

## 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 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 (ITA) 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.

## Details of the schedule

### 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 purposes 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 the 2017-18 tax year. 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 settlements 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 annual charge for long-term remittance basis taxpayers.
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 a 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 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 paragraph 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, they 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) TCGA.
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 TCGA (provisions supplementing section 86 of TCGA 1992) by inserting new paragraph 5A.
58. New subsection 5A (1) provides that section 86 TCGA does not apply in relation to a tax year – referred to as 'the particular year' – where certain conditions are met. These are that:
- Per Condition A, the tax year is 2017/18 or later;
  - Per Condition B, the settlor is not domiciled in the UK at the time when the settlement was created;
  - Per Condition C, at no time in the particular year is the settlor UK domiciled or where a settlement is created on or after 6 April 2017, deemed domicile in the UK under section 835BA ITA 2007.
  - Per Condition D, where the settlor is treated as domiciled in the UK by virtue of section 835BA ITA because they were resident in the UK for at least 15 of the previous tax years, they or the trustees of another settlement of which the settlor is the beneficiary or the settlor, 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 subsection 5B (1) and (2) provides that, when considering property or income provided directly or indirectly for the purposes of the settlement by the settlor or by the trustees of another settlement of which the settlor is a beneficiary or a settlor, the following should be disregarded:
- any property or income which is provided on arms' length terms;
  - any property or income provided outside of a loan as long as a free benefit is not intended;
  - a loan made to the trustees of the settlement on arm's length terms
  - any interest paid to the trustees of the settlement under a loan on arm's length terms ;
  - repayment of a loan made by the trustees of the settlement
  - any property or income provided to meet the excess of the settlement's expenses relating to administration or taxation for the year over its income, or so much of its income as can be used for payment of those expenses.

60. New subsection 5B(3) provides that where a loan is made to the trustees of the settlement by the settlor on arm's length terms, the loan will be regarded as provided to the trustees where there is a relevant event.
61. New subsection 5B(4) defines a "relevant event".
62. New subsection 5B(5) to (9) outlines the conditions required for sub-paragraph 6 to take effect.

*FA 2004*

63. Paragraph 19 of the Schedule inserts new sub paragraph 4 into paragraph 8 of Schedule 15 to FA 2004. This is a consequential amendment to ensure that the new rules under the reforms to the taxation of non-domiciled individuals do not affect the operation of the Pre Owned Assets Tax rules.

*ITTOIA 2005*

64. Paragraph 20 introduces amendments to Chapter 5 of Part 5 of ITTOIA 2005.
65. Paragraph 21 updates section 624 at subsection (3) to advise of a new section 628A to cover the exception for protected foreign-source income.
66. Paragraph 22 of the Schedule inserts new section 628A and 628B of ITTOIA.
67. New section 628A provides for an exception for protected foreign-source income.
68. New section 628A (1) to (13) outlines the conditions which must be fulfilled before any exemption can be granted.
69. New subsection 628B provides that, when considering property or income provided directly or indirectly for the purposes of the settlement by the settlor, or by the trustees of any other settlement of which the settlor is a beneficiary or settlor, the following should be disregarded:
  - any property or income which is provided on arms' length terms;
  - any property or income provided outside of a loan as long as a free benefit is not intended;
  - a loan made to the trustees of the settlement on arm's length terms
  - any interest paid to the trustees of the settlement under a loan on arm's length terms ;
  - repayment of a loan made by the trustees of the settlement
  - any property or income provided to meet the excess of the settlement's expenses relating to administration or taxation for the year over its income, or so much of its income as can be used for payment of those

expenses.

70. New subsection 628B (3) provides that where a loan is made to the trustees of the settlement by the settlor on arm's length terms, the loan will be regarded as provided to the trustees where there is a relevant event.
71. New subsection 628B (4) defines a "relevant event".
72. New subsection 628B(6) deals with where an outstanding loan account is to be regarded as property directly provided by the settlor and new subsections 628B(5) and (7) to (9) outline the conditions required for new subsection 628B(6) to take effect.
73. New subsection 628C provides for relief for transitional trust income treated as arising to the settlor before 6 April 2017 but not remitted until later where the remittance is made by the trustees.
74. New section 628C(2) defines transitional trust income.
75. New section 628C(3) states that section 648(3) to (5) do not apply for the purposes of transitional trust income.
76. Paragraph 23 introduces a new section at 630A ITTOIA.
77. New section 630A provides for an exception for protected foreign-source income.
78. New section 630A(1) disapplies section 629(1) ITTOIA if income from a settlement is protected foreign-source income.
79. New section 630A(2) advises section 628A (2) to (4) have effect for this purpose.
80. Paragraph 24 updates section 635 as follows:
  - In subsection (2), before "income" insert "unprotected".
  - Subsection (4) explains the meaning of unprotected income.
81. Paragraph 25 introduces amendments to section 636 by inserting the word "unprotected" in front of the word "income" where it occurs in subsection (1).
82. Paragraph 26 introduces amendments to section 645 by inserting "s628A and".
83. Paragraph 27 introduces amendments to Chapter 2 of Part 13 of ITA 2007 on transfer of assets abroad.
84. Paragraph 28 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.
85. New subsection (3BA) explains the meaning of protected income for the purposes of



the charge under s733A.

86. Paragraph 29 adds a new section 721A, which defines the meaning of “protected foreign-source income” for the purposes of new section 721(3B).
87. New subsection (2) provides that income of the person abroad is ‘protected foreign source income’ if it is within subsection (3) or (4).
88. New subsection (3) provides that income is protected foreign source income where:
- it would be relevant foreign income if were the income of 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 starting from whichever is the later date of 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.
89. New subsection (4) is aimed at foreign source income. It explains that seven conditions (a) to (g) must be met if that income is to be treated as “protected foreign-source income”. New subsection (3)(c) requires that the trustees must be “participants” in the company.
90. New subsection (5) provides that for the purposes of new subsections (3)(e) and (4)(g), the addition of value to settlement property is to be treated as the direct provision of property for the purposes of the settlement.
91. New subsection (6) explains section 721B contains further provisions for the purposes of new subsections (3)(e) and (4)(g).
92. New subsection (7) provides the definitions of a “participant” in relation to a company and “deemed domiciled” regarded for the purposes of section 718(1)(b).
93. Paragraph 29 also adds a further subsection 721B covering tainting and anti-tainting.
94. New section 721B provides that, when considering property or income provided directly or indirectly 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, the following should be disregarded:
- any property or income which is provided on arms' length terms;

- any property or income provided outside of a loan as long as a free benefit is not intended;
  - a loan made to the trustees of the settlement on arm's length terms
  - any interest paid to the trustees of the settlement under a loan on arm's length terms ;
  - repayment of a loan made by the trustees of the settlement
  - any property or income provided to meet the excess of the settlement's expenses relating to administration or taxation for the year over its income, or so much of its income as can be used for payment of those expenses.
95. New subsection 721B (3) provides that where a loan is made to the trustees of the settlement by the settlor on arm's length terms, the loan will be regarded as provided to the trustees where there is a relevant event.
96. New subsection 721B (4) defines a "relevant event".
97. New subsection 721B (5) to (9) outlines the conditions required for sub-paragraph 6 to take effect.
98. Paragraph 30 inserts new subsection (6) and (7) into section 726 which provides that in applying Chapter A1 of Part 14 for the 2017-18 tax year and after, in relation to income treated under section 721 as arising to an individual earlier than the 2017-18 tax year, this does not include any transitionally protected income which has not been distributed by the trustees prior to 6 April 2017.
99. New subsection (7) defines the terms "remitted to the UK" and "transitionally protected income".
100. Paragraph 31 adds new subsections (1A) and (1B) to section 728 and defines the rules at section 728 (1) around income of a person abroad arising in the UK.
101. New subsection (1B) explains the meaning of protected income for the purposes of the charge under s733A.
102. Paragraph 32 inserts new section 729A into ITTOIA 2005.
103. New subsection 729A defines "protected foreign-source income" for the purposes of Rule 2 in new section 728(1A).
104. New subsection 729A(2) confirms income of a person abroad is protected foreign-source income so far as it is within subsection (3) or (4).
105. New subsection 729A(3) defines protected foreign source income where the person abroad is the trustee of a settlement
106. New subsection 729A(4) defines protected foreign source income where the person

abroad is a company.

107. New Subsections (5) and (6) further qualify subsections (3) and (4).
108. New subsection (6) provides that the new rules at s.721B will now apply to subsections (3)(e) and (4)(h).
109. New subsection (7) defines the definition of "participator" in relation to a company.
110. Paragraph 33 inserts new subsection (6) and (7) into section 730 and advises that s832 ITTOIA 2005 does not apply to any transitionally protected income that arises prior to the tax year 2017-18 provided it was not distributed by the trustees prior to 6 April 2017. Subsection (7) defines the terms "remitted to the UK" and "transitionally protected income."
111. Paragraph 34 provides for a number of changes to section 731 and in particular includes a new section 731(1A) dealing with matching and chargeability of a non-UK resident person if section 733A applies.
112. Paragraph 35 introduces changes to section 732 which concerns those receiving a benefit in a particular tax year. In particular it now applies to settlors (other than a settlor who is relevantly domiciled, that is UK domiciled or treated as domiciled in the UK as a result of Condition A in section 835BA) as well as non transferors and to benefits received by those who are non-resident (subject to the provision at s 731(1A) above).
113. New subsection 732(4) describes the conditions where an individual will be considered to be "relevantly domiciled".
114. Paragraph 35(5) amends s731 to limit deductions to cases where tax has been charged under s731 for an earlier tax year.
115. Paragraph 36 adds a new section 733A. This explains when a Settlor is liable for a charge on closely-related beneficiary for the purposes of section 731.
116. New subsection 733A(1) provides that new subsection (2) applies if the six conditions (a) to (f) are met.
117. New subsection 733A(2) provides that where those tests are met and the individual is either non-UK resident or is on the remittance basis and nothing is remitted to the UK, then the settlor is liable for the tax charged under section 731 on the amount mentioned in subsection (1)(a).
118. New Subsection 733A(3) provides that if the individual is on the remittance basis and part of the amount mentioned in subsection (1)(a) is remitted to the UK, then the settlor will be liable to tax under s.731 as if the remainder was his income.
119. New Subsection 733A(4) provides that the amounts mentioned in (1)(a) can be either all or part of the amounts arising under s.732.
120. New subsection 733A(5) provides where the settlor is liable for tax under new subsection (2) or (3), the settlor is entitled to recover the amount of the tax from the

individual.

121. New subsection 733A(6) 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.
122. New subsections 733A(7) and (8) define a close member of the family for the purposes of new subsection (1)(b)(ii).
123. New subsection 733A(9) advises that the normal remittance basis rules apply to this section.
124. Paragraph 37 amends section 735A(6) to insert a reference to a person other than the individual being charged to tax under section 733A
125. Paragraph 38 amends section 735 by adding new section 735B, which provides that this section applies in relation to income where the income is treated as arising to a beneficiary for a tax year and the settlor, to whom the remittance basis applies for that year, is liable for tax on the income.
126. New subsection (1) explains that this section applies in relation to income if conditions (a) to (c) are met.
127. New subsections (2) and (3) provide that the income is treated as relevant foreign income of the settlor and for the purposes of Chapter A1 of Part 14, is treated as remitted to the UK in the year.
128. New subsection (4) provides when subsection (2) of section 832 of ITTOIA 2005 is applied in relation to the income, it has the effect with omission of its paragraph (b).

*Commencement of amendments in ITTOIA 2005 and ITA 2007*

129. Paragraph 39 provides that all amendments made by paragraphs 20 to 38 will commence and have effect from the start of the 2017-18 tax year onwards.

FA2008

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

### **Part 3: Capital Gains Tax rebasing**

131. Paragraph 40 provides that an individual 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.
132. Paragraph 41 provides that assets brought to, or received or used in the UK are

treated as not situated in the UK under certain circumstances.

133. Paragraph 42 provides that a person may elect for rebasing not to apply to a disposal. An election must be made and once done is irrevocable.

134. Paragraph 43 provides for an irrevocable election to be made to stop paragraph 41 applying to any disposal made.

## Part 4: Cleansing of Mixed Funds

135. Paragraph 44 (1) introduces Part 4 of the Schedule which enables individuals who have previously been taxed on the remittance basis 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.

136. 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 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.

137. These conditions are provided in subsections (a) to (f) of paragraph 43(2) of the Schedule. These are that

- the transfer is a transfer of money which is 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 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 in relation to a qualifying individual.

138. 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.

139. Paragraph 44 (4) provides that any transfer subject to paragraph 43(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 paragraph 43(2)(d).

140. Paragraph 44 (5) provides that the amounts of income, gains and capital specified under paragraph 43(4) cannot exceed the amounts of income, gains and capital which were in the mixed fund immediately before the transfer was made.

141. Paragraph 44 (6) provides that the terms 'mixed fund' and 'offshore transfer' have the same definition as they do in section 809R (4) of ITA 2007.

142. Paragraph 45 provides that Part 4 of the Schedule which enables individuals who have previously been taxed on the remittance basis to rearrange their overseas mixed funds will apply to transfers from a mixed fund arising before 6 April 2008 that are contained within those overseas mixed funds.

143. Paragraph 45 (1) sets the conditions for which the provisions will apply to a transfer made by a person from a mixed fund.

144. Paragraph 45 (2) defines a qualifying individual as someone who

- 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.

145. Paragraph 45 (3) provides that any transfer subject to paragraph 44 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 paragraph 44(1)(e).

146. Paragraph 45 (4) provides that the amounts of income, gains and capital specified under paragraph 44(3) cannot exceed the amounts of income, gains and capital which were in the mixed fund immediately before the transfer was made.

147. Paragraph 45 (5) provides definitions for the terms "mixed fund", "overseas account" and "pre-6 April 2008 income or chargeable gains".

148. Paragraph 46 (1) applies to determine, for the purposes of paragraph 45, the composition of the mixed fund referred to in paragraph 45(1).

149. Paragraph 46 (2) to 46 (5) provide the steps that apply to determine the composition of a mixed where a transfer of money is made before 6 April 2008 from the mixed fund to another overseas account.

150. Paragraph 46 (6) to 46 (8) provide the steps that apply to determine the composition of a mixed where:

- a transfer of money is made before 6 April 2008 from another overseas account to the mixed fund, and
- there is insufficient evidence to determine the composition of the transfer.

151. Paragraph 46 (9) provides that for the purposes of the steps in sub-paragraph 45(7),

where there is insufficient evidence to determine whether an amount is income or chargeable gains, that amount is to be treated as income.

## Background note

152. The clause and schedule 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 general law. It will broadly align the existing deemed domicile rules for Inheritance Tax with those for income tax and capital gains tax.
153. This clause and schedule 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.
154. 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 years out of 20 rule.
155. Transitional protections are now included where an individual becomes deemed-UK domicile under the 15 years out of 20 rule in April 2017, including the facility to rebase offshore assets for CGT purposes. The new rules will also ensure that those non-doms who set up a qualifying trust before becoming deemed domiciled under the 15 years out of 20 rule would not pay Income Tax or CGT on income or 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.
156. Specific changes made to allow transitional protections include:
- Paragraph 19 – A consequential amendment to ensure that the new rules do not affect the operation of the Pre Owned Assets Tax rules.
  - Paragraph 20 – A technical amendment to clarify that we test to see if income is protected in the year it actually arises.
  - Paragraph 22 - New section 628C provides transitional relief for income treated as arising to the settlor before 6 April 2017 but not remitted until later where the remittance is made by the trustees. This is an equivalent provision to that in sections 726 and 727 ITA 2007 (transfer of assets abroad)
  - Paragraph 29 - New rules defining 'protected income' for the purposes of the S733A charge.
  - Paragraph 29 - Trust protections: Changes to s721A(3) and (4) to remove

references to property originating from the individual to make clear which income is protected where there is a company underlying the settlement.

- Paragraph 31 - A similar amendment to that in s721(3BA)
- Paragraph 32 – A similar changes to those in s721A
- Paragraph 34 - Technical changes which limits the tax charge on individuals receiving benefits whilst they are non-resident.
- Paragraph 34 - Technical change to s733 (1) to limit deductions to cases where tax has been charged under s731 for an earlier tax year.
- Paragraph 36 - Minor drafting changes to s733A(1)(b)(i)
- Paragraph 36 - Minor drafting change to s733A(9)

157. 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. Further clarifications on the process have now been added to legislation. In addition a further legislative change has been made to enable remittance basis users to cleanse any pre- April 2008 funds they may hold too.

158. Specific changes made to the cleansing rules can be found at:

- Paragraph 44 - Technical amendment that extends the scope of the legislation to include amounts arising pre-6 April 2008 that are contained in a mixed fund.
- Paragraph 45 - Technical amendment which allows the composition of a mixed fund to be determined, for the purposes of paragraph 44, where there has been a transfer of money before 6 April 2008.

159. 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](mailto:aidan.close@hmrc.gsi.gov.uk))