

HM TREASURY


TAXES

Budget 2024 - FIG regime



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. However, provided an individual has been non-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 UK tax residence, meaning that most foreign income or gains arising outside the UK will not be liable to UK tax.

Once an individual becomes UK resident after 10 consecutive tax years of being non-UK resident under the UK's 'Statutory Residence Test', for that tax year and the following 3 consecutive tax years, provided they are UK resident they can elect for the FIG regime, 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.

An election to use the FIG regime for a qualifying individual must be made by submitting a UK 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 only, for gains only, or for both. In addition, the claim applies on a source-by-source basis, so it is possible to choose what foreign income and gains that the FIG claim is being applied to. This must be detailed on the tax return.

Not all foreign income and gains are defined as FIG, including profits of a foreign partnership unless all partnership duties are carried out outside the UK, payments from UK tax relieved offshore pension schemes (RNUKS) and offshore life insurance policies and investment bonds subject to chargeable event gains regime (even if a personal portfolio bond), as well as foreign earnings and related income (including amounts from personal service companies). Gains on the disposal of offshore entities with sufficient value from UK real estate (UK 'property-rich' entities) are treated as UK gains for the purposes of FIG, hence could not be subject to a claim.

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 are lost. This is irrespective of whether a claim is made for only income or for only gains, or only for certain sources of these. In addition, the 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 4 year period, the FIG regime is no longer available, even if it was not claimed during any (or all) of those 4 years. An individual would need to achieve 10 tax years of non-UK residence once again, in order to be eligible for the FIG regime on their return to the UK.

Impact of the FIG regime for trusts and UK resident settlors and beneficiaries

UK resident beneficiaries

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.
- Offshore income gains are specifically included in the definition of FIG, therefore capital payments from an offshore trust that are matched to OIGs 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.

UK resident settlors of settlor-interested offshore trusts

The previous 'protected trust' regime no longer applies 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%.



The new Foreign Income and Capital Gains (FIG) regime

Proposed changes to offshore anti-avoidance legislation

From 6 April 2025, the existing anti-avoidance rules in relation to onward gifts (i.e. trust distributions made to non-UK residents that are passed on to UK residents) and the close family member rules (e.g. where a UK resident settlor can be taxed in relation to distributions made to a non-UK resident spouse or minor child) are to be modified to incorporate the 4-year FIG exemption and the removal of the remittance basis. Also various changes will be made to the mechanics of the ToAA legislation to reflect the new rules.

It was proposed by the previous government that the anti-avoidance legislation relating to the taxation of income and gains arising in offshore structures (i.e. the ToAA legislation, the Settlements Code and the capital gains attribution rules for settlors and beneficiaries) would be subject to review in order to make the provisions simpler to apply in practice and to remove various ambiguities and uncertainties.

The Chancellor has taken this proposal forward with a “call for evidence” ahead of a formal consultation being launched in 2025. The call for evidence period will run until 19 February 2025.

Capital gains tax rebasing

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 for those previously able to rely on the remittance 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 they must 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.



Mandy Connolly CTA

Tax Services Director, Head of Tax Technical
LTS Tax Limited
DD: +44 (0)1481 755875 T: +44 (0)1481 755862
E: mandy.connolly@lts-tax.com



Luke Harding CTA

Tax Services Director, LTS Tax Limited
DD: +44 (0)1481 755867 T: +44 (0)1481 755862
E: luke.harding@lts-tax.com



Helen Salisbury ATT

Associate Director, LTS Tax Limited
DD: +44 (0)1481 747752 T: +44 (0)1481 755862
E: helen.salisbury@lts-tax.com



Chloe Taylor

Manager
DD: +44 (0)1481 743047 T: +44 (0)1481 755862
E: chloe.taylor@lts-tax.com



LTS Tax Limited
PO Box 20, Les Echelons Court, St Peter Port,
Guernsey, GY1 4AN, Channel Islands
T: +44 (0)1481 755862
www.lts-tax.com

