

# THE TAX AND IMMIGRATION SYSTEMS DON'T MATCH



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There has been endless discussion and speculation in relation to the proposed reforms to the UK tax regime for “non-UK domiciliaries”. This article, which is written the day before the 30 October 2024 Budget, does not seek to deal with what those changes actually look like (the four year regime originally proposed by the previous government or something else entirely?), but instead looks at the complete disconnect between the future tax regime (whatever that may be) and the suitability of the UK’s immigration system to adapt to these changes. There is a yawning disconnect between a proposed tax system that seeks to incentivise the tax-free influx of capital into the UK and the retention of that capital in the UK, and the practical reality of allowing these



individuals past UK border control to set up a life in the UK.

It is counter intuitive to create a tax system that seeks to attract wealthy clients to establish themselves in the UK, but fails to provide them with a route to enable them legally to stay in the UK unless they fall into strict the immigration categories. These currently comprise (i) work, (ii) study (iii) business creation, (iv) exceptional talent (under limited endorsement) or (v) relationship with a British or settled person. This siloed approach to immigration means clients who have the money but not the required “immigration attributes” to fit into any of these categories are unable to find a clear route to the UK.

The previous routes connected to inward investment (the Investor visa and the Entrepreneur visa) have been discontinued. The former has been withdrawn completely (with no forewarning) and no replacement has been proposed. The latter has been replaced with the Innovator visa which requires both endorsement from a third party and a business plan created by the applicant. This route is moderately popular at best, but the client who has already created and sold their business and is no longer in the throes of entrepreneurship will have little interest in an immigration route where they are asked to come up with a new business plan which is innovative subject to supervision from an endorsement body (who can decide to stop endorsing the business if they no longer consider that the business is meeting its original plan).

It is a rare meeting where a client who wishes to live in the UK is motivated by the idea of starting all over again. Furthermore, the very notion of the Innovator visa is that only few will meet the status of "innovative" therefore it cannot be the panacea for those entrepreneurial individuals wishing to make the UK their home.

This leaves clients with three options: work, study or a relationship with an individual who already has leave to remain in the UK (but not studying) or is British. The latter cannot be forced or structured, and the first two are also unique to that client's circumstances. Most will not wish to study unless they have a real interest in a subject – but even then, they are no longer able to bring their family for most

study routes so it is a very limited option.

This leaves work which is best explained by way of example.

*"Alan is one of the lucky ones. He has options – but none are quite right. He is a French national who lives in France with his wife (also a French national). He and his wife have never lived in the UK. They have adult children who have moved away from home. He has built up and then sold several food production businesses. He would now like to base himself in London. He no longer works a traditional "9 to 5" day, and he wants to invest in young UK businesses to help them grow. Naturally, he wants a healthy return, hopefully in many multiples so that he can support his expensive golf habit and subscribe for an elite club membership. He wants to be a UK tax resident, and he is interested in understanding how the new regime will work for him.*

*Alan has been given all the UK and French tax advice he needs, at considerable cost and time, and he is ready to move (let us assume for this example that we know the new tax rules, and they work for him). On this basis, he and his wife will live in the UK for four years, and then see how the land lies. He has found somewhere to rent as he doesn't want to buy, and he isn't quite sure on the area in which he wishes to settle. He is on the verge of signing a rental agreement when the Landlord's agent asks him to show his permission for "leave to remain".*

This is typically when Alan will knock on my door and ask what his options are. We will quickly discount the study route. He

has no existing nexus to the UK, and he is happy with his current wife, so the relationship visas are not relevant. This leaves us with either: (a) work, (b) business creation or (c) his “global talent”. To start, I explain that global talent is not going to work for him as his talents (all the while considerable) do not fall within academia or research, arts and culture or digital technology. This is discounted.

I explain the Innovator visa, but after some discussion Alan does not think that any ideas he may have could qualify as “innovative”. He also shows little interest in the concept of endorsement. Finally, we land on “work”. This requires him to be employed in the UK. He isn’t interested in being employed by a third party given his already lengthy career. He briefly considers starting his own business again, without the requirement of endorsement. But in order to do so he needs to hire UK individuals to start his business – unfortunately he does not yet have the right contacts in the UK for this, and he does not believe that starting a business remotely is an appropriate way to operate.

So Alan falls squarely into the category of individual who wishes to bring capital and experience to the UK, but who is forced to choose between (a) undertaking a job he doesn’t need to do solely for immigration purposes, or (b) creating a new business that holds little purpose other than to “manufacture” his immigration route into the UK. Both options, as Alan says, are absurd”

There is a palpable sense of frustration in client meetings due to the lack of options

or flexibility. No-one would worry that Alan would be a burden on the state; he would be subject to the Immigration Health Surcharge at the point of application which would frontload his contribution to the NHS, and his plans mean that he would contribute to the UK economy by virtue of investment into young UK businesses.

The political sentiment is clear, and some would argue fair – while the UK needs to be able to attract foreign investment, those who do benefit from what the UK has to offer should equally contribute to the exchequer in a fair and proportionate manner. However, the question must be how the UK can be an attractive jurisdiction if the immigration system is both restrictive and prone to abuse? How can it incentivise foreign capital investment in the UK, if the generators of this wealth cannot come and live here? This is increasingly difficult to comprehend when there is inbuilt statutory flexibility in the Immigration Rules to adapt to change.

Clients are frustrated, and not necessarily because they just want an easy route into the UK. Most clients will accept that in moving to a new home, a new country and a new tax system means they will inevitably encounter immigration obstacles before they can start their new UK lives in earnest. Most will equally accept that migration to the UK is not guaranteed, and they will need to adapt their lives or their finances in some way to ensure that their applications to remain in the UK are accepted. However, their frustration comes from encountering a system that does not seem to recognise that individuals who are financially and fiscally incentivised to

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come, are only able to do so if they work or study in the UK. This is unrealistic, especially in the context of changes to a tax system that has been created both to encourage and to benefit them.

The plea from this immigration lawyer is to provide a consistent approach between tax incentives to encourage those to bring capital to and live in the UK, and the routes available to that same category of individuals in the immigration system. If the UK Government wants, needs or hopes for an influx of capital in the UK, they need to accept that those holding the capital will want to live in the UK in a way that suits them. In so doing, the Government must accept that those with means will contribute differently to those who simply seek employment. The former category will include individuals who are largely not beholden to acquiring a regular job that pays them a salary.

Accordingly, if the UK Government wishes to attract them through tax breaks, they also need to unlock the immigration door so that they can actually come in. There must be a flexible route that allows them to do that which is both a benefit to the UK, and which does not require applicants to consider convoluted and artificial structures to meet immigration requirements. The risk otherwise is that we are plagued with a system that is abused by those with few options, or the very incentives created by the Government are seldom used to their maximum effect.

