



## BUDGET 2024 - WHAT NOW FOR NON-DOMS AND DOMICILE?

On 6 March 2024 the government unveiled its plans for wide-ranging changes to the tax treatment of UK resident non-UK domiciled individuals (non-doms).

While the government intends to bring the changes into force with effect from 6 April 2025, given the upcoming General Election Labour has responded to the plans with their own amendments. Although the final form of the changes is unknown at present, it is vital that non-doms take steps now to understand their position and how the proposed rules might impact them.

### BACKGROUND

The UK currently operates a comparatively generous system of taxation for non-doms known as the “remittance basis” of taxation (for more details of which, see the box on page 2).

It had been widely known for several years that the Labour party was not in favour of the status quo and had pledged to reduce its scope, or even abolish it altogether, in the event of a future return to power.

The Conservative government, however, had previously claimed to be broadly in favour of the current system and, until a few days before the Budget, there was no hint that the existing rules would be under threat this side of a General Election. The Budget announcements, which amount to an abolition of the remittance basis, therefore came out of the blue, creating a significant sense of shock and disruption to the non-dom community and their advisors, who have (in 2008 and 2017) already been through two significant sets of changes in recent years.

Although the two main UK political parties are now aligned in wanting to abolish the current non-dom regime, the General Election still has a role to play, mainly in casting an unhelpful air of uncertainty around the time scale and scope of the proposed changes. Although the Conservatives intend to bring the new regime into force from 6 April 2025, this would require Royal Assent to the legislation bringing it into effect before the date of the General Election (if they do not get re-elected). Even doing away with much of the normal consultation process and fast-tracking the legislation (which itself gives rise to concerns), this seems a tight deadline. And even if it can be done, Labour have announced that while their version of a new regime would be broadly similar, they would make further changes if they were elected.

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With a General Election approaching, it is uncertain whether the proposals will be enacted, or indeed remain enacted, in the form outlined by the Conservatives

## THE HEADLINES

Non-dom taxation is notoriously complex, and the proposed changes are not fully formed and give rise to many questions and points of detail. However, in summary, the proposals (if implemented in line with the Conservative plans) mean that from 6 April 2025:

- Non-doms will no longer be able to shelter non-UK income and gains by using the remittance basis.
- Tax benefits for non-doms will only last for four tax years from the point of becoming UK tax resident (following a period of 10 years of non-UK tax residence) but will be more generous as remittances will also be tax-free during this period.
- There will be a “grace” period during the 2025-2026 tax year for individuals moving from the remittance basis to the arising basis and who are not eligible for the beneficial four-year regime referred to above, during which they will only be taxed on 50% of their foreign income. However, Labour have pledged to remove this allowance if elected.
- Capital gains will be taxed in the usual way but there will be an option to rebase assets to their 2019 value (but only providing at least one year of remittance basis has previously been claimed).
- Inheritance tax (IHT) will no longer be linked to domicile but will be based on UK tax residency (determined by the statutory residence test) and will carry a ten-year tail.
- Non-UK resident (offshore) trusts with UK resident non-dom settlors who can benefit from the trust will cease to have income and gains protections outside the four-year window. This means that non-UK income and gains arising in the trust from 6 April 2025 will be taxed in the hand of the settlor/transferor. Pre-6 April 2025 undistributed income and gains should then be subject to the usual “matching” rules applying to offshore trusts.
- Existing trusts of non-UK assets settled before 5 April 2025 by non-domiciled settlors should remain outside the scope of UK IHT irrespective of the future residence position of the settlor. Trusts settled on or after 6 April 2025 would be exposed to UK IHT based on the residence of the settlor at the date of any IHT event. However, Labour have again pledged to remove this allowance if elected. This is the most significant difference between the Conservative and Labour plans, and the most likely to cause significant concern to some non-doms.

## WHAT DOES THE LAW CURRENTLY SAY?

In high level terms, a person who is not UK domiciled (or deemed domiciled by virtue of being resident in the UK for more than 15 out of 20 years), can access an advantageous set of tax rules known as the “remittance basis” of taxation. Under the remittance basis, whilst UK source income and capital gains are subject to UK tax as they arise (the arising basis), non-UK income and gains should remain outside of the UK tax net unless they are used in or brought (remitted) to the UK.

The concept of domicile is also currently the determining factor when looking at exposure to UK IHT. Broadly speaking, a UK domiciled person’s entire worldwide estate is within the UK IHT net. In contrast, for a person who is neither UK domiciled nor deemed domiciled in the UK, only their UK assets are within the UK IHT net. Put simply, a non-dom shouldn’t be subject to UK IHT on their non-UK assets.

## WHAT ARE THE PROPOSED CHANGES TO THE REMITTANCE BASIS?

Under the Conservative proposals, the remittance basis of taxation will cease and be replaced with a shortened four-tax-year window of tax advantages. The government have referred to this window as the four-year foreign income and gains (FIG) regime. To benefit from the advantages of the FIG regime, the four-year window must follow a ten-year period of UK non-residence and individuals must elect to opt into the FIG regime each year.

During this four-year period, if the FIG regime is claimed:

- Foreign income and gains arising will not be taxable. This is regardless of whether they are brought into the UK.
- Distributions received from offshore trusts will not be taxed.
- UK source income and gains will be subject to UK tax (although Labour plan to consider introducing some form of incentive to encourage new arrivals to invest in the UK free of tax during this period).
- Income tax personal allowances and the CGT annual exempt amount will be lost.
- It will be possible to claim “overseas workday relief” (i.e. relief on earnings for employment duties performed outside the UK) for the first three years (but the existing rules will be simplified).

## HOW WILL THE PROPOSED REMITTANCE BASIS CHANGES APPLY TO TRUSTS?

The proposed changes to the tax treatment of offshore trusts appears to be targeted at “typical” settlor-interested excluded property trusts (i.e., trusts which are created by non-doms but where the UK resident non-dom settlor can still benefit from the assets).

The treatment of settlor-interested offshore trusts will depend upon whether the settlor is within the four-year FIG regime outlined above. During the four-year window, income and gains arising within the trust, together with distributions from an existing offshore structure will not suffer UK tax. After the four-year window (with no current proposals to extend the benefits to those already in existence before the date of the Budget):

- Income and gains which have arisen **before** 6 April 2025 will be subject to the usual benefits “matching” rules when distributions are made to a UK tax resident beneficiary.
- Income and gains arising to the trust **on or after** 6 April 2025 will be taxed in the hands of the non-domiciled settlor/transferor (if they have been UK resident for more than four tax years). While it may be possible to exclude the settlor from benefit to avoid the income being attributed, this will be much harder to avoid for gains due to wide anti-avoidance provisions that already exist.
- While it is not expressly stated, it may be the case that the new rules will not apply to existing trusts which have neither: (i) a living settlor nor (ii) a UK resident non-dom settlor. If this is correct, for such trusts, UK income tax and capital gains tax should continue to be payable only when benefits accrue to UK resident beneficiaries (i.e. based on the current benefits “matching” rules). However, this is not clearly addressed in the proposals.

## TRANSITIONAL RULES

If the Conservatives are in power on the introduction of the rules and a non-dom moves from being taxed on the remittance basis to the arising basis and is not eligible for the four-year window, they will be given a one-year grace period. During 2025-2026, they would pay tax on 50% of their foreign income.

If Labour are in power on the introduction, they intend to remove this relief.

Irrespective of who is in power, the tax on any foreign gains will not be reduced by this one-year grace period, but for individuals who have claimed the remittance basis previously and

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Protections currently afforded to some offshore trusts will cease

are not UK domiciled or deemed domiciled by 5 April 2025, there will be an option to “rebase” directly held assets to their value as at 6 April 2019 (in effect wiping out pre-2019 gains).

Under the government’s proposals there will be a two-year “Temporary Repatriation Facility” or TRF during the period from 6 April 2025 to 5 April 2027. During the TRF any non-trust income or gains which are brought into the UK will be subject to UK tax at a reduced rate of 12%. This is likely to offer an appealing incentive to those wanting to bring assets to the UK for the long-term.

Under Labour’s proposals, they will also explore ways to encourage individuals to further remit FIG outside the two-year TRF period to enable the end of the current complex rules on the taxing of previously protected FIG on remittance.

To encourage inward investment into the UK Labour will also consider whether there should be an investment incentive during the four-year FIG period such that UK investment income is also free of UK tax.

### WHAT ABOUT INHERITANCE TAX?

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Residence, rather than domicile, would be the linking factor for inheritance tax

Domicile (rather than residence) has always been the factor which determines an individual’s exposure to UK IHT. The changes announced would mean a shift from domicile to tax residence being the linking factor. However, the Budget papers include a veiled reference to “other connecting factors” being considered as part of the redesign of the system and so it remains to be seen whether other aspects will have a bearing on determining exposure to UK IHT.

If the rules move to a residency basis, it is intended that, once a person has been tax resident in the UK for 10 years, their entire worldwide estate will be within the scope of UK IHT. Such an individual would remain within the scope of UK IHT for ten years after their departure (i.e. there will be a ten-year tail).

For trusts, the current position is that IHT is determined by where the assets are located and whether, at the time the person created the trust or settled further assets on the trust, the person was domiciled in the UK. Broadly, if a non-dom settles non-UK assets on trust, these are outside the scope of UK IHT.

The government proposes that future IHT treatment will depend upon whether the person who settled the assets on an offshore trust is resident in the UK or is within the ten-year tail at the chargeable date, albeit there is uncertainty at this stage as to exactly which of these provisions might apply. Their residency will need to be assessed when assets are settled, as well as at the date of future ten-year anniversaries or exits of property from the trust. This means that the tax treatment of a trust could change regularly, as it follows the residence position of its settlor.

The draft government proposals note that, to give certainty, the IHT position for trusts with non-UK assets settled by non-UK domiciled settlors before 6 April 2025 will not change, but that for any offshore trusts settled on or after 6 April 2025 the new regime will apply. It also appears to apply regardless of the residence of the trust (i.e. where the trustees are located). This would give an advantageous IHT planning opportunity prior to 6 April 2025 for a non-dom to settle assets on trust to take advantage of these provisions, which may be lost thereafter.

Labour have responded to note that they would remove this exemption and would look to subject all non-UK assets held in a non-UK trust to UK IHT, whenever they were settled, so that “nobody living here permanently can avoid paying UK inheritance tax on their worldwide estates”. The proposals are brief and do not give any details as to how this might apply in practice – it is certainly more complex to achieve than this simple statement might imply.

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**Non-doms need to review their position as a matter of urgency and evaluate whether changes should be made**

## WHAT SHOULD I DO NOW?

If the rules are implemented, either as they stand or with Labour amendments, this means for longer-term non-doms:

- You will lose the ability to claim the remittance basis and will instead be subject to UK tax on your worldwide income and gains as they arise.
- You will cease to have trust protections for your offshore trusts which you can benefit from.
- You need to think carefully about what assets are and are not within the scope of UK IHT.

Although the precise terms of the law as it will come into force are not yet known, we would strongly recommend that you review your current circumstances and your structures so that you can understand how the proposed changes would apply to you. From this starting point, you can then evaluate what steps could be taken to optimise the position before April 2025 once the draft legislation is published and more details are known.

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## KEY CONTACTS

For further information about any of the issues raised in this guide, please contact:



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