The Remittance Basis

BURGES SALMON

FAQs

September 2015

With George Osborne's announcement in the Summer Budget that perpetual "non-dom" status (and in particular the ability to elect for the remittance basis indefinitely) will end from 6 April 2017 (for more information about this change see our briefing **Keep Calm and Carry On?**) we have received a number of queries about how this will impact on existing offshore income or gains which have not yet been remitted.

We have set out the below questions and answers to illustrate how we expect the new rules will apply. Although there is a degree of uncertainty at this stage we believe that the mixed fund rules which apply now will continue to apply un-amended after the changes. As a result, the rules described below are already applicable.

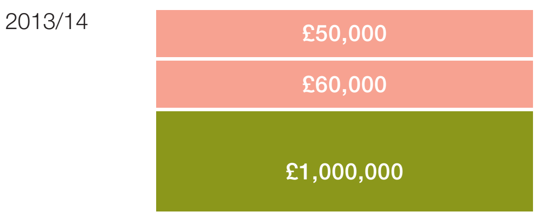
1. When I move to the arising basis what happens to my previous offshore income and gains?

The first thing to note is that changing to the arising basis does not mean you can then bring your historic offshore income and gains to the UK without triggering a UK tax charge.

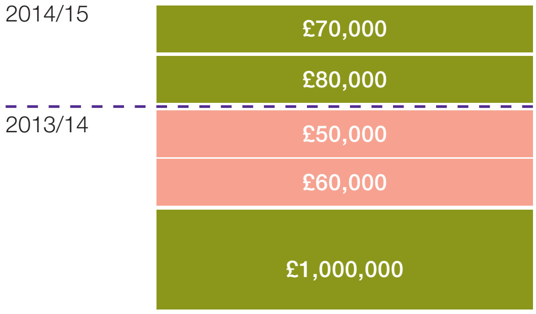
It is best to visualise the income and gains of each tax year as a discrete fund and the tax treatment of each fund is governed by how you paid tax in that tax year. If you have accrued offshore income and gains while a remittance basis user then you will be subject to UK tax if you remit those funds to the UK at any time when you are UK resident.

This can be illustrated by way of an example:

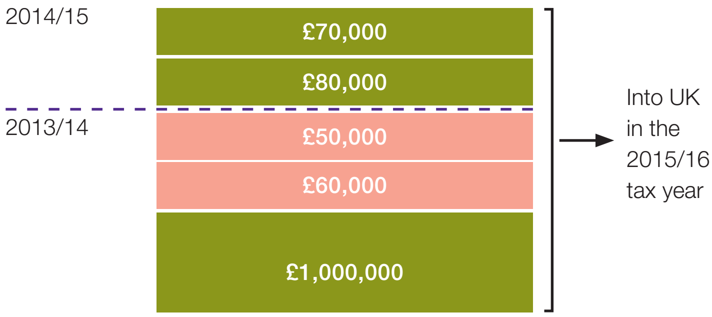
a. Georgina set up an offshore portfolio account in the 2013/14 tax year with £1,000,000 of clean capital (being money earned before she became UK resident). She paid tax on the remittance basis and the portfolio earned interest of £50,000 and realised gains of £60,000 in that tax year. She kept all of the funds offshore.



b. In the 2014/15 tax year Georgina started paying UK tax on the arising basis and paid UK tax on the further £70,000 of interest and £80,000 of gains realised in that tax year.



c. In the 2015/16 tax year Georgina continues to pay UK tax on the arising basis and decides to close the account and bring the funds to the UK. This will trigger a tax charge on the £50,000 of interest and £60,000 of gains realised in the 2013/14 tax year.



As the above scenario sets out, historic untaxed offshore income and gains taint the account that they are in. As a result, bringing those funds to the UK will result in additional UK tax if the individual is UK resident when the remittance is made. This is regardless of whether the individual pays UK tax on the remittance basis or the arising basis when the remittance is made.

2. If I use offshore income and gains to buy units in a non-reporting fund then when I cash out (paying income tax on the arising basis) do I pay tax twice?

If an arising basis taxpayer realises a gain on this disposal and pays income tax on the gain then they will be able to remit the net of tax gain to the UK free of further tax. If any excess is brought into the UK then it will also be taxed if it represents offshore income or gains.

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Imagine the following scenario:

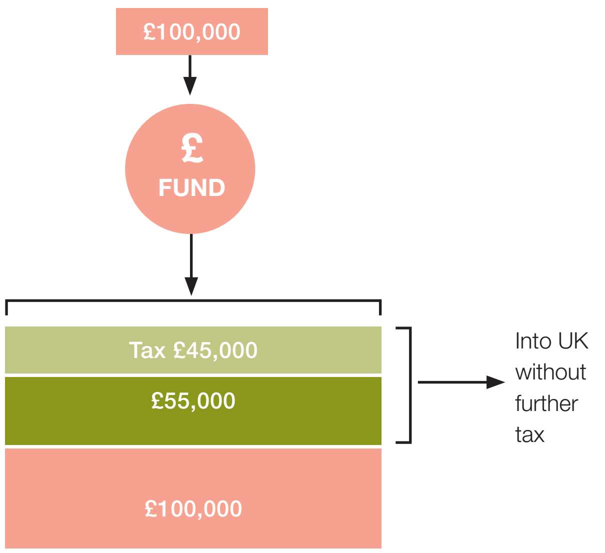
a. David had £100,000 of offshore income and gains in an offshore bank account when he was a remittance basis user.

b. On the advice of his financial advisor David invested the money into a non-reporting fund.

c. Two tax years later, after moving to the arising basis, he sells his units in the non-reportable fund realising £200,000.

d. David is an additional rate taxpayer and so pays income tax of 45% on the £100,000 gain. This leaves him with £155,000 sale proceeds after tax.

e. The £55,000 (net of tax gain) can be brought to the UK tax free as David has paid the UK tax due. The remaining £100,000 cannot be brought to the UK without triggering a UK tax charge as it was earned when the remittance basis applied and the income and gains are traced through the investment into the fund and into the sale proceeds from the fund.



f. The ordering rules for remitting to the UK from mixed funds are considered in the answer to 3. below. The reason why the taxed income is remitted to the UK before the offshore income and gains is that it was earned in a later tax year.

3. Can I pick and choose what I am taking out of a mixed fund?

Unfortunately mixed funds are subject to strict ordering rules and so it is not generally possible to "un-mix" a mixed account so that the fund can be brought to the UK without a UK tax charge.

Please note that there are different ordering rules for pre-2008 transfers from mixed funds. The pre-2008 ordering rules are not considered in this briefing.

This is illustrated below:

a. Greg has an offshore bank account which comprises £1,000,000 consisting of:

i. £500,000 of clean capital (being money earned before he became UK resident and kept segregated) transferred into the account in the 2012/13 tax year;

ii. £300,000 transferred into the account during the 2013/14 tax year when he claimed the remittance basis. £200,000 of this is offshore gains and £100,000 is taxed UK employment income; and

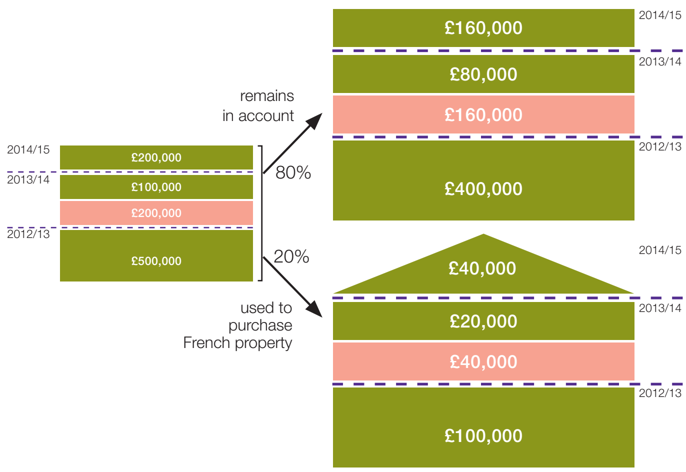
iii. £200,000 of taxed UK employment income transferred into the account during the 2014/15 tax year.

b. Although £800,000 of the money in the account is made up of clean capital Greg cannot remit more than £300,000 to the UK without having a UK tax charge. This is the case regardless of whether he is a remittance basis user or taxed on the arising basis in the year of the remittance.

c. In general terms the mixed fund ordering rules apply on a last in first out basis for each tax year when money is remitted to the UK and on a pro-rata basis when money is transferred offshore.

d. Suppose Greg wants to use £200,000 of the fund to purchase a property in France and wants to bring £300,000 to the UK. Greg may think that he can take out £200,000 first to purchase the French property and remove the offshore gains and then transfer the £300,000 (and more in the future) to the UK without a tax charge. Unfortunately the consequences would be as follows:

Offshore Transfer:
The UK employment income, clean capital and offshore gains would be divided pro-rata between the offshore account and the French property. This would leave £160,000 of the offshore gains in the account as set out below:



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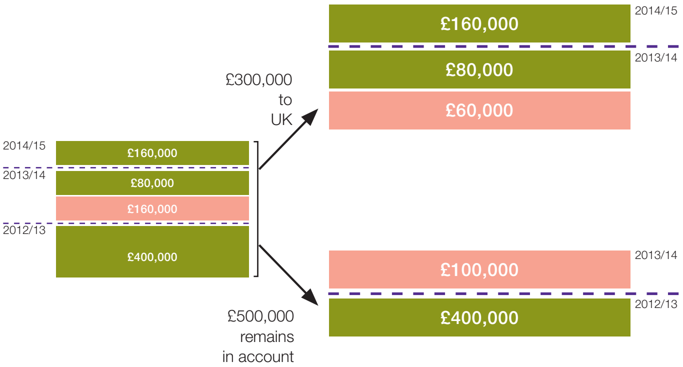
Transfer to the UK:

The transfer to the UK would reduce the UK employment income, clean capital and offshore gains on a last in first out basis. As illustrated below if £300,000 was transferred to the UK this would mean that £60,000 of offshore gains would be remitted to the UK resulting in a tax charge.



It will be seen that this planning has left Greg worse off. If he had transferred £300,000 to the UK from the account before purchasing the French property then he would not have been subject to any UK tax on the remittance.

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