at £4,000.

Some changes to the ISA rules will apply from 6 April 2024. The qualifying age for opening a Cash ISA will increase from 16 to 18, as it is for Stocks and Share, Innovative Finance and Lifetime ISAs. At present, 16 and 17 year olds can have a Junior ISA and a Cash ISA allowance in the same tax year; this loophole will close from 6 April 2024.

Also from 6 April 2024, subscriptions to multiple ISAs of the same type will be allowed, with the exception of the Lifetime ISA, within the same tax year, removing the limit on subscribing to one ISA of each type per year. All subscriptions must remain within the overall ISA limit of £20,000. It will also be permitted, from 6 April 2024, to hold long-term asset funds and open ended property funds in an Innovative Finance ISA.

4.6 Lifetime ISAs were introduced from 6 April 2017 for individuals aged between 18 and 40 (contributions can continue to be made up to the age of 50). As mentioned, up to £4,000 a year can be saved. What makes a Lifetime ISA attractive is a 25% government bonus received at the end of the tax year. An individual can only have one Lifetime ISA. The funds contained within the Lifetime ISA can be withdrawn tax free in the following circumstances:

- you are buying your first home up to the value of £450,000 (provided the qualifying conditions are met);
- you are over 60; or
- you are terminally ill, with less than 12 months to live

Withdrawals in other circumstances will be subject to a 25% tax charge (effectively clawing back the bonus).

4.7 Consider saving for children under the age of 18, who do not have a Child Trust Fund, through

Junior ISAs (£9,000 can be put into a Junior ISA for 2023/24). From 6 April 2015 it has been possible to opt to transfer a Child Trust Fund into a Junior ISA. Anyone can put money in on behalf of the child. Generally, the child cannot access the funds until he or she reaches the age of 18 (the exception being if the child becomes terminally ill). As noted, 16 or 17 year olds can potentially, at present, have a Junior ISA and an Adult cash ISA. Junior ISAs automatically turn into adult ISAs when the child turns 18.

Tax favoured investments

4.8 Investing in smaller businesses is generally higher risk so various schemes exist to offer taxpayers incentives to provide financing for smaller entities.

Enterprise Investment and Seed Enterprise Investment Scheme

4.9 A subscription for fully paid shares wholly in cash in the ordinary share capital of a company carrying on a qualifying trading operation in line with the Enterprise Investment Scheme (EIS) rules (or in a small early stage company coming within the Seed Enterprise Investment Scheme (SEIS) rules) can attract various tax benefits, as shown in the table below.

4.10 Specific advice should be taken, as the two reliefs are subject to a number of complex conditions (applying both to the investor and the company) that must either be met or not breached both for relief to be available initially and to avoid a claw back of any relief given.

4.11 It is important to note that for the CGT exemption to apply, Income Tax Relief must have been claimed. This should, therefore, be done even in cases where the Income Tax position of the taxpayer means that the Income Tax relief is not in itself worthwhile (where, for example, the individual might have to disclaim their personal allowance in order to have income to claim relief against).

4.12 Both the EIS and the SEIS regime allow for a qualifying investment made in a tax year to be carried back to the preceding tax year provided the taxpayer has sufficient capacity to use the relief in the earlier tax year. This means that for both EIS and SEIS relief 5 April 2024 is the deadline for making a qualifying investment that can be carried back to 2022/23 to take advantage of any unutilised capacity in that tax year. Investment should be deferred until after 5 April 2024 if capacity in both 2023/24 and 2022/23 has been exhausted.

From 6 April 2023, an increased maximum investment of £200,000 applies for SEIS.

Benefit	EIS	SEIS
Maximum investment	£2 million*	£200,000
Income Tax Relief on the amount invested up to the maximum for the tax year	Yes at 30%, provided: • the taxpayer has sufficient income to set the relief off against; and • the qualifying conditions are not breached in the three-year period after acquisition.	Yes at 50%, provided: • the taxpayer has sufficient income to set the relief off against; and • the qualifying conditions are not breached in the three-year period after acquisition.
CGT exemption on the disposal of the EIS shares	Yes, provided Income Tax relief has been validly claimed and not been forfeited.	Yes, provided Income Tax relief has been validly claimed and not been forfeited.
Deferral of gains as a result of re-investment in qualifying shares	Yes, every £1 of qualifying reinvestment defers £1 of gain. This relief can also be claimed by Trustees. The qualifying investment must be made within the period commencing one year before and ending three years after the relevant disposal (that is the disposal that realised the gain that you wish to defer). Where the reinvestment takes place before the relevant disposal, the EIS shares must still be held at the time of the relevant disposal. The qualifying conditions for CGT deferral relief are less stringent than for the other EIS reliefs. The investor can claim this relief and be connected to the company.	No. The entire gain is not deferred but up to 50% of the gain may be exempt (see below)
CGT Reinvestment Relief	No, just CGT deferral relief, so the gain will become chargeable at a later date.	Yes, provided the Income Tax relief claim is made and not forfeited as a result of breaching the qualifying conditions. See below for further details..

** any amount invested over £1m must be invested in knowledge-intensive companies*

4.13 The SEIS regime for CGT Reinvestment Relief is available where a gain is realised as a result of an actual chargeable disposal (it does not apply for deemed disposals) provided the investor makes an Income Tax relief claim (either for the tax year in which the gain is realised or by way of a carry back claim to that tax year) and does not forfeit the Income Tax relief.

4.14 Provided Income Tax relief is not withdrawn, for gains reinvested in qualifying SEIS shares up to 50% of the gain will be exempt from CGT. This means that per tax year the potential maximum CGT exemption is £50,000 (half of the £100,000 maximum investment permitted). This will result in a potential maximum tax saving of:

- £10,000 for 2023/24 gains deferred where the gain is on chargeable assets subject to tax at the lower 10%/20% CGT rates; and
- £14,000 where the gain is on the disposal of assets subject to the higher 18%/28% CGT rates. The higher rates are charged on gains on the disposal of non-exempt residential property and carried interest.

4.15 As noted in section 1 the cap on the offset against general income of capital losses on the disposal of shares in unlisted trading companies does not apply to losses relating to EIS and SEIS shares. This relief can be very valuable, so it is important to keep in mind if investments in such securities do perform badly. The capital loss that can be offset must be reduced by the amount of Income Tax relief that the taxpayer was entitled to.

Venture Capital Trusts

4.16 Provided certain conditions are met, investments by individuals of up to £200,000 per tax year in Venture Capital Trusts (VCTs) can offer: (i) 30% Income Tax relief (assuming that the individual has a sufficiently high tax liability for the relevant tax year); (ii) tax-free dividends; and (iii) exemption from CGT on disposal.

Property

4.17 Residential property is often a major part of an individual's estate and careful review of the tax position can ensure tax efficiencies. There have been many changes to the taxation of real property since 2012, and recent years have seen further significant changes. From 6 April 2019 non-UK residents, including individuals, companies and trusts, are subject to CGT, or corporation tax where applicable, on disposals of all types of UK immovable property, that is, residential or commercial. Previously, from 6 April 2015, only disposals of residential property by non-UK residents were taxed. However, the immediate impact of these changes is reduced by rebasing provisions. Broadly, residential property can be rebased to its value at 6 April 2015 and commercial property to its value at 6 April 2019.

4.18 As well as on direct disposals, CGT is charged on indirect disposals of interests in UK land by non-UK residents. Indirect disposals arise in situations where a non-resident disposes of an interest in a "property rich" entity (simplifying, where 75% of its gross asset value, excluding liabilities, is represented by UK immovable property), and at the date of disposal, or in the previous five years, the non-resident (alone or with related parties) holds, or has held, an interest of 25% or more in the entity.

4.19 As with previous extensions of CGT to non-UK residents, for new property brought within the charge there are transitional provisions with respect to the gain accruing prior to April 2019 (rebasing being the default option).

4.20 Separate UK land disposal returns, and 60 day payment of tax, are now required. Non-residents disposing of any UK land must file a return within 60 days of completion, whether or not a gain is made, and pay tax within the same timescale. Finally, from 6 April 2020 UK residents must make the same return, and pay tax, if they realise a gain on residential property, again within 60 days of completion.

Rent a Room Relief

4.21 Individuals can rent a room in their home for up to £144 a week and not pay tax on the rent. If income exceeds £7,500 for the tax year, the excess is taxable at normal income tax rates.

Letting out residential property

4.22 The finance costs deduction allowed against income on a loan taken out to acquire a property that is let residentially has been restricted from 2020/21 to a basic rate tax deduction (though this does not apply to corporate landlords or where the property is a furnished holiday let).

4.23 As a consequence of the above, re-financing may need to be considered and/or a sale of one or more of the let properties. The higher 18%/28% CGT rates apply to a sale of residential property. Where the letting of the properties constitutes a business, you may wish to consider placing the properties in a company. Providing the loan interest is below £2m a year, on a group wide basis, companies can still deduct interest in full. Specialist tax advice is recommended to ensure that the strategy adopted is tax efficient, and consideration must also be given to the Stamp Duty Land Tax position.

Main residence exemption

4.24 Main residence exemption (also known as principal private residence relief (PPR)) is only available on the disposal of a residential property where that property is (or has been) your actual residence. In addition, PPR is only available on the garden or grounds of a residence within permitted limits. Where PPR has been available you can also benefit from exemption for a final period of ownership, even if in that period the home is no longer your primary residence. The exempt final period is currently 9 months in most cases. A longer exempt period of three years, which applied to all disposals before 6 April 2014, is retained for disabled persons and those living in care homes.

4.25 If you sell your home, it is possible that not all of the gain will be exempt from CGT (for example because the grounds are too large to qualify for PPR). If there is a gain on sale, the tax must be paid to HMRC within 60 days of completion of the sale.

4.26 A letting relief of up to £40,000 is allowed for an individual, and up to £80,000 for a couple, where a property is let and occupation is shared with the tenant. In principle, the £40,000 or £80,000 relief is available for more than one property, provided the main residence requirement is met.

4.27 This is a change to the more generous letting relief applicable for disposals before 6 April 2020; shared occupation with the tenant was not a requirement.

4.28 Advice should be sought where there are multiple residences, in that case it is possible to nominate which one is the main one qualifying for exemption.

4.29 Very broadly, where there are multiple residences and the individual is resident in the same jurisdiction as the location of the property with respect to which the nomination has been made, the nomination will automatically be valid for the tax year. Where the individual is not resident in the country where the property is located, a day count test is applied. Where the individual ("P") has owned the nominated residence for the entire tax year, to meet the test at least 90 days must be spent in "qualifying houses". A qualifying house is defined as the residence itself and any other residence in the same country that is a dwelling house or part of a dwelling house if at the time any of the following have an interest in the property:

- P;
- P's spouse or civil partner at that time; or
- an individual who is not P's spouse or civil partner at that time but is at the time of the disposal.

4.30 Where P's ownership period starts or ends in the tax year, the 90 day figure is adjusted by a specified formula.

4.31 For married couples and civil partners, occupation of a qualifying residence by one spouse or civil partner will be regarded as occupation by the other (but there is no double counting).

High Value Residential Property Owned by Companies

4.32 In the 2012 Budget a package of measures was announced to tackle perceived avoidance involving the acquisition and holding of high value residential property through corporate and other vehicles (termed 'enveloping'). Initially, for these purposes, 'high value' residential property was defined as property with a value in excess of £2m. The penal 15% Stamp Duty Land Tax rate came in with immediate effect, with the Annual Tax on Enveloped Dwellings (ATED) and the extension to the scope of CGT coming in from April 2013. There are specified exemptions from these provisions and exemptions that can be claimed where the qualifying conditions are met.

4.33 The penal SDLT rate and the ATED charge:

- were extended with effect from April 2015 to properties that were worth in excess of £1 million as at 1 April 2012 (or the acquisition date if later); and
- were extended with effect from April 2016 to properties that were worth in excess of £500,000 as at 1 April 2012 (or the acquisition date if later).

In both cases ATED-related CGT commenced from 6 April on the properties brought within ATED but with the base cost uplifted to the value immediately before the property came within the scope of ATED-related CGT. For example, a property valued at £0.7 million as at 1 April 2012 will have come into the ATED charge from 6 April 2016 (assuming no exemption applied) and the base cost will be the 5 April 2016 value of the property (though if this is lower than the actual cost then it is possible to opt out of rebasing).

4.34 From 1 April 2021 an additional 2% SDLT charge applies to the purchase of residential property in England and Northern Ireland by non-UK residents. This is in addition to the existing 3% surcharge applying to purchases of additional property, leading to a potential maximum rate of 17%.

4.35 The ATED legislation provides for the charge to increase each year in accordance with the consumer price index (CPI) for the previous September. However, the Chancellor can introduce higher increases in the ATED charges.

4.36 The ATED return and the payment of the tax for 2024/25 are both due by 30 April 2024. It is important to remember that five yearly revaluations apply for ATED, which means that for properties held at 1 April 2022 the reference property value will now be, for 2024/25 and subsequent returns, the market value as at 1 April 2022. A valuation at 1 April 2022 will therefore be required. The ATED charges for 2024/25 are as follows:

Property Value	Charge
More than £0.5 million but not more than £1 million	£4,400
More than £1 million but not more than £2 million	£9,000
More than £2 million but not more than £5 million	£30,550
More than £5 million but not more than £10 million	£71,500
More than £10 million but not more than £20 million	£143,550
More than £20 million	£287,500

4.37 The provisions are complex, and the ATED charges for properties worth more than £2 million are significant. As such, making best use of the reliefs is important. For example, forfeiting entitlement to letting relief as a result of allowing occupation of the UK residential property by a non-qualifying person could be very costly. Specific advice is recommended to avoid unnecessary tax liabilities.

Extension of IHT to overseas property representing UK residential property

4.38 Domicile rather than residence is the key concept when considering an individual's exposure to IHT.

4.39 Foreign assets (referred to as 'excluded property') are outside the scope of IHT when owned by individuals who are neither UK domiciled nor deemed domiciled, or by trusts settled by individuals who met those criteria at the time the property became comprised in the settlement; however, it should be noted that the excluded property status is lost if the settlor was not domiciled in the UK when he made the settlement, but subsequently becomes UK resident as a 'formerly domiciled resident' – see Section 7.

4.40 Up to 6 April 2017, there were no look through provisions for IHT, so that UK assets could be held within a foreign company, or similar opaque foreign entity, and be effectively outside the IHT charge. Prior to 6 April 2017 this strategy continued to be effective for IHT, albeit at the potential cost of exposure to the ATED charge since 2013.

4.41 The new rules are complicated but, summarising, from 6 April 2017, interests in offshore companies which would be close companies if UK resident ('foreign close companies'), and interests in similar opaque entities and interests in partnerships, are no longer excluded property if and to the extent that the value of the shares or capital is attributable to UK residential property. Where the rules apply to the property all of the normal IHT chargeable event provisions will apply.

4.41 From 6 April 2017, the following are also within the scope of IHT:

- Relevant loans' - broadly a loan is a relevant loan if money or money's worth has been made available to an individual, a partnership or a trustee for: (i) the acquisition of a UK residential property interest; (ii) the making or repayment of a loan to finance the acquisition; (iii) the maintenance of the UK residential property interest; or (iv) the enhancement of the UK residential property interest.

- Money or money's-worth held or otherwise made available as security, collateral or a guarantee for a relevant loan.

- For a period of two years after the disposal, the disposal proceeds from the sale of a qualifying property interest and, for a period of two years after receipt, funds on the repayment of a relevant loan. These rules only apply to sales and loan repayments after 5 April 2017.

De-enveloping?

4.42 Cumulatively the tax changes mean that in cases other than where property is being let there is no UK tax reason for holding a UK residential property within an enveloped structure unless the costs of unwinding the structure are prohibitive. Where there are existing structures, specialist tax advice should be taken with the tax consequences of closing down the structure assessed against the tax costs of keeping it.

5 Pensions

5 Pensions

The current pension tax landscape is complex, subject to frequent change and decisions cannot be taken without both specialist pension investment advice and tax advice.

Pension contributions

5.1 Take specific advice to ensure you maximise tax relief on your pension contributions and do not suffer unnecessary tax charges.

5.2 Significant changes were announced in the Spring Budget 2023. The lifetime allowance charge was abolished and the lifetime allowance (currently £1,073,100 unless you registered for one of the transitional protections) will be abolished from 6 April 2024. Broadly speaking, a lump sum of 25% of lifetime allowance - £268,275 for the standard lifetime allowance of £1,073,100 – will be tax free, with any excess subject to marginal income tax rates. Monitor the amount within your various pension funds and take advice where it seems that the lifetime allowance may be exceeded.

5.3 Subject to the de minimis exception total below, effective tax relief on pension contributions is limited to the lower of your earnings for the year and your total available annual allowance for the year. The standard (see below for taxpayers with adjusted income over £260,000, and flexible access to money purchase funds) total available annual allowance for 2023/24 is £60,000 plus any available unused annual allowances for the previous three tax years. If your contributions exceed this figure you will be subject to an Income Tax charge, so consider whether action should be taken now (such as ceasing contributions until after 5 April 2024) if you think the annual allowance may be exceeded.

5.4 The pension relief available to taxpayers with adjusted income over £260,000 is reduced. The standard £60,000 annual allowance referred to above is tapered down to a minimum of £10,000 at a rate of a reduction of £1 for every £2 of income. An individual with adjusted income of, say, £320,000 would, therefore, have an annual allowance of £30,000.

5.5 Adjustments are made to the annual allowance where the individual makes use of the flexibility introduced with respect to accessing money purchase funds (see the section on Flexible Pensions below), including a reduced money purchase annual allowance of £10,000. This allowance cannot be increased by amounts brought forward.

5.6 The ability to utilise any unused annual allowance from 2020/21 will be lost if it is not used before 5 April 2024. The annual allowance for the year of payment is deemed to be used first, and then the unused annual allowance for the prior years (the unused amounts in prior years being used on a first in, first out basis), so to avoid losing the unutilised 2020/21 amount it will be necessary for total contributions in 2023/24 to cover the allowance for 2023/24 and the unutilised capacity in 2020/21.

5.7 For those without earned income (including minors), contributions of £2,880 (net) can be made, and an amount equivalent to the basic rate tax (so currently £720) claimed by the pension provider and added to the pension pot (meaning £3,600 in total in pension savings), regardless of the level of income or tax paid for the year.

5.8 As explained in previous years' Tax Planning Bulletins, the lifetime allowance has reduced a number of times since the "A Day" changes in 2006. As a result of making a "protection" election you may have already secured a higher protected lifetime allowance figure than £1,073,100. Depending on the protection election you made, specified strict conditions may apply with respect to additional pension contributions that can be made.

5.9 It is important for an individual who has made a Fixed Protection 2014 (FP14) election or an earlier election for either Fixed Protection 2012 (FP12) or Enhanced Protection to keep in mind the fact that the Protection will be forfeited if further contributions are made by them or on their behalf (this includes the deemed employer contribution where benefits accrual increases under a final salary scheme). Auto-enrolment is a particular trap. Employees who are auto-enrolled must opt out within a month of being auto-enrolled to avoid forfeiting Protection.

5.10 A £1 million lifetime allowance figure came in from 6 April 2016 (and was subsequently increased to the amount noted above). Where an individual, who had total UK tax relieved savings in excess of £1 million on 5 April 2016, does not have a higher lifetime allowance as a result of claiming protection when one of the earlier lifetime allowance reductions occurred, there are two forms of protection to consider. These are Fixed Protection 2016 ('FP16') and Individual Protection 2016 ('IP16').

5.11 Those who register for FP16 and do not break the qualifying terms (the main condition being to not make any further contributions after 5 April 2016, though individuals with final salary schemes are allowed to accrue further benefits provided they do not exceed a specified percentage) will have a lifetime allowance equal to the higher of £1.25 million and the lifetime allowance at the time the individual takes their pension benefits. For example, assuming the lifetime allowance does not increase to above £1.25 million the individual making the election will have the £1.25 million lifetime allowance. He will not be able to make any additional pension contributions but if his pension benefits were standing at £900,000 as at 5 April 2016 he may have been expecting the growth in his pension plan to be such that it would exceed the then current £1 million lifetime allowance and mean that the election is worthwhile (since, provided it is not forfeited, it will preserve his entitlement to the £1.25 million lifetime allowance). If growth is worse than expected he always has the option of forfeiting the protection and making further contributions.

5.12 Individuals with IP16 will have a lifetime allowance worked out as follows:

- step one – establish the lesser of £1.25 million and pension savings as at 5 April 2016; and
- step two – take the higher of the figure in step one and the lifetime allowance at the time the individual takes their retirement benefits.

  For example, assuming the individual has pension benefits of £1.2 million he can apply for IP16 protection, will have a special protected lifetime allowance of £1.2 million and will not have to stop making pension contributions.

5.13 In contrast to the transitional provisions in prior years, there are no deadlines for registering for either FP16 or IP16.

5.14 The application process for FP2016 and IP2016 is online via a self-service portal. Full details are available at https://www.gov.uk/guidance/pension-schemes-protect-your-lifetime-allowance. Various information must be provided and declarations made. The online system will then provide the individual with a response to the notification and a protection reference number. The protection reference number will then need to be passed to the pension scheme so that it will apply the higher lifetime allowance when benefits are taken.

Flexible Pensions

5.15 Various measures were introduced from 6 April 2015, which give individuals far greater choice over what to do with their pension savings where those pension savings are held in defined contribution (or money purchase) schemes.

5.16 In most cases (though not for unfunded public-sector schemes) those with final salary schemes will be able to transfer out to a money purchase scheme to take advantage of the flexibility, provided they can demonstrate that they have taken financial advice before doing so. We cannot comment about the wisdom of this but given the potential benefits of a final salary scheme we would suggest that nothing is done without comprehensive financial advice being taken from a regulated pensions expert.

5.17 The choices made can have significant tax repercussions, so it is important that both specialist investment advice and tax advice is taken.

6 Charitable Donations

6 Charitable Donations

UK tax legislation includes a range of reliefs for charitable giving, some of the most important of which are discussed below. It should be noted that to be entitled to UK tax relief the charity must be situated in the UK or, until 5 April 2024, an EU Member State, Iceland, Norway, or Liechtenstein. From 6 April 2024 only UK charities will be eligible.

Lifetime giving -

Gift Aid

6.1 Where there are cash donations, provided a valid Gift Aid declaration is made by the donor (such a declaration being capable of being made retrospectively), the Gift Aid regime will:

- increase the funds received by the Charity (currently the charity will receive an additional amount equivalent to 25% of the amount gifted so a cash gift of £80 will mean the charity receives £100); and
- provide tax relief to higher and additional rate taxpayers.

6.2 There is, however, a potential trap for the unwary as the Gift Aid rules provide that the donor has to pay sufficient tax to cover the basic rate tax the charity will reclaim. This means that if the donor's standard tax liability is insufficient he or she will be subject to an additional tax charge to cover this. In such cases it may be appropriate to make a gift under Gift Aid up to the amount your tax liability can cover, and then an additional gift which is not covered by a Gift Aid Declaration.

6.3 Gift Aid should be made by the spouse/civil partner with the highest marginal income. The paperwork must reflect this. Ideally joint accounts would be avoided.

Gift Aid is not available where an individual receives a benefit as a result of the donation unless the benefit is within specified de minimis limits.

Gifts of assets in specie

6.4 Gifts of assets in specie to charity are tax neutral for CGT purposes (that is, the transaction is deemed to take place at neither a gain nor a loss). A gift to a charity of an asset standing at a gain will not, therefore, result in the donor crystallising a gain.

6.5 In addition to the CGT relief, where "qualifying assets" are gifted to charity, Income Tax relief is also available. Broadly, "qualifying assets" are defined as listed securities, units in an authorised unit trust, shares in an open-ended investment company, an interest in an offshore fund and/or immovable property. The Income Tax relief is available by way of set off against the individual's total income and is equivalent to the market value of the property gifted (less any benefit received by the individual).

6.6 The combination of Income Tax and CGT relief means that, where the asset is standing at a gain, gifting qualifying assets in specie is generally more valuable than the relief for cash gifts (Gift Aid). The relief is even more valuable where an interest in an offshore fund is gifted if that offshore fund is a non-reporting fund since the individual would have been subject to Income Tax, not CGT, on the disposal if it had not been given to charity.

Legacy giving -

6.7 Gifts to charity are exempt from IHT. In addition, there is a reduction in the IHT rate to 36% (from 40%) where at least 10% of a person's net estate is left to charity. If you want to make such a charitable bequest take advice to ensure that:

- your Will is drafted to take advantage of this relief; and
- other parts of your Will are updated so that overall it still reflects your wishes.

7 Overseas aspects including Offshore Trusts

7 Overseas Aspects including Offshore Trusts

As noted in the introduction to this bulletin, a new government this year may herald significant changes to the tax regime for foreign domiciliaries, including abolition of the remittance basis. For a discussion on what may change, and what action should be considered, contact your usual Rawlinson & Hunter adviser. The key features of the current regime are summarised below.

UK Resident Foreign Domiciliaries - Deemed domicile

7.1 Finance (No 2) Act 2017 enacted the concept of deemed domicile with retrospective effect to 6 April 2017.

7.2 Anyone born in the UK with a UK domicile of origin who is UK resident in a tax year (defined as a "Formerly Domiciled Resident" or "FDR") is deemed domiciled in the UK for all tax purposes (subject to a period of grace for Inheritance Tax (IHT) if the individual was not UK resident in either of the preceding two tax years). Generally, such individuals will not be able to access the Remittance Basis and will be subject to IHT on worldwide assets. In addition after the period of grace all trusts established by the FDR will be unable to benefit from excluded property status whilst the individual is UK resident and will be fully subject to UK IHT.

7.3 A long term resident (LTR) – one who has been UK resident in at least fifteen of the immediately preceding twenty tax years – is deemed domiciled for all tax purposes. Where they are the settlor and beneficiary of an offshore trust and a LTR (who is not also a FDR) they can also benefit from valuable trust protections provided the trust has not been "tainted".

7.4 The one circumstance where deemed domiciliaries will be able to access the remittance basis is where their unremitted income and gains for the tax year are below the £2,000 de minimis level.

7.5 Rebasing relief enables qualifying individuals to calculate gains on qualifying foreign assets held by reference to the market value of the asset as at 5 April 2017. The rebasing applies to non-reporting funds (where Income Tax is payable on the gain) as well as chargeable assets. It does not, however, apply to deep discounted securities or life policy gains (since the chargeable amounts are not computed as chargeable gains).

7.6 Rebasing relief is only available in respect of assets held directly by a qualifying individual. It applies to:

- qualifying foreign assets that another person holds as nominee for the qualifying individual;
- the qualifying individual's share of qualifying foreign assets belonging to a UK partnership (including LLPs); and
- the qualifying individual's share of qualifying foreign assets belonging to a transparent foreign situs partnership (including LLPs).

7.7 To benefit from rebasing an individual:

- must not have been born in the UK with a UK domicile of origin.
- must have become deemed domiciled on 6 April 2017.
- must be deemed domiciled under the 15 out of 20 test throughout the relevant tax years (defined below).
- must not be domiciled in the UK under general principles throughout the relevant tax years.
- must have held the asset at 5 April 2017, with the disposal taking place after that date.
- must have paid the remittance basis charge at least once for a tax year prior to 6 April 2017.

In addition, the asset must have been foreign situs throughout the period from 16 March 2016 (or if acquired later, the date of acquisition) to 5 April 2017. The asset is not regarded as situated in the UK where it has been brought to the UK and one of the remittance exemptions applies.

The relevant tax years are from 2017/18 up to and including the tax year during which the asset is disposed of.

7.8 Rebasing relief will be extremely valuable for some individuals. However, given the qualifying conditions the individuals who can qualify for rebasing will be limited. In addition, breaching one of the conditions at a later date, prior to the disposal of an asset that would otherwise qualify for the relief, is a risk so specialist advice should be taken.

7.9 If this has not already been carried out, 2024/25 planning should be considered where that year will be the first for which an individual is deemed UK domiciled. In addition, it is not too early to start planning where 2025/26 (or even 2026/27) will be the first year that an individual will be deemed UK domiciled. This is particularly the case if it is possible that you will want to avoid deemed domiciled status by becoming non-UK resident (a minimum of six complete tax years of non-UK residence being required to achieve this, and retention of non-UK domicile under general law; see the section on Non-Residents below). You should also make investment decisions with your future tax status in mind, as the change in your domicile status may also have an impact on the type of investments you wish to own from the tax perspective.

The Remittance Basis

7.10 UK resident foreign domiciliaries, who are not deemed domiciled, can access the Remittance Basis of taxation (such individuals will be referred to as RFD's). Generally, where the Remittance Basis applies the UK tax charge on their foreign income and gains is deferred unless and until a remittance is made.

7.11 Apart from where the RFD's aggregate unremitted income and gains for the tax year are below the £2,000 de minimis level, claims by an adult RFD to access the Remittance Basis will generally come at the cost of forfeiting the personal allowance and CGT annual exemption for the relevant tax year. Once an individual has been UK resident in at least seven of the immediately preceding nine tax years the Remittance Basis charge (RBC) is also payable.

7.12 There are two levels of RBC depending on the length of residence (with the individual becoming deemed domiciled if they stay long enough to have been UK resident in fifteen of the immediately preceding twenty tax years). The RBC is as follows:

- £30,000 where the RFD was UK resident in at least seven of the nine tax years, but not UK resident in as many as twelve of the fourteen tax years preceding the current one;
- £60,000 where the RFD was UK resident in at least twelve of the fourteen tax years, but not UK resident in as many as fifteen of the twenty tax years, preceding the current one.

7.13 If this has not already been carried out, 2024/25 planning should be considered if that year will be the first for which the £30,000 or £60,000 RBC will be payable. In addition, it is not too early to start planning where 2025/26 will be the first tax year that the standard or higher RBC will be payable.

7.14 Individuals who move between being taxed on the Arising Basis and the Remittance Basis should consider opening up a new suite of offshore accounts so that foreign income and gains in an Arising Basis year (which may be remitted without an additional tax liability since they will already have been taxed) do not become mixed with income and gains of a Remittance Basis year.

7.15 Where both are RFDs with similar residence patterns, spouses/civil partners may want to consider consolidating the ownership of foreign assets. The aim of this is to re-arrange their affairs such that just one of them has to pay the RBC. Specialist legal and tax advice (UK and foreign) should be taken before transferring ownership of any assets.

The Remittance basis definition and avoiding inadvertent remittances

7.16 The Remittance Basis is highly complex and we can provide bespoke advice to enable you to avoid inadvertent remittances and maximise tax mitigation opportunities. It may be that a detailed discussion of what the funds are required for and what offshore sources of funding are available will allow for the identification of funds that can be remitted with no tax cost, or one that is acceptable.

- where funds are needed for general UK expenditure, Double Tax Treaty relief could be especially helpful in reducing the UK tax cost to an acceptable amount where the foreign tax paid is high;
- where the funds are required for a specific purpose, one of the on-going exemptions (such as business investment relief) might be helpful;
- if the funding to be used traces back to pre-6 April 2008 relevant foreign income, one of the 2008 transitional reliefs might be in point such that the funds can be remitted with little or no UK tax liability; and
- the capital gains tax rebasing discussed above may be helpful.

7.17 Remember that the definition of "remittance" is very wide:

- It covers cash remittances, goods, services (including UK-related travel) and the payment of UK-related debts where the transaction can be traced directly or indirectly to previously unremitted foreign income or foreign chargeable gains of the RFD.
- Actions taken and UK benefits enjoyed by any 'relevant person' in connection with the RFD can result in a taxable remittance. Broadly, the relevant person definition encompasses (i) the RFD; (ii) his or her immediate family (excluding adult children but including minor grandchildren); (iii) trusts which benefit the taxpayer or other relevant persons and (iv) close companies or foreign companies that would be close if UK resident (and subsidiaries of such companies) in which the taxpayer or any other relevant person is a participant.

7.18 Transitional rules and ongoing exemptions/ reliefs (such as business investment relief) can provide significant tax mitigation opportunities for the well advised but are also complex and without specialist advice inadvertent tax liabilities can be crystallised.

7.19 Appropriate offshore banking arrangements and investment strategy are critical if inadvertent remittances and tax inefficiencies are to be avoided. Written investment guidelines should be given to all offshore bankers and investment advisers to avoid unnecessary UK tax liabilities being crystallised.

Overseas Workday Relief

7.20 Overseas workday relief applies to UK resident individuals domiciled outside the UK, who work both in the UK and abroad under a single contract of employment. The relief is available during the first three years of UK residence, providing these are preceded by at least three non-resident tax years. The earnings of the employment are apportioned between UK and overseas duties on a day count basis, and the overseas earnings will only be taxable if remitted. If certain conditions are met, there is an administrative relaxation of the mixed fund rules which would otherwise apply to the offshore bank account used to receive the earnings for overseas duties. There will be a taxable remittance of the overseas earnings only if the total amount received in the UK plus the amount brought into the UK from the offshore account exceeds the total UK portion of the earnings. The operation of the relief is complex, particularly where other non-cash emoluments like vesting share awards and restricted stock units are a feature of the package, and specific advice is always recommended. National insurance will need to be considered separately.

Dual Contracts

7.21 Apart from in the first three tax years of coming to the UK (when overseas workday relief is available) it is very difficult to claim the Remittance Basis in connection with foreign earnings. This is because, in addition to needing to have a foreign employer, the Remittance Basis is only available where the duties are wholly performed outside of the UK (an exception being allowed for incidental duties). For many UK resident foreign domiciliaries practical constraints meant that they could not meet the conditions so, when they can no longer claim overseas workday relief, their worldwide earnings were taxed on the Arising Basis.

7.22 Additional legislation was enacted in Finance Act 2014 that was even more draconian. Broadly, from 2014/15, once the overseas workday relief period is over the Remittance Basis will be removed from all senior employees with dual contracts (meaning at least one UK and one non-UK contract) with associated companies unless either: (i) the foreign tax on their non-UK contract is at least 65% of the additional UK Income Tax rate (so for 2023/24 the foreign tax will need to be at least 29.25%); or (ii) regulatory requirements necessitate the use of dual contracts.

7.23 On a separate issue it is important to remember that the UK is party to agreements with respect to the coordination of social security across the EU, EEA and Switzerland. Generally this means that where an individual (regardless of domicile status) works (either as an employee, as a self-employed person or in both capacities) in more than one State and/or works in a State (or States) other than the State where he or she is resident, just one of the States will have the right to levy social security contributions on all the earnings (with special rules applying to determine which State has the taxing rights). Given the very different levels of social security contributions across the States it is recommended that advice is taken in advance to avoid surprises.

Imminent deadlines

7.24 Take advice urgently, if you have not yet made the following claims/elections but are concerned that you should have:

- A Remittance Basis claim for 2019/20 - the deadline for making the claim being 5 April 2024.
- The foreign capital loss election – if due by 5 April 2024 (again being the deadline where 2019/20 is the first tax year after 2008/09 that the Remittance Basis claim was made). If the foreign capital loss election is not made there will be no relief for foreign losses for as long as the UK resident foreign domiciliary remains foreign domiciled (and not deemed UK domiciled). If the election is made, a new (not always beneficial) capital loss regime applies for UK and foreign capital losses. The issue, therefore, needs careful consideration.

Foreign domiciliaries and IHT

7.25 Foreign domiciled individuals who are not deemed UK domiciled are only subject to IHT on UK situs assets (including UK residential property even if held via an offshore structure). As such, UK assets (other than those that attract relief such as qualifying business property) should be kept at as low a level as is practical.

7.26 As explained above, a RFD (who was not born in the UK with a UK domicile or origin) becomes deemed UK domiciled in the first tax year where they were UK resident in at least fifteen of the immediately preceding twenty tax years. Planning (potentially involving a trust structure) should be considered no later than the tax year before this change in status, so as to prevent valuable long term IHT protection being lost.

7.27 The normal provisions that provide that all transfers between spouses/civil partners are exempt from IHT will not apply where there is a transfer from a UK domiciled individual to his or her foreign domiciled (and not deemed UK domiciled) spouse/civil partner. The foreign domiciliary can elect to be deemed UK domiciled for IHT purposes but this might not be optimal. Timing is important in such cases and we can advise on how to achieve the most tax efficient result.

7.28 Specific anti-avoidance provisions mean that debts/loans secured on UK assets will not be deductible from your UK estate on death where the funds raised from the debt/loan were used to acquire property which has "excluded property" status at the time of your death (similar provisions apply to trusts with "excluded property" when calculating the decennial charge). Specific advice should be taken.

Offshore Trusts

7.29 Offshore trusts can still be highly beneficial for foreign domiciliaries, although it is important that new trusts are created before the settlor is deemed domiciled and that those who are already deemed domiciled do not add property to existing trusts.

7.30 Unless specialist advice is taken beforehand trustees should avoid trust borrowing, as a transfer of value (including a loan) made at a time when there is outstanding trustee borrowing can trigger particularly harsh CGT anti-avoidance provisions (depending on whether the borrowing is used for a permissible purpose).

7.31 There are complex anti-avoidance provisions where a UK resident receives any benefit from an offshore structure. Occupying a house that is owned by a non-resident company or trust or receiving an interest free loan from such an entity is seen as a benefit and tax complications are likely to result unless specialist advice is taken beforehand.

7.32 New legislation on the IHT treatment of transfers of assets between trusts, and the addition of property to them, following the Barclays Wealth Trustees case, was introduced by Finance Act 2020, with effect from 22 July 2020. This is a highly complex area on which specialist advice should be taken.

The New Regime

7.33 From 6 April 2017, a fundamentally new regime for the taxation of offshore trusts was introduced.

7.34 From 6 April 2017 for all trusts established whilst an individual is not deemed UK domiciled (provided the individual is not a FDR in which case he or she will be subject to the trust anti-avoidance provisions in the same way as a UK domiciliary):

- The transfer of assets abroad (ToAA) provisions are fundamentally altered such that where the trust receives protected foreign source income (PFSI) the transferor charges are switched off and the benefits charge is extended so that it applies to all foreign domiciled settlors of non-UK resident trusts. LTRs will, however, fall out of this new regime and into the regime for UK domiciled settlors if the trust becomes tainted (see below).
- For PFSI the settlements regime is switched off. Again, LTRs will fall out of this new regime and into the regime for UK domiciled settlors if the trust becomes tainted.
- For CGT purposes an LTR (who is not also a FDR) will continue to be subject to tax on trust gains only if a capital payment is received, but again this protection will be lost if the trust becomes tainted.
- For ToAA purposes only, a close family member attribution rule is introduced.

7.35 Where an individual is an LTR and the trust is tainted they will be taxed as UK domiciliaries with respect to the trust income and gains. A trust is tainted where non- qualifying property or income is provided directly or indirectly for the purposes of the settlement. This is complex and trustees need to take specialist advice. Of particular urgency is a review of loans within the settlement, as where the settlor becomes deemed domiciled action may need to be taken prior to this event.

7.36 From 6 April 2018:

- The CGT attribution of gains to beneficiaries legislation was fundamentally overhauled with washing out of gains to non-UK residents no longer being possible.
- The settlements legislation changed fundamentally with a benefits charge modelled loosely on the ToAA charge being introduced to tax PFSI at the trust level where ToAA does not apply because the motive defence is in point.
- Close family member attribution provisions are included in the settlements' legislation and the CGT attribution of gains to beneficiaries legislation. The Income Tax provisions are similar with the CGT provisions being wider (though the close family member definition is aligned).
- Complex onward gift provisions are introduced into all three sets of anti-avoidance legislation. Very broadly, the provisions are intended to prevent UK tax being avoided by a trust making a distribution to an individual who will not pay UK tax on it and that individual then making an onward gift to an individual who would have paid UK tax if the distribution has been made to him or her directly. The provisions apply to onward payments made after 5 April 2018 even if the original distribution was made prior to 6 April 2018.

Offshore Non-Compliance

7.37 HMRC write to taxpayers for whom they have received reports under Common Reporting

Standards tax information and exchange agreements. They are also using information from the new Register of Overseas Entities owning UK land. If you receive such a letter please contact your tax adviser before replying.

7.38 The time limit for HMRC to make an assessment has been extended to 12 years in a case where there is a loss of income tax or capital gains tax and an offshore transfer or offshore matter is involved.

7.39 If you have any concerns about offshore non-compliance you should take specialist advice urgently, so that a timely disclosure to HMRC can be considered.

Non-Residents

7.40 In many instances, if you are UK resident or non-resident for part of a tax year you will be resident for the whole year. As we approach the end of the tax year, therefore, it is imperative that you are aware of the residence rules so you can, if applicable, plan your move to optimise your tax position. Effective from 6 April 2013 the UK has a statutory residence test (SRT) for the purposes of Income Tax, CGT and, in so far as it is relevant, IHT and Corporation Tax. Whilst there are some similarities with the old rules, the SRT rules are significantly different. We have Tax Factsheet (see https://www.rawlinson-hunter.co.uk/tax-factsheets) that provides a detailed explanation of the SRT.

7.41 The SRT has been designed to give a definitive answer in determining an individual's residence status. There are, however, significant potential complexities. Advice is required to ensure that you fall on your desired side of the residence line if either non-residence or UK residence is important to your tax position. In addition, as the SRT position is so fact dependant, on-going reviews are advisable and new advice will be necessary if the facts change.

7.42 Pre-arrival and pre-departure planning is vital so as to mitigate tax liabilities. This is particularly the case where you are a foreign domiciliary and/or leaving the UK for a temporary period (in which case various anti-avoidance provisions may apply in the year of return). To tie in with the new statutory split year provisions, an individual leaving the UK from tax year 2013/14 onwards has to be non-UK resident for more than five years to avoid the anti-avoidance provisions, rather than, as was previously the case, for at least five tax years:

- If the taxpayer falls into one of the split year cases when leaving and/or arriving then non-UK residence for five years and a day will be sufficient (depending on dates of arrival and departure this could mean that an individual has to be non-UK resident for less time than was necessary under the old rules).

- In contrast, if neither the year of departure nor arrival can be split (such that the individual is UK resident in both tax years) the individual will need to be non-UK resident for at least six tax years (so, in such cases, an additional tax year of non-UK residence is required under the new rules in order to avoid the anti-avoidance provisions).

7.43 Note that where a foreign domiciliary (who was not born in the UK with a UK domicile or origin) has become deemed domiciled he or she will need to be non-UK resident for six entire tax years to shed UK domicile status. Doing so will mean that the domicile clock is re-started, the temporary non-UK resident anti-avoidance rules do not apply and that, if relevant, overseas workday relief can be claimed. This does, however, rely upon the individual retaining their foreign domicile under general law when they re-establish UK tax residence after a six year absence.

8 Conclusion

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Accurate and robust tax planning and reporting is vitally important in the current environment of complex legislation and anti-avoidance measures, and HMRC focus on closing the tax gap.

But as these notes demonstrate, there is still scope for review of your tax affairs, and implementation of uncontroversial tax planning. The end of the tax year provides the perfect time for reflection to ensure you are not missing an opportunity. We would be pleased to discuss any of the matters raised in this Bulletin with you.

What to do next...

This Bulletin is designed solely as a summary of complex and detailed legislation. No reliance should be placed on it without appropriate professional advice..

If you have seen anything relevant to you which you are interested in considering in more detail, please call the Rawlinson & Hunter LLP Partner who normally acts for you. If you are not one of our regular clients but would like more information or advice, a full list of Partners is provided on this page and any of them will be delighted to help you.

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