

Future of the UK Non-Dom regime: Impact of the General Election

Recap

The Chancellor announced in the Spring Budget that the current remittance basis of tax for non-UK domiciliaries will come to an end on 5 April 2025. It will be replaced with a new residence-based regime for new arrivers, where foreign income and gains will broadly be exempt for 4 years. Thereafter, all UK residents will become taxable on a worldwide basis from 6 April 2025, whether domiciled or not, subject to some significant transitional arrangements for existing remittance basis users.

Full details of the proposed regime are set out at the end of this briefing, together with comments subsequently made by the Labour Party in terms of how they might implement a new regime if elected to Government.

The General Election on 4 July 2024

The Prime Minister announced that a General Election will be held on 4 July 2024, in a surprise move over what was expected to be an Autumn election date. In some ways this earlier election may bring greater certainty to the proposed tax law earlier, but it may equally mean that there is less of a window for non-domiciliaries to plan. This will depend on the priority given to the matter by the new Government in drafting and enacting new legislation, together with any proposed consultation period. But it should be borne in mind that closing tax “loopholes” (including the non-dom regime) to fund the NHS was announced as one of the 6 “first steps” which Labour has committed to take if it is elected.

The Danger of Anti-forestalling Legislation

The Labour Party has ruled out an “Emergency Budget” in the early days of a new Parliament, on the basis that it wishes to give the Office for Budget Responsibility the minimum 10 weeks to complete its forecasting. That would suggest an Autumn Budget, probably followed by a further Budget in March 2025.

Due to time constraints, it may take considerable time for draft legislation to follow the Autumn Budget, and this may not appear until Spring 2025. But a real danger is that anti-forestalling legislation could be introduced prior to that, to prevent planning ahead of the proposed change of law. It is for this reason that we are encouraging non-doms to enter into discussions about whether taking action before the Autumn might be prudent.

Planning which could be targeted by anti-forestalling measures

1) Trusts and Inheritance Tax (IHT)

The Conservative Party’s stated plan is that all trusts settled before 5 April 2025 by a non-domiciliary will retain IHT excluded property status indefinitely, effectively exempting the assets from IHT. This has led to significant interest in settling new trusts before that deadline or settling additional assets into existing trusts.

Those plans were somewhat overshadowed by a speech given by Rachel Reeves of the Labour Party on 8 April 2024, in which she announced an intention to bring all trusts within IHT from 6 April 2025, regardless of the date of settlement. Subsequently, the promise to eliminate “offshore trust loopholes” has made its way into the

The logo for verFides is displayed in a white, sans-serif font against a dark background. The background image shows a modern bridge structure with a large dome in the distance, likely a cityscape at dusk or night.

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Labour Party Manifesto, but with very little detail. Will these plans be enacted by a Labour Government? Possibly, even probably. But it has become clear that the IHT proposals represent the single biggest “game changer” for non-doms in deciding whether to remain in the UK, and there is a significant consultation process to go through until the final policy is formed. That could feasibly result in a new Labour Government adopting the existing Conservative proposals, but we will need to wait and see.

In the meantime, if Labour does decide to retain IHT protections for existing trusts, they could decide to introduce an anti-forestalling measure into law at the Autumn fiscal event, to prevent people settling new trusts between then and the date of the main legislation coming into force. Such anti-forestalling measures have significant precedent in UK tax law.

The question then is whether to settle such a trust before the Autumn, in the hope that the existing rules are retained for trusts settled before then. The decision will be determined by the level of wealth at stake when compared with the costs. If the final legislation renders the trust ineffective for tax purposes, a decision could then be made to unwind it, although of course there are many non-tax reasons why a trust may be retained. The tax implications of dissolving such a trust should be minimal, and would broadly be restricted to any growth in value of the assets and income received in the interim.

2) Accelerating income and triggering capital gains

Some non-doms (namely those who will have been in the UK for less than 4 years at 6 April 2025) are considering accelerating income and gains in the final year of the non-dom regime. In doing so, they can take advantage of the remittance basis to shelter those income and gains from UK tax. Furthermore, they may be able to remit these funds after 5 April 2025 at the proposed “discounted rate” of 12% (an opportunity which will be lost for income and gains generated after 5 April 2025).

There is some risk that this could be subject to anti-forestalling measures in the Autumn, so planning should be considered before then.

Next Steps

Our Tax Team would be delighted to assist anyone who would like help in reviewing their position. Please contact Terence Pay, Tax Partner, or Adam Thompson, Tax Director, on +44 20 7930 7111 or e-mail us at tax_team@verfides.com

London, 14 June 2024

What was announced in the Budget, and what has the Labour Party's response been?

Overview of Current Non-Dom Regime

UK residents with a foreign origin or “domicile” can currently elect to be taxed on the remittance basis in respect of their foreign income and gains during the first 15 years of UK residence. That broadly means that they are not subject to tax on foreign income and gains unless and until those funds are brought to or used in the UK.

Such individuals are also able to establish and maintain special “protected trusts” which can be used to roll up foreign income and gains tax-free and which, if established before 15 years of residence have elapsed, can continue to be tax-protected almost indefinitely.

Finally, non-domiciled individuals are only subject to UK Inheritance Tax (IHT) on their UK assets, as opposed to their worldwide estate. Protected Trusts have also been effective in keeping foreign assets out of the UK IHT net after year 15.

Key Changes to the Regime

The changes proposed by the Chancellor and the subsequent **comments from the Labour Party** can be summarised as follows:

1. From 6 April 2025, the current remittance basis of taxation will be abolished for UK resident non-domiciled individuals. **The Labour Party have not made any official announcements to the contrary¹.**
2. This will be replaced from 6 April 2025 with a new 4-year foreign income and gains (FIG) regime for individuals who become UK tax resident *after a period of 10 tax years of non-UK residence*. **The Labour Party have not made any official announcements to the contrary¹.**
3. Qualifying individuals will not pay tax on FIG arising in the first 4 tax years after becoming UK tax resident and will be able to bring these funds to the UK free from any additional charges. They will not pay tax on non-resident trust distributions either. They will pay tax on UK income and gains, as is the case for non-domiciled individuals now. **The Labour Party have not made any official announcements to the contrary¹.**
4. Individuals who on 6 April 2025 have been tax resident in the UK for less than 4 years (*after 10 years of non-UK tax residence*) will be able to use this new regime for any tax year of UK residence in the remainder of those 4 years. **The Labour Party have not made any official announcements to the contrary¹.**
5. Overseas Workday Relief (OWR) for the first 3 tax years of UK residence will be retained and simplified. From 6 April 2025 eligibility for OWR will be based on an employee's residence and whether they opt to use the new 4-year FIG regime. **The Labour Party have not made any official announcements to the contrary¹.**

What about Trusts?

1. From 6 April 2025, the protection from taxation on future income and gains as it arises within trust structures (whenever established) will be removed for all current non-domiciled and deemed domiciled individuals who do not qualify for the new 4-year FIG regime. **The Labour Party have not made any official**

announcements to the contrary¹.

2. FIG arising in non-resident trust structures from 6 April 2025 will be taxed on the settlor or transferor (if they have been UK resident for more than 4 tax years) on the arising basis. **The Labour Party have not made any official announcements to the contrary¹.**
3. FIG which arose in the trust or trust structure before 6 April 2025 will be taxed on settlors or beneficiaries if, and only if, they are matched to worldwide trust distributions. **The Labour Party have not made any official announcements to the contrary¹.**
4. Existing IHT benefits pertaining to excluded property settled into trust prior to 6 April 2025 will be preserved (see below commentary on IHT). **The Labour Party have pledged to abolish this 'loophole'².**

Transitional Period – Existing Remittance Basis Users

1. Individuals who move from the remittance basis to the arising basis on 6 April 2025 and are not eligible for the new 4-year FIG regime will, for 2025-2026 only, pay tax on 50% of their foreign income. **The Labour Party have not made any official announcements to the contrary¹.**
2. This reduction applies to foreign income only; it does not apply to foreign chargeable gains.
3. From 6 April 2025, an individual who is not, or who later ceases to be, eligible for the new 4-year FIG regime will be taxed on foreign gains in the normal way. Transitionally, individuals who have claimed the remittance basis will, on a disposal of an asset held personally at 5 April 2019, be able to elect to rebase that asset to its value as at that date. **The Labour Party have not made any official announcements to the contrary¹.**
4. **From 6 April 2025, individuals who have been taxed on the remittance basis will be able to elect to pay tax at a reduced rate of 12% on remittances of pre-6 April 2025 FIG under a new Temporary Repatriation Facility (TRF) that will be available for tax years 2025-26 and 2026-27.** TRF will not apply to pre-6 April 2025 FIG generated within trusts and trust structures. **The Labour Party have said that they will not allow the reduced rate of tax under the proposed TRF².**
5. For 2026-27 onwards, tax will be due on all worldwide income and gains in the normal way. **The Labour Party have not made any official announcements to the contrary¹.**

What about Inheritance Tax (IHT)?

1. From 6 April 2025 the government intends to move inheritance tax from a domicile-based regime to a residence-based regime. This will be subject to consultation. **The Labour Party have not made any official announcements to the contrary¹.**
2. **After the Chancellors announcements it appeared that there would be an important window until 5 April 2025 during which a non-domiciled individual may settle non-UK assets into trust and benefit from**

indefinite IHT protection as under the current Protected Trusts regime. (This again is subject to consultation, but it appears the Gifts with Reservation (GWR) exemption will continue to apply to excluded property within such settlor-interest trusts. The exemptions are unlikely to apply to returning “Formerly Domiciled Residents”, as at present.). **The Labour Party have stated that they will look to remove the IHT protection afforded to Trusts, regardless of the date of settlement².**

Checklist – What do I need to be thinking about?

The General Election must take place before the end of January 2025, but it is widely expected to be held before the end of the year, most likely in October/November 2024. This means that regardless of the result, the new Government will not have much time for consultation or drafting of new legislation before the intended start date of 6 April 2025. Given this, it is possible that the implementation of the changes (in whatever form they take) may be delayed until 6th April 2026 (or later).

However, we would recommend that all current remittance basis users take professional advice as soon as possible, not least so that any transitional benefits can be maximised. Matters to consider may include:

- Am I eligible for all or part of the new 4-year FIG regime from 6 April 2025, or am I taxable on an arising basis?
- If not, what would the tax liability be on my worldwide income and gains going forward, including in the transitional year?
- Can I bring non-UK income and gains forward into 2024/25 to benefit from the final year of remittance basis? For instance, distributions from private companies or trusts?
- Should I remain tax resident in the UK, or should I plan to leave before 6 April 2025? What tax-favourable jurisdictions are available and what are the immigration requirements?
- I may be subject to tax on the income in my trust from 6 April 2025. Can I restructure the trust before that, and / or bring distributions forward? Should I exclude myself from benefit as settlor, in favour of future generations?
- Are Labour really going to get rid of excluded property status for all trusts (even those settled years ago) for non-doms? It was a bold statement, but let’s remember there will be a consultation first on this and nothing is set in stone.
- Could I, as the settlor of a Trust “move abroad” while still spending some time in the UK to retain tax benefits? In many cases this may not be that different to your current patterns, and the wider family may be able to remain in UK.

The logo for verFides, featuring the word 'verFides' in a white, sans-serif font. The 'v' and 'F' are lowercase, while 'erFides' are uppercase. The background is a dark, blue-tinted photograph of a cityscape at night, with a prominent bridge structure in the foreground and a domed building (likely a parliament or capitol) in the distance.

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- Would older Trust structures be protected by various motive defences (particularly underlying companies of trusts) which, on the face of it, would not be removed as they are part of general tax law not non-dom tax law.

¹ To the best of our knowledge and belief as at the date of this article.

² A speech made by Rachel Reeves (the Labour Shadow Chancellor) on Monday 8th April 2024