CHAPTER ONE

MOBILE INDIVIDUALS: TAX POLICY

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Cross-reference links are active in the Online version of this Chapter, but are not active in this pdf file.

External hyperlinks are active in this pdf file

This chapter has been updated for the FA 2025

1.1 Scope of chapter

The topics of this chapter are:
(1) Policy arguments for a lighter tax regime for a class of Mobile Individuals
(2) How that class may be determined
(3) The merits of the 2025 reforms
(4) The state of UK tax reform, and prospects for the future

The 2024/25 edition of this chapter contained a history of domicile tax reform, and an assessment of the reforms of 2008 and 2017. I omit that now as it is of historical interest only.

1.2 Mobile/established: terminology

In this chapter I coin the following terms:
"Mobile Individuals" means some class of mobile (or "footlose") individuals who are less connected with, or settled in, the UK than Established Residents.

"Established Residents" are UK residents with sufficient UK links that they do not qualify as Mobile Individuals.
"Mobile-individual relief" is some relief for UK resident Mobile Individuals (which is not available to Established Residents)

I write these with initial capitals to reflect the technical nature of my terminology.

The UK has provided some form of Mobile-individual relief since 1914. Before 2025 the distinction between Mobile Individuals and Established Residents in my sense was determined by reference to domicile (supplemented by 7-year, 12-year and 15-year residence tests). The Mobile-individual reliefs were the IT/CGT remittance basis and protected-trust reliefs (informally known as non-dom reliefs).

After 2025, the distinction the distinction between Mobile Individuals and Established Residents is determined by Qualifying New Resident status, in short, 10-year absence followed by no more than four year's residence, and the Mobile-individual relief is FIG relief[1].

1.3 Tax competition

All UK residents may choose where to reside, but some are less securely attached to the UK than others. Tax competition arguments claim that if their tax burden was as great as established residents, fewer would choose to live in the UK, and overall the UK economy would lose:
(1) directly, from tax paid by them (including VAT and SDLT); and
(2) indirectly, from UK investment and expenditure which is more likely to be made by UK residents.[2]

Similarly, UK firms competing in the global market for talent and expertise will find recruitment easier if the tax regime for foreign employees is lighter. Some potential employees would not choose, or could not afford, to come if the UK tried to tax them on worldwide income.

In a nutshell: the argument is that the UK economy benefits from some Mobile-individual Relief.

1.3.1 *Tax competition: Analysis*

Tax competition raises a number of sub-issues:

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1 In this chapter I use the term "FIG relief" to include OWR.
2 Except to the extent that tax makes UK investment unattractive, as to which, see 19.23 (Investment relief: Critique).

(1) To assess the existence and amount of tax competition
(2) What the UK should do in the light of that tax competition
(3) What international agreements might do to regulate tax competition

The first question is essentially one of fact; the second is a question of domestic politics. The third is a matter of foreign politics.

The debate about international tax competition is long standing.[3] All countries, of course, grapple with the same issues.[4]

1.3.2 *Extent of tax competition*

It seems clear that there is plenty of tax competition for wealthy mobile individuals: there are many low-tax or preferential tax regimes in Europe where they may choose to reside,[5] even without looking any further.

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3 See the evidence of Lord Vestey to the 1920 Royal Commission, *https://www.kessler.co.uk/wp-content/uploads/2013/07/Vestey_Royal_Commission_evidence_and_ensuing_debate.pdf*

4 See eg New Zealand Inland Revenue "Tax, foreign investment and productivity" *https://taxpolicy.ird.govt.nz/publications/2022/2022-other-draft-ltib* (2022)

5 Switzerland, for instance, has a lump sum taxation regime for non-Swiss citizens, specifically targeted for this purpose and more favourable than the UK remittance basis; see 9.5.4 (Swiss forfait taxpayer). This was at one time politically controversial; it was abolished in Zurich in 2009 and 5 other cantons followed suit. But in a referendum in 2014, the regime was supported by 59% of voters, on a 49% turnout; see Sigg and Luongo, "The Swiss lump-sum taxation regime: after the storm comes the calm?" [2015] JITTCP 169 *http://www.swissinfo.ch/eng/bloomberg/swiss-say-foreign-millionaires-are-still-welcome-after-tax-vote/41144174*
So I expect that Swiss tax law is now stable. In the 2014/15 edition of this work I added "and probably more stable than the UK" and that proved to be correct!
In 2017, Italy introduced a *forfait* regime for new residents: art.24-bis [Italy] *Testo unico delle imposte sui redditi*.
In 2024, Macfarlanes comment:

> ... other regimes have been created (most notably by Italy and Greece) which are based on the UK rules but are significantly more generous. As a result, wealthy individuals probably now have greater choice than they have ever had if they want to take advantage of a time limited but tax advantaged status. Some attractive inpatriate regimes (such as the Portuguese regime) have come and gone but overall, the number of international competitors to the UK has grown.

https://www.macfarlanes.com/what-we-think/in-depth/2024/non-uk-domiciliary-regime-an-analysis/?utm_source=vuture&utm_medium=email&utm_campaign=11%20march%202024-passle%20emails%20(ongoing)
Ireland retains the pre-2008 remittance basis, but I understand that Irish Capital Acquisitions Tax makes Ireland unattractive

In assessing the existence and amount of international tax competition several points must be borne in mind.

Effective low tax may be achieved in other countries by relaxing legal provisions at administrative level, in a non-transparent way.

One-paragraph summaries of a country's tax system are bound to be misleading.

The terms of statutory tax law are only one aspect of tax competition. Compliance costs are important. The quality of tax administration is important. An OECD study identifies six desiderata: a developed legal system, confidentiality, impartiality, proportionality, responsiveness (meaning a CRM for large companies, and at least answering correspondence from lesser taxpayers) and competence. They add:

> Frequent changes in legislation, particularly where there has been an absence of consultation, can have an adverse impact on the taxpayers and their advisers trust in the tax system.[6]

But there are others: can a tax authority subject an individual to an expensive and intrusive tax investigation without evidence that tax returns were wrong? Certainty is very important.[7] When individuals make decisions of where to live, perception matters as much as reality. Rates of tax on UK source income may matter more than FIG relief. By some of these measures, the UK competes poorly.

1.4 Other tax competition

Tax competition arises in many areas of taxation, and affects different types of income in different ways.

In areas where investment by non-residents is (more or less) completely mobile, tax competition has driven UK tax rates down to zero. Examples include:[8]

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6 "Engaging with High Net Worth Individuals on Tax Compliance" (2009) para 208 and 243; see *http://www.oecd.org/ctp/aggressive/engagingwithhighnetworthindividualsontaxcompliance.htm*

7 See 2.8 (The Rule of Law).

8 Another example from the field of shipping:

> "The location of ownership, flagging (registration) and management activities is very 'footloose', since it can easily be transferred from one country to another. This makes it vital to have regard to the fiscal regimes in other countries if we want to maintain a successful shipping industry in the UK. The modern armoury

Topic: Relief	**See para**
Income Tax	
Interest: Reliefs for non–residents	26.23; 45.1
IME: Non-residents trading in investments	72.1
IHT	
UK funds: IHT relief for non LTRs	75.3
FOTRA securities: IHT relief for non-residents	77.9, 77.15

In the case of very mobile sources of income, such as interest on bank deposits and trading income from asset management, any UK tax charge would only cause non-resident investors to move the investments to a different jurisdiction with a resultant loss in economic activity and profits in the UK.

In the corporate field, tax competition reduced the rate of CT, before 2023, though not of course to zero or near it. Tax competition may not have been the only factor which contributed to the historic reduction in CT rates, but if HM Treasury is to be believed, it was an important factor. In the 2017 spring budget:

> 3.11 The UK is one of the most open economies in the world, and a highly competitive business tax regime remains a key factor in retaining that position. The UK's corporate tax rate is the lowest in the G20.[9]

The increase in CT rates announced in the 2021 budget with effect from 2023 is a reversal of this trend, which surprised everyone who expected

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in the battle for success invariably includes a virtually tax-exempt fiscal regime." (Independent Enquiry into a Tonnage Tax, Lord Alexander, HM Treasury 1999.)

Another example is the exemptions for major sports events; see s.48 FA 2014. These events would not be held in the UK in the absence of tax exemption.

9 *https://www.gov.uk/government/publications/spring-budget-2017-documents*
This was the latest in a line of similar statements, traced in the 2016/17 edition of this work para 1.2.2, but I omit that here as it has little contemporary significance.
Reductions in UK corporation tax rates from 2012 may have been partly motivated by anticipation of Scottish tax competition; but if so, this was tactfully not mentioned. But of course, headline rates are only part of the story. If one looks deeper, a different (and more complex) picture emerges, having regard to other major changes to corporate taxation:

(1) Reduced capital allowances (subsequently increased); see Pomerleau, "What We Can Learn from the UK's Corporate Tax Cuts" (2017) *https://taxfoundation.org/can-learn-uks-corporate-tax-cuts/*

(2) Increases in taxation of dividends in 2016, and again in 2023 (though dividend tax is less relevant to tax competition, as it does not apply to non-residents)

consistency in tax policy. The explanation may be that the government were constrained by promises not to raise the rates of IT or VAT. And as Paul Johnson has pointed out, a rise in corporation tax is politically attractive because it is not obvious who bears the burden of the tax. What the vagaries of CT rates illustrate is that tax competition is only one factor in determining tax policy.

1.4.1 *Tax competition within UK*

Devolution raises the issue of tax competition within the UK.

The possibility was once mooted that Scotland may compete in the corporate field, by a lower corporation tax rate than England:

> a lower headline rate of corporation tax could encourage greater investment by Scottish and UK firms in both physical and human capital and in research and development within Scotland.
> At the same time, it could make the country more attractive as a location for multi-national investment. It could also act as an important signal to global companies and investors as to Scotland's ambition to be a location for competitive business.[10]

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10 "Devolution of tax powers to the Scottish Parliament - Commons Library Standard Note" (2012, 2013)
The consultation paper does not consider the possibility that England might match the Scottish lower rate and does not address the question of what constitutes a Scottish company for the purpose of the lower rate. The most recent version of this paper is "Devolution of tax powers to the Scottish Parliament - recent developments" (2016) *https://commonslibrary.parliament.uk/research-briefings/sn07077/*
Likewise in Northern Ireland: The Corporation Tax (Northern Ireland) Act 2015; House of Commons Briefing paper No 7078, "Corporation tax in Northern Ireland" (2017)
http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07078#fullreport
HMRC, "Draft guidance on the NI CT regime"
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/677832/NI_CTregime-draft_guidance.pdf
Wales would also like to join in:
> "If Northern Ireland is allowed to cut corporation tax, it would be outrageous if Welsh politicians did not have the option of doing the same."

Gerald Holtham, chair of the Holtham Commission for Wales (Cited in the Scottish consultation paper).
So in the future there might be no shortage of corporation tax competition within the UK.

Similar issues apply to taxation of individuals.[11] Competition in the field of new UK residents is therefore only one aspect of a wider topic.

1.4.2 *Attitudes to tax competition*

Most sober commentators accept that tax competition is an important consideration in framing UK taxation. The UK could not act alone, as if there were no such thing as international tax competition.[12]

Tax competition offers advantages to countries which compete successfully and disadvantages to those who do not. In some areas government have accepted the challenge of competition, and sometimes with enthusiasm:

> The [investment manager] exemption enables non-residents to appoint UK-based investment managers without the risk of UK taxation and is one of the key components of the UK's continuing attraction for investment managers.[13]

Those opposed to the consequences of this line of argument deride it as:
(1) a "race to the bottom"[14]; and
(2) "harmful" tax competition

It is correct that if tax competition were the only policy consideration, it should logically drive tax rates on the mobile sources of income of non-residents down to zero; and in some cases that has been the result. Of

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11 See 43.3.4 (IT competition within UK).

12 However at the extreme this is denied; eg "Tackle Tax Avoidance" a piece by Margaret Hodge (2013):

> "There is real fear at the heart of government that if it gets tough on business, businesses will flee the UK. But as the chief executive of Google, Eric Schmidt, himself admitted in an interview: 'Google will continue to invest in the UK no matter what you guys do because the UK is just too important for us.'

https://archive.progressivebritain.org/2013/05/30/tackling-tax-avoidance-2/

13 SP 1/01; see 72.1 (Investment manager exemptions). The point is restated in HMRC "Expanding the Investment Transactions List for the Investment Management Exemption and other fund tax regimes" section 1 (2022)
https://www.gov.uk/government/consultations/expanding-the-investment-transactions-list-for-the-investment-management-exemption-and-other-fund-tax-regimes

14 This metaphor goes back at least to OECD *Harmful Competition* (1998)
https://www.oecd.org/ctp/harmful/1904176.pdf
The problem is not unique to tax: international regulatory competition may also lead to a "race to the bottom"; but perhaps in areas outside tax it is easier to reach international agreements imposing minimum standards.

course tax competition is not the only consideration in forming tax policy.

The expression "harmful tax competition" conceals awkward questions about harmful to whom? "Harm" is not an obvious or self-defining concept. The focus is often on harm to the G7 countries.[15]

Unfortunately, it is usually hard and sometimes impossible to predict the economic effects of any reform, even approximately; and predictions reflect the views and hopes of the partial pundits who make them.[16] Ascertaining the effect of reforms after they are made is scarcely less difficult. As a significant number of non-doms work in senior roles in banking or finance,[17] one might infer that non-dom reliefs did (until 2025) contribute to the UK's success in these industries, but it is difficult to prove or disprove.

1.4.3 *Tax competition: International law*

International tax competition against other countries is subject to certain constraints of international law and politics. International fiscal co-operation in this area at present operates only to a limited extent. It made some progress in a (non-binding) EU code of conduct on business taxation,[18] but that is now defunct as far as the UK is concerned.

State Aid rules also impose restrictions on UK's freedom to tax and untax.

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15 See Littlewood, "Tax Competition: Harmful to Whom?" in Asif Qureshi and Xuan Gao, eds, Critical Concepts in Law: International Economic Law, Routledge, London (2010) volume VI, 162-234; reprinted from (2004) 26 Michigan Journal of International Law 411-487 *https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1227&context=mjil* Avi-Yonah "Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State" [2000] Harvard Law Review p.1573.

16 For instance, HMRC estimate that a reduction in the rate of Corporation Tax in Scotland to 12.5% would cost £2.6bn, but the Scottish Parliament say the impact would be positive: "Corporation Tax: Discussion Paper Options for Reform" (2011) p.43, *https://webarchive.nrscotland.gov.uk/3000/https://www.gov.scot/Resource/Doc/919/0120786.pdf*

17 A CAGE Warwick Policy Briefing, "The UK's 'non-doms': Who are they, what do they do, and where do they live?" (2022) records that around 22% of bankers in the top 1% (income above £125,000) are non-doms. *https://warwick.ac.uk/fac/soc/economics/research/centres/cage/manage/publications/bn36.2022.pdf*

18 *https://taxation-customs.ec.europa.eu/harmful-tax-competition_en*

Tax competition extends beyond the EU, and those hoping for a body to curb international tax competition tend to look to OECD.[19] At present this is focussed on corporate rather than personal taxation. There seems little prospect of that changing.

1.5 Mobility tests

1.5.1 *Domicile test*

The domicile concept was not ideally framed to identify the Mobile Individuals whose UK links are sufficiently less that a lighter IT/CGT regime is appropriate on fairness or tax competition arguments.

(1) The adhesive quality of a domicile of origin, and the restrictive rules for the acquisition of a domicile of choice, sometimes allow fortunate individuals to enjoy foreign domicile tax treatment, despite close UK links and only tenuous, historical and fortuitous links to their domicile of origin.
(2) The test depends on intention, which allows the possibility of mistaken or false claims.[20]
(3) Domicile disputes are expensive to conduct, because they require a wide investigation of facts.

To the extent that those points apply, non-dom reliefs fail on both economic and fairness criteria.

In considering these objections to domicile, however, one should bear in mind that there are no perfect criteria of what we are seeking to ascertain, which is "footlooseness", or "UK links". The question is not whether domicile always produced the right answer, but whether one can do significantly better with other concepts such as QNR.

1.5.2 *Residence tests*

Various long term residence concepts have sometimes been used:

Rules to supplement domicile test, abolished in 2025
Deemed domicile: 15 years residence
Remittance basis claim charge: 7 and 12 years residence
Pre-2025 rules still in effect
Temporary non-residence: 4 years residence and 5 years absence

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19 Eg Jeffrey Sachs "Stop this race to the bottom on corporate tax" Financial Times, March 28 2011.

20 Such claims were not uncommon; see App. 4.24.1 (Change of HMRC practice).

Arriver/leaver rules for residence: 3 years non-residence

Post 2025 rules

10 years non-residence and up to:

(a) 4 years residence (FIG relief)

(b) 10 years residence (LTR)

These are ways to distinguish between UK residents with stronger or weaker UK links.

Citizenship/nationality is not much used in tax, and is unsuitable as a sole or principal test of taxability,[21] though it might be used to supplement other tests.

Until 2025, residence-based concepts were used to modify or supplement a domicile test rather than to wholly replace it. FA 2025 has abandoned domicile as a test and replaced it with a test based exclusively for residence.

1.6 Fairness and Mobile-individual Relief

The other consideration in the assessment of mobile individual taxation is fairness.

The starting point for any serious discussion of fairness in tax is terminology from economics:

Term	**Meaning**
Horizontal equity	Those relevantly equal should pay the same amount of tax
Vertical equity	Those relevantly different should pay different amounts of tax

It is considerations of vertical equity which have lead to the (more or less) accepted view that fair taxation should be progressive rather than regressive.

Economists have developed the concepts of horizontal/vertical equity with considerable sophistication[22] but their limitations are exposed when one tries to apply them in a real life context, such as an assessment of the fairness of the former remittance basis or FIG relief. The concepts are not so much a definition of fairness as an approach to identifying the issues.

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21 See App 15.5 (When citizenship matters for UK tax).

22 For a starting point, see Kaplow, "Horizontal Equity: Measures in Search of a Principle" National Tax Journal 42, no. 2 (1989) p.139-55
https://www.nber.org/system/files/working_papers/w1679/w1679.pdf
Musgrave "Horizontal Equity Once More" National Tax Journal 43, no. 2 (1990) p.113-23
https://www.journals.uchicago.edu/doi/abs/10.1086/NTJ41788830?journalCode=ntj

In deciding whether FIG relief is fair, one needs to ask if qualifying new residents and other UK residents relevantly equal. The answer is not self-evident.

1.7 Assessment of reform: Metrics

The House of Commons Treasury Committee offer a sensible approach to assessment of tax reform, identifying 8 criteria:

> The Committee recommends that tax policy should be measured by reference to the following principles. Tax policy should:
> 1. **be fair**. We accept that not all commentators will agree on the detail of what constitutes a fair tax, but a tax system which is considered to be fundamentally unfair will ultimately fail to command consent.
> 2. **support growth and encourage competition**.
> 3. **provide certainty**. In virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs. **Certainty about tax requires**
> i. **legal clarity**: Tax legislation should be based on statute and subject to proper democratic scrutiny by parliament.
> ii. **Simplicity**: The tax rules should aim to be simple, understandable and clear in their objectives.
> iii. **Targeting**: It should be clear to taxpayers whether or not they are liable for particular types of charges to tax. When anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system.
> 4. **provide stability**. Changes to the underlying rules should be kept to a minimum and policy shocks should both be avoided. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
> 5. The Committee also considers that it is important that a person's tax liability should be easy to calculate and straightforward and cheap to collect. To this end, tax policy should be **practicable**.
> 6. The tax system as a whole must be **coherent**. New provisions should complement the existing tax system, not conflict with it.

The Committee acknowledge that these objects are incompatible:

> 85. ... There will always be trade-offs and difficult decisions; a desire for fairness may increase complexity; a desire for certainty may increase administrative complexity. Nonetheless, the principles we set out, which reflect a surprising degree of convergence within our evidence, give a

direction of travel which, in the long run, can both secure consent and improve the performance of the economy.[23]

1.8 2025 reform: Assessment

The FA 2025 contained a package of reforms and any short assessment of its merits must be limited to its main features, which are:

Inheritance Tax

Long-term residence replaces domicile

Excluded property in trusts depends on settlor's LTR from time to time

Income tax/CGT

FIG relief replaces the remittance basis

The Temporary Remittance Facility

A new definition of remittance (for pre-2025 unremitted income)

1.8.1 *Political background*

The inspiration for the changes was political. It was made under the Tory Sunak administration, in the Spring Budget of 6 March 2024, and confirmed in the Autumn Budget of 30 October 2024 by Labour, following the election.

The original decision should be seen in the context of a history of the Tories adoption of Labour policies: the increased national living wage,[24] the apprenticeship levy,[25] and the 2017 non-dom reforms.

Accordingly there was no debate on the policy issues. Since the policy was supported by Labour, there was no opposition to it.

This is not to say that the 2017 reforms are not defensible, on the basis of fairness or otherwise, just that little reasoned debate took place in public, and probably limited debate took place in private.

1.8.2 *Clear and easy to operate*

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23 Treasury "Principles of tax policy" (2011) *http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/753/753.pdf*

24 Labour Manifesto 2015 provided: "We will [raise] the National Minimum Wage to more than £8 an hour by October 2019". *https://manifesto.deryn.co.uk/wp-content/uploads/2021/04/BritainCanBeBetter-TheLabourPartyManifesto2015.pdf*

25 Labour Manifesto 2015 provided: "[Apprenticeships] will be co-funded ... by employers..." *https://www.slideshare.net/miquimel/2015-04-labourgeneralelectionmanifesto2015britaincanbebetterlabour*

The 2025 rules are a success by this criteria. They are unquestionably clearer than the pre-2025 rules. The test of residence is clearer than domicile.

The are some shadows in this sunny picture.

(1) The problems of the remittance basis, exacerbated by the botched reforms of 2008 and 2017, will remain for a generation: it will continue to apply to pre-2025 unremitted income/gains, only partly mitigated by the TRF. These problems are worsened by the 2025 amendments to the definition of remittance, which the reader may think were quite unnecessary, given the transitional nature of the new rules. After a decade or two the issue will gradually fade into insignificance.

(2) The individual has to compute the income/gains in order to claim FIG relief; in this respect the remittance basis was simpler, as unremitted income/gains did not have to be computed.

(3) The abolition of protected trusts (certainly a simplification) means that attention will need to be given to the ToA and CGT s.3 motive defences, and reliefs such as SSE, which may not have mattered for protected trusts. Simplicity is not simple to achieve..

1.8.3 *Economic benefit: Non-dom relief*

On one side of the account is the gain of more tax paid by those who formerly qualified for the remittance basis and protected-trust relief (non-dom reliefs). On the other is tax and investment lost from individuals who leave the UK, and those who (because of these reforms) decide not to come.

The gain from abolishing the non-dom reliefs was discussed in two papers (together, "the Warwick Paper"):

- Reforming the non-dom regime: revenue estimates
- Taxation and Migration by the Super-Rich[26]

Key questions here are:

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26 *https://warwick.ac.uk/fac/soc/economics/research/centres/cage/manage/publications/bn38.2022.pdf*
https://warwick.ac.uk/fac/soc/economics/research/workingpapers/2022/twerp_1427_-_advani.pdf
Both by Arun Advani, David Burgherr and Andy Summers, two economists and a lawyer, and published 2022. The two papers need to be read together.

(1) The **"emigration response"**: how many would leave if non-dom reliefs were abolished
(2) The **"immigration response"**: how many would chose not to come

The Warwick Paper concluded, contrary to the generally- and long-accepted view, that the emigration and immigration responses would be small. The Paper gives figures for the tax yield which would increase if the reliefs were abolished:

> After accounting for this limited migration response, including the loss of existing tax paid by non-doms who leave, the additional tax that would be received is £3.23 billion. The net additional revenue to government, after also accounting for the loss of the remittance basis charge receipts, is £3.16 billion. Based on the upper bound for the expected migration effects, we can rule out increases in receipts of below £2.4 billion.
> These findings allow us to rule out the concern – previously raised by Labour and Conservative politicians alike – that abolishing the non-dom regime would 'cost Britain money'. ... Objections to restriction or removal of the remittance basis cannot therefore be based on their fiscal effects.

I discussed the paper in the 2024/25 edition of this work[27] and omit that now as it is of historic interest. It is important to note that even if one accepts the authors predictions - and there is room for doubt - they are not relevant to the reforms actually carried out in 2025, because these reforms differed in important ways from those contemplated in the Warwick paper:
(1) FIG relief: the paper floated the possibility of a short term residence relief to replace the former remittance basis, but did not evaluate their cost
(2) The paper did not consider IHT: in practice the imposition of IHT on trusts made prior to becoming LTR will increase the migration response, in the author's view, very considerably.

Given the likely migration response, it does not seem likely to the author that the reforms will bring in any additional revenue.

What proportion of IHT strictly due will be properly paid on the death of non-resident LTRs, or on settlements made by non-resident LTRs?

1.8.4 *Economic benefit: FIG relief*

27 Para 1.6 (Warwick/LSE paper)

On one side of the account is the gain of more tax paid by new residents who come because of the relief. On the other is the loss of tax from those who would come anyway. The pre-2025 remittance regime was targeted at the wealthiest. FIG relief is less targeted, because:

(1) The individual does not have to be wealthy to qualify, just to have enough foreign income to justify the loss of the personal allowance (and then, only if there individual has UK income to use against it)
(2) The relief applies to anyone who has been away 10 years, even if UK domiciled or a formerly-domiciled resident, who would not have qualified for the former non-dom reliefs.

Some will be attracted to the UK by the FIG regime, but how many? How much tax and investment will they bring to the UK? Will they stay after four years when the regime stops? or after 10 years when they would become LTRs? The answers at present can only be speculative. We will know a little more in a decade, when figures for the early years of the FIG regime are available and academics have studied them.

Macfarlanes say:[28]

> we would anticipate that individuals who are planning a major exit from a business within that four-year period will be attracted to the UK. In this sense, the regime is better than Italy, because in Italy there can be significant problems with disposals of major private company shareholdings in the first five years of residence.

1.8.5 *Is FIG relief fair*

If one accepts that taxation ought in principle to be progressive, which has long been a broad feature of UK taxation, then it is difficult to claim that FIG relief is fair. The domicile Technical Note, significantly, makes only one reference to fairness:

> The government is committed to addressing unfairness in the tax system, so that everyone who is long-term resident in the UK pays their taxes here

It is interesting to compare the 1988 Consultative Document (Residence in the UK) which proposed that the remittance basis would be abolished, and those resident here for less than seven out of 14 years (and, perhaps, also

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28 *https://www.macfarlanes.com/what-we-think/in-depth/2024/non-uk-domiciliary-regime-an-analysis* (2024)

not UK domiciled) would qualify for a new "intermediate basis" of taxation. A drawback of that proposal was that it would require disclosure of worldwide income in order to tax it at an effective rate of 2% or less. FIG relief opts for practicality over fairness.

The difficulty in assessing the fairness of the IHT reforms is that IHT (unlike its predecessor, CTT) is a fundamentally unfair and illogical tax, particularly in its treatment of trusts.[29] But subject to that caveat, the IHT reforms may be regarded as fair.

The TRF is not fair. It is a mechanism for bringing in money sooner, at a cost of reducing later receipts.

To those who lobbied successfully against domicile, one might say: be careful what to wish for! To the extent that UK domiciled individuals who have worked abroad return to their home in any event, the FIG relief fails on economic and fairness criteria. Just as there were non-doms, or alleged non-doms, who did not "deserve" the relief, there will be "undeserving" qualifying new residents who do not "deserve" FIG relief.

But again, the question is not whether the 2025 rules always produce the right answer, but whether one can do significantly better with other rules or refinements.

1.8.6 *FA 2025 enactment process*

The manner in which the FA 2025 was introduced deserves to be recorded. 46 amendments were made at Report Stage. Avery Jones notes that "Report Stage amendments are usually a disaster."[30] But it was not as bad as 2008, which Lord Howe described as "an object lesson in how not to legislate."[31]

Perhaps it would be naive to expect otherwise.

1.9 The promise of stability

No tax system is, or can be, entirely static. But there is a long tradition of instability in the UK tax system. In 1981:

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29 See Kessler, "The Quest for Fair Inheritance Taxation of Trusts" (2015) *https://www.kessler.co.uk/wp-content/uploads/2014/08/Kessler-The-Quest-for-Fair-Inheritance-Taxation-of-Trusts.pdf*

30 See "Taxing Foreign Income from Pitt to the Tax Law Rewrite—The Decline of the Remittance Basis", Avery Jones in *Studies in the History of Tax Law* (Vol 1 2004) *https://www.kessler.co.uk/wp-content/uploads/2013/12/Remittance-basis.pdf*

31 Making Taxes Simpler - The final report of a Working Party chaired by Lord Howe (2008) *https://conservativehome.blogs.com/torydiary/files/making_taxes_simpler.pdf*

> One of the most noticeable characteristics of the British tax system is that it is under continual change.[32]

In 1993:

> The major distinguishing characteristic of the British tax system is its instability. The British tax system changes faster, more frequently, and more radically than any other tax system I have observed.[33]

In 1999:

> The UK tax system is caught in a culture of never-ending change.[34]

The years 2008 - 2013 saw a series of broken promises of stability without any perceptible change of practice.[35] The promises of stability should be regarded as lip-service to the desideratum of stability. The practice, which lies deep in the culture of government, proved immune to such announcements. A true commitment to stability requires HMRC to refrain from making reforms which they would like to make, and when actual proposals come to the table, the interest of reform overcomes the interest of stability. It is easier for politicians to talk about stability than to achieve it. Perhaps HMRC recognised this, as the 2014, 2015 budgets contained no further promises of stability. The 2017 budget had a vague reference to "a more stable and certain tax environment", but I doubt if anyone was expected to take that seriously. Subsequent budgets have made no reference to stability in taxation; and everything changed again in 2025.

1.9.1 *Will the FIG regime be stable?*

The law will no doubt be amended a few times in the next few years, as issues emerge. After that, will the new law be stable? It seems unlikely. A government in need of funds might:

(1) Cut the qualifying period from 4 to 2 or 3 years
(2) Impose a FIG relief claim charge comparable to the remittance basis claim charge

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32 James & Nobes, *Economics of Taxation* (1st ed., 1981), p.135.
33 Steinmo, *Taxation and Democracy* (1993), p.44.
34 ICAEW TAXGUIDE 4/99 (Towards A Better Tax System) *https://www.icaew.com/-/media/corporate/files/technical/tax/tax-faculty/taxguides/pre-2017/taxguide-0499.ashx*
35 I set them out the 2016/17 edition of this work para 1.10 (The promise of stability) but omit that here as it has diminishing contemporary significance.

That is especially likely if, as I would guess, the published figures underestimate the cost of FIG relief. There is something to be said, for instance, to restricting FIG relief to non-UK citizens, or those who have been UK citizens for less than 4 years.

On the other hand, there will be pressure to increase the qualifying period. Macfarlanes say:[36]

> ... the four-year period is really very short, especially when looked at in the international context. ... the Italian and Greek regimes are each available for 15 years, a French inbound regime lasts for eight years and the Spanish "Beckham" law lasts five years.
>
> A four year period is significantly less attractive. Such a short period could also be said to encourage what might be termed "fiscal nomadism". Individuals who choose to benefit from the regime are likely to leave a limited footprint in the UK. After all, why would they purchase a property, or invest in the UK, if they only choose to be in the UK for four years?

That is not comparing like with like. FIG exemption while it lasts is more generous than a remittance basis, is uncapped, and does not incur a significant flat tax payment. The length of the Exempt Period is only part of the picture.

1.9.2 *Will the IHT regime be stable?*

Probably not.

Short summary descriptions of foreign tax laws are bound to mislead. Nevertheless the following quote is of interest as it illustrates how foreign jurisdictions have, unsurprisingly, struggled with the policy issues of using residence as a connecting factor for IHT:[37]

> Last year, [2017] Japanese inheritance tax rules were amended such that, where a foreign national had lived in Japan for 10 years (in the aggregate) out of the last 15, died outside of Japan, the foreigner national's heirs would be subject to Japanese inheritance tax on such foreign national's assets located both in Japan and elsewhere (a similar rule also applies for gift tax purposes).

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36 *https://www.macfarlanes.com/what-we-think/in-depth/2024/non-uk-domiciliary-regime-an-analysis* (March 2024)

37 *https://www.notaio-busani.it/it-IT/INTERNATIONAL---JAPAN--Disastrous-Japanese-inheritance-tax-IHT-amendment-to-be-repealed.aspx*

> The above rule resulted in a situation where the heirs of a foreign national who had left Japan would potentially be subject to Japanese inheritance tax on the foreign national's worldwide assets for up to five years after such foreign national had left Japan. The fact that Japanese inheritance tax could "follow" a foreign national for up to five years after such person had left Japan caused great concern among Japan's expatriate community, and threatened to derail the Japanese government's efforts at attracting successful foreign talent to live and work in Japan.
>
> In this year's tax reform, [2018] the Japanese government indicates that it will abolish the above rule applying to foreign nationals, subject to a certain anti-avoidance countermeasures in the context of gift tax... This change to the inheritance tax provisions should aid Japan in its efforts to show Japan to be an attractive location for successful foreign executives to reside long term.

1.10 State of UK tax reform

In 2010 CIOT expressed itself strongly:

> The way tax law is developed and effected in the UK is deeply flawed.[38]

Two publications shed light on what went wrong with tax legislation in recent years. Demos say:

> The centralisation of [tax policy-making power] is a particular problem because of the lack of institutional accountability of the Treasury on taxation policy and the lack of accountability of chancellors themselves in matters of taxation. ... The concept of checks and balances in tax policy is nonexistent.
>
> ... the current relationship between the Treasury and HMRC was 'very dysfunctional', had 'almost gone as wrong as it could have gone'...
>
> At the moment, pursuing a career only in tax policy is not valued within the Treasury hierarchy. Officials pass through the tax teams rather than making tax policy a career choice. ... High turnover results in a lack of experience in the tax section and little institutional memory...
>
> ... There are traditional areas that are ring-fenced as not for consultation, including tax rates and anti-avoidance measures. ...
>
> ... 'at the moment [anti-avoidance] works like a drive-by shooting. You might hit your objective but you also hit a lot of other people.'
>
> At present, policies are frequently changed without understanding the

38 Letter from CIOT to George Osborne, 19 May 2010

> impact the policy has initially had in practice.[39]

Re-inforcing the tendency not to consult is an HMRC culture which is hostile to the tax profession . The Director of the HMRC Tax Avoidance Group 2004-2009 records:

> ... I was never happier than when a new tax avoidance initiative was greeted with howls of protest from the tax avoidance quarter.[40]

In short, preventing avoidance has been a priority that outweighs other considerations, such as certainty, workability and the Rule of Law; or rather obliterates all consideration; and listening to the tax avoidance quarter – which includes the professional bodies and almost any practitioner who said what HMRC did not want to hear – has been ruled out. The professional bodies are regarded by HMRC as a pressure group whose vaunted commitment to fairness, practicality and the Rule of Law is merely a cloak for self-interested whingeing of a featherbedded elite.[41]

That policy has ruled since the 1997 Blair administration, and its consequences can be seen in seeking to state the law, as this book seeks to do, or in seeking to understand the law, as you the reader will do now.

1.10.1 *Tax Consultation Framework*

In 2011 the coalition administration promised a fresh start with the Tax Consultation Framework. The 2015 Cameron administration also committed to this.[42] I am not aware that any subsequent administration has formally committed to it, though it has not been repudiated either.

The Tax Consultation Framework provides:

> 2. There are five stages to the development and implementation of tax

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39 Ussher and Walford, *National Treasure* (Demos, 2011) *https://demos.co.uk/wp-content/uploads/2011/03/National_treasure_-_web.pdf* Demos claims to be Britain's leading cross-party think-tank.

40 Tailby, "Some Reflections on Tax Avoidance" [2011] PCB 41.

41 This may be seen in the context of a more general antagonism to the legal (and other) professions, and dismissal of their ethical pretensions. That is an ancient trope, but took renewed vigour under the Thatcher administration, and has lead to a transfer of regulatory power from the Bar and Law Society to regulation by non-lawyers.

42 HM Treasury: "Tax policy consultation will continue and be strengthened. The government remains committed to consulting on policy as set out in 'The new approach to tax policy making' in 2010." (2016). *https://www.gov.uk/government/news/7-things-you-need-to-know-about-the-new-budget-timetable*

policy:
Stage 1 Setting out objectives and identifying options.
Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
Stage 3 Drafting legislation to effect the proposed change.
Stage 4 Implementing and monitoring the change.
Stage 5 Reviewing and evaluating the change.
3. Where possible, the Government will:
- engage interested parties on changes to tax policy and legislation at each key stage of developing and implementing the policy;
- make clear at what stage (or stages) the engagement is taking place so that its scope is clear;
- carry out at least one formal, written, public consultation in areas of significant reform;
- set out, as the policy develops, its strategy for stakeholder engagement including planned formal consultation periods, informal discussions, working groups and workshops;
- consult, where it can, on the policy design, draft legislation and implementation of anti-avoidance and other revenue protection measures, provided this does not present additional risk to the Exchequer;
- minimise the occasions on which it consults only on a confidential basis. Where confidential consultation has been necessary the Government will be as transparent as possible about its outcome and consult openly if pursuing the policy change further; and
- provide feedback which sets out the Government's response to the views received and makes clear what changes, if any, have been made to the planned approach as a result of those views.

4. At each stage of consultation, the Government will set out clearly:
- the policy objectives and any relevant broader policy context;
- the scope of the consultation, in particular what is already decided and where there is still scope to influence the outcome;
- its current assessment of the impacts of the proposed change and seek to engage with interested parties on this analysis. A final assessment of impacts will be published once the final policy design has been confirmed...

5. Informal consultation will be as transparent as possible, consistent with the need to protect revenue. The best principles of formal consultation will be applied to informal consultation to ensure clarity of scope, impact, accessibility, and meaningful feedback. ... Informal consultation can run alongside formal consultation but will often be most appropriate at the earliest and latest stages of tax policy development to

> identify options and then to fine-tune the detailed legislation and implementation of change.
>
> **Exceptions**
>
> 8. The Government will generally not consult on straightforward rates, allowances and threshold changes, or other minor measures; recognising, however, that even in these cases some level of consultation can often be informative. It may also adopt a different approach for revenue protection or anti-avoidance measures where following this Framework could present a risk to the Exchequer. In other circumstances where the Government decides not to consult during tax policy development it will explain the reasons for that decision.
>
> 9. There will be times when it will be necessary to deviate from this Framework. In these circumstances the Government will be as open as possible about the reasons for such deviations.[43]

Of course tax is not unique in this respect: similar considerations apply to all areas of law reform. The Data Retention and Investigatory Powers Act 2014 was enacted in two working days; and in holding it to be unlawful, the Divisional Court noted in moderate terms:

> legislation enacted in haste is more prone to error.[44]

And again:

> it is widely acknowledged that the [Immigration] Rules have become overly complex and unworkable. They have quadrupled in length in the last ten years. They have been comprehensively criticised for being poorly drafted, including by senior judges. Their structure is confusing and numbering inconsistent. Provisions overlap with identical or near identical wording. The drafting style, often including multiple cross-references, can be impenetrable. The frequency of change fuels complexity.[45]

1.10.2 *Compliance with Framework*

How far has tax reform since 2011 complied with the Framework? That is a broad question; it would need a series of volumes, there has been so much.

In brief, compliance with the Framework's tax reform timetable has been

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43 *https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/89261/tax-consultation-framework.pdf*

44 *Davis (R, oao) v Secretary of State* [2015] EWHC 2092 (Admin) at [121].

45 Law Com No 388, "Simplification of the Immigration Rules: Report" (2020) para 1.1.

patchy. It is easier to announce good intentions than to abide by them. The culture of "ready, fire, aim" still prevails.

A few examples will illustrate the point.

The ATED regime was introduced in breach of the Framework. The House of Lords Economic Affairs Committee commented:

> ... the Government's response to SDLT avoidance might have been more appropriately designed had it consulted interested parties at the outset as its 'new approach to tax policy making' stipulates. We recommend that the Government adhere to that approach in designing future tax changes.[46]

The 2016 dividend income reforms, a major change (also misdescribed as simplification[47]), were introduced in breach of the Framework. The House of Lords Economic Affairs Committee comment:

> We deeply regret the lack of consultation on the savings [Personal Savings Allowance] and dividend income proposals and repeat the recommendation in our Report on the draft Finance Bill 2014 that the Government should reassert its commitment to the 'new approach' to tax policy making and make sure that, in future, it adheres to it in full except in the most exceptional circumstances.[48]

The Law Society say:

> ... the new approach is (i) not always followed, and (ii) side-stepped by labelling new tax law as anti-avoidance when it is no such thing.
> A case in point is the FA 2014, which introduced changes to the way in which certain members of limited liability partnerships were taxed. When this proposal was first published, it was an anti-avoidance measure. Following initial consultation, the nature of the proposal changed markedly and became more widely applicable to professional partnerships. This was not anti-avoidance legislation but, nevertheless, there was no formal consultation of the kind envisaged by Tax

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46 House of Lords Select Committee on Economic Affairs *The Draft Finance Bill 2013* (March 2013) para 210 *http://www.publications.parliament.uk/pa/ld201213/ldselect/ldeconaf/139/139.pdf*

47 Summer Budget 2015, para 1.186: "the government will reform and simplify the system of dividend taxation...".

48 "The Draft Finance Bill 2016" (2016), para 250. *http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeconaf/108/108.pdf*

> Consultation Framework.[49]

The Tax Professionals Forum note some cases where the framework was followed, and then say:

> In contrast, however, in other cases, consultations have started:
> - part way through the process (such as that on the provisions relating to the transfer of assets abroad and gains made by offshore close companies),
> - without a clear articulation of the policy involved (for example, on IR35 and Controlling Persons), or
> - without any discussion of the policy (for example, the changes to SDLT on properties owned by non-residents through companies, investment funds and others and the cap on income tax reliefs).[50]

The 2017 domicile reforms were announced in 2015, which should have allowed time for thinking and consultation. Two years is an appropriate time scale to introduce major reforms, and at the time it seemed a refreshing break from the pattern of 2008 to see reform enacted on that basis. But two caveats to this welcome development:

(1) A distant deadline allowed the more difficult and serious work to be put off, the matter was concluded in the usual frantic rush, and the end result is disappointing. Still, deferring some aspects of the offshore tax reforms to 2018, to allow consideration, is encouraging.

(2) The need for time was not accepted by Labour:

> ... why else would the Government have given a grace period for those non-doms affected to get an offshore trust if they do not have one already? ... why else would the Government have actively signposted the changes for non-doms, which has set hares running? It seems to me that those are things that the architect of the measures would do if they were of a mind to completely undermine the measures' effectiveness.[51]

On the other hand, the IHT residence nil-rate band, 10 pages of dense, foolish legislation, was slotted into F(no.2)A 2015, precluding debate and consideration, even though the rules only took effect from 2017/18! and

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49 The House of Lords Economic Affairs Committee was also critical: see the Committee report "The Draft Finance Bill 2014" (2014).

50 Tax Professionals Forum Second Independent Annual Report (2013).

51 Peter Dowd (Labour Shadow Chief Secretary to the Treasury) Hansard, 19 Oct 2017 *https://hansard.parliament.uk/Commons/2017-10-19/debates/aea0b4b1-dc6c-4153-a24f-09fb6be7d155/FinanceBill(FourthSitting)*

even though there had to be a second installment of the legislation in FA 2016.

The last part of the Tax Consultation Framework requires post-implementation monitoring and evaluation. This is almost never done.[52] It is interesting to speculate what would happen if it were. Much would depend on the identity of those carrying out the review and, in controversial areas, on their instructions and on their politics.[53]

Does anyone think that the 2025 reforms will be stable?

1.10.3 *Alternatives to Framework*

There is one route and one route only to a good tax system: sound tax policy, devised by those with a sound understanding of the current tax system, carried out by those who have reflected seriously on the issues in the context of the tax system as a whole; a leisurely timetable of consultation and legislative drafting as envisaged in the Tax Consultation Framework and the 10 tax tenets of ICAEW.[54] That is a hard prescription, though CIOT and others continue to bang the drum, and IFS do useful work.[55]

It is tempting to look for easier solutions. Past attempts include the Tax Law Rewrite, which achieved little; and, perhaps, the GAAR.[56] Advocates of the GAAR claimed:

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52 Even in the cases where the FA 2018 required post-implementation reviews, the results were "singularly unilluminating. Most of them merely contains words to the effect of 'this legislation is new and we haven't yet seen how it will work in practice'." See Hubbard, Taxation Magazine, 4 April 2019.

53 See 121.16.5 (12 year limit: Critique).

54 *https://www.icaew.com/en/technical/tax/towards-a-better-tax-system/ten-tenets-of-tax*

55 See Institute for Government, "Overcoming the barriers to tax reform" (2020). *https://www.instituteforgovernment.org.uk/publications/overcoming-barriers-tax-reform*
See too House of Lords Select Committee on the Constitution, "The Legislative Process: Preparing Legislation for Parliament" *https://publications.parliament.uk/pa/ld201719/ldselect/ldconst/27/27.pdf* (2017)
For Finance Bill procedures, see House of Commons Briefing Paper 813, "The Budget and the annual Finance Bill" *https://commonslibrary.parliament.uk/research-briefings/sn04680*

56 I have wondered whether the HMRC Charter might be added to this list, but its object lies in administration rather than substantive tax law. Its subject is "standards of behaviour and values to which HMRC will aspire when dealing with people in the exercise of their functions"; s.16A CRCA 2005.

> Enacting an anti-abuse rule should make it possible, by eliminating the need for a battery of specific anti-avoidance sub-rules, to draft future tax rules more simply and clearly. Also, fewer schemes would be enacted and so there will be less call for specific remedial legislation...In time, once confidence is established in the effectiveness of the anti-abuse rule, it should be possible to initiate a programme to reduce and simplify the existing body of detailed anti-avoidance rules.[57]

I am not sure if anyone seriously believed that, but it has not happened, and it is unlikely that it will. But it will take several decades to assess whether the GAAR will yield a consistent case law and reasonable predictability of outcome.

57 Aaronson, *GAAR Study* (2011) para 1.7 *http://webarchive.nationalarchives.gov.uk/20130321041222/http:/www.hm-treasury.gov.uk/d/gaar_final_report_111111.pdf*