

Clause 1 and Schedule 1: Deemed domicile: income tax and capital gains tax

Summary

1. Clause 1 and Schedule 1 amend the Income Tax Acts and the Taxation of Chargeable Gains Act (TGCA) 1992, with the effect that certain non-domiciled individuals will be treated as if they were domiciled in the UK for the purposes of income tax and capital gains tax from the start of the 2017-18 tax year.
2. There are two categories of individual who will be affected by this rule: those who are domiciled outside the UK and who were born in the UK with a UK domicile of origin; and those who have been resident in the UK for at least 15 of the preceding 20 tax years.

Details of the clause

3. Subsection 1 amends Chapter 2A of Part 14 of the Income Tax Act 2007 by inserting new section 835BA. This is the deemed domicile rule.
4. Subsection 835BA(1) provides that the section applies for the Income Tax Acts or for all the parts of the Taxation of Chargeable Gains Act (TGCA) 1992 which are relevant to an individual's domicile status.
5. Subsection 835BA (2) provides that any individual who is not domiciled in the UK is to be regarded as domiciled in the UK if they meet either of two conditions.
6. Subsection 835BA (3) provides the first of these two conditions, Condition A. This is that the individual was born in the UK with a UK domicile of origin and is resident in the UK for tax purposes in the relevant tax year.
7. Subsection 835BA (4) provides the second of these two conditions, Condition B. This is that the individual has been resident in the UK in at least 15 out of the 20 years preceding the relevant tax year
8. Subsection 835BA (5) provides that condition B is not met if the individual has not been resident in the UK after 5 April 2017.
9. Subsection (2) of the Clause provides that Schedule 12 includes further provisions which apply for the purposes of this section and new section 835BA.

Schedule 1: Deemed Domicile: income tax and capital gains tax

Part 1: Application of Deemed Domicile Rule

10. Paragraph 1 of Schedule 12 amends the Income and Corporation Taxes Act (ICTA) 1988
11. Paragraph 1(1) amends section 266A of ICTA which provides the tax treatment of employer paid life assurance premiums. Its effect is that anyone deemed UK domiciled for tax under new section 835BA of ITA 2007 is treated in the same way as someone domiciled in the UK.
12. Paragraph 1(2) provides that the amendment made by paragraph 1(1) takes effect on 6 April 2017.
13. Paragraph 2 introduces the amendments to the Taxation of Chargeable Gains Act (TCGA) 1992.
14. Paragraph 3(1) amends section 16ZA TCGA which provides the tax treatment of capital losses incurred by non-uk domiciled individuals.
15. Paragraph 3(2) sets out the amendments made to subsections (1) to (3) to the making of an election under section 809B of ITA 2007 for use of the remittance basis and the tax years affected by this election after they become domiciled in the UK. Failure to make such an election could adversely affect any claim for foreign losses that have accrued. Further subsections (4), (5) and (6) in this paragraph advise that the deemed domicile rule will apply and that changes will commence from the start of tax year 2017-18. Finally, if any election for claiming losses under the remittance basis is made under section 16ZA of TCGA 1992 and the individual subsequently becomes UK domiciled then section 16ZB and 16ZC will not have effect by virtue of this election.
16. Paragraph 4(1) outlines the changes made to section 16ZB after an election for claiming losses has been made under section 16ZA to remit foreign chargeable gains in the subsequent year after they arise.
17. Paragraph 4(2) provides that the amendment made by paragraph 4(1) takes effect from the start of the 2017-18 tax year.
18. Paragraph 5(1) provides the changes made to section 16ZC after an election has been made under section 16ZA to remit foreign chargeable gains.
19. Paragraph 5(2) provides that the changes in paragraph 5 will come into effect from the start of the 2017-18 tax year.
20. Paragraph 6(1) amends section 69 of TCGA, covering the residence of trustees of settlements. Paragraph 6(1) applies the new deemed domicile test in section 835BA of ITA for the purpose of determining the domicile of the settlor for the purposes of that section.
21. Paragraph 6(2) provides that the amendments made by paragraph 6(1) take effect in relation to settlements created on or after 6 April 2017.
22. Paragraph 7(1) provides that the deemed domicile rule in new section 835 BA applies for the

purposes of section 86, TCGA. This means that settlors with interests in such settlements and who are deemed UK domiciled for tax purposes under new section 835BA will be subject to Capital Gains Tax under section 86 in the same way as settlors domiciled in the UK under general law.

23. Paragraph 7(2) provides that the amendments made by paragraph 7(1) take effect on 6 April 2017.
24. Paragraph 8(1) amends section 275 of TCGA, by the insertion of a new subsection 3A, which provides that the new deemed domicile test in 835BA will apply for the purposes of 275(1) (l) (iii). This means that the location of foreign currency bank accounts held by an individual deemed UK domiciled for tax purposes under new section 835BA will be treated as being located in the UK.
25. Paragraph 8(2) provides that the amendment made by paragraph 8(1) takes effect on 6 April 2017.
26. Paragraph 9(1) amends Schedule 5A by the insertion of a new subsection 3A, which provides that the new deemed domicile test in 835BA will apply for the purposes of settlements with a foreign element.
27. Paragraph 9(2) provides that the amendment made by paragraph 9(1) takes effect in relation to settlements created on or after 6 April 2017.
28. Paragraph 10(1) amends the Income Tax (Earnings & Pensions) Act (ITEPA) 2003.
29. Paragraph 10(2) amends section 355 of ITEPA, covering deductions for corresponding payments by non-domiciled employees with foreign employers. Paragraph 10(2) applies the new deeming section 835BA ITA into section 355 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK under general law.
30. Paragraph 10(3) amends section 373 of ITEPA, covering non-domiciled employees' travel costs where the related duties are performed in the UK. Paragraph 10(3) applies new section 835BA ITA to section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK.
31. Paragraph 10(4) amends section 374 of ITEPA, covering non-domiciled employees' spouses' travel costs and expenses where an employee's related duties are performed in the UK. Paragraph 10(4) applies the new section 835BA ITA on deeming to section 373 so that the treatment of an individual affected by new section 835BA will be the same as that for an individual domiciled in the UK.
32. Paragraph 10(5) amends section 376 of ITEPA covering non- domiciled employees' foreign accommodation and subsistence costs and expenses. It applies the new section 835 BA ITA 2007 to section 376 so that an individual deemed domiciled under that section will be treated the same as an individual domiciled in the UK.
33. Paragraph 10(6) provides that all the amendments made by paragraph 10 take effect on 6 April 2017.
34. Paragraph 11 introduces the amendments to ITA.

35. Paragraph 12 deals with section 476 ITA. Section 476 provides the rules for determining whether a settlor meets Condition C in section 475. Section 475 determines the residence of trustees for income tax purposes. Paragraph 12 (1) amends section 476(2) (b) and section 476(3) (b) so that the treatment of a settlor treated as domiciled by new section 835BA will be the same as that for a settlor domiciled in the UK.
36. Paragraph 12(2) provides that the amendments made by paragraph 12(1) take effect for deaths and settlement made on and after 6 April 2017.
37. Paragraph 13 deals with section 718 ITA. Section 718 covers the meaning of a 'person abroad' for the purpose of Chapter 2 of Part 13 ITA -Transfer of Assets Abroad legislation (ToAA).
38. Paragraph 13(1) amends section 718(1) (b) so that the treatment of an individual affected by the deemed domicile rule in new section 835BA will be the same as that for an individual domiciled in the UK.
39. Paragraph 13(2) provides that the amendments made by paragraph 13(1) take effect on 6 April 2017.
40. Paragraph 14 introduces the amendments made to the remittance basis in Chapter A1 of Part 14 of ITA.
41. Paragraph 14(2) amends section 809B ITA so that a claim to the remittance basis cannot be made by anyone affected by section 835BA.
42. Paragraph 14(3) consequentially amends section 809C ITA so that individuals who are deemed domiciled in the UK by virtue of new section 835BA because they have been resident in the UK for at least 15 of the preceding 20 years will not be liable to pay the Remittance Basis Charge.
43. Paragraph 14(4) amends section 809E ITA (application of the Remittance Basis without a claim), so that the treatment of an individual affected by new section 835BA under section 809E will be the same as that for an individual domiciled in the UK.
44. Paragraph 14(5) makes further provision to remove any references in section 809H to the '17 years' residence test.
45. Paragraph 14(6) provides that the amendments made by paragraph 9(1)-(5) take effect on 6 April 2017.
46. Paragraph 15(1) will apply if section 10A of the TCGA 1992, as originally enacted is applicable to an individual and if the year of return is 2017-18.
47. Paragraph 15(2) provides that the amendments made under paragraphs 14(2) have no effect on paragraph 15(1) cases where 'foreign chargeable gains' accrue in an intervening year.
48. Paragraph 15(3) provides that where an individual makes a remittance basis claim in a paragraph 15(1) case, he will not be liable to pay the remittance basis charge or lose entitlement to personal allowances.
49. Paragraph 15(4) sets out the statutory definitions of 'year of return', 'intervening year' and "foreign chargeable gains" for the purposes of paragraphs 15.

50. Paragraph 16(1) applies to cases where section 10A substituted by paragraph 119 of FA 2013 applies in relation to an individual.
51. Paragraph 16(2) disapplies the effect of the amendment in the `period of return` made under paragraphs 14(2), and where the related `temporary period of non-residence` began before 8 July 2015.
52. Paragraph 16(3) provides that where an individual makes a remittance basis claim in a paragraph 16(1) case, he will not be liable to pay the remittance basis charge or lose entitlement to personal allowances.
53. Paragraph 16(4) provides that the definition of `foreign chargeable gain` for the purposes of paragraph 16 is the same as in section 12(4) TGCA.
54. Paragraph 16(5) advises that part 4 Sch 45 FA 2103 explains the meaning of the terms "temporary period of non-residence" and "period of return".
55. Paragraph 17(1) deals with the residence of personal representatives. Paragraph 17(1) amends section 834 ITA so that the residence of the personal representatives of individuals affected by new section 835BA will be the same as that for an individual domiciled in the UK.
56. Paragraph 17(2) provides that all the amendments made by paragraph 17 will take effect from the start of the 2017-18 tax year.

Part 2: Protection of overseas trusts

57. Paragraph 18 of the Schedule amends Schedule 5 to TGCA (provisions supplementing section 86 of TGCA 1992) by inserting new paragraph 5A.
58. New paragraph 5A (1) provides that section 86 TGCA does not apply in relation to a tax year – referred to as 'the particular year' – where certain conditions are met. These are that:
 - the tax year is 2017/18 or later;
 - the settlor is not domiciled in the UK at the time when the settlement was created;
 - where a settlement is created on or after 6 April 2017, that settlement was created when the settlor was not deemed domicile in the UK under section 835BA ITA for the purposes of section 86(1)(c);
 - the settlor is either domiciled in the UK or treated as domiciled in the UK by virtue of 835BA ITA because they were born in the UK with a UK domicile of origin throughout that tax year;
 - where the settlor is treated as domiciled in the UK by virtue of 835BA ITA because they were resident in the UK for at least 15 of the previous tax years, they have not provided any property or income directly or indirectly for the purposes of the settlement at any time between whichever is the later of the date when the settlement was created and 6 April 2017 and the date of the end of tax

year.

59. New paragraph 5A(2) provides that, when considering property or income provided for the purposes of the settlor, the following should be disregarded:
- any property or income which is provided on arms' length terms;
 - any property or income provided in repayment of a debt which was incurred after 6 April 2017; and
 - any property or income which is provided to meet any excess of the settlement's income for the year over its administration or taxation expenses.
60. Paragraph 19(1) of the Schedule amends TGCA by inserting new sections 87D to 87J.

Section 87D: Sections 87 and 87A: disregard of capital payments to non-residents

61. New section 87D(1) provides that, in applying sections 87 and 87A TGCA to a settlement, any capital payments should be disregarded, including a part of such a payment, within new subsection 87D(2), subject to conditions set out in new subsection 87D(3) and new subsection 87E.
62. New section 87D(2) provides that any capital payment is within this subsection where it is made in a tax year made by a trustee to a beneficiary who is not resident in the UK at all times within that tax year.
63. New section 87D(3) provides that new subsection 87D(1) does not apply to a capital payment, or a part of such a payment, where the recipient beneficiary is a close family member (as defined in new subsection 87H), the payment is received on or after 6 April 2017 and the settlor is resident in the tax year when the payment was received.

Section 87E: Sections 87 and 87A: disregarded payments to temporary non-resident

64. New subsection 87E(1) applies where:
- no account is taken of a capital payment, or part of such a payment, for the purposes of section 87 and 87A TGCA as a result of new subsection 87D;
 - the recipient beneficiary is a temporarily non-resident individual; and
 - the payment or part payment is received when the recipient beneficiary is temporarily non-resident.

Where these conditions are met, new subsection 87E(1) provides that the payment or part payment is treated as received in the beneficiary's period of return and that it should be treated accordingly for the purposes of sections 87 and 87A.

65. New subsection 87E(2) provides that the terms 'temporarily nonresident', 'temporary period of residence' and 'period of return' as used in new subsection 87E have the same meaning as they do for the purposes of part 4 of Schedule 45 to Finance Act 2013.

Section 87F: Sections 87 and 87A: disregarded payments in year settlement ends

66. New subsection 87F(1) provides that new subsection 87F applies where the settlement ceases to exist in a tax year, two or more beneficiaries receive capital payments, of a part of such payments, from the trustees and at least one of those beneficiaries is a non-resident beneficiary.
67. New subsection 87F(2) provides that the capital payments referred to in new subsection 87F(1) are not within new subsection 87D(2) to the extent that they are received by a non-resident beneficiary.
68. New subsection 87F(3) defines the term 'non-resident beneficiary' as a beneficiary who is not resident in the UK at any time in that tax year.

Section 87G: Cases where settlor liable for section 87 charge on closely-related beneficiary

69. New subsection 87G(1) provides that new subsection 87G(2) applies where:
- chargeable gains are treated as accruing to an individual in a tax year by section 87 or section 89(2) TCGA;
 - the beneficiary is a close family member as defined in new subsection 87H of the settlor at any time in the tax year;
 - the settlor is resident in the UK any time in the tax year; and
 - either the beneficiary is not resident in the UK throughout the tax year or the beneficiary was taxed on the remittance basis and no gains are remitted to the UK in that tax year.
70. New subsection 87G(2) provides that the settlor is liable to tax on those gains as if they were so liable because they had accrued to the settlor in the tax year.
71. New subsection 87G(3) provides that if the settlor is liable to tax on gains because of new subsection 87G(2) and the tax is paid, they are entitled to recover that amount from the beneficiary or from any trustee of the settlement.
72. New subsection 87G(4) provides that, in recovering the amount referred to in new subsection 87G(3), the settlor can ask HMRC to provide a certificate showing the amount of the gain and the amount of tax which has been paid. This certificate must contain any evidence to support the facts stated in it.

Section 87H: Meaning of 'close member of the settlor's family'

73. New subsection 87H(1) defines the term 'close family member' for the purposes of new subsections 87D, 87G and 87I as a settlor's spouse or civil partner, a settlor's child or a child of a settlor's spouse or civil partner who is aged under 18.
74. New subsection 87H(2) provides that two people living together as spouses are if they were spouses and that two people of the same sex living together as civil partners are treated as civil partners.

Section 87I: Non-UK resident settlements: attribution of gains to onward gifts

75. New subsection 87I(1) provides that new subsection 87I(2) applies in relation to a settlement if the following conditions are met:
 - a capital payment (the 'original payment') is received by a person (the 'original beneficiary') from a trustee in a tax year;
 - the trustees are not resident in the UK at any time in the tax year;
 - either the original beneficiary is not a close member of the settlor's family in that year, or if they are a close member of the settlor's family in that year, the settlor is not resident in the UK in that year;
 - the original beneficiary makes a gift (the 'onward payment') to a person (the 'subsequent recipient') either within three years of the day containing the start time, or before the original payment is received in anticipation of receiving the original payment;
 - the subsequent recipient is resident in the UK in the tax year when the subsequent recipient receives the onward payment; and
 - where the particular tax year is a tax year in the period which begins with the start of the tax year when the original payment is received and ends with the end of the tax year in which the subsequent beneficiary receives the onward payment, the original beneficiary is not resident in the UK throughout the particular year or the remittance basis applies to the original beneficiary for the particular tax year.
76. New subsection 87I(2) provides that sections 87, 87A and 89 and new subsection 87I(1)(a) have the same effect as they would if the subsequent recipient were a beneficiary of the settlement who has received a capital payment from the trustees at whichever is the earlier of the time when the onward payment was made and the tax year in which the settlement ceases to exist.

77. New subsection 87I(2) also provides that sections 87, 87A and 89 and new subsection 87I(1)(a) have the same effect as they would if that capital payment were the same amount as whichever is the lower of the amount of the onward payment or the amount of the original payment after it is reduced by the tax-producing amount of any relevant payment.
78. New subsection 87I(3) provides that, for the purposes of new subsection 87I(1)(d), where the original payment is a capital payment other than one treated as received under new subsection 87I(2), the start time is the time when the original payment is received, and (b) if the original payment is a capital payment that is treated as received because of the operation of subsection (2) on a previous occasion, the start time is that time provided by this subsection as the start time.
79. New subsection 87I(4) provides that new subsection 87I(1)(d) applies without the reference to the time before the end of 3 years beginning with the day containing the start time, in situations where the onward payment is made as part of any arrangements which amount to arrangements for the whole or part of the amount of a capital payment which the trustees actually make for ultimate receipt by a beneficiary who is not the recipient of that payment.
80. New subsection 87I(5) defines the term 'relevant payment' for the purposes of new subsections 87I(2)(b)(ii) and 87I(6) as either a gift made by a subsequent recipient after receipt of the original payment but before the onward payment is made, or, in cases where gains are treated under section 87 or section 89 TCGA as accruing to the original beneficiary as a result of the receipt of the original payment, any amount of those gains remitted to the UK in a tax when the original beneficiary was taxed on the remittance basis.
81. New subsection 87I(6) defines the term 'tax-producing amount' of a relevant payment for the purposes of new subsection 87I(2)(b)(ii) as the amount on which a person is chargeable to capital gains tax as a result of new subsection 87I(2) (for relevant payments within new subsection 87I(5)(a), and the amount remitted (for relevant payments within new subsection 87I(5)(b)).
82. New subsection 87I(7) defines the terms 'arrangements', 'gift' and 'make' in connection with a gift as used in new subsection 87I.

Section 87J: Sections 87 and 87A: disregard of payments to migrating beneficiary

83. New subsection 87I(1) provides that a capital payment, or a part of such a payment, is disregarded by new subsection 87J(2) for the purposes of sections 87 and 87A as they apply to a settlement for a particular tax year.
84. New subsection 87I(2) provides that a capital payment is within this subsection where it meets the following conditions:
- if it is received by a beneficiary of the settlement in or before the particular tax year;
 - if the beneficiary is resident in the UK in the tax year when the payment is received;

- if the beneficiary is not resident in the United Kingdom in the particular tax year;
 - to the extent that it has not been matched under section 87A TGCA with either the section 2(2) amount for any tax year before the particular tax year, but not earlier than the tax year 2017-18, in which the beneficiary is resident in the United Kingdom, or the section 2(2) amount for any earlier tax year.
85. Paragraph 19(2) of the Schedule makes consequential amendments to section 87B (1) TGCA.
86. Paragraph 19(3) replaces the reference to section 87C in section 89(3) TCGA to a reference to new subsection 87I.
87. Paragraph 19(4) of the Schedule provides that the new subsections 87D and 87E have effect in relation to payments received in the 2017-18 tax year or a later tax year (apart from new subsection 87D(3)) and in relation to payments received before the tax year 2017-18 in the tax year 2017-18 and later tax years.
88. Paragraph 19(5) of the Schedule provides that the new subsection 87F has effect in relation to payments received in the tax year 2017-18 or a later tax year.
89. Paragraph 19(6) of the Schedule provides that the new subsection 87G has effect in relation to chargeable gains treated as accruing in or after the tax year 2017-18 as a result of capital payments received, or treated as received, in or after that tax year.
90. Paragraph 19(7) of the Schedule provides that the new subsection 87H, including the amendments in sections 87B and 89, has effect for the tax year 2017-18 and later tax years.
91. Paragraph 19(8) of the Schedule provides that the new subsection 87I has effect in relation to onward payments made on or after 6 April 2017, and even in cases where the original payment is received (or treated as received) before that date.
92. Paragraph 19(9) of the Schedule provides that the new subsection 87J has effect where the particular tax year is the tax year 2017-18 or a later tax year.
- ITTOIA 2005*
93. Paragraph 20 introduces amendments to Chapter 5 of Part 5 of ITTOIA 2005.
94. Paragraph 21 changes section 619 (1) by omitting the “and” at the end of paragraph (c), and after para (d) inserting a new section (e) so that income tax will be charged on benefits whose value is treated as income of the settlor or close family member as a result of new section 643A.
95. Paragraph 22 updates section 621 to include benefits as now being chargeable to tax.
96. Paragraph 23 advises that section 622 where the settlor is chargeable to tax is now subject to the conditions at section 643 A.
97. Paragraph 24 updates section 624 at subsection (3) to advise of a new section 628A to cover the exception for protected foreign-source income.
98. Paragraph 25 of the Schedule inserts new section 628A of ITTOIA.

99. New section 628A provides for an exception for protected foreign-source income
100. New Section 628A (1) disapplies section 624(1) ITTOIA where protected foreign-source income arises under a settlement in a tax year.
101. New section 628A (2) defines the term 'protected foreign-source income' for the purposes of new section 628A. Income will be treated as protected foreign-source income if:
- it would be relevant foreign income had it been the income of an individual who is resident in the UK;
 - it is from a property originating from the settlor;
 - the settlor was neither domiciled in the UK nor regarded as so domiciled by virtue of section 835BA ITA when the settlement was created;
 - the settlor is not domiciled in the UK or regarded as so domiciled at any time in the tax year by virtue of section 835BA ITA because they were born in the UK with a UK domicile of origin;
 - the trustees are not resident in the UK for the tax year; and
 - the condition provided by new section 628A(3) is met.
102. New section 628A(3) provides the final condition referred to in new section 628A(2) which must be met for income to be treated as protected foreign-source income. This is that no property or income is provided either by the settlor for the purpose of the settlement or by the trustees of any other settlement of which the settlor is a beneficiary or settlor at any time between 6 April 2017 (or the date when the settlement was created if earlier) and the end of the tax year at a time when the settlor is either domiciled in the UK or regarded as so domiciled as a result of having met section 835BA ITA.
103. New section 628A(4) provides that, for the purposes of new section 628A(3), property or income should be ignored if it was provided at arm's length terms or provided with respect to a liability incurred by any person before 6 April 2017. It also provides that property or income should be ignored where it is provided towards meeting any excess of the settlement's expenses over its income for that tax year.
104. Paragraph 26 introduces a new section at 630A ITTOIA
105. New section 630A provides for an exception for protected foreign-source income.
106. New section 630A(1) disapplies section 629(1) ITTOIA if income from a settlement is protected foreign-source income.
107. New section 630A(2) advises section 628A (2) to (4) have effect for this purpose
108. Paragraph 27 updates section 635 as follows:
- In subsection (2), before "income" insert "unprotected".

- After subsection (4) insert—“(5) In subsection (2) “unprotected income” means income which is not protected foreign-source income, and section 628A(2) to (4) (meaning of “protected foreign-source income”) apply also for this purpose.”

109. Paragraph 28 introduces amendments to section 636 by inserting the word unprotected in front of the word income where it occurs in subsection (1). In addition the phrase “and otherwise than under section 643A” is inserted after “633” in subsection (2).

110. Paragraph 29 of the Schedule inserts new section 643A and B of ITTOIA which deals with benefits which are provided out of protected foreign-source income.

111. New section 643A(1) provides that subsection 643A(2) applies where

- the trustees of a settlement who are non-resident in the UK in a tax year provide a benefit to an individual who is a close member of the family of the settlor.
- the benefit is provided at a time when there is available protected income (as defined in new section 643A(9). and the one of the conditions provided at sub paragraph (1)(d) is met.

The conditions at s 643A(1)(d) are as follows:

- -Condition A is that the individual is not UK resident at any time in the year
- - Condition B is that s 809B, 809D or 809E of ITA 2007 (remittance basis) applies to the individual and that none of the benefit is remitted in the year, and
- - Condition C is that neither Condition A and B is met and the individual is not liable to income tax on the value of the benefit under this section.

112. New section 643A(2) provides that the payment is treated as income for the purposes of income tax of the person on whom the benefit is conferred, if that payment is within new subsection 643A(1). However, this is subject to new section 643A(3).

113. New section 643A(3) provides that new section 643A(2) does not apply in relation to the payment if:

- the individual is either not resident in the UK or is resident in the UK and taxed on the remittance basis but does not remit any of the benefit to the UK in the tax year
- the settlor is resident in the UK for the tax year
- the settlor is not domiciled in the UK at any time in the year and the settlor is not regarded as domiciled in the UK because they were born in the UK with a UK domicile of origin

However, where new section 643A(2) does not apply because these conditions are met, the amount that would have been treated as income under that subsection is

instead treated as the income of the settlor for that year.

114. New section 643A(4) provides that new sections 643A(2) and (3) do not apply to any part of the payment which is taken into account for the purposes of the transfer of assets abroad provisions in Chapter 2 of Part 13 of ITA 2007.
115. New section 643A(5) provides that where the value of benefit exceeds the amount treated as person's income for a tax year under new sections 643A(2) and (3), those subsections apply for the following tax year to the excess.
116. New section 643A(6) enables the settlor to recover amounts of tax from the individual concerned or any trustee of the settlement to which they become liable as a result of new section 643A(3).
117. New section 643A(7) provides that, in recovering that amount, the settlor can require an officer of HMRC to provide a certificate which stipulates the amount of income and the amount tax concerned. It also provides that such certificates will be conclusive evidence of the facts which it contains.
118. New section 643A(8) defines the term 'close member of the family of the settlor' as used in section as any person who is the settlor's spouse or civil partner or a child of the settlor, their spouse or civil partner who is under the age of 18.
119. New section 643A(9) provides that, for the purposes of new section 643A(8), two people living together as if they were spouses will be treated as spouses and two people of the same sex living together as if they were civil partners are treated as civil partners,
120. New subsections 643A(10) and (11) provide that for the purposes of new subsection 643(2), there is available protected income up to the end of a tax year where:
 - the total amount of protected foreign-source income arising to the settlement in the year or an earlier tax year less
 - so much of that total amount which has been paid in the year or an earlier tax year as income to beneficiaries other than close members of the settlor's family less
 - so much of the total amount, aside from that paid to beneficiaries other than close members of the settlor's family, which has been taken into account under Chapter 2 of Part 13 of ITA (transfer of assets abroad) less
 - so much of that total amount which has been used by the trustee to meet the expenses of the trust is greater than
 - the total of all amounts treated as income under this section in respect of other benefits provided by the trustees in the year or in an earlier tax year.
121. New subsections 643A(10) and (11) also provide that, where there is available protected income up to the end of the tax year, the amount of such income is

- the total amount of protected foreign-source income arising to the settlement in the year or an earlier tax year less
- so much of that total amount which has been paid in the year or an earlier tax year as income to beneficiaries other than close members of the settlor's family less
- so much of the total amount, aside from that paid to beneficiaries other than close members of the settlor's family, which has been taken into account under Chapter 2 of Part 13 of ITA (transfer of assets abroad) less
- so much of that total amount which has been used by the trustee to meet the expenses of the trust less
- the total of all amounts treated as income under this section in respect of other benefits provided by the trustees in the year or in an earlier tax.

122. New subsection 643A(12) provides that the term 'protected foreign-source income' as used in new section 643A(11) has the meaning given by new sections 628A (2) to (4).

123. New section 643B provides for the attribution of deemed income to recipient of onward gift.

124. New section 643B (1) advises that subsection(2) will apply if:

(a)) an amount is treated as income is treated under section 643A in a tax year (the 'initial year')

(b) the trustees of the settlement were non UK resident throughout the initial year

(c) the original beneficiary is not a close member of the settlor's family at any time in the initial year or, if they are, the settlor is not resident in the UK in that year

(d) the original beneficiary makes any type of gift (onward payment) to a person (subsequent recipient) in the starting year or any three following years.

(e) the subsequent recipient is UK resident in the year they receive the onward payment

(f) where a particular tax year is a tax year that begins with the start of the initial tax year, and finishes with the end of the tax year in which the onward payment is received by the subsequent recipient, either –

(i) the original beneficiary is non-UK resident throughout the particular year or

(ii) the original beneficiary is taxed on the remittance basis for the particular tax year.

125. New section 643B (2) states that section 643A and subsection (1) will apply:

(a) as if an amount of protected foreign-source income of the settlement were paid to the subsequent recipient in the same year as the onward payment is made

(b) as if the amount of that protected foreign-source income were the same as –

- (i) the amount of the onward payment
- (ii) if less, the amount of the income mentioned in subsection (1)(a)
reduced by the tax-producing amount of any relevant payment

126. New section 643B(3) provides that for subsection (1) (d) any income referred to in subsection (1)(a) which is treated as arising other than as a result of subsection (2), the ‘starting year’ is the tax year for which that income is treated as arising. It also provides that if that income is treated as arising as a result of subsection (2), the ‘starting year’ is the tax year provided by this subsection
127. New section 634B (4) advises that any onward payment made as part of a benefit to the beneficiary will mean subsection (1)(d) has effect in any late tax year rather than just the three following tax years.
128. New section 634B (5) defines a relevant payment as a gift made by the subsequent recipient in or after the first year before any on wayward payment is made.
129. New section 634B (6) provides definitions for “arrangements”, “close family member” and “making gifts”.
130. Paragraph 30 substitutes section 628a into the meaning of property originating from the settlor.
131. Paragraph 31 introduces amendments to Chapter 2 of Part 13 of ITA 2007 on transfer of assets abroad.
132. Paragraph 32 amends section 721 ITA by substituting a new subsection (3B) which introduces two new rules to determine the amount of income arising under subsection (1). Rule 1 provides that the amount is equal to the amount of income of the person abroad if the individual is domiciled in the UK at any time in the tax year or is regarded as domiciled in the United Kingdom at any time in the tax year as a result of being born in the UK with a UK domicile of origin. Rule 2 provides that, in all other cases, the amount is equal to the amount of the income of the person abroad which is not protected foreign-source income.
133. Paragraph 33 adds a new section 721A, which defines the meaning of “protected foreign-source income” for the purposes of new section 721(3B).
134. New subsection (1) inserts new section 721A ITA which defines the term ‘protected foreign source income’ for the purposes of section 721.
135. New subsection (2) provides that income of the person abroad is abroad is ‘protected foreign source income’ where:
- it would be relevant foreign income if were the income of the individual,
 - it derives from property originating from the individual,
 - the person abroad is the trustees of a settlement,
 - the trustees are non-UK resident for the tax year,

- the settlement was created when the individual is neither domiciled in the UK nor treated as so domiciled by virtue of section 835BA, and
- no property or income is provided indirectly or directly for the purposes of the settlement by the individual, or by the trustees of any other settlement of which the individual is a beneficiary or settlor, at a time from the time starting when the later of the date when the settlement was created and the start of 6 April 2017 and ending with the end of the tax year in which the individual is domiciled in the UK or so regarded a result of section 835BA.

136. New subsection (3) is aimed at foreign source income. It explains that seven conditions (a) to (h) must be met if that income is to be treated as “protected foreign-source income”. New subsection (3)(d) requires that the trustees must be “participators” in the company. New subsection (6) provides that “participator” takes the meaning at section 454 CTA 2010. Broadly this requires, in this case, the trustees to have an interest in the company.

137. New subsection (4) provides that for the purposes of new subsections (2)(f) and (3)(h), the following should be ignored if:

- property or income provided under a transaction entered into at arm’s length,
- property or income provided in pursuance of a liability incurred by any person before 6 April 2017, and
- where the settlement’s expenses relating to taxation and administration for a tax year exceed its income for that year, property or income provided towards meeting that excess if the value of any such property and income is not greater than the amount of the excess.

138. New subsection (5) explains that the references to “settlor” in subsections 645(1), (3) and (4) of ITTOIA 2005, and which apply to new subsections (2)(b) and (3)(b), should be read as though they refer to “individual”.

139. New subsection (6) provides a definition of a “participator” in relation to a company.

140. Paragraph 34 defines the rules at section 728 (1) around income of a person abroad arising in the UK.

141. Paragraph 35 inserts new section 729A into ITTOIA 2005.

142. New subsection 729A defines “protected foreign-source income” for the purposes of Rule 2 in new section 728(1A).

143. New Subsection 729A(2) defines this where the person abroad is the trustee of a settlement

144. New subsection 729A(3) defines where the person abroad is a company.

145. New Subsections (4) and (5) further qualify subsections (2) and (3).

146. New subsection (6) defines the definition of “participator” in relation to a company.

147. Paragraph 36 provides for a number of changes to section 731 and in particular includes a new section (1A) dealing with chargeability of a non-uk resident person if section 733A applies.
148. Paragraph 37 introduces changes to section 732 which concerns those receiving a benefit in a particular tax year. In particular it now applies to settlors as well as non transferors and to benefits received by those who are non-resident (subject to the provision at s 731(1A) above.
149. Subsection 732(4) amends the calculation of income treated as arising under s 732(2) in respect of benefits where benefits are received by a non UK resident individual.
150. Paragraph 38 adds a new section 733A and B. This explains when a Settlor is liable for a charge on closely-related beneficiary for the purposes of section 731.
151. New subsection 733A(1) provides that new subsection (2) applies if the six conditions (a) to (f) are met
152. New subsection 733A(2) provides that where those tests are met the settlor is liable for the tax charged under section 731 on the amount mentioned in subsection (1)(a).
153. New Subsection 733A(3) provides that where the settlor is liable for tax under new subsection (2), the settlor is entitled to recover the amount of the tax from the individual or from any person who is a trustee of the settlement.
154. New subsection 733A(4) provides that in order to recover that amount, the settlor is entitled to require HMRC to provide a certificate specifying the amount of tax paid.
155. New subsections 733A(5) and (6) define a close member of the family for the purposes of new subsection (1)(c).
156. New section 733B provides for the attribution of deemed income to recipient of onward gift.
157. New Section 733B (1) applies subsection (2) if:
- An amount of income is treated as arising to the original beneficiary, in the first year by virtue of section 732 ITTOIA
 - That amount is matched with relevant income, by virtue of section 735A ITTOIA, that is protected foreign-source income for the purposes of rule 2 of section 721(3B) or 728(1A)
 - Trustees of the settlement are not resident in the United Kingdom in the first year.

Either –

The original beneficiary is not a close member of the family of the settlor in the first year, or

If there is a time in the tax year that the original beneficiary is a close member of the settlor's family, the settlor is not resident in the United Kingdom in the first year.

- The original beneficiary makes a gift (onward payment), directly or indirectly, to a person (the “subsequent recipient”) in the first year or in any three of the following years
- The subsequent recipient is resident in the United Kingdom in the tax year in which they receive the gift, and
- Where a tax year is contained in the period beginning with the that of the first tax year and ending with the end of a tax year in which the gift is received by the subsequent recipient, either –

The original beneficiary is not resident in the United Kingdom at all time in the particular tax year, or

The remittance basis applies to the original beneficiary for the particular tax year by virtue of section 809B, 809D or 809E.

158. New Section 733B (2) provides that section 731 and subsection (1)(a) have the effect that:

- the subsequent recipient were an individual to whom income is treated as arising, by virtue of section 732, for the tax year in which the gift is made, and
- The amount of income were the same as the amount of the gift or, if less, the amount of the income reduced by the tax-producing amount of any relevant payment

And section (1)(b) has the effect, as if by virtue of section 735A, that amount of that income were matched with an amount of relevant income that is protected foreign-source income.

159. New Section 733B (3) advises that for the purposes of subsection (1)(e) if the income mentioned in section (1)(a) is treated as arising by otherwise than because subsection (2), the first year is the tax year in which the income is treated as arising. If the income mentioned in subsection (1)(a) is treated as arising because of subsection (2) on previous occasion, then the first year is the tax year given as the first year by this subsection on that occasion.

160. New Section 733B (4) substitutes “any later tax year” in place of “of the three following tax years” in subsection (1)(e), where if the gift is made as part of any arrangement that amounts to arrangements for the whole or part of a benefit provided by the trustees of the settlement to be received by beneficiary, who is not the recipient of the benefit.

161. New Section 733B (5) outlines the definition of “relevant payment” in subsection (2)(b)(ii) as a gift made –

- By the subsequent recipient
- In or after the first year, and
- Before the onward payment is made

And it’s “tax producing amount” is the amount of income tax for which a person is liable as

result of subsection (2) in relation to the making of the relevant payment.

162. New Section 733B (6) defines the terms “arrangements”, “close member”, “gift” and “make”.

Commencement of amendments in ITTOIA 2005 and ITA 2007

163. Paragraph 39 provides that all amendments made by paragraphs 20 to 38 will commence and have effect from the start of the tax year 2017-18 onwards, and that none of the references in new s 643A(11) to an earlier tax year include a year earlier than 2017-18.

FA2008

164. Paragraph 40 advises of changes to Part 2 of schedule 7 to FA 2008 around the conditions for domicile at paragraph 172.

Part 3: CGT: Rebasing

165. Paragraph 41 provides that a person who was a non-UK domiciled remittance basis user prior to 2017-18 and becomes treated as UK domiciled under the 15 out of 20 rule from 6 April 2017 may, in computing the gain or loss accruing on the disposal of an asset on or after then, treat the acquisition cost of the asset as its value at 5 April 2017 (“rebasing”) provided that during the person’s ownership the asset was not situated in the UK in the period 16 March 2016 to 5 April 2017 (the “relevant period”), and the person remains deemed domiciled under the 15 out of 20 rule at all times until disposal.

166. Paragraph 42 provides that assets brought to, or received or used in the UK are treated as not situated in the UK under certain circumstances.

167. Paragraph 43 provides that a person may elect for rebasing not to apply to a disposal. An election must be made and once done will be irrevocable.

Part 4: Cleansing of Mixed Funds

168. Paragraph 44 (1) introduces Part 4 of the Schedule which enables individuals who have previously been taxed on the remittance to rearrange their overseas funds so that they will be able to bring money to the UK without being subject to the rules which normally apply for remittance basis purposes.

169. Paragraph 44(2) will disapply section 809R(4) ITA to any transfer of funds made between two overseas accounts, one of which is a mixed fund, provided certain conditions are met. A mixed fund is defined in section 809Q(6) of that Act as money or other property containing or deriving from a mixture of income, gains and capital or income, gains and capital from different tax years.

170. These conditions are provided in subsections (a) to (f) of paragraph 44(2) of the Schedule. These are that

- the transfer is a transfer of money which made at any time during the 2017-18 tax

year or the 2018-19 tax year;

- the transfer is made from an account which is a mixed fund
- the transfer is made into a different receiving account;
- the transfer is nominated as a transfer for the purposes of this paragraph 26(2);
- at the time when the transfer is made, no other transfer has been so nominated from that mixed fund into the receiving account; and
- the transfer is made by a qualifying individual.

171. Paragraph 44(3) defines a qualifying individual for these purposes. These are that the individual in question

- was taxed on the remittance basis in any tax year before 2017-18; and
- was not born in the UK with a UK domicile of origin.

172. New paragraph 44(4) provides that any transfer subject to new paragraph 44(2) is to be treated as containing those amounts of income, gains and capital which were within the mixed fund immediately before that transfer took place, provided these amounts are specified when making the nomination under new paragraph 44(2)(d).

173. New paragraph 44(5) provides that the amounts of income, gains and capital specified under new paragraph 44(4) cannot exceed the amounts of income, gains and capital which were in the mixed fund from which the transfer was made.

174. Paragraph 44(6) provides that the terms 'mixed fund' and 'offshore transfer' have the same definition as they do in section 809R (4).

Background note

175. The clause is related to a series of reforms announced at the summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law. It will broadly align the existing Inheritance Tax deemed domicile provisions for individuals with the proposed changes for income tax and capital gains tax.

176. This clause provides that those individuals who are not domiciled in the UK will be deemed to be UK domiciled for tax purposes if they are either resident in the UK for 15 of the past 20 tax years, or if they are born in the UK with a UK domicile of origin and return to the UK having obtained a domicile of choice elsewhere.

177. They will be taxed on any arising worldwide income and gains in the same way as UK domiciles. At the same time the existing IHT deeming provisions will be aligned with the new 15 out of 20 rule.

178. Transitional protections will be given where an individual becomes deemed-UK domicile under the 15 out of 20 rule in April 2017, including the facility to rebase offshore assets for

CGT purposes. The new rules will also ensure that any non-dom who sets up a qualifying trust before becoming deemed domiciled would not pay Income Tax /CGT on income/gains in the trust, as long as they did not receive a benefit from the trust. However, once a benefit is taken, CGT would be payable on trust gains and income tax on family benefits received.

179. There will also be a facility for remittance basis taxpayers to rearrange their overseas mixed funds to allow them to remit clean capital from overseas ahead of income and gains.

180. If you have any questions about this change, or comments on the legislation, please contact Aidan Close on 03000 585 255 (email: aidan.close@hmrc.gsi.gov.uk)

