Analysis

Private client tax in 2024: ch-ch-ch-changes*

Speed read

2024 was a year of speculation and significant change, with a general election and two Budgets. Changes to 'non-doms' and IHT have dominated the year, but there have also been some interesting cases including on taxpayer anonymity, Treaty residence and residential property.

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We last had the pleasure of writing *Tax Journal*'s annual review of issues that have affected private clients in 2021. Our title was 'Private client tax in 2021: plus ça change?' and our overriding theme that little had changed. How different 2024 has been!

The year has of course been dominated by a Budget apiece for the outgoing Conservative government and the incoming Labour government. We promised *Tax Journal*'s esteemed editor that this piece would not solely be about 'non-doms' (which make up the majority of our client base) or 'tractor tax' (Claire is a farmer's daughter), but these are clearly the issues that have dominated 2024.

As well as a brief canter through some of the other main reforms announced in the Spring Budget and the Autumn Budget, we report on some interesting cases that have caught our eye this year. We end by summarising 'dates for the diary' as we look ahead to 2025.

A tale of two Budgets

The Spring Budget 2024

In a move that was widely seen as an attempt to take the wind out of the Labour Party's sails, the Chancellor used the Budget on 6 March to announce sweeping changes to the UK taxation of 'non-doms'. Whilst the abolition of the remittance basis may have been predicted, the surprises were (a) that it was to be replaced by such a limited alternative; and (b) the announcement of a consultation on changing liability to IHT to a residence-based system.

Further last-ditch reforms announced by the Chancellor included the reduction in the main rates of class 1 and 4 NICs and the higher rate of CGT on disposals of residential property (down to 24% from 6 April 2024). On the other hand, he abolished multiple dwellings relief for SDLT from 1 June 2024 and the special relief for furnished holiday lettings from 6 April 2025.

The Autumn Budget 2024

Following the general election on 4 July 2024, private client practitioners embarked on a 19-week period of crystal ball gazing as to possible reforms, culminating with the much-anticipated Autumn Budget on 30 October 2024. In the end, there was very little that had not already been leaked/pre-announced (for which the deputy speaker admonished the Government).

Before turning to the main measures, we start with what the Budget did *not* do: speculation in the weeks leading up to the Budget that the rates of CGT would be dramatically increased (or even aligned with income tax), and that the ability to make potentially exempt transfers would be restricted or abolished entirely, resulted in a flurry of asset realisations and gifts – 29 October was a very busy day indeed in the private client world.

In the end, the increase of the CGT rate to 24% was a relief for many, although the announcement of new restrictions on 'business asset disposal relief' were unwelcome. Potentially exempt transfers have lived to fight another day – but see below for the significant IHT reforms that were announced.

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Taxing non-doms, not condoms (reportedly a mistake made by a voter in Hull East, who told his local parliamentary candidate that he would not vote for Labour because they were taxing condoms, as reported by *The Guardian*, 27 June 2024):

Keir Starmer was clear throughout the election process that he would push ahead with the reforms. Although very little was said about 'non-doms' in the Budget speech itself, the accompanying technical note ('Reforming the taxation of non-UK domiciled individuals'), together with draft legislation (103 pages of it) finally provided the details on:

- the abolition of the remittance basis, and the introduction of the new four-year regime for income tax and CGT (snappily referred to as the 'FIG regime'). As an aside, an issue that has occupied more of our time than it perhaps should is how we will now describe individuals using this regime: Figgers? Figgies?;
- the abolition of domicile as the connecting factor for IHT purposes and replacement with a new test of 'long-term residence' (where an individual has been UK tax resident for 10 out of the preceding 20 tax years);
- the abolition of the existing rules for 'protected settlements' for income tax and CGT;
- the changes to the rules governing the excluded

property status of settlements, which will now depend on whether the settlor is 'long-term resident' at the relevant date of charge,

all with effect from 6 April 2025.

The government has described the FIG regime as an 'internationally competitive residence-based regime'. We have described it in lots of different ways; none of which can be repeated here.

There were some surprises to be found in the technical note and draft legislation.

From a positive perspective, the so-called 'temporary repatriation facility' (allowing former remittance basis users to 'designate' existing income and gains at a 12% rate) was extended from two years to three years (albeit with the slightly higher rate of 15% in the third year). It was also extended to capital distributions/benefits from trusts, which may offer a valuable opportunity over the next three years to extract historic income/gains from trusts at a much lower rate than would normally apply.

The provisions in relation to the IHT 'tail' for long-term residents who leave the UK were also softened so that there is a sliding scale from a minimum of three years to a maximum of 10 years (depending on the length of the period of residence) and a transitional rule for those who are/will be non-UK tax resident in 2025/26.

Shockingly, the government's policy paper [on the APR and BPR reforms] states that the new rules will apply to lifetime transfers made on or after 30 October 2024 where the donor dies after 6 April 2026

But there were also some new restrictions, most notably the introduction of an exit charge where settled assets come out of the scope of IHT as a result of the settlor ceasing to be long-term resident.

We have said all along that the devil would be in the detail in relation to these rules and this is particularly true in relation to some of the 'tweaks' to the existing remittance basis legislation that have been included in the Finance Bill. Whilst these look innocuous, they may prove costly for former remittance basis users.

IHT: It is not just the 'non-doms' who are adversely impacted by the IHT consequences of Rachel Reeves' first budget.

- **'Tractor tax':** From 6 April 2026, only the first £1m of combined Business Property Relief (BPR) and Agricultural Property Relief (APR) qualifying assets will be eligible for 100% rate relief from IHT, after which only 50% rate relief will be available. Any unused allowance will not be transferable between spouses and civil partners. This is probably the reform that has attracted the most publicity, due to the adverse effect on owners of UK trading businesses and agricultural land, including those in long-term ownership of families. There is very little detail at this stage and no draft legislation. Shockingly, the government's policy paper states that the new rules will apply to lifetime transfers made on or after 30 October 2024 where the donor dies after 6 April 2026.
- **AIM shares:** The rate of BPR for AIM and other unlisted shares has been reduced from 100% to 50%, with no access to the capped amount as a deduction.
- **Pensions:** The announcement that most unused pension funds and death benefits will subject to IHT from 6 April 2027 was extremely disappointing for pension savers. Although pensions had been seen by many as a 'soft target', there were still those who hoped the Government would not go this far.
- **Nil-rate bands:** The nil-rate band and the residence nil-rate band will remain frozen until 2030, when they will increase in line with CPI (unless further amended).

No increased taxes on 'working people': The Chancellor made no changes to income tax, VAT or employee NICs, but increased the tax burden on employers with NI contributions increased from 13.8% to 15%.

Carried interest: Reforms to the taxation of carried interest were inevitable following the government's announcements over the summer. The CGT rate on carried interest will increase to 32% from 6 April 2025, with further changes to follow in April 2026 when qualifying carried interest will become subject to income tax and Class 4 NICs (but with only 72.5% of the amounts actually being taxed).

SDLT: There were yet more increases to the rates of SDLT: the additional surcharge that applies to the purchase of additional residential properties increased to 5% from 31 October 2024; the flat rate of SDLT payable by companies and non-natural persons purchasing residential properties worth more than £500,000 increased to 17%.

Some cases that caught our eye this year

Taxpayer anonymity

HMRC's win on appeal in *HMRC v The Taxpayer* [2024] UKUT 12 (TCC) is a reminder that the principle of 'open justice' almost always trumps the right to a taxpayer's privacy in relation to their tax affairs where HMRC is challenged in court.

This point was highlighted again in August in *Equity Advisory Ltd, Craig Allan Mellor v HMRC* [2024] UKFTT 784 (TC), when the FTT held that commercial sensitivity was not sufficient to require anonymity, even when requested by an affected third-party bank.

Usufructs

The UK tax treatment of usufructs is a thorn in the side of many practitioners with clients from civil law jurisdictions. In *M Lincoln, as legal personal representative of, M Falzon v HMRC* [2024] UKFTT 886 (TC), the FTT held that a usufruct over Maltese properties was not an IHT settlement of excluded property. What is most notable about this case is that HMRC agreed, in direct contrast with its own manuals (particularly the *Inheritance Tax Manual* at IHTM27054).

Treaty residence

Following the announced changes to the taxation of 'non-doms', we anticipate that individuals will increasingly look to relief under double tax treaties. The decision of the UT in *McCabe v HMRC* [2024] UKUT 280 (TCC) is therefore a timely reminder of tie-breaker provisions.

Residential property

The importance of maintaining scrupulous records when litigating against HMRC was highlighted in January of this year when the FTT dismissed the appellant's appeal for a lack of evidence that PRR was available on the sale of his property (*S Patwary v HMRC* [2024] UKFTT 53 (TC)).

HMRC continue to scrutinise claims for SDLT mixed-use treatment. They succeeded in a number of cases, applying full residential rates (see *K Bonsu and another v HMRC* [2024] UKFTT 158 TC; *J Harjono and another v HMRC* [2024] UKFTT 228 (TC); *M Michael and another v HMRC* [2024] UKFTT 301 (TC)).

However, there were also some taxpayer victories, including *A Hurst v HMRC* [2024] UKFTT 540 TC, where the taxpayer (who represented herself) was successful in arguing mixed-use on the basis that the property was previously used as a hotel, inn or similar establishment. See also *M Guerlain-Desai v HMRC* [2024] UKFTT 117 (TC) and *HMRC v T Suterwalla and another* [2024] UKUT 188 (TCC)).

Looking ahead to 2025

With 6 April 2025 the implementation date for many of the above reforms, it is clear that the first few months of 2025 will be incredibly busy for private client practitioners.

The Finance Bill 2024/25 seems to need a lot of work. The proceedings in the Public Bill Committee are scheduled to conclude on 4 February 2025 at the latest, which will give very little time for advisers to absorb the impact of any changes before the end of the tax year.

There are a number of consultations to engage with in the coming months:

- The government will publish a technical consultation regarding the proposed changes to APR and BPR and how they apply to trusts in 'early 2025'.
- The technical consultation on the processes required to implement the changes to the IHT treatment of pension schemes will run until 22 January 2025.
- The consultation on whether to introduce additional qualifying conditions for the taxation of carried interest will run until 31 January 2025.
- The government's 'call for evidence' regarding personal tax offshore anti-avoidance legislation, including the Transfer of Assets Abroad and Settlements legislation, will run until 19 February 2025.

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But in the meantime, we wish everyone a very Merry Christmas and a Happy New Year. Now bring us some *FIG*-gy pudding! ■

The authors thank Ishika Dhatariya for her assistance with this article.

*(*Yes David Bowie, lots of them.)*

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