The new Foreign Income and Capital Gains (FIG) regime

Introduction

From 6 April 2025, all UK residents will be taxed on the arising basis, as the remittance basis will no longer be available following the abolition of the concept of domicile. A new tax regime is being introduced which will benefit an individual has not been UK resident for at least 10 consecutive tax years. They will be able to benefit from the new 'FIG' regime for their first 4 years of their UK tax residence, meaning that most foreign income or gains arising outside the UK may not be liable to UK tax.

The reform to the taxation of non-UK domiciled individuals includes:

- **Relevance of domicile for tax purposes:** The concept of domicile will cease to be a relevant connecting factor for income tax, capital gains tax and inheritance tax purposes.
- **Introduction of the FIG regime:** The current remittance basis of taxation will be replaced by a new four-year tax exemption for many types of foreign income and gains from 6 April 2025.
- **Residence-based system for inheritance tax:** A residence-based system will apply for inheritance tax purposes from 6 April 2025.
- **New inheritance tax regime for trust assets:** The inheritance tax treatment of trust assets will be dependent on the long-term residence status of the settlor at relevant chargeable events rather than at the time of settlement.
- **Transitional rules:** Various transitional rules will be introduced to soften the impact of the changes coming into affect.

The New RIG Regime

An individual may be able to elect to claim the benefits of the new regime if they have not become UK tax resident in the previous 10 consecutive tax years. The new regime will be available in the tax year of arrival plus the following 3 consecutive tax years. if it is beneficial to do so. Note that treaty residence is ignored for this purpose, but split years are treated as a year of UK tax residence. The Statutory Residence Test is applied to determine an individuals UK tax residence status.

An election to use the FIG regime must be made by submitting a UK Self-Assessment tax return and the amount of FIG on which relief is claimed must be quantified and included on the return. A claim can be made for income, or gains or for both. To make the claim, the taxpayer will be required to disclose all of their sources of worldwide income and/or gains. If any non-UK source of income or gain is not disclosed in the tax return then this source will remain taxable on the arising basis.

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The new Foreign Income and Capital Gains (FIG) regime cont'd

The types of foreign income that will be eligible for exemption under the FIG regime are:

- Accrued income profits
- Adjusted income
- Annual payments not otherwise charged
- Certain telecommunication rights: non-trading income
- Certain types of pension income
- Dividends
- Estate income
- Films and sounds recordings: non-trading business
- Foreign deemed income under the Transfer of Assets Abroad provisions
- Foreign income arising under a settlement charged under the Settlements Legislation
- Income-based carried interest (IBCI) that arises by virtue of pre-arrival services
- Income not otherwise charged
- Interest
- Offshore income gains
- Partnership income
- Profits from deeply discounted securities
- Property business profits
- Purchased life annuity payments
- Royalties and other income from intellectual property 7
- Trade profits
- The foreign proportion of certain income received from a Qualifying Asset Holding Company by an individual performing investment management services

The new Foreign Income and Capital Gains (FIG) regime cont'd

The foreign income that <u>will not</u> be eligible for relief will be:

- Foreign employment income paid through third parties
- Income from pensions paid under the Overseas Pensions Act 1973
- Income paid in connection with foreign securities received in exchange for UK securities
- Payments from UK-tax relieved funds within relevant non-UK pension schemes
- Profits from sale of foreign dividend coupons
- Profits of certain disposals concerned with land in the UK treated as trading profits
- Unremittable income: charged on withdrawal or relief after source ceases, section 844 Income Tax (Trading and Other Income) Act 2005
- Offshore life insurance policies and investment bonds subject to chargeable event gains whether the policy is a personal portfolio bond or not
- Relevant foreign earnings and foreign specific employment income will also not be relievable under the 4-year FIG regime. However, relief for these may be available under the Overseas Workday Relief (OWR) provisions. OWR will be subject to an annual financial limit for each qualifying year: the lower of 30% of the qualifying employment income or £300,000 per tax year.
- Income from performance of a related activity will also not be relievable under the 4-year FIG regime. This will include income related to sportspersons and entertainers and will include payments to or distributions by personal service companies.

The foreign gains will be relieved from tax under the 4-year FIG regime will be:

- Gains accruing on the disposal of assets situation outside the UK
- Gains attributed to participators in non-UK companies to the extent that they accrue on the disposal of assets situation outside the UK
- Gains attributed to settlors of non-resident settlements under section 86 of the Taxation of Chargeable Gainst Act (TCGA) 1982 to the extent that they accrue on the disposal of assets situation outside the UK
- All gains attributed to beneficiaries of non-resident settlements in respect of capital distributions or benefits under section 87 of, or Schedule 4C to, TCGA 1992
- Carried interest gains to the extent that the gain element relates to investment management services performed outside UK

Contact us and speak to a Partner for more information

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The new Foreign Income and Capital Gains (FIG) regime cont'd

- The foreign proportion of certain gains received from Qualifying Asset Holding Company by an individual performing investment management services
- All other foreign gains <u>will not</u> be relieved under the FIG regime.

Where the FIG regime is claimed, both the tax-free personal allowance for income tax as well as the tax-free annual exempt amount for CGT will not be available. Also, an individual will not be able to claim any foreign income losses or any foreign capital losses arising in the year of a FIG claim, again irrespective of what the FIG claim is made on.

After the first 4 tax years, the FIG regime will not be available and the tax payer will be assessed on the raising basis.

<u>Capital gains tax rebasing</u>

For those UK residents not eligible for the 4-year FIG exemption, foreign gains will be subject to CGT from 6 April 2025. To ease the transition to the arising basis, there will be the ability for some individuals (but not trusts) to "rebase" foreign assets to their market value of 5 April 2017 in respect of disposals made after 5 April 2025.

Rebasing will only be permitted for those who have never been domiciled or deemed domiciled in the UK and have claimed the remittance basis at some point between 2017/18 and 2024/25. To be eligible, the asset must have been held on 5 April 2017 and have been outside the UK from 6 March 2024 to 5 April 2025.

Where a valid claim has been made for the 2008 rebasing rules for offshore trusts to apply in respect of gains attributed to non-UK domiciled beneficiaries, these rules will continue to have application after 5 April 2025 in respect of any trust gains that are not attributed to a UK resident settlor. As the rebasing rules only apply to non-UK domiciled beneficiaries, these rules will retain a link to the former domicile regime.

<u>Impact of the FIG regime for trusts and UK resident settlors and beneficiaries UK resident beneficiaries</u>

For those beneficiaries eligible to claim the FIG regime, the following could be the subject of a claim:
A discretionary income distribution from an offshore trust, although

- for beneficiaries with a life interest in an offshore trust, only the foreign income arising is within the definition of FIG, not any UK source income.
- Capital distributions or benefits matched to foreign income within the trust structure under the Transfer of Assets Abroad (ToAA) rules. These are within the definition of FIG, but they will not reduce the pool of relevant income in the trust, where they have not been taxed on the beneficiary as a result of a FIG claim.

The new Foreign Income and Capital Gains (FIG) regime cont'd

- Offshore income gains are specifically included in the definition of FIG, therefore capital payments from an offshore trust that are attached to overseas income and gains should qualify.
- Capital payments which would ordinarily be matched to stockpiled gains (under the s.87 or Sch.4C rules) are within the definition of FIG, but they will not reduce the pool of stockpiled gains in the trust, where they have not been taxed on the beneficiary as a result of a FIG claim.

Note that relevant income and stockpiled gains continue to arise in the trust as before, even during years in which UK resident beneficiaries claim the FIG regime.

Although currently beneficiaries are unable to offset personal capital losses against gains attributed to them from an offshore trust, this restriction will be removed from 6 April 2025.

<u>UK resident settlors of settlor-interested offshore trusts</u>

The 'protected trust' regime provisions will cease with effect from 6 April 2025, hence UK resident settlors of settlor-interested offshore trusts will be taxable on all income and gains arising within the trust, unless they qualify for and claim the FIG regime on foreign income and gains within the trust in their first 4 years of UK residence. This is irrespective of the residence or domicile position of the settlor when the trust was settled. The concept of 'protected foreign source income' (PFSI) no longer applies from 6 April 2025, nor does the concept of 'tainting' a protected trust.

Where a UK resident settlor of a settlor-interested trust is eligible to claim the FIG regime, foreign income and gains arising within the trust are within the definition of FIG, so the settlor can claim the FIG regime to avoid being liable to UK tax on the trust's foreign income and gains for the year(s) of the FIG claim, although UK income and gains remain taxable on an arising basis.

From 6 April 2025 gains attributed to a UK resident settlor of a settlor-interested trust will no longer form the top part of their chargeable gains, so can instead be allocated to any available basic rate band. Whilst this is a more beneficial treatment, it should be noted that the basic rate of CGT has increased from 10% to 18%.

<u>How can Bourner Bullock help you</u>

We can advise you on the impact of the new FIG regime and to discuss further the potential structuring, compliance and planning opportunities for existing UK tax residents who need to transition from the old to the new regime and for new UK tax residents who are interested in the new regime.

Contact us should you require advice and assistance - Viraj Mehta, Tax Partner— viraj.mehta@bournerbullock.co.uk

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