



# Association of Accounting Technicians response to Ensuring a fair contribution from non-UK domiciled individuals: consultation on a minimum claim period for the remittance basis charge

# Association of Accounting Technicians

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### 1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the consultation document on “Ensuring a fair contribution from non-UK domiciled individuals: consultation on a minimum claim period for the remittance basis charge” (condoc), released on 22 January 2015.
- 1.2. AAT is submitting this response on behalf of our membership and from the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has added comment in order to add value or highlight aspects we believe need to be considered further. AAT has focussed on the operational elements of the proposals and provided opinion on the practicalities in implementing the measures outlined. Furthermore, our comments reflect the potential impact that the proposed changes may have on non-UK domiciled individuals

### 2. Executive summary

- 2.1. The taxation of tax-resident non-domiciled individuals (RNDs) has presented successive governments with the difficult balancing act of maximising tax revenues from a wealthy section of the community without forcing them off-shore, or alternatively structuring their affairs in ever more complex ways so as to avoid a charge to UK-tax. Most recently it has been one of the highest profile issues covered in the run up to the forthcoming general election, further reinforcing the challenge that any new government will face in managing the balancing act.
- 2.2. The remittance basis charge (RBC), was introduced in 2008 and at the time it was intended to achieve a balance between the two potentially conflicting outcomes referenced in 2.1 above. The introduction of the RBC was intended to place a tax-charge on non-domiciled individuals able to be taxed on a remittance rather than an arising basis.
- 2.3. The Autumn Statement 2014 raised the annual RBC bands (based on tax year spent in the UK) and now the government is considering extending the current annual basis for the RB to a three-year period and invites responses from interested parties on this proposal.
- 2.4. The government is seeking to reduce opportunities for non-UK domiciled individuals to arrange their tax affairs with the aim of not paying the charge on a regular basis (1.3, condoc). However, raising taxes from RNDs may be counter-productive as they may choose to leave the UK, so AAT favours a measured approach as advocated in 3.12 (below).
- 2.5. In the conclusion (4.3, below), AAT suggests that the government consider the whole domicile concept for taxation before making further changes. For example, the government could consider the hypothesis of removing the remittance option for RNDs completely with all its consequences.

**3. AAT response to the consultation paper Ensuring a fair contribution from non-UK domiciled individuals: consultation on a minimum claim period for the remittance basis charge**

**Question 1**

**Based on your experience, what are the reasons for individuals choosing to pay the remittance basis charge again after a period of non-payment?**

- 3.1. A reason for an RND taxpayer choosing to pay the RBC in a particular tax year is that they may be affected by fluctuating levels of income and capital gains that accrue to them year on year. If an RDN's UK income falls, say, during a period of economic downturn they may choose to remit to the UK their overseas income/gains to maintain their lifestyle in the UK.
- 3.2. A further reason is RNDs will carefully plan their residence status and/or their remittances in such a way that they minimise their exposure to the RBC. This is likely to happen where a person approaching exposure to the RBC in the first instance, after say 7 years tax residence in the UK out of the previous 9 tax years, may decide to become non-resident for a while to "reset" the clock.
- 3.3. It is well documented<sup>1</sup> that some sophisticated financial products have been specifically designed with the RNDs in mind and with the objective of mitigating the RBC, by placing investments in wrappers such as off-shore-trusts and off-shore-bonds.

**Question 2**

**To what extent are individuals actively planning their affairs with the aim to reduce exposure to the remittance basis charge? How do they do this?**

- 3.4. The extent that individuals will be actively planning their affairs with the express aim of reducing their exposure to the remittance basis charge will be commensurate with the impact that the potential level of tax saving available to the RNDs.
- 3.5. It is clear that for the ultra-wealthy, the increases in the RBC and the proposed extension of the 12 month period for the remittance basis will be a price well worth paying for staying in the UK.
- 3.6. For the main body of the RBC population, as noted in the answer to Q1 (3.1-3.3, above), there are several ways in which RNDs can reduce their exposure to the RBC, for example by:
  - leaving the UK permanently
  - leaving the UK for several tax years to reset the "7 out of the previous 9" clock
  - deferring the remittance of income and/or capital for a period of time
  - using products and structures that are specifically designed to mitigate the RBC.
- 3.7. This last approach in 3.6 (above) has traditionally centred around two groups of products:
  - offshore trusts
  - offshore bonds.
- 3.8. Information in respect of such products is freely available; a cursory search on Google will reveal insurance companies who have traditionally offered these products<sup>1</sup>. No doubt the government will have seen and studied them.

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<sup>1</sup> For example

<http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmtreasy/430/430we08.htm>

### **Question 3**

#### **Does the proposed minimum claim period strike the appropriate balance, noting the opportunities to mitigate the potential uncertainty?**

- 3.9. AAT is of the view that the proposed minimum claim period, if introduced, should meet its objective. However it is AAT's belief that consideration should be given to a two year period as an alternative.
- 3.10. If the effect of the three year minimum period is to encourage RNDs to leave the UK, there may be a real financial loss to the UK, as their economic contribution cannot only be measured in terms of tax-take. It should also be measured by their spending in the UK economy while they are resident.
- 3.11. Such a change would inevitably mean that whether to claim the remittance basis would become a more complex calculation and would make the RBC more regressive through the fact that very wealthy RNDs with high levels of foreign income continuing to claim the remittance basis and just accepting the increase in the charge as the price they have to pay in order to achieve longer term residency in the UK.
- 3.12. AAT favours a measured step-by-step response to the issue whereby some changes are made, followed by a period of say three years of assessment, in order to measure the impact on the UK economy.

### **Question 4**

#### **How should subsequent claim periods be treated?**

- 3.13. On the basis of the comments in 3.9-3.12 (above) AAT favours, and RB users may well prefer, the rolling year-on-year basis, as it allows escape from the charge more quickly and seemingly offers more flexibility to RNDs to manage their tax affairs.

### **Question 5**

#### **Do you believe there would be merit in introducing further increased minimum claim periods based on the number of years that an individual has been resident? If so, how should that be structured?**

- 3.14. Taking as read the current perception, as further highlighted during the recent debate on the topic amongst the UK political parties, that the majority of the tax-paying British public has little sympathy with the fact ultra-rich RNDs resident in the UK do not pay the right amount of tax increasing and then further increasing the minimum claim period will no doubt be popular. However, as noted in 3.10 (above) the economic benefit cost to the UK should not be measured only in lost tax revenue, but also by the loss of retail, leisure, education related and property spending.
- 3.15. AAT is in favour of adopting a cautious approach whereby further changes are made, followed by a bedding-in-period in order to measure the impact of these changes on the UK-economy.
- 3.16. For example: If a minimum period of three years (or two in the first instance as suggested in 3.9 (above) is introduced, AAT considers that it would be prudent for it to be followed by a period of assessment of, say, three years during which time the impact of the changes could be measured.

### **Question 6**

#### **Are these appropriate ways to deal with circumstances where an individual stops being resident in the UK? If not, how would you recommend dealing with them?**

- 3.17. The proposals set out in section 3.5 (condoc) seem proportionate and as a result AAT is in support of the proposed approach.

### **Question 7**

**Are there other special circumstances when it might be inappropriate for the claim period to span 3 consecutive years? If so, how would you recommend dealing with those circumstances?**

- 3.18. AAT declines to comment to Q7.

### **Question 8**

**Please explain if and how individuals resident in the UK will plan their affairs in response to the introduction of a minimum claim period.**

- 3.19. The introduction of a minimum claim period will affect the RND population in different ways as has been discussed above:
- 3.19.1. Ultra-rich RNDs are unlikely to be significantly affected and may well accept that this is a price that they have to pay to be able to remain in the UK.
  - 3.19.2. Those who are at the other end of the spectrum will no doubt have to decide whether the RB is still worth electing for and may decide to adopt the normal arising basis instead with the attendant personal allowance and CGT annual allowance.
  - 3.19.3. Those RNDs in the middle are likely to take advice and AAT believes it very likely that the market for advice and financial products will expand to accommodate their interest to find ways to avoid the RBC.
  - 3.19.4. Some RNDs may decide to leave the UK either permanently or temporarily.
  - 3.19.5. There may well be an increase in the business investment relief mechanism to avoid the RBC.
  - 3.19.6. It is possible that there would be an increase in attempts at tax evasion.
  - 3.19.7. For those who are considering coming to the UK for the first time as RNDs or those who have been here for 7 years out of the previous 9 may consider not coming at all, or consider leaving to avoid the charge.

### **Question 9**

**Are there alternatives to the minimum claim period that would ensure greater fairness in the contribution made by non-UK domiciled individuals? Or is there complementary action that should be taken in conjunction with the minimum claim period?**

- 3.20. AAT notes that there have already been a number of tax measures that will have a direct impact on RNDs, such as the annual tax on enveloped dwellings and bringing RNDs within the scope of capital gains tax, so AAT believes that their contribution to the tax take is likely to increase.
- 3.21. The RNDs' contribution is not just measured in tax terms, but in the wider contribution that they make to the UK economy.
- 3.22. AAT proposes that the government should give consideration to a shorter claim period of two years (3.9, above) followed by a rolling year-on-year election as a first step, in order to see how this beds down in the RND community.

## **4. Conclusion**

- 4.1. AAT notes that the approach to RND taxation has evolved since 2008. The total number of taxpayers that are affected is around 5,000 and the tax-take has been modest in

absolute terms, but politically effective by taxing what is perceived to be an ultra-rich sector of the population. This may be popular with the wider body of taxpayers.

- 4.2. However, raising taxes for RNDs may be counter-productive as RNDs may leave the UK, so AAT favours a measured approach as advocated in 3.12 above.
- 4.3. On a final note, perhaps the wider issue is for the government to consider the whole domicile concept for taxation before making further changes. For example, the government could consider the hypothesis of removing the remittance option for RNDs completely with all its consequences. As referenced above in 2.1 and 3.14, given the profile that this subject has had in the run up to the general election, it is clear that there will be an even greater level of scrutiny on whatever course of action that the next government chooses to pursue on this matter.

## **5. About AAT**

- 5.1. AAT is a professional accountancy body with over 49,800 full and fellow members and 78,400 student and affiliate members worldwide. Of the full and fellow members, there are over 4,100 Members in Practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types (figures correct as at 31 March 2015).
- 5.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

## **6. Further information**

If you have any questions or would like to discuss any of the points in more detail then please contact AAT at:

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