CHAPTER ONE

MOBILE INDIVIDUALS: TAX POLICY

This file contains Chapter 1
Taxation of Non-Residents and Foreign Domiciliaries
by James Kessler KC

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1.1 Introduction

In this chapter I coin the following terms:
"Mobile Individuals" means some class of 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)

Until 2025 the distinction between Mobile Individuals and Established Residents was determined by reference to domicile (supplemented by 7-year, 12-year and 15-year residence tests). After 2025, as all readers will know, the distinction will principally be determined by 10-year absence followed by no more than four year's residence.[1]

The topics of this chapter are:
(1) Policy arguments for a lighter tax regime for a class of Mobile Individuals

1 See Chapter A1 (FIG Relief - Abolition of Domicile).

(2) How that class may be determined (which is to change in 2015)
(3) A brief history of domicile tax reform, with comments on the reforms of:
    (a) 2008
    (b) 2017
(4) The state of UK tax reform, and prospects for the future

1.2 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 mobile individual reliefs.

1.2.1 *Tax competition: Analysis*

Tax competition raises a number of sub-issues:
(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

2 Except to the extent that tax makes UK investment unattractive, as to which, see 19.23 (Investment relief: Critique).

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*

countries, of course, grapple with the same issues.[4]

1.2.2 *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.

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

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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*; as there is no further tax on remittance, this is more favourable than the UK remittance basis.
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.

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 non-dom reliefs. By some of these measures, the UK competes poorly.

1.3 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:

Topic: Relief	**See para**
Interest: Reliefs for non–residents	26.23; 45.1
IME: Trading income of non-residents from dealing in investments	72.1
UK funds: IHT relief for foreign domiciliaries[8]	75.3

In the case of very mobile sources of income, such as interest on bank

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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 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.

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]

But headline rates are only part of the story.[10]

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 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 the CT rates do illustrate is that tax competition is only one factor in determining tax policy.

1.3.1 *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:

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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.

10 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)

> 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.[11]

Similar issues apply to taxation of individuals.[12] Competition in the foreign domicile field is therefore only one aspect of a wider topic.

1.3.2 *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.[13]

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11 "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.

12 See 43.3.4 (IT competition within UK).

13 However at the extreme even this is denied; eg "Tackle Tax Avoidance" a campaign of Progress (which describes itself as a New Labour pressure group):
"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,

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.[14]

Those opposed to the consequences of this line of argument deride it as:
(1) a "race to the bottom"[15]; 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 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.[16]

Unfortunately, it is usually hard and sometimes impossible to predict the economic effects of any reform, even approximately; and predictions

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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.'

14 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*

15 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.

16 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.

reflect the views and hopes of the partial pundits who make them.[17] Ascertaining the effect of reforms after they are made is scarcely less difficult. As a significant number of non-doms[18] work in senior roles in banking or finance,[19] one might infer that non-dom reliefs have until now contributed to the UK's success in these industries, but it is difficult to prove or disprove.

1.3.3 *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,[20] 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.

Tax competition extends beyond the EU, and those hoping for a body to curb international tax competition tend to look to OECD.[21] At present this is focussed on corporate rather than personal taxation. There seems little prospect of that changing.

1.4 Mobility tests

1.4.1 *Domicile test*

The domicile concept is not ideally framed to identify the mobile (or

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17 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*

18 I use the term "non-dom" here to mean those who benefit from non-dom reliefs; see 4.2.1 ("Non-doms").

19 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*

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

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

"footloose") 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 is expensive to prove and allows the possibility of mistaken or false claims.[22]

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 produces the right answer, but whether one can do significantly better with other concepts or refinements.

1.4.2 *Residence tests*

Various long term residence concepts are sometimes used:

(1) Deemed domicile: 15 years residence
(2) Remittance basis claim charge: 7 and 12 years residence
(3) Temporary non-residence: 4 years residence and 5 years absence
(4) Arriver/leaver rules for residence: 3 years non-residence
(5) New residence rules: 10 years non-residence and up to:
    (i) 4 years residence (FIG, proposed)
    (ii) 3 years residence (OWR, proposed)
    (iii) 10 years residence (IHT, proposed)

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 test of taxability,[23] though it might be used to supplement other tests.

Until 2025, these residence-based concepts were used to modify or supplement a domicile test rather than to wholly replace it.

Budget 2024 proposes to abandon domicile as a test and replace it with

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22 See 4.24.1 (Change of HMRC practice).
23 See App 15.5 (When citizenship matters for UK tax).

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

But again, the question is not whether this always produces the right answer, but whether one can do significantly better with other concepts or refinements.

1.5 Fairness and mobile-individual reliefs

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[24] but their limitations are exposed when one tries to apply them in a real life context, such as an assessment of the fairness of a non-dom remittance basis or of the proposed new residence relief. The concepts are not so much a definition of fairness as an approach to identifying the issues. In deciding whether non-dom reliefs are fair, one needs to ask if UK domiciliaries are relevantly equal; in deciding whether new residents FIG relief is fair, one needs to ask if new residents are relevantly equal. In neither case is the answer self-evident.

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24 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

1.6 Warwick/LSE paper

This section discusses two papers (together, "the Warwick Paper"):
- Reforming the non-dom regime: revenue estimates
- Taxation and Migration by the Super-Rich[25]

As far as I know, this is the first attempt to assess the financial implications of abolishing UK non-dom reliefs[26] on anything other than an impressionistic or anecdotal basis.[27]

Key questions here are:

(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. If that were right, the tax competition argument for non-dom reliefs[28] is invalid. 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

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25 *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 Sep 2022. The two papers need to be read together.

26 I use the expression "non-dom reliefs" to mean the remittance basis for IT/CGT and protected-trust reliefs. The Warwick Paper does not consider IHT.

27 For international studies in this area, see: Kleven et al., "Taxation and Migration: Evidence and Policy Implications" NBER Working Paper No. 25740 (April 2019); Young et al., "Millionaire Migration and Taxation of the Elite: Evidence from Administrative Data" American Sociological Review Vol 81, Issue 3, (2016); Kleven et al., "Migration and Wage Effects of Taxing Top Earners: Evidence from the Foreigners' Tax Scheme in Denmark" The Quarterly Journal of Economics (2014) p.333.

28 1.2 (Tax competition).

> below £2.4 billion.
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> 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'. For the reform not to raise any revenue, the migration response would have to be more than 15 times larger than the emigration response that we observe following the 2017 reforms. There remains uncertainty over the precise extent of any immigration response and the wider economic impacts associated with abolishing or restricting the non-dom regime, but these would need to be very large to outweigh the revenue gains under even our upper bound (for migration) estimate. Objections to restriction or removal of the remittance basis cannot therefore be based on their fiscal effects.

The methodology of the Warwick Paper is as follows:

(1) It estimates the foreign income/gains of non-doms by reference to comparable UK domiciled taxpayers. The economic analysis here is as sophisticated as one would expect, and the author (not being an economist) could not critique it, except to say that the precision of the headline figures of £3.23/£2.4 billion (suggesting tax yields could be reliably measured to within £10m/£100m) seems unjustified.

(2) The paper estimates the emigration response to the abolition of all non-dom reliefs by assuming it would be the same as the emigration response as two groups:
   (a) those who became deemed UK domiciled (for IT/CGT) under the 15 year rule
   (b) formerly domiciled residents

   It finds those response rates in 2018 to have been small.[29]

(3) The paper assumes that:
   (a) The immigration response would be small (based on its conclusion that the emigration response would be small)[30]

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29 Data from subsequent years was not available though the authors propose to consider subsequent years in due course.

30 The Paper says: "Looking at the (small) variation in responsiveness by length of time in the UK is suggestive that any immigration response is also likely to be small, given the limited size of the emigration response even for very recent arrivals."
Clearly, if the Paper's comments on the emigration response are wrong, its assumption that there would be no immigration response is also wrong. But even if the emigration response was small, or tiny, it is a leap to say that the immigration response would be the same. In the absence of data, we are in the field of intuition, or guesswork, but a decision to come is not the same as a decision to remain.

(b) Once deemed domiciled, non-doms in the UK would pay the same amount of tax as their UK domiciled comparables.[31]
(c) The headline figure of £3.2 billion is computed on the assumption that:
  (i) there would be no transitional reliefs[32]
  (ii) there would be no relief for short-term residents to replace the current remittance basis[33]

There are reasons to doubt the points at (3).[34] But the biggest weakness in the analysis, which seems to me to render its conclusions unreliable, is at point (2). The Paper cites and takes at face value the Chancellor's statement that the 2017 changes "abolished permanent non-dom status".[35] But that was (at best) a half truth.[36]

(1) For those who became deemed domiciled under the 15-year rule, the 2017 reforms did not involve the abolition of non-dom reliefs. In assessing the emigration response of this class of non-doms one must take into account:
  (a) protected-trust relief[37]

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31 Those coming to the UK, and those planning to leave, have tax planning opportunities which are not available to those here long term See 13.1 (UK arrival or departure: Tax Checklist). The most obvious include realising income/gains before arriving, or deferring until departure; and rebasing gains before arriving; see 13.2 (Individual coming to UK; not TNR). If non-dom reliefs were abolished, this would become more important than it is now, because non-doms currently expect to qualify for the remittance basis, and so (generally) do not need to take any further tax planning steps.

32 The Paper does not note that extensions to the territorial scope of UK tax have normally had transitional relief; see 56.16.1 (Rebasing reliefs).

33 In fact current Labour policy is that:
"We will ... introduce a modern scheme for people who are genuinely living in the UK for short periods."
James Murray MP, Shadow Financial Secretary to the Treasury
https://hansard.parliament.uk/Commons/2023-01-31/debates/7A361B65-9960-49F1-BE34-EA2A0B5FDD4F/Non-DomicileTaxStatus
The authors estimate that if a remittance basis was allowed for up to four years of UK residence, the tax saving is cut by half, because many non-doms who claim the remittance basis do not stay in the UK for more extended periods.

34 See above footnotes.

35 Warwick Paper p.12. It is at one point acknowledged that non-dom reliefs were not "entirely abolished".

36 See 90.2 (Protected trusts: Policy).

37 The Warwick Paper paid little attention to protected-trust relief other than to disparage it as a "major loophole"; this tabloid expression is to be deprecated in

(b) cleansing relief which (if it had any purpose) was specifically designed to mitigate the cost of the changes for this class of taxpayer

(2) For those who became deemed domiciled as formerly domiciled residents, the emigration response is more relevant, as this class of non-doms did not qualify for those reliefs. However this class of individuals:
(a) is small, and
(b) by definition, has UK connections that other non-doms lack[38]

In short, the Warwick Paper does not assess the emigration response to a future reform by reference to the actual response to the actual 2017 reform, but by reference to the actual response to an imaginary reform which did not happen. Had the 2017 changes actually "abolished permanent non-dom status" (more analytically, abolished non-dom reliefs for deemed domiciliaries under the 15-year rule), the emigration response may have been different.

1.6.1 *Are mobile reliefs fair*

Even if it is accepted that it is fair to tax foreign domiciliaries less than UK domiciliaries, the question of what constitutes a fair reduction is a distinct and more difficult issue.

The 2008/2017 reforms accepted the principle of a distinction (which is why they did not go far enough for some commentators) but reduced the extent of the tax reduction by making the remittance basis less attractive. The effective rate of tax under the remittance basis (broadly) declines with income and it can be described as regressive taxation. If one accepts that taxation ought in principle to be progressive, which has long been a broad feature of UK taxation, then there is a sound argument that the remittance basis is unfair.

What effect did the 2008/2017 reforms have in this area? So far as they decreased the attractiveness of the remittance basis they have decreased the unfairness.

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serious policy discussion; see App. 1.9 (Loophole/tax break).

38 Just how significant those UK connections are will vary from case to case, and anyone in this class must also have substantial foreign connections in order to justify the claim to have acquired a foreign domicile of choice, but on average they will be more UK linked than other non-doms.

So far as they have introduced the remittance basis claim charge, the reforms have targeted the benefit of the remittance basis at a small number of ultra-wealthy individuals. That may make sense under the tax competition argument, but from a fairness point of view it is difficult to justify.

FIG is a much more generous relief, though for a relatively short term. Is it fair? Discuss.

1.7 Non-dom tax reform history

The chequered history reflects the difficulty, or impossibility, of reconciling incompatible policy considerations.[39]

1.7.1 *1974-2002*

The 1974 Finance Bill included a provision (clause 18) that an individual ordinarily resident in the UK for 5 out of 6 years should be deemed UK domiciled for IT and CGT purposes. By the time the clause came to be debated, the Labour (Wilson) administration proposed to amend it so that individuals resident for 9 years out of 10 years were deemed UK domiciled.[40] That would have been similar to the 2017 reforms, but without protected-trust relief. But even after this concession, the clause did not survive to the Finance Act.[41]

The 1988 Consultative Document (Residence in the UK) made radical proposals. The remittance basis would be abolished. Those resident here for less than seven out of 14 years (and, perhaps, also not UK domiciled) would qualify for a new "intermediate basis" of taxation. This would require disclosure of worldwide income in order to tax it at an effective rate of 2% or less. This proposal was abandoned.

1.7.2 *2003 - 2008*

In 2002 a newspaper campaign pressed the Blair administration into action,

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39 See too 17.2 (History of remittance basis).

40 Hansard, Finance Bill debate 9 May 1974.

41 For an account of the lobbying behind this, see Barnett, *Inside The Treasury* (1982) p.28–9. For the Parliamentary debate, see HC Deb 13 June 1974 vol 874 cc1842-948 *https://api.parliament.uk/historic-hansard/commons/1974/jun/13/cases-i-and-ii-of-schedule-e*
It is perhaps relevant to the outcome that the Labour administration was a minority government from 4 March 1974 until the election on 10 October 1974, after which it had a majority of 3 seats.

or at least into the appearance of action. The Budget of April 2003 delivered a "Background Paper".[42] This was a facile document[43] but it may be unfair to criticise its (unnamed) authors. Their instructions may have been to be uncontroversial; by saying nothing, there was nothing in the document to which anyone could object.

Nothing then happened from 2003 to 2008. It is clear that the 2003 review of foreign domicile tax did not follow the normal course of consultation, decision and implementation. In the absence of a frank explanation of what went on, it is tempting to speculate. The likely explanation is that the Blair administration wanted to do nothing, but prevaricated to avoid an announcement which would have lead to a furore from those in favour of reform. Blair resigned in 2007. A change of power led to an unannounced U-turn from that unannounced policy.[44]

1.8 Assessment of reform: Metrics

It is a common feature of HMRC papers to ignore point [2], and to claim the mantles of fairness and competitiveness without acknowledging a conflict between them. Thus the HMRC policy paper "Domicile: Income Tax and CGT":

> The government wants to reform the tax treatment of non-doms so that the UK can continue to benefit from the presence of talented foreigners while also addressing unfair tax outcomes.[45]

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42 "Reviewing the residence and domicile rules as they affect the taxation of individuals"
http://webarchive.nationalarchives.gov.uk/20091222074811/http://www.hmrc.gov.uk/budget2003/residence_domicile.pdf

43 It contained an outline of the law and one paragraph summaries of the law of 29 other countries (of insufficient detail to be of any use and generally said to be misleading). The paper did not consider any proposals or their possible impact. It (consciously?) ignored every earlier discussion of reform: the Royal Commissions of 1920 and 1955, the 1936 Codification Committee, the 1974 Finance Bill, the 1987 Law Commission Report and the 1988 Consultation Paper.
For an account of the decline in quality of government white and green papers, see Forster, *British Government in Crisis* (2005), p.134.

44 Earlier editions of this work contain a more detailed history of the period 2003-2007, see the 9th edition of this work para 1.3.2, but details seem less important with the passage of time.

45 *https://www.gov.uk/government/publications/domicile-income-tax-and-capital-gains-tax/domicile-income-tax-and-capital-gains-tax* (2016)

One might describe this as the Janet and John approach to tax reform, but the phenomenon is currently known as "cakeism" referencing Boris Johnson's witticism on cake: "pro having it and pro eating it".

The House of Commons Treasury Committee provide an intelligent 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. No tax system is, or can be, static. 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.[46]

1.9 2008 reform: Assessment

The 2008 reforms increased the tax burden on foreign domiciliaries in four main ways:

(1) Remittance basis claim charge for long-term residents
(2) Withdrawal of personal allowances for remittance basis claimants
(3) ITA remittance basis, stricter than the pre-2008 remittance basis
(4) Extension of anti-avoidance provisions to remittance basis taxpayers (in particular, the s.720, s.3 and s.87 remittance bases)

1.9.1 *Clear and easy to operate*

It will be evident to anyone who skims this work that the 2008 rules were a failure by this criteria. The rules are unclear, often difficult and sometimes impossible to operate. In these respects they are unquestionably worse than the pre-2008 rules.

1.9.2 *Benefit to UK economy*

On one side of the account is the gain of more tax paid by foreign domiciliaries. On the other is:

(1) Tax and investment lost from individuals who leave the UK, and those who (because of the reforms) decide not to come.
(2) The loss to the economy that the 2008 rules generally discourage or prevent investment in the UK and use of UK service providers.

The 2008 reforms did not in the event greatly reduce the non-dom population, though they may have reduced it slightly.

1.9.3 *Fairness of 2008 reforms*

The FA 2008 contained a package of reforms and any short assessment of its merits must be limited to its main features.

The remittance basis claim charge distinguishes between short term and long-term residents, and taxes the latter more heavily, the connecting factor here being the long term residence tests. One cannot categorise those distinctions as unfair.

On the other hand, among long-term foreign domiciliaries, the charge

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

distinguishes between the extremely wealthy (to whom the remittance basis is still attractive) and others (to whom it is not). This offends against the principle of vertical equity, that people with higher incomes should pay more tax. That is not fair, it represents a decision to prioritise the economic advantage of tax competition by targeting the remittance basis to the wealthiest. The tax competition consideration conflicts with fairness.

The withdrawal of personal allowances as a quid pro quo of a remittance basis is not unfair (though it comes at a cost in terms of complexity).

Of perhaps greater importance is the other aspects of a package of reforms which affect all foreign domiciliaries, not just long-term residents.

The stricter ITA remittance basis is not unfair, except for the wilder reaches of the relevant person definition[47] and the supposed rule (probably ignored in practice) that the taxable amount remitted may exceed the value of the asset remitted.[48]

The extended 2008 anti-avoidance rules can work unfairly but complete fairness is impossible to achieve in this area.

All in all, the 2008 reform may be given some limited marks for fairness. This is not to say that the pre-2008 rules should be regarded as unfair: the concept of fairness (especially if viewed with some attention to practicality) is so vague that a very wide range of tax policies may all be categorised as "fair".

1.9.4 *FA 2008 enactment process*

The manner in which the FA 2008 was introduced deserves to be recorded.

In January 2008, 26 pages of draft clauses were published whose unwritten message to wealthy non-residents was broadly: *do not come to the UK if possible; if you must, do not invest any money here*. The clauses were officially described as work in progress, but this was unfit for publication.

HMRC[49] presumably agreed. On 27 March the Finance Bill was published, containing 54 pages of legislation. The FB clauses bore almost no resemblance to the January draft. One consequence is that the

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47 See 18.8.1 (Company person: Critique); 18.12 (Relevant person rules: Critique).

48 See 18.35.2 (Remittance of derived property).

49 In this work I use the expression HMRC loosely, to include those in HM Treasury and in Government who share the responsibility for tax reform; it is not easy, or necessary, to identify where tax reform decisions are actually made.

professional time and clients' money spent considering the old clauses was almost entirely wasted. That certainly cost many £millions. Another consequence was that the profession had nine frantic days to scramble around before the end of the tax year. Because of the absence of sensible transitional reliefs, large amounts of tax depended on decisions and actions taken in those days. Sensible consideration of difficult and important matters was rendered impossible.

On the date of publication the Treasury announced that the Finance Bill was incomplete and amendments covering almost every aspect of the rules[50] were made in the course of progress of the Finance Bill.[51] Thirty pages of amendments duly emerged in mid June – far too late in the Finance Bill timetable to give them any serious consideration. Forty eight more Report Stage amendments were published on 26 June. The report stage and third reading (after which no further amendments could be made) were held on 1 and 2 July 2008. Avery Jones notes that "Report Stage amendments are usually a disaster."[52]

The former editor of *Taxation* is blunt:

> The standard of strategic policy making at the Treasury has been unacceptably poor in recent years, but this must surely have been one of its lowest ebbs ever.[53]

CIOT say:

> when corners are cut, especially under time pressures, there can be serious deficiencies.

and their example to prove the point is the 2008 non-dom reforms.[54]

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50 Explanatory notes to sch7, para 36 (mixed funds); para 47 (s.87 charge); para 52 (non-resident trusts); para 74 (sch 4C); para 91 (ToA provisions; para 106 (works of art); para 107 (employment related securities).

51 In the 2008/09 edition I said:
"This is a new development in tax legislation. While from time to time inadequately drafted clauses have always been found in Finance Bills, this is as far as I am aware the first time that the Government has had to announce that fact at the time of publication of the Finance Bill."
There are similar examples in the FA 2009 but it has not become a trend.

52 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*

53 *Taxation* 12 June 2008 Vol 161 No. 4160 p.627 (Malcolm Gunn).

54 The Making of Tax Law, para 3.2, CIOT, June 2010.

The House of Lords Economic Affairs Committee comment in measured language:

> Our private sector witnesses would not have used words like "a real shambles" if they did not feel strongly about this. ...
> 176. We recommend that, if they have not already done so, HMT and HMRC should carry out a full review of the reasons why there were so many difficulties in the development of this policy initiative. They should ensure that the lessons are learned so that these problems do not emerge in other initiatives.

No review was carried out.

> 177. We also recommend that if another policy initiative gets to the point where the legislation cannot be finalised for inclusion in the Finance Bill, that initiative should not be included in the Bill, or, if feasible, the part which is not finalised should not be included. We cannot support the approach of the Finance Bill's still being subject to much amendment at the time it is published, particularly when the proposals come into effect from the beginning of the tax year, as in this case. [55]

Does it now matter? Readers may think it pointless to cry "foul" in a game which had no referee, whose result was long ago declared, and which (from 2025) is no longer played. But I think the story deserves to be recorded as what Lord Howe described as "an object lesson in how not to legislate."[56]

1.10 2017 domicile reform: Assessment

The 2017 reforms[57] contained another package of reforms and any short assessment of its merits must be limited to its main features. These are:

(1) 15-year deemed domicile rule for IT/CGT
(2) Formerly-domiciled resident rules
(3) Protected-trust regime
(4) IHT residential-property regime

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55 Select Committee on Economic Affairs, 2nd Report of Session 2007–08, The Finance Bill 2008 *http://www.publications.parliament.uk/pa/ld200708/ldselect/ldeconaf/117/117i.pdf*

56 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*

57 I use the term "2017 reforms" to refer to the reforms which took effect in 2017 and the supplemental offshore trust reforms which were announced in 2017 and implemented in 2018.

(5) Non-resident disregard for s.87 gains

1.10.1 *Political background*

The inspiration for the changes was political. The decision did not much depend on an assessment of the policy arguments analysed in this chapter. The decision should be seen in the context of the 2015 summer budget's adoption of a number of Labour policies: the increased national living wage[58] and the apprenticeship levy.[59] The Cameron administration sought to occupy ground left vacant, or perceived vacant, by the Corbyn opposition.

The Government showed no interest in debate on the policy issues. Since the policy was taken from the Labour manifesto,[60] and continued to be 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 little debate took place in private. The IFS, as usual, shone an intelligent beam into the fog, but I am not sure that anyone took any notice.[61]

Contrast the 2008 reforms where there was at least the appearance of consultation and debate (though not on the legislation itself).

Perhaps it would be naive to expect otherwise.

1.10.2 *Clear and easy to operate*

By this criterion the 2017 reforms failed hopelessly.

1.10.3 *Fairness*

A 15-year deemed domicile rule for IT/CGT seems fair. The protected-trust regime leaves us short of equality between long term foreign

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58 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

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

60 See 1.5.2 (Are non-dom reliefs fair).

61 IFS, "Unknown quantities: Labour's 'non-dom' proposal" (2015)
http://www.ifs.org.uk/publications/7703

domiciled individuals and UK domiciliaries, but that can itself be defended as fair.

Formerly-domiciled resident rules can work harshly, but all workable rules must have hard cases at the borders and the number of truly unfair cases will be very small.

The difficulty in assessing the fairness of the IHT residential-property regime is that IHT (unlike its predecessor, CTT) is a fundamentally unfair and illogical tax. I would have thought it reasonably clear that any advantage does not justify the complexity and oddity of the results from the territorial limits of the tax which now apply.

The non-resident disregard operates unfairly, and significantly extends the unfairness of a code which was already unfair.

1.10.4 *Benefit to UK economy*

Perhaps more importantly: Did the 2017 reforms benefit the UK economy? The consultation was prefaced with the statement that:

> The government wants to attract talented individuals to live in the UK who will help to contribute to the success of this country by investing here and creating jobs. The long-standing tax rules for individuals who are not domiciled in the UK are an important feature of our internationally competitive tax system, and the government remains committed to that aim.[62]

I wonder how far that was meant to be taken seriously.

Perhaps economic benefit was not a major consideration, or not a consideration at all, in the 2008 or the 2017 reforms. Does that now even matter? Discuss.

1.10.5 *2017 enactment process*

The 2017 revolution on the reform of offshore trust taxation - the term is not too strong - was introduced in breach of the Tax Consultation Framework, as the proposals first emerged in the HMRC summary of responses to the original consultation paper. In fact there was little consultation on the principles at all, and only limited opportunity to consult on the drafting, since the draft published September 2017 differed

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62 Consultation paper "Reforms to the taxation of non-domiciles" (2015) *https://www.gov.uk/government/consultations/reforms-to-the-taxation-of-non-domiciles/reforms-to-the-taxation-of-non-domiciles*

substantially from the Finance Bill, which in turn received 32 amendments at committee stage. Parliamentary discussion in the Public Bill committee was perfunctory. In this respect the pattern of the 2008 reform was repeated. Perhaps one should not be surprised.

1.11 The promise of stability

There is a long tradition of instability in the UK tax system. In 1981:

> One of the most noticeable characteristics of the British tax system is that it is under continual change.[63]

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.[64]

In 1999:

> The UK tax system is caught in a culture of never-ending change.[65]

The years 2008 - 2013 saw a series of broken promises of stability without any perceptible change of practice.[66] 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 changes again in 2025.

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63 James & Nobes, *Economics of Taxation* (1st ed., 1981), p.135.

64 Steinmo, *Taxation and Democracy* (1993), p.44.

65 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*

66 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.

1.12 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.[67]

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 impact the policy has initially had in practice.[68]

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.[69]

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

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67 Letter from CIOT to George Osborne, 19 May 2010

68 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.

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

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.[70]

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.

1.12.1 *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.[71] 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 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

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70 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.

71 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*

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.[72]

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.[73]

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.[74]

1.12.2 *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 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.[75]

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

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

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

75 House of Lords Select Committee on Economic Affairs *The Draft Finance Bill 2013* (March 2013) para 210

The 2016 dividend income reforms, a major change (also misdescribed as simplification[76]), 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.[77]

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 Consultation Framework.[78]

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,

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http://www.publications.parliament.uk/pa/ld201213/ldselect/ldeconaf/139/139.pdf

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

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

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

investment funds and others and the cap on income tax reliefs).[79]

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.[80]

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 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.[81] 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.[82]

Does anyone think that the 2025 reforms will be stable?

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

80 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)*

81 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.

82 See 121.16.5 (12 year limit: Critique).

1.12.3 *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.[83] That is a hard prescription, though CIOT and others continue to bang the drum, and IFS do useful work.[84]

It is tempting to look for easier solutions. Past attempts include the Tax Law Rewrite, which achieved little; and, perhaps, the GAAR.[85] Advocates of the GAAR claimed:

> 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.[86]

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

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

84 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*

85 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.

86 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*

predictability of outcome.