

# Offshore trusts – planning for the changes before April 2025

There has been a complete overhaul of the taxation of non-UK domiciled individuals and non-resident trusts which comes into force on 5 April 2025. Essentially, the tax benefits of being a non-UK domiciled individual have been removed and those individuals who have been resident in the UK for more than four tax years will be subject to UK tax on their worldwide income on an arising basis. This has tax implications for beneficiaries and settlors of non-resident trusts.

We set out some of the changes affecting such trusts, their settlors and beneficiaries, and the planning opportunities available to trustees and corporate service providers which should be considered before 5 April 2025. We discuss the tax implications more generally for non-UK domiciled individuals in a separate document.

Please note the changes are set out in draft legislation in Finance Bill 2025 and are subject to amendment until legislated.

## What should trustees do before 5 April 2025?

Foreign income and gains ('FIG') realised within an offshore trust **prior** to 6 April 2025, that have not previously been subject to UK tax, will remain within 'protected pools'. As such, UK tax consequences will only arise for the settlor and for beneficiaries when distributions and benefits are paid out (wherever in the world) and matched to these amounts. The draft legislation extends the availability of a Temporary Repatriation Facility ('TRF') (see overleaf) to these distributions, potentially allowing FIG to be taxed at 12%

(and 15% in 2027/28), rather than the usual rates of income tax or capital gains tax.

There are several key points for trustees and trust service providers to consider and there will be a need to discuss the issues with the settlors and beneficiaries in anticipation of the 5 April 2025 deadline:

1. A complete review of historical FIG that arose prior to 5 April 2025 should be carried out to ascertain the level of pre-5 April FIG that may attract the TRF.
2. Consider realising FIG prior to 5 April 2025 to maximise the amounts on which the TRF can be claimed (as this is a once in a lifetime opportunity), particularly if the beneficiaries will need funds in the UK.
3. Non-domiciled beneficiaries should consider whether it is appropriate to make a claim for the remittance basis in 2024-25. It is a necessary condition of the TRF that the remittance basis has been claimed at least once.
4. Trustees should ascertain whether any of the beneficiaries have not yet been UK resident for four tax years as at 5 April 2025. Distributions of FIG arising after 5 April 2025 can be made to them in the UK without any UK tax arising under the FIG Regime (see overleaf).
5. Trustees should consider excluding settlors as beneficiaries of offshore trusts to avoid the arising basis of tax applying to them on foreign trust and underlying company foreign income.

## The TRF

The TRF is a relief to encourage individuals to bring back historical FIG into the UK. It offers a much lower rate of tax than would otherwise apply, but it applies for a limited period of three tax years. It requires careful planning before 5 April 2025 to ensure the relief can be used to its maximum potential. We specifically concentrate on how this relief can be utilised by beneficiaries of offshore trusts (including the settlor if they are able to benefit under the terms of the trust). The following payments or benefits to beneficiaries can fall within this relief provided the other conditions are satisfied:

- Capital payments made to non-UK domiciled beneficiaries offshore **before** 6 April 2025 that have been matched to pre-5 April 2025 FIG but have not been subject to UK tax because the remittance basis applied. Remittance to the UK of these funds would be subject to UK taxation.
- Capital payments received from offshore structures in the 2025-26, 2026-27 and 2027-28 tax years, provided these capital payments will be matched with FIG of the offshore structure which arose **prior** to 6 April 2025.

This will therefore allow beneficiaries to remit capital payments which have been matched to FIG at a reduced rate from 6 April 2025. This means non-domiciled UK resident individuals who had been subject to the remittance basis in any tax year up to and including 2024/2025 can therefore remit pre-6 April 2025 FIG at a flat rate of 12% for 2025/2026 and 2026/2027 and at a flat rate of 15% for 2027/2028.

This is done by making a designation of the amount of FIG and paying tax in the year of designation. Forbes Dawson can assist further with this process.

## The 'FIG' Regime

From 6 April 2025, the remittance basis of taxation for foreign income and gains will be removed and replaced with a new regime which applies to individuals coming to the UK as new arrivals, or those who have been non-UK resident for at least 10 tax years. The Government has referred to this new system as the FIG Regime.

The new FIG Regime means that 'qualifying new residents' will not pay UK tax on their personal FIG or on FIG distributed from offshore trusts for the first four tax years of residence, subject to making an election for the regime and keeping clear records of the FIG.

The FIG covered by the election will then remain outside the scope of UK taxation, regardless of whether or not these funds are remitted to the UK. It is anticipated that the tax-free remittance of these funds will encourage more investment in the UK.

## The taxation of beneficiaries

Below we provide a summary of the rules governing the taxation of beneficiaries of non-UK resident trusts:

- Capital payments made to a UK tax resident beneficiary who is not eligible for the FIG Regime will continue to be matched to FIG within the offshore trust and taxable in full when the capital payments are matched.
- A beneficiary who claims relief under the FIG Regime will be able to receive income distributions and capital payments from offshore trusts without a UK tax charge. The appropriate claim and disclosure of the payment must be made on the beneficiary's personal tax return.
- Where a beneficiary fails to disclose a qualifying capital payment under the FIG Regime, the capital payment will be regarded as being matched to relevant income and capital gains of the offshore trust and taxable as such.
- Capital payments made to a beneficiary who claims relief using the FIG Regime will not be matched to trust income and gains. As such, it will not be possible to 'wash-out' trust FIG using such capital payments and the pool will remain at the same level to be matched to taxable payments.
- Capital payments received offshore by a UK tax resident beneficiary before 5 April 2025 during a period when the taxpayer claimed the remittance basis will continue to be taxable when remitted to the UK, provided that the capital payment was matched to FIG arising to the offshore trust (as is the case under the current rules). These amounts may be eligible for the TRF.
- If a beneficiary has an unmatched capital payment brought forward on 6 April 2025, this will become taxable when it is matched to future relevant income or gains of the trust. Unfortunately, the TRF cannot apply to these payments as it can only apply to FIG realised before 5 April 2025.

## Trust protections end

From 6 April 2025, the trust protections for FIG in settlor-interest trusts will be removed. UK income received by an offshore trust will continue to be assessable on the settlor as it arises. Any FIG arising where the settlor is UK tax resident (and retains an interest in the trust) will now be taxable on the settlor on an arising basis, unless they are eligible for the FIG Regime.

If a claim for the FIG Regime is made by the settlor, they will not be taxed on FIG arising in the settlement within the four-year FIG Regime period.

FIG which arose in an offshore trust pre-6 April 2025 will remain pooled and will be available to be matched against capital payments made to UK tax resident settlors and beneficiaries.

When a settlor makes a claim for the FIG Regime in a tax year:

- Foreign income which arises to an offshore trust that year will continue to be relevant income which may be available to be matched to capital payments to UK tax resident beneficiaries (other than the settlor) as noted above.
- Capital gains arising to an offshore trust will be pooled and will be available to be matched to future capital payments received by a UK tax resident beneficiary in a tax year when the recipient does not claim relief under the new FIG Regime.

With such considerable changes affecting what are often very valuable structures, it is important that professional tax advice is sought to navigate the best route forward.

## IHT and Trusts

Existing offshore trusts settled by non-doms prior to 30 October 2024 will fall within the relevant property regime and be subject to 10-year charges if the settlor is a long-term resident at the time of the 10-year anniversary.

If a settlor dies prior to 6 April 2025, the trust's UK IHT status will follow that of the settlor's domicile at the time of the creation of the settlement.

If a settlor dies after 6 April 2025, the IHT status of the trust will be determined by whether the settlor is a long-term resident in the UK at the time of their death.

This will bring a lot of offshore trusts into the realm of UK IHT for exits of capital and 10-year charges after 6 April 2025.

Any new trusts created after 30 October 2024 whereby the settlor can benefit from the trust will remain within the settlor's estate for IHT purposes under the gift with reservation of benefit regime. Previously this rule had been disapplied for excluded property (generally non-

UK property). This applies in addition to the 10-year charge regime, creating the potential for double tax.

Trustees should consider whether any tax reliefs - such as Business Property Relief - can apply to trust assets held to mitigate any IHT charges.

It will be important for trustees to understand the tax position of the settlor to determine what IHT reporting is required.

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