THE CHARTERED INSTITUTE OF TAXATION

PBRN 18 (RESIDENCE AND DOMICILE REVIEW)
COMMENTS OF THE CHARTERED INSTITUTE OF TAXATION

1 BACKGROUND

1.1 This paper responds to one particular aspect of PBRN18 (Residence and Domicile Review). It deals specifically with the possible changes to Taxation of Chargeable Gains Act 1992 sections 86 and 87.

1.2 We deal with this issue separately in this paper as we believe it is one of the most significant changes proposed by the PBR and one which may have the greatest economic impact on the UK and in particular London. We therefore feel that it is important to raise these issues with ministers at an early stage. We intend to respond on other issues in PBRN18 in due course.

1.3 As this paper deals with offshore trusts, it inevitably deals almost solely with the wealthy foreign domiciliaries who are the main users of such trusts. We accept that such wealthy non-UK domiciliaries amount to only a small percentage of the total foreign domiciliary population of the UK (Government figures suggest around 15,000 out of 4m+). We concentrate upon such individuals in this paper because they are often among the most internationally mobile and also because of the significant wealth generation they bring to the UK and their disproportionate economic impact on London in particular. We wish to make it clear, however, that in concentrating on this group we in no way wish to diminish the impact of PBRN 18 on the lower income foreign domiciliaries. We intend to deal with their position in separate representations. We should also make it clear that we are not objecting in principle to changes in the taxation of foreign domiciliaries but to the introduction of this particular change which we believe will have very adverse economic effects for the UK because it will discourage investment here and reduce transactions taking place in London.

2 EXECUTIVE SUMMARY

2.1 We believe that amending section 86 and section 87 would have a significant behavioural impact upon foreign domiciliaries in a number of respects which would be to the detriment of UK plc as a whole.

2.2 Given that only certain PBRN18 measures are being implemented in April 2008, with others waiting until April 2009, we believe that it would be sensible to defer any changes to section 86 and section 87 until a wider review of the macro-

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economic consequences has been undertaken. We understand that no economic impact assessment has been made and given the significant problems outlined below we strongly believe this should be done. In the meantime, we recommend that the status quo on section 86 and section 87 remains. The current proposals risk penalising disposals of assets in the UK as well as inward investment. The first result arises because gains on disposals of UK assets will now be taxed on an arising basis. This means that more mobile assets such as art will inevitably be sold abroad in the US or Swiss markets rather than in the UK to the general loss of the economy here. The second result arises because foreign domiciliaries will not want to bring capital into the UK and invest here if the remittance of such capital incurs UK capital gains tax charges. Instead investments will be moved outside the UK. There are a number of ways that the remittance rules can be reformed without having such an adverse economic impact.

2.3 We give more detail below of the reason for these recommendations.

3 POLICY BACKGROUND

3.1 We welcome the fact that both Treasury and HMRC are willing to consult on the policy and the implementation of some changes. However, given the fact that this matter has been under review for some years, we would have welcomed formal consultation prior to any announcements on the complete range of issues including the £30,000 levy.

3.2 We believe that the consultation process will be improved (and indeed PBRN18 would have been improved) if the policy objective behind the proposed changes could be made clear. At present PBRN18 contains no statement at all of the policy objectives behind the proposed changes. This leaves a great deal to surmise. It is enormously helpful in framing a response to know no only what the Government plan to do, but also why they plan to do it.

3.3 In the absence of a clear statement of the policy objective behind PBRN18, we think it is helpful to set out at the start of this paper our understanding of what that policy objective might be. This will help to frame our response. If we have misunderstood the policy objective it also helps to highlight why any divergences have occurred.

3.4 As such, we would tentatively suggest that the policy objective behind PBRN18 might be as follows:

(a) To counter the perceived unfairness inherent in the current tax system for non-domiciliaries;

(b) In the process to raise some additional tax by ensuring that foreign domiciliaries make further contributions to the UK Exchequer;

(c) While at the same time recognising the unique place that foreign domiciliaries play in UK life and the fact that they tend to have a lesser connection with the UK than many UK domiciliaries and in some cases will only be present in the UK for 4 or 5 months in the year. In particular, that they are by definition a mobile set of individuals and that their wealth is particularly mobile.

(d) Consequently tempering any changes to the current system to ensure that non-domiciliaries and the business they bring to the UK as a whole does not relocate to different jurisdictions; and

(e) Recognising that complete parity of treatment is unlikely to be possible for the above reasons, removing obvious anomalies and clarifying and simplifying the tax system for non-domiciliaries and making this as coherent as possible.

4 SECTION 86 AND SECTION 87 (AND TCGA SECTION 13) – TECHNICAL DETAIL

4.1 Although section 86 and section 87 are not specifically mentioned in PBRN18, we anticipate that HMRC and the Treasury may view those sections as anti-avoidance measures covered by the third bullet of point 12 of PBRN18 ("*Extending those existing anti-avoidance measures which currently do not apply to remittance basis users so that in future they do*"). We understand that possible legislative changes to section 86 and section 87 are currently being drafted.

4.2 The following brief summary of the effect of section 86 and section 87 may be useful by way of background.

4.3 Both sections apply to capital gains realised by the trustees of offshore (i.e. non-UK resident) trusts. It is important to note that unlike income, gains cannot be segregated from capital and therefore if a share is sold at a gain it is not possible to transfer the gain element to a separate account and bring in only the capital. In calculating such gains currency gains are also included. It will therefore be virtually impossible for foreign domiciliaries to remit capital tax free in the future unless they or their trusts hold only sterling cash and carry out no investments. Hence a major shift in the taxation of foreign domiciliaries has occurred without consultation.

4.4 Where the trust is "settlor interested" and meets certain other criteria, section 86 applies and treats gains made by the trustees as though they were made by the settlor. Such gains are imputed to the settlor on an arising basis and on the disposal of assets anywhere in the world. Section 86 currently does not apply at all where the settlor is not domiciled in the UK. Under the proposals it would apply to a foreign domiciled settlor resident here where the trust realises chargeable gains from disposals of UK assets such as art or houses.

4.5 For these purposes a trust is "settlor interested" if the settlor, his or her spouse, his or her children (or those children's spouses) may benefit in any way from the trust. Since 1998 a trust is also "settlor interested" if the settlor's grandchildren may benefit from it. Hence it is quite possible that from 6 April 2008 a foreign settlor who is resident here will be subject to tax on gains realised by a non-UK resident trust from which he is excluded and even where all the beneficiaries are resident and domiciled abroad.

4.6 To the extent to which section 86 does not apply to an offshore trust – for instance because the trust is not settlor-interested, or because the settlor has died, or because (before April 2008) the settlor is not domiciled in the UK - any capital gains made by the trustees are "stockpiled" under section 87.

4.7 Such stockpiled gains are then matched with capital payments or other benefits received by (currently) UK domiciled and resident beneficiaries of the trust. The

matching procedure (extending from section 87 to section 96 and with further anti-avoidance provisions in schedules 4B and 4C) is extremely complex and contains detailed rules dealing with situations such as transfers between trusts; trusts which migrate from offshore to onshore or vice versa, payments to and from controlled companies and payments linked with trustee borrowing.

4.8 Without going into detail on this complexity, it is worth pointing out in particular that where there is a delay between the realisation of the gain and the making of the capital payment, a notional interest charge of 10% pa may be imposed for up to six years. This is usually referred to as increasing the rate of CGT from 40% to 64% (or presumably from 18% to 28.8% from 2008/09 onwards). Moreover if a trust realises a gain abroad and a UK domiciled beneficiary receives a benefit in the UK the UK domiciled beneficiary currently pays tax on that benefit under section 87 whether or not the benefit is itself attributable to or in respect of the actual gain. It is assumed that a similar approach would be adopted for foreign domiciliaries. Hence a trust might realise gains on art in New York but pay the cash realised from share sales to the beneficiary in the UK. The beneficiary would still pay tax by reference to the gain on the art even though that was not what he had actually received. The compliance and disclosure aspects of this are likely to be extremely onerous. Many trusts will have a range of foreign beneficiaries and it is quite likely that perhaps only one of them will be UK resident. Until now the trustees have not needed to keep records of section 87 gains. Under the new rules they will need to keep detailed records of all trust gains (computed according to UK tax rules) and capital payments to assist one UK resident beneficiary. The trustees are unlikely to do this. Foreign domiciliaries are extremely cautious about providing information to any state authorities given the security issues that this may raise for their families. Providing information to HMRC is not the problem; rather it is the automatic exchange of information with the mother country that will worry them. One of the attractions of the current regime is that foreign domiciliaries can comply with all their UK tax obligations without the need for detailed disclosure and compliance.

4.9 Section 87 looks at the status of the recipient of the capital payment or benefit. If that recipient is not domiciled in the UK then the payment under current rules does not give rise to a charge to CGT. This is apparently to change from 6 April 2008 irrespective of how long a foreign domiciliary has been resident.

4.10 TCGA SECTION 13

4.11 In this context it is also briefly worth mentioning TCGA section 13 which deals with the capital gains of offshore close companies.

4.12 Section 13 contains rules imputing the capital gains of such companies to the participators in those companies. The imputation method shares some features with section 86 although the exact method of imputation is different. Like section 86, section 13 does not apply to non-domiciled participators.

4.13 Section 13 may also combine with sections 86 and 87. This will arise where, as is commonly the case, the offshore structure involves an offshore trust with an underlying holding company which in turn owns the assets. Section 13 will impute the gain to the offshore trustees with that gain, in turn, being potentially imputed to the settlor (under section 86) or to beneficiaries in receipt of capital payments (under section 87).

4.14 We do not comment separately in this paper on section 13, although the comments we make about section 86 and section 87 should be taken to apply equally to section 13. Nor do we comment in detail on the possible effects on offshore income gains since at this stage we are concerned about the overall policy.

5 HOW MUCH WEALTH IS TIED UP IN OFFSHORE STRUCTURES?

5.1 Most wealthy foreign domiciliaries (and certainly all those who have taken any form of advice) will hold a large part of their capital wealth through offshore structures. This is as much for succession as for tax reasons – it avoids the need for complicated probate procedures on death and can provide for continuity in the running and ownership of a business.

5.2 Quantifying the number of such structures is extremely difficult and we can do no more than rely on anecdotal evidence from advisers. The following figures should therefore simply be taken as outlining the possible scale of the issue rather than as providing anything like accurate figures.

5.3 Anecdotal evidence would suggest that a good starting point here would be to look at the level of trust business in the Channel Islands. While the Channel Islands will also deal with trusts for those with no UK connection at all, we would suspect that the number of such trusts might be counter-balanced by the number of structures for non-domiciled residents in other locations such as Switzerland and other centres.

5.4 On this basis, our experience is that there are perhaps 50-60 organisations which offer trust services on what might be described as a "systematic" basis (i.e. ignoring the "boutiques" which may administer only a handful of trusts). These larger organisations, in our experience, will usually have a "book" of anywhere between 100 and 1,000 trusts, with an average perhaps being around the 300-400 mark.

5.5 This would suggest that there are between 15,000 – 25,000 such offshore structures. A few such structures may exist for UK domiciliaries, but these are increasingly rare since the changes in 1991 and 1998 and will not form a significant part of the total.

5.6 This figure would broadly tie in with the 15,000 figure which HMRC gives for those who claim the remittance basis on their self-assessment returns and who have unremitted income in excess of £75,000 (thus making the £30,000 charge worthwhile). We suspect that HMRC's figure understates the position as it only captures those non-domiciliaries who self-assess. Many foreign domiciliaries, particularly those who do not have income from employment, may in the past never have bothered to claim the status[1].

5.7 Such offshore structures are, in our experience, rarely cost-effective to manage where assets are less than around £1m. With that figure as a minimum, the sums involved may range well into the hundreds of millions or, in a number of cases, even the billions. One adviser (who is far from unique) cites his three largest trusts as being worth £300m, £1bn and £10bn respectively. Although it is very difficult to say, we would suspect that the *median* figure might be around the £4m - £5m mark. The *mean* figure is likely to be higher (skewed by a

[1] Anecdotal evidence from meeting non-domiciled clients suggests that perhaps only 1 in 3 have ever had their status "cleared" by HMRC.

handful of extremely large trusts): we would provisionally suggest around the £10m mark. This would suggest that the total wealth in such offshore structures may be between £150bn and £250bn. Indeed given the figures quoted above (£10bn in a single trust) the figure is likely to be significantly higher than this.

5.8 UK assets within offshore structures

5.9 Attempting to quantify the proportion of the above figure which relates to UK situs assets is even more difficult and should probably not be attempted.

5.10 However, many foreign domiciliaries will hold the value of their UK residence through such a structure (say £2m average value x 15,000 to 25,000 trusts = £30bn to £50bn). Such structures will also typically hold a wide range of other UK assets including:

(a) UK quoted stocks and shares and other investments

(b) UK commercial property

(c) Unquoted UK investments. Our own experience shows this ranges from investment in wind farms to private equity funds/environmental and health products.

(d) Art and other chattels – the art market in London has been particularly buoyant being fuelled by the presence of wealthy foreigners with the means and inclination to buy and sell art. A number of the auction houses have already expressed concern that art sales will be moved abroad and people living here will be less inclined to buy in London.

(e) Luxury goods (such as racehorses, football teams, etc).

(f) UK-registered ships aeroplanes and yachts.

(g) Hotels and restaurants which in turn provide employment and services.

5.11 Asset allocation theory would suggest that those living in the UK will want to be exposed in some way to the UK market. Such theory might form the basis of an estimate of the overall proportion of UK assets in such structures (50%?).

5.12 Potential "inherent" CGT

5.13 Given the significant growth in recent years (particularly in the UK property market) many assets in such offshore structures will already stand at a significant capital gain.

5.14 Even ignoring this, however, one can provisionally estimate – at a growth rate of say 7% p.a. - would give annual gains[2] between say £10bn and £15bn. CGT on this would presumably be between 18% and 28.8%[3], say 20% as an average rate would give between £2bn and £3bn at stake – assuming of course that foreign domiciliaries would be willing to pay this and would not change their behaviour as a result (which seems very unlikely). In our view, though, such gains will not be realised in the UK and the inward investment which generates

[2] Of course, CGT would only be charged on actual disposals, but by giving a figure for annual growth, one can estimate how much "inherent" CGT is potentially payable.

[3] See section 4.8 above

the gains (and all the economic spin offs currently enjoyed) will also fall considerably.

6 WHY SHOULD SECTION 86 AND SECTION 87 NOT BE AMENDED?

6.1 We accept that the existing terms of section 86 and section 87 cannot be justified either in terms of *fairness* or in terms of *coherence*.

6.2 The first of these charges (lack of *fairness*) can, however, be fairly readily dismissed. The rules for foreign domiciliaries are clearly not "fair" – in that non-domiciliaries benefit from rules which do not apply to those domiciled in the UK. But if fairness were the sole policy objective then PBRN18 would have proposed the entire abolition of the remittance basis and all tax advantages for non-domiciliaries. That PBRN18 does not do this indicates that the Government accepts, as successive Governments have done before, that the issues facing foreign domiciliaries need to be more pragmatically addressed. Moreover, it is important to realise that foreign domiciliaries do not compare their tax position with that of UK domiciliaries but instead examine the tax effects of living and investing in the UK as opposed to the tax effects of living and investing abroad. Currently foreign domiciliaries have some income tax disadvantages but no material capital gains tax disadvantages if their trusts invest in the UK rather than abroad. That position will apparently cease from 6 April 2008.

6.3 The second of these charges (lack of *coherence*) cannot be so easily dismissed. The lack of coherence can only be supported if it can be justified in other ways. We believe it can be justified and in the following paragraphs seek to give the reasons why this is the case.

6.4 Reason 1 – conflict with overall policy objectives

6.5 PBRN18 and subsequent comments by politicians and in the press have all been framed as a "light hand on the tiller". Comments along lines such as "*We think that non-domiciliaries should be asked to contribute a little more to the UK and that £30k is not an unreasonable price for the continuing advantages they enjoy*"[4] all suggest that the policy objective here is to raise a reasonable amount of tax while not discouraging wealthy non-domiciliaries from living here.

6.6 If this is correct – and we have attempted to summarise this policy objective more formally above (see 3.4) – then any changes to section 86 and section 87 would go much further.

6.7 Although the figures given at section 5 above are extremely subjective, they suggest that the amount of tax at stake – assuming that non-domiciliaries would be willing to bear this - would be some four to six times greater than the figure of £500m originally given by HMRC in response to the Conservatives' original proposals. While this figure was itself somewhat subjective, this clearly indicates that changing section 86 and section 87 *would be of a different order to the proposals for a £30k charge.*

6.8 As such, changing section 86 and section 87 would represent, in our view, a departure from the perceived policy objectives and may well have a significant deterrent effect on non-domiciliaries for the reasons we give further below.

[4] This is not a direct quotation, but an amalgam of the type of comments made.

6.9 Raising an additional £2bn - £3bn of tax is tempting but since foreign domiciliaries have alternative options (either by moving their wealth or themselves abroad) the only effect of the changes will simply be to reduce significantly the overall economic activity within London which is fuelled by this group. The above figures illustrate the scale of the "problem" which non-domiciliaries will perceive if section 86 and section 87 change but not the actual tax at stake. Such a major policy shift, which would have a profound impact on the housing and art markets in London as well as its pre-eminence as a financial centre, should be considered carefully and an open economic impact assessment made.

6.10 Reason 2 – current state of section 86 and section 87 encourage investment in the UK

6.11 The above discussion has concentrated on both UK situs and non-UK situs assets.

6.12 As set out above, by far the most significant of these changes would be to UK situs assets – given that first the proposal is to tax sales of such assets on an arising basis and second that funds brought into the UK to finance purchases of such assets are now more likely to be taxable.

6.13 While coherence might suggest that it is anomalous to tax personal ownership of UK assets by non-domiciliaries on an arising basis, but (in effect) to exempt gains on such assets where they are owned by an offshore trust, the counter-argument is that the present rules encourage offshore trusts to invest in UK situs assets – to the benefit of the economy as a whole.

6.14 The figures in section 5.8 above suggest that the scale of such assets might provisionally be between £75bn and £125bn. These figures are, as already stated, extremely subjective, but they give an indication of the scale of the issue.

6.15 It is also worth pointing out that such assets fall into four main classes:

(a) First there are investments in UK quoted companies and other UK investments – particularly in UK private equity. Taxing such gains on an arising basis rather than a remittance basis would, in our view, simply lead to offshore trusts restructuring their portfolios to invest in non-UK quoted companies and investments. Such a change could be effected very quickly[5] and without any serious economic disadvantages to foreign domiciliaries. The loss to UK quoted companies would be significant and, over time, we would anticipate that the impact on the London Stock Exchange would also be very significant as companies delisted from it in order to list elsewhere[6]. The same points arise in relation to unquoted investments. We have already had evidence that trusts are simply ceasing to take up investment opportunities in the UK given the advice they are receiving from their lawyers.

[5] Indeed, if the changes do not come in until 6 April 2008, there is likely to be significant movement of assets ahead of that date to wash out any "inherent" gains – particularly on UK assets.

[6] See STEP's recent representations on a similar point in relation to the "permanent establishment" test for trustees which cite a potential listing of an £11bn company which has, anecdotally, already been pulled from the LSE as a result of changes in FA2006.

(b) Second, there are assets such as art, racehorses, ships, aircraft, etc. These assets are, by definition, portable and can easily have their situs moved outside the UK. The UK currently enjoys a reputation as a leading market place for such assets. The art market, in particular, would almost certainly move to New York (or perhaps Geneva). Most well advised non-domiciliaries will own their art collections through offshore trusts. Why arrange a sale of a painting in London when it will be subject to 18% CGT? The art industry is particularly vulnerable and could suffer a severe loss of business in London. Figures are currently being produced on this.

(c) Third, there is commercial and other investment property. Such assets obviously cannot be physically relocated. However, they can be sold and similar property assets be purchased in other jurisdictions. While not as immediate as the changes above, therefore, we would anticipate a significant amount of property being dropped on the market if these changes go through. In the current uncertain economic climate, it is easy to envisage that a large amount of property coming to the market in this way could well tip that market into a significant downturn.

(d) Fourth, there is personal residential property. Apart from those cases where main residence relief may be available, the issues here are similar to those for commercial and other investment property, although the timing of the impact is likely to be more prolonged as it would be a more long-term decision for non-domiciliaries to move their personal residence out of the country. The change will tend to affect those foreign domiciliaries who want to purchase houses here using trust capital from overseas. They will now face a capital gains tax charge on remittance of such capital.

6.16 All of the above examples demonstrate that, over a shorter or longer time frame, it would be easy for a large amount of investment (potentially up to £125bn on the above figures) to be removed out of the UK economy.

6.17 In our view, therefore, changing the terms of section 86 and section 87 to tax UK gains on an arising basis and foreign gains on a remittance basis would be entirely counter-productive. We do not believe that any significant amounts of tax would be raised. Instead there would be a material loss of investment in the UK economy, with a knock-on effect in any number of industries (art, horses, shipping, services) which rely heavily on the wealth of foreign domiciliaries for their business.

6.18 Reason 3 – nature of capital gains – arising over time

6.19 Capital gains, by their nature, will accrue over a period of time which may potentially be many years. They are therefore unlike income which, by its nature, arises from year to year.

6.20 Thus while it is logically justifiable to tax the income of offshore trusts on the same basis as for individuals[7], capital gains will have arisen over a period of time during which the settlor and beneficiaries of the trust may have been resident in a range of different jurisdictions.

[7] This is achieved by section720, section 727 and section 732 ITA 2007, re-enacting the former section 739 and section 740 ICTA 1988.

6.21 CGT, inevitably and rightly, does not tax the gain as it accrues, but only at the point of disposal. As such, it is entirely coherent to have a different set of rules for capital gains in order to recognise the fact that the gain may have accrued over a period during only part of which the settlor or relevant beneficiary was UK resident.

6.22 Or, putting the same argument the other way round, taxing gains by reference to the point of disposal (or, in the case of beneficiaries at the point of enjoyment) merely encourages settlors and beneficiaries to become non-resident at that point.

6.23 Reason 4 – nature of capital taxes – comparison with inheritance tax

6.24 While modern portfolio theory has led to some erosion of the distinction, there remains a fundamental difference between revenue items and capital items.

6.25 Revenue items represent an expense for the enjoyment of an asset. For instance, rent represents the expense to a tenant of living in a house.

6.26 Capital items represent the expense of the asset itself. For instance, the purchase price of a house represents the cost to the freeholder of the house itself.

6.27 By definition, foreign domiciliaries are "tenants" or "guests" in the UK. They live here for a period of time and then intend to return to their home country (or move on elsewhere). While they are here they enjoy the benefits of living in the UK and should be asked to contribute to the costs of such enjoyment.

6.28 As such it is intellectually coherent to charge revenue taxes (Income Tax, National Insurance Contributions, VAT, etc) to foreign domiciliaries, while exempting them from capital taxes.

6.29 While foreign domiciliaries might not express the argument in exactly these terms, they are in our experience, acutely aware of the difference. The argument might be phrased differently, e.g. "*I'm happy to pay my fair share to live in the UK, but my family wealth is nothing to do with the UK*", but it is essentially the same argument.

6.30 A similar point relates to foreign domiciliaries' desire for confidentiality over their wealth. In many countries, disclosure of wealth can lead to extortion, kidnap and even worse. Foreign domiciliaries, perhaps above all, welcome the confidentiality they enjoy in the UK. They are (generally) happy to disclose their income and pay tax on this. They baulk at the thought of disclosing their capital – particularly when it is situated outside the UK.

6.31 Reason 5 – if there is a lack of coherence, change the rules for personal ownership instead

6.32 There is a lack of coherence between the rules for personal ownership of non-UK situs assets (taxed on the remittance basis) and trust ownership of non-UK situs assets (effectively tax free).

6.33 In our view a better answer might be to align the rules the other way, ie to exempt personal ownership by foreign domiciliaries of non-UK situs assets (or at least for those willing to pay the £30k levy) whether or not the proceeds are remitted here.

6.34 While such a change was not envisaged by PBRN18, there is a lot to commend it. In particular, although the remittance rules currently attract foreign domiciliaries to the country, they then encourage those foreign domiciliaries to keep their personal wealth outside the UK.

6.35 Exempting non-UK source income (and gains) entirely from UK tax would encourage wealthy foreign domiciliaries to bring money into the UK where it would benefit the UK economy as a whole, as well as providing significant VAT on the goods and services purchased.

6.36 Foreign domiciliaries who have been resident here could be required instead to pay an increasing fixed charge for each year of residence (possibly related to the value of their accommodation whether rented or purchased). This would be simple (since it no longer requires such foreign domiciliaries to operate the complex remittance rules) but does not involve major compliance issues and would raise significant revenue. It would also encourage inward investment. However, there are a variety of other options that can be discussed.

6.37 Reason 6 – technical reasons

There are a host of technical reasons why the interaction of section 86 and section 87 with the remittance rules would cause significant practical problems, both for taxpayers and for HMRC. This paper is not the place to give details of these but we would be happy to discuss them further with HMRC if it was thought helpful.

7 RECOMMENDATIONS

7.1 In the light of the above our principal recommendation is that the current structure of section 86 and section 87 remains as it is and further changes are made to the taxation of foreign domiciliaries after proper consultation in a way that minimises compliance issues for them, raises revenue and does not deter UK investment[8].

7.2 Even if the current rules are not retained in the longer-term, we would strongly urge the Government to delay any changes in this area until the full economic impact can be assessed. A delay until April 2009 would be consistent with the already stated intention to delay the "10 year" changes until that date. Given that section 86 and section 87 deal with longer-term "capital" issues, tying these in with the "10 year" proposals for a greater contribution from those who have been in the UK for longer would be entirely consistent.

7.3 We would welcome the chance to have further discussions on these and other issues.

John Barnett, Chairman, CGT and Investment Income Sub-Committee

Emma Chamberlain, Chairman, Succession Taxes Committee

The Chartered Institute of Taxation

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[8] Alternatives such as an accommodation based charge could and in our view should be considered since this would target the wealthier foreign domiciliaries, raise revenue and is an annual charge linked to the benefits of living in the UK