

Non-domicile taxation Finance Bill 2017

Non-domicile taxation: background

- Major changes to taxation of UK resident non-doms in 2008
- Further changes in 2009, 2010, 2012, 2013, 2014 and 2015
- Major reforms planned for 2016, but shelved to 2017
- Effective from 6th April 2017

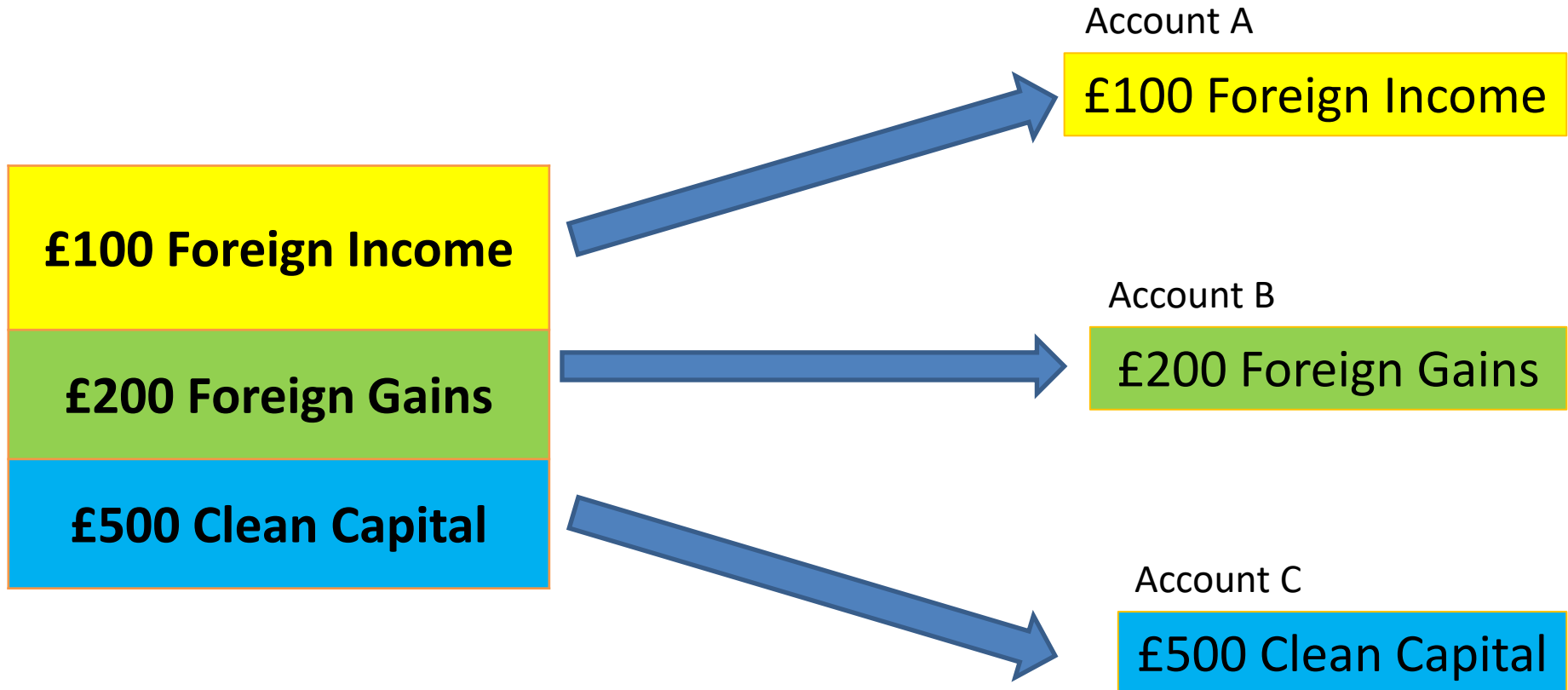
From 6th April 2017

- End of permanent non-dom status for all taxes (income tax, CGT, IHT)
- 15/20 years residence limit immediate loss of non-dom status for those returning to the UK with UK domicile of origin
- Extension of IHT to UK residential property held by non-doms through offshore structures
- Transitional protections- rebasing, cleansing, overseas golden trusts

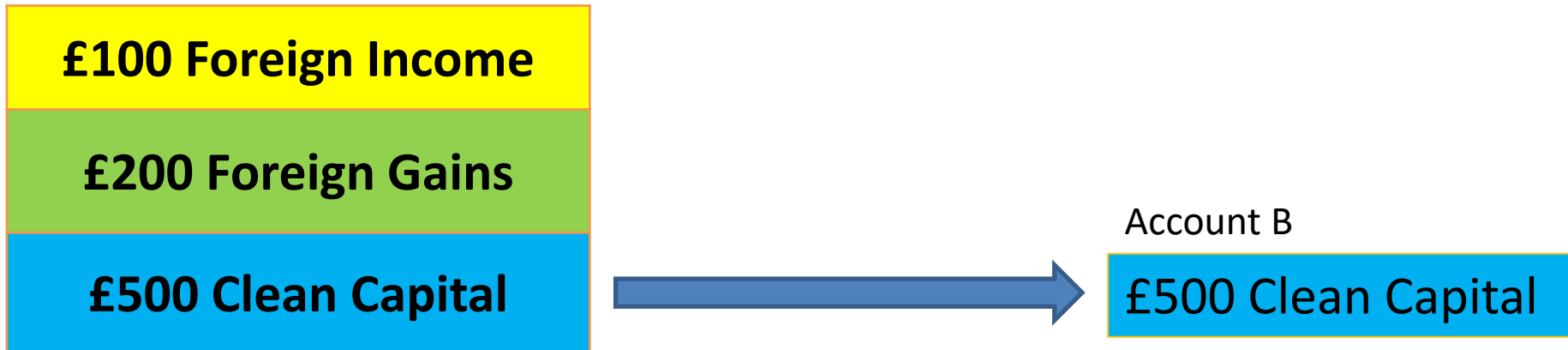
Cleansing of mixed funds

- Not a 'transitional' provision
- Not restricted to those becoming deemed domiciled
- Restricted to 2017/18 & 2018/19 two year opportunity
- Applies to anyone taxed on the remittance basis before 2017/18
- Excludes those born in the UK with a UK domicile of origin

Cleansing in practice



Cleansing in practice



CGT rebasing

- Transitional provision rebasing personally held overseas assets to 5th April 2017 market value
- Available for anyone who:
 - becomes deemed domiciled from April 2017/2018
 - made a remittance basis election before 2017/2018
 - disposes of an overseas asset after 6 April 2017
- Excludes those born in the UK with a UK domicile of origin

CGT rebasing

- Applies to:
 - any non-UK situs asset held by an individual giving rise to a gain
 - Disposal of assets outside the UK after 6 April 2017
 - Assets held overseas between 6 March 2016 and 6 April 2017
- Elections for rebasing not to apply

Protections for offshore trusts

- The Government intends to protect overseas trusts:-
- Created by UK resident non-doms who become deemed domiciled
- Provided the trust was created when they were non domiciled

However

The Government thinks it is fair to ask deemed domiciled individuals in the UK to pay tax on:

- Benefits received from offshore trusts by them, their spouse or minor children
- Benefits received from underlying entities

Protections for offshore trusts

Treatment of capital gains:

- No more washing out of trust gains by capital payments made to non resident beneficiaries after 5 April 2017
- Surplus overseas capital payments as at 5 April 2017 not capable of being matched against future trust gains
- All deemed domiciled individuals will be taxed on capital payments (by matching against trust gains) wherever received

Protections for offshore trusts

Taxation of foreign income

- The settlor charges under the settlements legislation and the Transfer of Assets Abroad legislation will be disapplied from 6th April 2017 in respect of protected foreign source income regardless of whether the settlor becomes deemed domiciled on 6th April 2017 or remains foreign domiciled for tax purposes
- Protected foreign source income will only be taxed on the non domiciled or deemed domiciled settlor by reference to the benefits received by the settlor or their close family members
- The settlor will be taxed on benefits received world-wide if resident and domiciled at the time but only on benefits received in the UK if resident and non-domiciled and a remittance basis user for that year

Protection for offshore trusts

Tainting

- Protections will be lost permanently if property or income is added to the trust after the settlor has become deemed domiciled
- If the settlor later becomes non domiciled even though he is non dom he will not get any protection if additions made to a previously tainted trust
- Where protection is lost due to tainting or where the settlor has become domiciled under the Returning UK dom rule, foreign income within settlor interested trusts will be taxed on an arising basis on the transferor while UK resident.

Protection for offshore trusts

Close Family member

- Payments to close family members of a UK resident settlor made after 5 April 2017 matched against income and gains arising in the trust will be taxed on the settlors according to their status – target non resident close family members
- Close family members are defined as the spouse, cohabitee and minor children of the settlor – but not the grandchildren
- There will be a right of reimbursement from the trustees or the beneficiaries where the settlor has been taxed in respect of a benefit paid to a close family member

Protections for offshore trust

Recycling

- New rule to ensure that a payment being made to a non resident or remittance basis user (A) who then lends or gives it back to a beneficiary in the UK (B) within 3 years, is taxed on the UK resident beneficiary
- Capital payments will be taxed by reference to B's status at the time of receipt by B
- The process is repeated for longer chains

IHT and UK residential property

- Standalone measure
- Applies to those not affected by deemed domicile rule
- Long-standing anomaly with IHT and non-doms
- Amendment to definition of excluded property in section 6 & 48 IHTA
- IHT charged on UK residential property interests
- IHTA rules otherwise unchanged

UK residential property interests

- Based on existing definition of a dwelling for non-residents' CGT
- IHT charged where the interest is held by a non-domiciled individuals

Or a trust through:

- A close company;
- A partnership (including LLPs); or
- A relevant loan

Where the value of the property is attributable to that interest

Relevant Loans

- Interest of a creditor
- Money used as loan security, collateral or guarantee
- Loans used to finance:
 - the acquisition, maintenance or enhancement of a UK residential property interest
 - The acquisition of a right or interest in a close company or partnership by an individual or a trust

Further Rules

- Disposal of UK residential property interest (as defined in Part 1)
 - Disposal proceeds not excluded property for two years following the disposal
- 1% de minimis rule
- Double taxation agreement (India, Pakistan, Sweden)
 - IHT charged where not charged elsewhere or at 0%
- Anti-avoidance rule