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Branch Reporter
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1. Income (and capital gains) taxation of emigrants and immigrants under domestic law[1]

1.1. General overview of domestic income tax (and capital gains tax) system relating to individuals

This report discusses United Kingdom income tax (IT) and capital gains tax (CGT); it does not consider inheritance tax, national insurance contributions or other taxes.

In general terms, the UK imposes IT on the worldwide income of individuals resident in the UK, and on the UK-source income of individuals who are not resident.[2] (In the case of individuals who are resident but not domiciled in the UK, tax is generally imposed on foreign-source income only if remitted to the UK).[3] There is no statutory definition of residence for IT (or CGT) purposes: an individual will be regarded as resident in the UK if he is present for more than 183 days in a year of assessment[4] or for 91 days on average over a

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1 There is relatively little written on this topic. One of the few articles is by Goldberg and others, "Taxation Caused by or After a Change in Residence" (2000) 21 *Tax Notes Int'l* 643 – the UK contributor is John Avery Jones.

2 There is no comprehensive definition of income for IT purposes. Income is taxable if it falls within the Schedules and Cases or is otherwise made taxable by the Income and Corporation Taxes Act 1988 (ICTA 1988): see s. 1(1) ICTA 1988. The Schedules and Cases vary according to the connecting factors employed. Schedule A imposes IT on rents or other income from land situated in the UK. Schedule D applies to the profits or gains of a resident individual from property wherever situated or a trade, profession or vocation wherever carried on, and of a non-resident individual from property situated in the UK or a trade, profession or vocation exercised within the UK. Schedule E charges to tax the emoluments of an office or employment of an individual resident in the UK wherever the employment is exercised, and of an individual who is non-resident in respect of duties performed in the UK. Finally, Schedule F imposes tax on dividends or other distributions of companies resident in the UK.

3 See s. 65(4) and (5) ICTA 1988.

4 IT and CGT are imposed by reference to years of assessment which, for historical reasons, are years commencing on 6 April in one year and terminating on 5 April in the subsequent year.

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four-year period.[5] To a limited extent for IT purposes (but more extensively for CGT purposes) UK legislation also uses the connecting factor of ordinary residence: broadly, an individual is ordinarily resident in the UK if he is resident from year to year.

The income tax legislation proceeds on the basis that an individual is resident and/or ordinarily resident for a year of assessment and makes no provision for splitting a year of assessment into a resident part and a non-resident part. By concession, the Inland Revenue will split a year into a resident part and a non-resident part. In the case of IT, the terms of this concession are set out in extra-statutory (ESC) concession A.11. The text of ESC A.11 is set out in Table 1.

Table 1. Extra-statutory concession A.11 on Residence in the United Kingdom: year of commencement or cessation of residence

"The Income and Corporation Taxes Acts make no provision for splitting a tax year in relation to residence and an individual who is resident in the United Kingdom for any year of assessment is chargeable on the basis that he is resident for the whole year.

But where an individual –

(a) comes to the United Kingdom to take up permanent residence or to stay for at least two years; or

(b) ceases to reside in the United Kingdom if he has left for permanent residence abroad;

liability to United Kingdom tax which is affected by residence is computed by reference to the period of his residence here during the year. It is a condition that the individual should satisfy the Board of Inland Revenue that prior to his arrival he was, or on his departure is, not ordinarily resident in the United Kingdom. The concession would not apply, for example, where an individual who had been ordinarily resident in the United Kingdom left for intended permanent residence abroad but returned to reside here before the end of the tax year following the tax year of departure.

This concession is extended to the years of departure and return where, subject to certain conditions, an individual goes abroad for full-time service under a contract of employment. These conditions are:

– the individual's absence from the United Kingdom and the employment itself both extend over a period covering a complete tax year; and
– any interim visits to the United Kingdom during the period do not amount to
  (i) 183 days or more in any tax year; or
  (ii) an average of 91 days or more in a tax year (the average is taken over the period of absence up to a maximum of four years); and
– for years up to and including 1992–93, all the duties of the employment are performed abroad or any duties the individual performs in the United Kingdom are incidental to duties abroad."

[5] There are limited statutory provisions for determining residence in ss. 334 to 336 ICTA 1988 (which also apply to CGT by virtue of s. 9 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992)). There is a substantial body of case law, but of particular importance is the Inland Revenue practice on determining residence which is set out in the booklet *Residents and Non-residents: Liability to Tax in the United Kingdom* (IR 20: latest edition, 1999).

ESC A.11 will not apply in every situation where an individual becomes or ceases to be resident during a year of assessment: in particular, it will not apply if an attempt is made to use the terms of the Concession for a tax avoidance purpose.[6] In circumstances where the Concession does not apply, the strict legal position is that an individual who comes to or leaves the UK during a year of assessment will be regarded as resident (and, possibly, ordinarily resident) throughout the whole of the year of assessment.

The UK imposes a comprehensive CGT on the disposal of assets by individuals who are resident or ordinarily resident in the UK.[7] An individual is subject to CGT if he is resident during any part of a year of assessment or is ordinarily resident in that year.[8] Thus an individual who comes to the UK during a year of assessment, or leaves the UK during the year, is, as a matter of strict law, liable to CGT on disposals throughout that year of assessment.

Once again by concession, the Inland Revenue is prepared to apply split-year treatment for CGT purposes. The text of the concession is set out in Table 2.

Table 2. Extra-statutory concession D.2. Residence in the United Kingom: year of commencement or cessation of residence: capital gains tax

"1. An individual who comes to live in the United Kingdom and is treated as resident here for any year of assessment from the date of arrival is charged to capital gains tax only in respect of chargeable gains from disposals made after arrival, provided that the individual has not been resident or ordinarily resident in the United Kingdom at any time during the five years of assessment immediately preceding the year of assessment in which he or she arrived in the United Kingdom.

2. An individual who leaves the United Kingdom and is treated on departure as not resident and not ordinarily resident here is not charged to capital gains tax on gains from disposals made after the date of departure, provided that the individual was not resident and not ordinarily resident in the United Kingdom for the whole of at least four out of the seven years of assessment immediately preceding the year of assessment in which he or she left the United Kingdom.

3. This concession does not apply to any individual in relation to gains on the disposal of assets which are situated in the United Kingdom and which, at any time between the individual's departure from the United Kingdom and the end of the year of assessment, are either: (i) used in or for the purposes of a trade, profession or vocation carried on by that individual in the United Kingdom through a branch or agency; or (ii) used or held for, or acquired for use by or for the purposes of, such a branch or agency.

4. This concession does not apply to the trustees of a settlement who commence or cease residence in the United Kingdom or to a settlor of a settlement in relation to gains in respect of which the settlor is chargeable under sections 77-79 TCGA 1992, or section 86 and Schedule 5 TCGA 1992.

[6] See the warning printed in the Inland Revenue list of Extra Statutory Concessions, and see *R* v. *IRC, ex p. Fulford-Dobson* [1987] STC 344.

[7] In the case of a non-domiciled individual only on gains remitted to the UK: see s. 12 TCGA 1992.

[8] S. 2(1) TCGA 1992.

> 5. This revised concession applies to any individual who ceases to be resident or ordinarily resident in the United Kingdom on or after 17 March 1998, or becomes resident or ordinarily resident in the United Kingdom on or after 6 April 1998."

ESC D.2 for CGT is in several respects narrower than ESC A.11 relating to IT. Once again, there will be circumstances where the concession does not apply and an individual will be regarded as liable to CGT on disposals throughout a year of assessment including that part before he came to – or after he left – the UK.

Individuals who are not resident and not ordinarily resident in the UK are not generally subject to CGT, even on the disposal of assets situated in the UK. There is an exception where the non-resident is carrying on a trade, profession or vocation in the UK through a branch or agency.[9]

1.1.1. Formalities

An individual who ceases to be resident in the UK is required to confirm to the Inland Revenue the date on which he left or intends to leave the UK on Form P85.[10]

An individual who becomes resident in the UK is required to notify the Inland Revenue that he is chargeable to IT or CGT.[11] He will then be required to complete Form P86 giving details of when he arrived in the UK.[12]

1.2. Taxation of emigrants by the country of emigration: the UK as country of emigration

1.2.1. Taxes levied upon or after emigration

1.2.1.1. Exit taxes

The UK imposes no general or limited exit taxes on individuals emigrating. This is slightly surprising since there are exit taxes for companies ceasing to be resident in the UK[13] and for trustees (as a body of persons) who cease to be resident in the UK.[14]

1.2.1.2. Extended tax liabilities

As a matter of strict law an individual is resident or ordinarily resident for the whole of a year of assessment. If the concessionary treatment described above does

9 S. 10 TCGA 1992. Note that there are limited circumstances where there is a deemed disposal by non-residents: see s. 25 TCGA 1992.
10 Or, in certain circumstances, the simplified form P85(S).
11 S. 7, Taxes Management Act, 1970.
12 Instructions in various Inland Revenue Manuals indicate when Form P85 is to be issued to an individual leaving the UK (together with Booklet IR 138) and when Form P86 (together with Booklet IR 139) is to be issued to those arriving in the UK.
13 S. 185 TCGA 1992.
14 S. 80 TCGA 1992.

not apply, then an individual will continue to be liable to IT and CGT for the remainder of the year of assessment in which he emigrates. After the end of the year of assessment of emigration (or if the split-year treatment applies), the UK does not apply extended tax liability.

To this there is one significant and unique exception: this is the "re-entry charge" under section 10A TCGA 1992.[15] Under this provision, an individual who emigrates and spends less than five years of assessment outside the UK, and who then returns to the UK, is liable to CGT on disposals of assets made during the interim years when he was not resident. The liability arises in the year he returns. This provision extends UK CGT to former residents who emigrate and spend less than five years of assessment outside the UK.

The background to this provision is relatively straightforward. Before it was introduced, it was quite easy to avoid CGT by becoming non-resident (and non-ordinarily resident). Since the UK has neither an exit tax on the emigration of individuals, nor does it tax disposals by individuals who are not resident and not ordinarily resident in the UK (even of assets situated in the UK), it was possible to avoid CGT by becoming non-resident. Most individuals following the emigration route would have been advised that they should spend three years of assessment as residents of another country (in order to ensure that they were not ordinarily resident in the UK), but in certain circumstances it was even possible for an individual to become resident in another country for only one year of assessment and not be liable to UK CGT. Section 10A TCGA 1992 was introduced to ensure that an individual did not escape CGT unless he ceased to be resident for a full five years of assessment.

The charge to tax under section 10A TCGA 1992 is subject to a number of exceptions. The individual must have been resident in the UK for at least four out of the seven years prior to the year of departure.[16] The charge does not apply (subject to certain exceptions) to disposal of assets acquired by the individual after he emigrated from the UK: the charge is essentially on assets owned by the individual prior to his departure.[17] Perhaps most interesting, the charge is expressed to operate "without prejudice to any right to claim relief in accordance with any double taxation relief arrangements".[18] The relevance of this is discussed further below.

The re-entry charge under section 10A is unique: the text of the section is appended to this report at appendix 1.

1.2.1.3. Recapture of previously enjoyed deductions or deferrals

In certain circumstances, the CGT legislation provides for the recapture on emigration of liabilities to tax which were previously deferred. There are two groups of provisions that contain these "clawback charges".

15 Which was inserted by s. 127 Finance Act 1998 with effect from 17 March 1998.
16 See s. 10A(1)(d).
17 See s. 10A(3).
18 See s. 10A(10).

First, on gifts (and other disposals of assets otherwise than at arm's length), in certain circumstances the CGT legislation permits an election to defer any liability to tax until a subsequent disposal by the recipient of the asset. For these deferral reliefs to apply, the recipient must be resident in the UK. If the recipient were subsequently to emigrate and there was no provision for a clawback of the relief, the CGT liability would be avoided. For that reason, there is a clawback charge where the recipient ceases to be resident in the UK within six years of the receipt of the asset.[19]

Second, the CGT legislation in certain circumstances allows a chargeable gain to be deferred if the proceeds are reinvested in particular assets.[20] The liability to tax which was deferred on the reinvestment is brought into charge to tax if the investor emigrates within three years of the reinvestment.[21]

Aside from these specific, clawback provisions where a gain has been held-over or rolled-over, the UK has no general provision which recaptures previously enjoyed reliefs or deductions when an individual emigrates.

1.2.1.4. Other specific measures enacted to safeguard taxing rights in case of emigration

The UK recognises the principle that a liability to pay tax is not enforceable in another state.[22] Within the European Union, however, the UK is now subject to the Mutual Assistance in Recovery Directive which applies to IT and CGT.[23]

Where there is a clawback of the holdover relief for CGT on the emigration of the donee, there is a danger that the tax could not be collected from the donee after emigration. The legislation provides, therefore, that if the tax is not paid within 12 months, it can be claimed from the person who transferred the asset to the emigrant: that person then has a right to recover the tax from the transferee.[24]

[19] Legislation permitting the holdover of a chargeable gain was found in s. 79 FA 1980 (which was repealed by s. 124 FA 1989 with effect from 14 March 1989), and is currently found in ss. 165 and 260 TCGA 1992. The clawback charge where the recipient becomes non-resident within six years is found in s. 168 TCGA 1992 (which also applies to gains that were held over under s. 79 FA 1980 by virtue of s. 67(6) TCGA 1992).

[20] The current reinvestment reliefs are for investments in shares qualifying under the Enterprise Investment Scheme (s. 150C and Schedule 5B TCGA 1992) or shares in a venture capital trust (s. 151A and Schedule 5C TCGA 1992).

[21] See para. 3(1)(c), Schedule 5B TCGA 1992 in the case of EIS deferral relief and paragraph 3(1)(d), Schedule 5C TCGA 1992 for VCT reinvestments. Under the previous reinvestment relief in s. 164A to s. 164N TCGA 1992, the relief was clawed back if the investor became non-resident within three years of the reinvestment: see s. 164(2)(c) TCGA 1992. In all three cases the deferral is not clawed back if the individual becomes non-resident for reasons of his employment, returns to the UK within three years, and has not disposed of the reinvestment assets within that period: see para. 3(3), Schedule 5B; para. 3(3), Schedule 5C and s. 164F(9) TCGA 1992.

[22] See *Government of India* v. *Taylor* [1955] AC 491 and, most recently, *QRS 1 Aps* v. *Frandsen* [1999] STC 616.

[23] Council Directive 2001/44/EC of 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims.

[24] See s. 168(7) and (9) TCGA 1992. The right to recover the sum from the transferee who has emigrated may be more theoretical than real since the transferor who tries to recover that sum

While this is not exactly a measure to safeguard taxing rights, one of the few examples of a tax provision dealing expressly with the emigration of an individual is section 110A ICTA 1988.[25] This section provides that where an individual has been carrying on a trade, profession or vocation wholly or partly outside the UK and that individual either ceases to be resident in the UK or becomes so resident, then the trade, profession or vocation is treated as if it was permanently discontinued and a new trade, profession or vocation was commenced. It is expressly provided that losses may be carried forward and set against profits arising after the change of residence.

1.2.2. Unilateral relief of double taxation by the country of emigration: the UK as country of emigration

The UK provides for unilateral relief from double taxation by a foreign tax credit.[26] Unilateral relief is limited in a number of respects. Subject to certain exceptions, credit is only granted if an individual is resident in the UK for the year of assessment in respect of which the credit is claimed.[27] Credit is only granted for tax paid under the law of the territory outside the UK which is computed by reference to income arising in that territory (or any chargeable gain accruing in that territory): thus, with certain exceptions, credit is only granted for tax imposed on income or gains having their source in the other country.[28]

Mention might be made at this point of the generous approach which is taken by the Inland Revenue to foreign tax credit with respect to foreign taxes on chargeable gains. Because of the various forms that such taxes might take, the Inland Revenue has issued a Statement of Practice – SP 6/88 – which extends relief for overseas tax to any situation where the overseas tax is computed by reference to the same gain as the UK tax. “There is no requirement that the respective tax liabilities should arise at the same time nor that they should be charged on the same person.” The terms of SP 6/88 are set out in Table 3.

Because of the concessionary, split-year treatment, it will be relatively unusual for double taxation to arise from dual residence in the year in which an individual emigrates from the UK. It is possible that the country to which the individual moves does not operate split-year treatment and imposes tax on income arising (or gains realised) during the part of the year in which the individual was resident in the UK. In those circumstances, unilateral relief would only be available in the UK for the foreign tax on income arising (or gains accruing) in the country of immigration: income or gains arising in the UK or in a third country would not give rise to a foreign tax credit.

cont.
abroad might be met by the argument that he is seeking indirectly to collect tax on behalf of the UK government.

25 Added by s. 124 FA 1995.

26 S. 790 ICTA 1988, which applies to CGT by virtue of s. 277(1) TCGA 1992.

27 S. 794 ICTA 1988.

28 See s. 790(4) ICTA 1988.

Table 3. SP6/88 – Double taxation relief: chargeable gains

General

1. Section 277 TCGA 1992 applies to capital gains tax the double taxation provisions set out in Sections 788–806 ICTA 1988, with the necessary modifications. Section 797 of the Taxes Act applies the provisions to corporation tax on chargeable gains.
2. The standard credit articles in our double taxation agreements (which are made under Section 788) says, in effect, that subject to the provisions of the law of the United Kingdom, tax payable under the law of the treaty partner on capital gains from sources within that territory shall be allowed as credit against any United Kingdom tax computed by reference to the same gains by reference to which the overseas tax is computed. Section 790 allows unilateral relief for overseas tax and subsection (4) is in similar terms to the standard credit article.
3. The principal requirement for the granting of credit for overseas tax against liability to capital gains tax (or corporation tax on chargeable gains) is therefore that the overseas tax should be computed by reference to the same gain as the United Kingdom tax. There is no requirement that the respective tax liabilities should arise at the same time nor that they should be charged on the same person.

Specific examples

4. The Revenue's view is that the following sets of circumstances fall within the terms of the standard credit article and section 790 and may therefore give rise to a credit for overseas tax against United Kingdom capital gains tax or corporation tax on chargeable gains.
   - (i) The overseas tax charges capital gains as income.
   - (ii) Overseas tax is payable on a disposal falling within section 171 TCGA 1992 (transfers within a group of companies treated as taking place on a no gain/ no loss basis) and a liability to United Kingdom tax arises on a subsequent disposal.
   - (iii) An overseas trade carried on through a branch or agency is domesticated (i.e. transferred to a local subsidiary) and relief is given under section 140 TCGA 1992. There is a subsequent disposal of the securities (or the subsidiary disposes of the assets within 6 years) giving rise to a liability to 142 United Kingdom tax and overseas tax is charged in whole or in part by reference to the gain accruing at the date of domestication.
   - (iv) Overseas tax is payable by reference to increases in the value of assets although there has been no disposal. There is a subsequent disposal of the assets on which a liability to United Kingdom tax arises.
5. It will be seen that relief is conditional upon the subject of the overseas tax being identified with the gains on which the United Kingdom tax liability arises. In contrast, where "roll-over" relief is claimed, for example under section 152 TCGA 1992, the gain on disposal of the old asset is not subjected to United Kingdom tax. The gain on realisation of the new asset remains a gain separate from that realised on sale of the old asset and overseas tax payable as a result of the sale of the old asset is not creditable against United Kingdom tax payable on the gain realised on sale of the new asset. However, in such circumstances, section 278 TCGA 1992, allows the overseas tax to be claimed as a deduction in computing the gain for "roll-over" relief purposes.

Since the UK has no exit tax upon emigration by individuals, nor any general provisions for extended tax liability, double taxation of an individual who has emigrated from the UK is unlikely to arise.

The one exception is where a re-entry charge arises under section 10A TCGA 1992.[29] As has been explained, under this provision any gains arising on disposals of assets during the period of temporary non-residence are subject to CGT in the year in which the individual becomes once again resident in the UK. It may well be that the country in which the individual was temporarily resident at the time of the disposal would also have imposed tax on the gains. In those circumstances, the UK would not give unilateral relief unless the assets were situated in that other country. Where the assets are situated in the UK or in a third country, unilateral relief would not be available since the foreign tax is not charged on gains "accruing in" that territory.[30] In the absence of a tax treaty, there is a real likelihood of unrelieved double taxation in those circumstances.

1.3. Taxation of immigrants by the country of immigration: the UK as country of immigration

1.3.1. Taxation in the country of immigration of items of income taxed by the country of emigration

Once an individual becomes resident in the UK (whether ordinarily resident or not) he is generally liable to UK tax on his worldwide income and chargeable gains. This section considers the UK taxation of an immigrant in respect of capital gains, foreign-source pensions and foreign life insurance contracts.

When an individual who is resident (or ordinarily resident) in the UK disposes of a chargeable asset, the gain arising is fully subject to CGT, even if part of the gain relates to a period in which the individual was not resident in the UK. The UK gives no step-up in base cost on an individual moving to the UK: the entire gain for the period of time in which the individual owned the asset is liable to CGT (subject to indexation for inflation prior to March 1998, and to taper relief for assets disposed of after that time). This is, of course, subject, to the very generous provisions for foreign tax credit in accordance with SP 6/88 (discussed above).

Pensions paid by or on behalf of a person outside the UK are subject to tax as income arising from possessions out of the UK.[31] There is a specific relief under which only 90 per cent of the pension is taxable in the UK.[32]

Life insurance and similar policies are subject to a special tax regime on the "gain" arising on a "chargeable event".[33] The provisions are complex, and a full

[29] There is a very good note on this question of double taxation and the re-entry charge by John Avery Jones in [1999] *British Tax Review* 325 to 329.

[30] S. 790(4) ICTA 1988, as explained above.

[31] Schedule E applies only to a pension which is paid otherwise than by or on behalf of a person outside the UK: see s. 19, para. 3 ICTA 1988. Other pensions come within the charge to tax under Schedule D, Case V: see s. 18 ICTA 1988.

[32] See s. 65(2) ICTA 1988.

[33] See ss. 539 to 554 ICTA 1988.

description is beyond the scope of this paper. There is a reduction in the charge that is relevant to immigrants to the UK.

Where a chargeable event arises in relation to certain policies, and the policyholder has at some time during the period covered by the policy been non-resident, the amount of the taxable gain is reduced by multiplying it by a fraction. The fraction is the number of days on which the policyholder was resident in the UK during the period for which the policy has run prior to the chargeable event, divided by the total number of days for which the policy has run prior to that event. The effect is to treat the gain as if it arose on a straight-line basis throughout the period during which the policy has been in place, and only to charge to tax that part of the gain relating to the period in which the individual was resident in the UK.

1.3.2. Unilateral relief of international double taxation in the country of immigration: the UK as the country of immigration

The UK does not grant a step-up in basis for an individual's assets on immigration. In a sense, this is the other side of the coin to the absence of an exit tax on an individual ceasing to be resident in the UK. In practice, a new immigrant would be advised to dispose of assets which have unrealised gains prior to arrival in the UK. The individual might then reacquire the assets, giving a new basis. Quite often, the individual will dispose of the assets to a trust for the benefit of himself and family.

If the country in which the individual previously resided imposes an exit tax, the UK would grant a credit for that tax against any CGT imposed on a subsequent disposal of the asset (under the generous provisions for a foreign tax credit in SP 6/88). Under that Statement of Practice, the principal requirement is that the overseas tax should be computed by reference to the same gain as the UK tax. There is no requirement that the assets should be disposed of within a fixed period after immigration for credit to be granted in respect of the exit tax.

1.3.2.1. Unilateral relief for double taxation: extended tax liability or recapture of deductions in the country of former residence

The UK taxes the worldwide income of individuals resident in the UK: this includes the entire gain on any disposal of chargeable assets, foreign-source pensions (subject to the 10 per cent deduction) and the chargeable gains on foreign life insurance policies (subject to a reduction for the period of non-residence). If the country of former residence imposes extended tax liability on any income or chargeable gains, then there is potential for double taxation.

Unilateral relief by a foreign tax credit may be available, but this is subject to the limitation that the foreign tax must be computed "by reference to income arising or any chargeable gain accruing in" the other country.[34] Thus, for example, credit would be granted for tax on a pension arising in the other country, or on gains on assets situated in that country. However, if the extended tax liability in the

[34] See s. 790 ICTA 1988.

country of former residence was a liability on the worldwide income and gains of the individual, and the tax was imposed on income arising or gains accruing in the UK or a third country, no unilateral relief would be granted.

To take an example. Suppose that an individual who was formerly resident in country A becomes resident in the UK and receives a private pension and realises chargeable gains. If the pension arises in country A, or the gains are on assets situated in country A, the UK would grant unilateral relief by credit for taxation in country A. If, however, the pension arose in the UK or a third country (country C), or arose on the disposal of assets in the UK or country C, then no foreign tax credit would be granted by way of unilateral relief.

2. Effect of treaty provisions

2.1. Issues relating to the assessment of emigration taxes, and to the determination of the taxable period, and to enforcement

The UK has an extensive network of bilateral double taxation conventions (DTCs): the network includes DTCs with more than 100 countries.[35] Because of this extensive network, the vast majority of individuals who immigrate to or emigrate from the UK will come from or go to a country with which the UK has a DTC in force. To that extent, the provisions for unilateral relief from international double taxation (discussed above) are of limited relevance.

The following sections of this paper analyse certain of the provisions of the UK network of DTCs which are of particular relevance to persons immigrating to or emigrating from the UK.

2.1.1. Exit taxes or extended tax liability of the country of former residence

Only one of the UK's DTCs contains a general provision relating to extended tax liability of the country of former residence: this is the new DTC with the United States which was signed on the 24 July 2001 (the prior DTC from 1975 contained no equivalent provision). Article 1(6) of the 2001 Convention contains the following:

> "(6) A former citizen or long-term resident whose loss of citizenship or long-term resident status had as one of its principal purposes the avoidance of tax (as defined under the laws of the Contracting State of which the person was a

[35] At the time of writing, in October 2001, the UK had DTCs in force with 103 countries: a further two DTCs had been negotiated but had not yet entered into force. In some cases, an existing DTC applies to more than one country: this is the case, for example, to the DTC with the former Republic of Czechoslovakia which now applies to both the Czech Republic and to Slovakia. The UK had also negotiated and signed (but not yet ratified) a new DTC with the United States of America: because of the importance of that DTC, and some of the provisions that it contains, it is also analysed in the text along with the existing 1975 UK–US convention.

> citizen or long-term resident) shall be treated for the purposes of paragraph 4 of this Article [the "savings clause"] as a citizen of that Contracting State but only for a period of ten years following the loss of such status. This paragraph shall apply only in respect of income from sources within that Contracting State (including income deemed under the domestic law of that State to arise from such sources). Paragraph 4 of this Article shall not apply in the case of any former citizen or long-term resident of a Contracting State who ceased to be a citizen or long-term resident of that State at any time before February 6th, 1995."[36]

Though this paragraph is expressed in terms of either contracting state, it is believed to be only of relevance to former citizens or long-term residents of the United States who immigrate to the UK. Such persons who give up their citizenship or long-term residence for tax avoidance purposes are placed in a special category for a period of ten years: they will be UK residents generally for tax purposes, but they are denied the benefits of the DTC with respect to income having its source in the US.[37]

2.1.2. Capital gains articles

Of the UK's DTCs, more than two-thirds contain a capital gains article (DTCs with 72 countries contain such an article; 21 contain no capital gains article and 7 provide that capital gains can be taxed in each Contracting State according to its domestic law).[38] Exhibit 1 (at the end of the report) contains an analysis of the capital gains articles in the UK's DTCs.

Most of the capital gains articles in the UK's DTCs are equivalent to or a variant on article 13 of the OECD model convention. Thirteen of the capital gains articles follow paragraph 21 of the OECD commentary on article 13 by providing that gains on assets (other than immovable property, business property, aircraft, etc.) are exempt from tax in the country of source only if they are subject to tax in the country of residence. Three DTCs (those with Argentina, Japan and Mexico) allow a measure of source country taxation, specifically in respect of substantial holdings of shares in companies resident in the country of source.

The major practical issue for the UK as the country of emigration is the interrelationship between the UK's DTCs and the extended tax liability on chargeable gains realised by temporary non-residents under section 10A TCGA 1992. Section

[36] There is some clarification of the term "former long-term resident", and the circumstances where the loss of status has as one of its principal purposes the avoidance of tax, in the Exchange of Notes accompanying the DTC.

[37] There are special provisions for foreign tax credit purposes for such persons – see art. 24(6).

[38] CGT was introduced in the UK in 1965. A number of existing DTCs pre-date the introduction of that tax and only refer expressly to IT. The view seems to have been taken in 1965 by the UK Government, however, that CGT was a tax "substantially similar" to IT so that provision was made for existing DTCs to apply to the new tax (now s. 277(2) TCGA 1992). Most post-1965 DTCs expressly apply to CGT (the exceptions are the DTCs with Papua New Guinea and Trinidad and Tobago).

10A recognises that the country of temporary residence may also tax such a disposal and that there may be a DTC in force with that country which, if it followed article 13 of the OECD model convention, might grant to that other country the exclusive right to tax the chargeable gain. Section 10A(10) expressly states: "(10) This section is without prejudice to any right to claim relief in accordance with any double taxation relief arrangements."[39] It seems to be accepted that subsection (10) was inserted to make it clear that, where a DTC grants the other contracting state the exclusive right to tax the gain, the DTC will override the charge to tax in section 10A.

For a number of years, however, it has been regular UK practice in negotiating DTCs to seek to include a paragraph in the capital gains article recognising the continuing right of the country of emigration to tax gains realised by former residents for a number of years after they leave that country. Interestingly enough, even before the introduction of section 10A in 1998 such a paragraph was a regular feature of the UK's DTCs. Of the 73 DTCs which contain a capital gains article, 46 contain a paragraph recognising the continuing right to tax of the country of former residence. The period for which this right is recognised varies: most of the paragraphs recognise the right for a period of five years, but periods of two, three, six, seven and ten years are also found.

All of the UK's DTCs negotiated since the introduction of section 10A in 1998 contain a provision recognising the continued right to tax of the country of former residence. An example of the type of provision typically included in the UK's DTCs is as follows:[40]

> "(4) Gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) of this Article [immovable property, business property and ships or aircraft] shall be taxable only in the Contracting State of which the alienator is a resident.
> (5) The provisions of paragraph (4) of this Article shall not affect the right of a Contracting State to levy according to its law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property."

Those DTCs which contain a provision recognising the extended tax jurisdiction of the country of former residence are indicated in Exhibit 1.

The inclusion of such a provision is of practical significance for the operation of section 10A. With respect to those countries with which the UK has a DTC which does *not* contain such a recognition of extended tax jurisdiction, it is generally accepted that the DTC may override the charge under section 10A. For those coun-

[39] The UK domestic legislation, specifically s. 788 ICTA 1988, refers to "double taxation arrangements" which include DTCs and the deemed double taxation arrangement under the unilateral relief provisions of s. 790 ICTA 1988.

[40] Taken from art. 13(5) of the UK–Kuwait DTC of 23 April 1999.

tries where the DTC *does* contain such a provision, the effect is that the DTC will not prevent the imposition of a charge to tax under section 10A. In those circumstances – which now apply to more than half of the countries with which the UK has a DTC containing a capital gains article – a double charge to tax may arise: the country of temporary residence may impose a charge to tax on the gain realised during the period of temporary residence in that country; and the UK will impose a charge under section 10A on the same gain and the same disposal but in the year that the individual becomes again resident in the UK.

Assuming that the UK continues to follow the policy of including such a specific provision in its DTCs, it is likely that this problem of potential double taxation will increase in the future as less DTCs provide any shelter against a tax charge under section 10A.

Whether there would be any relief for the international double taxation which might arise in these circumstances has been partly discussed in connection with unilateral relief, and is discussed further below in connection with relief under DTCs.

2.1.3. Pensions

All but four of the UK's DTCs contain a pensions article (the only DTCs that do not contain such an article are those with Guernsey, the Isle of Man, Jersey and Thailand). The vast majority of these pensions articles provide for taxation only in the country of residence, though a substantial number (29 in total) make that treatment conditional upon the pension being subject to tax in the country of residence. DTCs with 13 countries make some provision for taxation of pensions at source. Five of these provide that pensions paid under the social security system of the country are taxable at source. Two DTCs (those with the Netherlands and the 2001 DTC with the US) provide that lump-sum payments in respect of pension rights may in certain cases be subject to taxation at source. The DTCs with Kenya, Sweden and Venezuela provide for taxation at source in certain circumstances: the provision in the DTC with Venezuela is particularly interesting as it allows taxation at source in proportion to the period of employment exercised in the state of source.

Under the majority of the UK's DTCs, pension payments will be taxable only in the country of residence, even if not subject to tax in that country. If the UK is the country of emigration, there is no provision for recapture of deductions previously made while the pension provision has been built up: in those circumstances, if a pensioner emigrates to a country where he is not subject to tax, he will have benefited from the deductions in the UK but will not be liable to UK taxation on the receipt of the pension.

The pensions articles in the UK's DTCs are analysed in Exhibit 2.

2.1.4. Other income articles

The "other income" article of a DTC may be relevant to certain payments under life insurance contracts.

DTCs with 72 countries contain an "other income" article. Of these, the majority follow a variant of article 21 of the OECD model convention and provide for taxation only in the country of residence of the recipient. Eleven DTCs make that treatment subject to the condition that the income is subject to tax in the country of residence. Seven DTCs provide that the other country (that is the country other than the country of residence) may impose tax on the income, but only if it has its source in that state.

2.1.5. Mutual assistance in the recovery of taxes

UK DTCs do not normally contain any provision for mutual assistance in the recovery of taxes. There are a few exceptions. The DTCs with Canada and the United States contain limited provisions for assistance in the recovery of taxes. Article 27(5) of the UK–Canada DTC provides as follows:

> "(5) Each of the Contracting States will endeavour to collect on behalf of the other Contracting State such amount as may be necessary to ensure that relief granted by this Convention from taxation imposed by that other State does not enure to the benefit of persons not entitled thereto. However, nothing in this paragraph shall be construed as imposing on either of the Contracting States the obligation to carry out administrative measures of a different nature from those used in the collection of its own tax or which would be contrary to its public policy."

Article 27(5) of the new UK–US DTC contains a similar provision.

It is notable that these provisions only require administrative assistance "to ensure that relief granted by this Convention … does not enure to the benefit of persons not entitled thereto": this would not normally extend to assistance in the recovery of emigration taxes.

With respect to other countries of the European Union, the UK is now subject to the provisions of the Mutual Assistance in Recovery Directive.[41] This directive will require the UK to assist in the collection of, *inter alia*, income taxes on behalf of other Member States of the European Union: in certain circumstances this could include the collection of exit taxes imposed on emigration from another Member State.

2.2. Relief of international double taxation

The UK relieves from international double taxation by foreign tax credit. Unilateral relief has been discussed above. The UK's extensive network of DTCs all contain a standard provision similar to the following:

[41] Council Directive 2001/44/EC of the 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties.

> "(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):
>
> (a) [X - the other state] tax payable under the laws of [X] and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within [X] (excluding, in the case of a dividend, [X] tax in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the [X] tax is computed;
>
> (b) in the case of a dividend paid by a company which is a resident of [X] to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10% of the voting power in the company paying the dividend, the credit shall take into account (in addition to any [X] tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the [X] tax payable by the company in respect of the profits out of which such dividend is paid.
>
> (2) For the purposes of paragraph (1) of this Article, profits, income and chargeable gains owned by a resident of the United Kingdom which may be taxed in [X] in accordance with this Convention shall be deemed to arise from sources within [X]."[42]

The foreign tax credit under the DTC is granted "subject to the provisions of the law of the UK regarding the allowance as a credit against UK tax of tax payable in a territory outside the United Kingdom". This brings into play the provisions of the "credit code" in sections 792 *et seq.* ICTA 1988. One of the rules contained in this code is that, subject to certain specific exceptions, credit is not allowable for any chargeable period unless the person claiming the credit is resident in the UK for that period.[43]

Where the UK is the country of emigration, it will generally fall to the country to which an individual has moved to grant relief by credit or exemption for any tax imposed in the UK.

Where the UK is the country of immigration, and a DTC applies, then the provision would require the UK to grant credit to the UK-resident individual for foreign tax on income or chargeable gains from sources within the other country. The DTC deems all tax on income or gains which may be taxed in the other country in accordance with the Convention to be tax on sources in that country: if the DTC allows the country of former residence to impose tax, then the UK will be expected to give credit for that tax.

In this context, the provisions of SP 6/88 are relevant. If, for example, the country of former residence imposes an exit tax, then under that Statement of Practice the UK would grant credit in accordance with the "elimination of double taxation"

[42] This is based on art. 24(4) and (5) of the new UK–US DTC of 2001.

[43] S. 794(1) ICTA 1988.

article in the relevant DTC against UK tax imposed on a subsequent disposal of that asset.

The only significant example of extended UK tax liability on those emigrating from the UK is the re-entry charge under section 10A TCGA 1992. Section 10A(10) states that the charge to tax under that section is subject to any claim to relief in accordance with any double taxation relief arrangements. Because many of the UK's DTCs contain provisions which preserve the right of the UK to tax its former residents for a period of time, these arrangements will not prevent the UK imposing a charge to tax under section 10A. The question then arises of relief from international double taxation.

Looking at this from the point of view of the UK as the country granting relief from double taxation, the DTC would have preserved the right of the UK to tax the chargeable gain but that right is not exclusive, and the country of temporary residence would also have a right to tax that gain (since it was a gain realised by an individual resident in that country). The gain is deemed to arise from sources within that country since that country may tax the gain in accordance with the Convention. This would be so whether the asset was situated in that country or in a third country or even in the UK: since the individual is a resident of that foreign country when he disposes of the asset, nothing in the DTC prevents that country (or the UK) from taxing the gain.

One can also look at this from the point of view of the foreign country as the country to grant relief from double taxation. Since the DTC contains a provision expressly recognising the right of the UK to continue to impose tax on its former residents, if the foreign country relieves from tax by a foreign tax credit (and there is a similar provision deeming gains which may be taxed in the UK to arise from sources in the UK) then the foreign countries should also grant a tax credit for UK tax imposed on the gain. However, such UK tax will only become chargeable if the individual returns to the UK within five years of emigrating, and only in the year in which the individual becomes once again resident in the UK. In that year, the individual will be resident in the UK and, presumably, no longer resident in the country of temporary residence. If the foreign country only grants a foreign tax credit – as does the UK – to individuals resident in the country, then at the time that the UK tax is imposed, the individual will no longer be resident in the foreign country and would not qualify for the foreign tax credit.[44]

Overall, and contrary to unilateral relief, an individual who is subject to tax under section 10A and is also subject to tax on a chargeable gain in the country of temporary residence ought to be able to claim a foreign tax credit in the UK under the relevant DTC for that foreign tax against the CGT imposed under section 10A.[45]

[44] The new UK–US DTC contains an express provision dealing with gains taxed by virtue of the recognition of the extended jurisdiction of the country of former residence in art. 24(2)(b). There is a similar provision in art. 22(2)(c) of the UK–Netherlands DTC.

[45] There is a contrary view of John Avery Jones in [1999] *British Tax Review* 325 at 328 who states "there is no possibility of applying the treaty again because the treaty applied at the time of the disposal (alienation) and there is nothing to deem the alienation to have taken place again when the gain is deemed to accrue." However, it is the elimination of double taxation article which is

3. Compatibility with international law of emigration taxes and other safeguarding measures applicable in case of emigration

The UK has limited provisions for the recapture of held over or rolled over gains on emigration, and only extended liability for temporary non-residents under section 10A. These provisions appear to be compatible with the UK's obligations under international and EC law, and, in the case of section 10A, may well have been specifically designed so as not to conflict with the UK's international obligations.

3.1. Compatibility with international conventions on human rights

The UK became a party to the European Convention on Human Rights in March 1951.[46] The UK has not, however, ratified the Fourth Protocol to the European Convention, article 2 of which contains the following provision:

> "*Article 2 (freedom of movement)*
> Everyone shall be free to leave any country, including his own."

The UK is a party to the International Covenant on Civil and Political Rights (which contains a similar provision on freedom of movement). However, the ICCPR has never been made a part of UK domestic law by incorporation.

In the absence of a freedom of movement which has been incorporated as part of UK domestic law, there is no legal basis for arguing that the provisions which claw back held over or rolled over gains, or the re-entry charge in section 10A, are contrary to human rights provisions.

Only one case has proceeded (from Sweden) to the European Commission on Human Rights under article 2 of the Fourth Protocol. The taxpayer was unsuccessful in arguing that the requirement to obtain a tax clearance before moving his property from Sweden to the United States was a breach of that article.[47] Even assuming that the UK were to ratify the Fourth Protocol, it seems unlikely that the existing UK tax provisions relating to emigration would be taken as restricting the exercise of that right.

cont.
relevant here (and not the capital gains article, which applies to the time of alienation): the standard provision in the UK's DTCs simply requires that the credit must be claimed against "United Kingdom tax computed by reference to the same profits, income or chargeable gain by reference to which the [country X] tax is computed." The re-entry charge is computed by reference to the same gains and so there should be a tax credit.

46 However, at that time the decision was taken not to incorporate the Convention into UK domestic law, which would have been necessary in order to allow individuals to enforce directly their rights under the Convention in UK and domestic courts. This decision was recently reversed, however, and the Human Rights Act of 1998 gives effect to the Convention in UK domestic law.

47 See *Sjöblad* v. *Sweden* (Application no. 10653/83) reported in 42 DR 224 and (1985) 8 EHRR 310.

3.2. Compatibility with European Community law

Provisions which impose a charge to tax on an individual emigrating from a country might be challenged on the grounds that they interfere, for example, with the exercise by that individual of the freedom of movement of workers under article 39 of the Treaty of Rome. The issue is whether the limited UK clawback of held over or rolled over gains, and the extended liability in section 10A TCGA 1992, are compatible with this freedom.

So far as the clawback provisions are concerned, it is notable that the legislative provisions exclude a charge to tax where the individual becomes non-resident to take up employment and he again becomes resident or ordinarily resident within three years (without having in the interim disposed of the relevant assets).[48] Thus an individual who goes temporarily abroad in exercise of his freedom of movement as a worker is not subject to the clawback charge.

Where the individual becomes non-resident for employment for a period longer than three years, or disposes of the relevant assets during the period of non-residence, then the charge to tax would not be excluded. However, the clawback provisions simply bring into charge gains which had previously accrued but which were held over or rolled over into new assets. These are gains which the UK would have been entitled to tax, but which the UK would lose the ability to tax if the donee or the investor became permanently non-resident and disposed of the assets after leaving the UK.

One can imagine situations where the exercise by an individual of his freedom of movement to another Member State of the European Union would trigger off a substantial charge to CGT such that the individual might hesitate before emigrating. It remains an open question whether in those circumstances there might be a potential challenge to the clawback provisions. Presumably the UK government would seek to justify any interference with a freedom on grounds of coherence of the tax system. Interestingly, any argument based on the inability to collect tax after emigration might now fail because of the possibility of collection under the Mutual Assistance in Recovery Directive.

So far as the re-entry charge in section 10A is concerned, the question of compatibility with Community law is slightly more complicated. The charge is a re-entry charge: it is not imposed on an individual who leaves the UK in exercise, for example, of his freedom of movement as a worker. The charge is only imposed if the individual disposes of assets while he is temporarily resident in the other Member State and then wishes to return to the UK, possibly again in exercise of his freedom of movement as a worker.

Once again one can imagine scenarios where an individual has realised a substantial gain during a period of temporary non-residence in another Member State of the European Union and the charge to UK CGT if the individual were to return to the UK would be such as to give the individual cause to hesitate before coming back within the five-year period. These circumstances would be quite unusual. If the country of temporary residence had imposed a charge to tax on the

[48] See, for example, Schedule 5A, para. 3(3) TCGA 1992. And see s. 168(5) TCGA 1992.

chargeable gain which had been realised, then (since the UK has DTCs in force with all other Member States of the EU) either the DTC would exclude the charge under section 10A or (if it contained a provision expressly recognising the continuing UK right to impose tax) should provide for a foreign tax credit for the foreign tax imposed.

It is only in the circumstances, therefore, of temporary residence in a jurisdiction where the DTC recognises the continuing right of the UK to impose tax but where little or no tax has been imposed in the country of temporary residence, that the issue could really arise. It seems unlikely in those circumstances that the taxpayer would be able successfully to argue that the imposition of the charge under section 10A was an unjustifiable interference with his freedom of movement.[49]

Appendix 1: section 10A: Taxation of Chargeable Gains Act 1992

"Section 10A Temporary non-residents

(1) This section applies in the case of any individual ("the taxpayer") if—
 (a) he satisfies the residence requirements for any year of assessment ("the year of return");
 (b) he did not satisfy those requirements for one or more years of assessment immediately preceding the year of return but there are years of assessment before that year for which he did satisfy those requirements;
 (c) there are fewer than five years of assessment falling between the year of departure and the year of return; and
 (d) four out of the seven years of assessment immediately preceding the year of departure are also years of assessment for each of which he satisfied those requirements.

(2) Subject to the following provisions of this section and section 86A, the taxpayer shall be chargeable to capital gains tax as if—
 (a) all the chargeable gains and losses which (apart from this subsection) would have accrued to him in an intervening year,
 (b) all the chargeable gains which under section 13 or 86 would be treated as having accrued to him in an intervening year if he had been resident in the UK throughout that intervening year, and
 (c) any losses which by virtue of section 13(8) would have been allowable in his case in any intervening year if he had been resident in the United Kingdom throughout that intervening year,

[49] The situation might be different if, as John Avery Jones suggests, no foreign tax credit was available and the gain would be fully taxed in the UK and the other Member State: the failure to relieve from double taxation might well infringe the free movement of the individual.

were gains or, as the case may be, losses accruing to the taxpayer in the year of return.

(3) Subject to subsection (4) below, the gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any gain or loss accruing on the disposal by the taxpayer of any asset if—

(a) that asset was acquired by the taxpayer at a time in the year of departure or any intervening year when he was neither resident nor ordinarily resident in the United Kingdom;

(b) that asset was so acquired otherwise than by means of a relevant disposal which by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued;

(c) that asset is not an interest created by or arising under a settlement; and

(d) the amount or value of the consideration for the acquisition of that asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).

(4) Where—

(a) any chargeable gain that has accrued or would have accrued on the disposal of any asset ("the first asset") is a gain falling (apart from this section) to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or any part of another asset, and

(b) the other asset is an asset falling within paragraphs (a) to (d) of subsection (3) above but the first asset is not,

subsection (3) above shall not exclude that gain from the gains which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return.

(5) The gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any chargeable gain or allowable loss accruing to the taxpayer in an intervening year which, in the taxpayer's case, has fallen to be brought into account for that year by virtue of section 10 or 16(3).

(6) The reference in subsection (2)(c) above to losses allowable in an individual's case in an intervening year is a reference to only so much of the aggregate of the losses that would have been available in accordance with subsection (8) of section 13 for reducing gains accruing by virtue of that section to that individual in that year as does not exceed the amount of the gains that would have accrued to him in that year if it had been a year throughout which he was resident in the United Kingdom.

(7) Where this section applies in the case of any individual, nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made shall prevent any such assessment for the year of departure from being made in the taxpayer's case at any time before the end of two years after the 31st January next following the year of return.

(8) In this section—
"intervening year" means any year of assessment which, in a case where the conditions in paragraphs (a) to (d) of subsection (1) above are satisfied, falls between the year of departure and the year of return;
"relevant disposal", means a disposal of an asset acquired by the person making the disposal at a time when that person was resident or ordinarily resident in the United Kingdom; and
"the year of departure" means the last year of assessment before the year of return for which the taxpayer satisfied the residence requirements.

(9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment if that year of assessment is one during any part of which he is resident in the United Kingdom or during which he is ordinarily resident in the United Kingdom.

(10) This section is without prejudice to any right to claim relief in accordance with any double taxation relief arrangements."

Exhibit 1: United Kingdom DTCs with capital gains provisions (as at 1 September 2001)

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax jurisdiction of the country of former residence	Period of years for which that jurisdiction is recognised
1. Antigua 19 December 1947	IT + ss	X			
2. Argentina 3 January 1996	Yes		Variant – allows source taxation		
3. Australia 7 December 1967	Yes	X			
4. Austria 30 April 1969	Yes		OECD	13(5)	3 + STT
5. Azerbaijan 23 February 1994	Yes		OECD variant STT	13(6)	5
6. Bangladesh 8 August 1979	Yes		OECD		
7. Barbados 26 March 1970	Yes		OECD STT	13(5)	5
8. Belarus 7 March 1995	Yes		OECD variant STT	13(6)	5

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax jurisdiction of the country of former residence	Period of years for which that jurisdiction is recognised
9. Belgium 1 June 1987	Yes		OECD		
10. Belize 19 December 1947	IT + ss	X			
11. Bolivia 3 November 1994	Yes		OECD variant	13(6)	2
12. Botswana 5 October 1977	No	X			
13. Brunei 8 December 1950	IT + ss	X			
14. Bulgaria 16 September 1987	Yes		OECD		
15. Canada 8 September 1978	Yes		Variant	13(9)	5
16. China 26 July 1984	Yes		Domestic law		
17. Croatia (see Yugoslavia)					
18. Cyprus 20 June 1974	No	X			
19. Czech Republic 5 November 1990	Yes		OECD		
20. Denmark 11 November 1980	Yes		OECD variant		
21. Egypt 25 April 1977	Yes		OECD	13(5)	5
22. Estonia 12 May 1994	Yes		OECD variant	13(6)	5
23. Falkland Islands 17 December 1997	Yes		OECD variant	13(6)	5
24. Fiji 21 November 1975	Yes		OECD variant	13(6)	5

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax jurisdiction of the country of former residence	Period of years for which that jurisdiction is recognised
25. Finland 17 July 1969	Yes		OECD variant	14(7)	5
26. France 22 May 1968	Yes		OECD	13(4)	5 (applies only to 25% share-holdings)
27. Gambia 20 May 1980	Yes		OECD variant		
28. Germany 26 November 1964	Yes		OECD variant	VIII(3)	So long as remain ordinarily resident + not STT
29. Ghana 20 January 1993	Yes		OECD variant	13(6)	5
30. Greece 25 June 1953	IT + ss		Pre-OECD		
31. Grenada 4 March 1949	IT + ss	X			
32. Guernsey 24 June 1952	IT + ss	X			
33. Guyana 31 August 1992	Yes		Domestic law		
34. Hungary 28 November 1977	Yes		OECD		
35. Iceland 30 September 1991	Yes		OECD		
36. India 25 January 1993	Yes		Domestic law		
37. Indonesia 5 April 1993	Yes		OECD	13(5)	5
38. Ireland 2 June 1976	Yes		OECD variant	14(6)	3
39. Isle of Man 29 July 1955	IT + ss	X			

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax juris-diction of the country of former residence	Period of years for which that jurisdiction is recognised
40. Israel 26 September 1962	Yes		OECD STT		
41. Italy 21 October 1988	Yes		OECD	13(5)	5 + not STT
42. Ivory Coast 26 June 1985	Yes		OECD		
43. Jamaica 16 March 1973	Yes		OECD STT	20(5)	5
44. Japan 10 February 1969	Yes		OECD variant some source taxation		
45. Jersey 24 June 1952	IT + ss	X			
46. Kazakhstan 21 March 1994	Yes		OECD variant	13(6)	5
47. Kenya 31 July 1973	Yes		OECD	15(5)	10
48. Kiribati 10 May 1950	IT + ss	X			
49. Korea 21 April 1977	Yes		OECD	13(5)	5
50. Kuwait 23 April 1999	Yes		OECD	13(5)	5
51. Latvia 8 May 1996	Yes		OECD variant	13(6)	5
52. Lesotho 29 January 1997	Yes		Domestic		
53. Lithuania 19 March 2001	Yes		OECD variant	13(6)	5
54. Luxembourg 24 May 1967	Yes		OECD		
55. Macedonia (see Yugoslavia)					
56. Malawi 25 November 1955	IT + ss	X			

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax jurisdiction of the country of former residence	Period of years for which that jurisdiction is recognised
57. Malaysia 10 December 1996	Yes		OECD variant STT	14(6)	5
58. Malta 12 May 1994	Yes		OECD variant STT	13(6)	5
59. Mauritius 11 February 1981	Yes		OECD	13(5)	5
60. Mexico 2 June 1994	Yes		OECD variant 25% shares at source	13(8)	5
61. Mongolia 23 April 1996	Yes		OECD Variant STT	13(6)	5
62. Montserrat 19 December 1947	IT + ss	X			
63. Morocco 8 September 1981	Yes		OECD variant	13(4)	5
64. Myanmar 13 March 1950	IT + ss	X			
65. Namibia 28 May 1962	IT + ss	X			
66. Netherlands 7 November 1980	Yes		OECD	13(5)	5
67. New Zealand 4 August 1983	Yes		OECD		
68. Nigeria 9 June 1987	Yes		Domestic law		
69. Norway 12 October 2000	Yes		OECD variant	13(6)	6 (shares etc. only)
70. Oman 23 February 1998	Yes		OECD variant STT	13(7)	3
71. Pakistan 24 November 1986	Yes		Domestic law		
72. Papua New Guinea 17 September 1991	No				

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax jurisdiction of the country of former residence	Period of years for which that jurisdiction is recognised
73. Philippines 10 June 1976	Yes		OECD	12(5)	6
74. Poland 16 December 1976	Yes		OECD		
75. Portugal 27 March 1968	Yes		OECD		
76. Romania 18 September 1975	Yes		OECD		
77. Russian Federation 15 February 1994	Yes		OECD variant STT	13(6)	5
78. St Kitts & Nevis 19 December 1947	IT + ss	X			
79. Sierra Leone 19 December 1947	IT + ss	X			
80. Singapore 12 February 1997	Yes		OECD variant	13(6)	5
81. Slovak Republic 5 November 1990	Yes		OECD		
82. Slovenia (see Yugoslavia)					
83. Solomon Islands 10 May 1950	IT + ss	X			
84. South Africa 21 November 1968	Yes		OECD variant	12(4)	5
85. Spain 21 October 1975	Yes		OECD variant		
86. Sri Lanka 21 June 1979	Yes		OECD		
87. Sudan 8 March 1975	Yes		OECD	13(5)	5

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax jurisdiction of the country of former residence	Period of years for which that jurisdiction is recognised
88. Swaziland 26 November 1968	Yes	X			
89. Sweden 30 August 1983	Yes		OECD variant	13(2)	7 (shares only)
90. Switzerland 8 December 1977	Yes		OECD variant		
91. Thailand 18 February 1981	Yes		OECD	14(5)	5
92. Trinidad and Tobago 31 December 1982	No				
93. Tunisia 15 December 1982	Yes		OECD		
94. Turkey 19 February 1986	Yes		OECD variant		
95. Tuvalu (see Kiribati) 10 May 1950					
96. Uganda 23 December 1992	Yes		OECD		
97. Ukraine 10 February 1993	Yes		OECD variant	13(6)	5
98. United States of America 31 December 1975	Yes		Domestic law		
USA *2001*	*Yes*		*OECD variant*	*13(6)*	*6*
99. Uzbekistan 15 October 1993	Yes		OECD variant STT	13(6)	5
100. Venezuela 11 March 1996	Yes		OECD variant STT	13(6)	5
101. Vietnam 9 April 1994	Yes		OECD variant STT	13(6)	5
102. Yugoslavia 6 November 1981	Yes		OECD		

Country and date of arrangement	Applies to CGT[a]	No capital gains article[b]	Capital gains article and type[c]	Provision recognising the tax jurisdiction of the country of former residence	Period of years for which that jurisdiction is recognised
103. Zambia 22 March 1972	Yes		OECD variant	14(4)	5
104. Zimbabwe 19 October 1982	Yes		OECD variant		

[a] Some pre-1965 DTCs apply to income tax and any "substantially similar" tax subsequently introduced. This is indicated by the entry "IT + ss".
[b] The DTCs which have no capital gains article are indicated with an X.
[c] The abbreviations used here are as follows:

OECD	identical or substantially similar to the OECD model convention art. 13
OECD variant	generally based on OECD model convention art. 13, but with some variations;
Domestic law	each contracting state may tax according to its domestic law (with certain exceptions in some cases
Variant	*sui generis* article
STT	exemption at source only if subject to tax in residence state

Exhibit 2: Analysis of the Pensions Provisions in the United Kingdom Double Taxation Conventions as at 1 September 2001)

	Country and date of arrangement	Analysis of the pensions provision[a]
1.	Antigua 19 December 1947	Residence only – STT
2.	Argentina 3 January 1996	OECD variant – residence only
3.	Australia 7 December 1967	Residence only
4.	Austria 30 April 1969	c. OECD – residence only
5.	Azerbaijan 23 February 1994	Residence only – STT
6.	Bangladesh 8 August 1979	c. OECD – residence only
7.	Barbados 26 March 1970	Residence only – STT

	Country and date of arrangement	Analysis of the pensions provision[a]
8.	Belarus 7 March 1995	OECD – residence only
9.	Belgium 1 June 1987	OECD – residence only
10.	Belize 19 December 1947	Residence only – STT
11.	Bolivia 3 November 1994	c. OECD – residence only
12.	Botswana 5 October 1977	OECD – residence only
13.	Brunei 8 December 1950	Residence only – STT
14.	Bulgaria 16 September 1987	OECD – residence only
15.	Canada 8 September 1978	OECD variant – residence only
16.	China 26 July 1984	OECD – residence only
17.	Croatia	Residence only, but social security pensions taxable at source unless a national of residence state
18.	Cyprus 20 June 1974	Residence only – STT
19.	Czech Republic 5 November 1990	c. OECD – residence only
20.	Denmark 11 November 1980	c. OECD – residence only, but social security pensions taxable at source
21.	Egypt 25 April 1977	c. OECD – residence only
22.	Estonia 12 May 1994	c. OECD – residence only
23.	Falkland Islands 17 December 1997	Residence only – STT
24.	Fiji 21 November 1975	c. OECD – residence only
25.	Finland 17 July 1969	c. OECD – residence only

	Country and date of arrangement	Analysis of the pensions provision[a]
26.	France 22 May 1968	c. OECD – residence only
27.	Gambia 20 May 1980	OECD variant – residence only
28.	Germany 26 November 1964	Residence only – STT
29.	Ghana 20 January 1993	Residence only – STT
30.	Greece 25 June 1953	Residence only – STT
31.	Grenada 4 March 1949	Residence only – STT
32.	Guernsey 24 June 1952	No pensions article
33.	Guyana 31 August 1992	c. OECD – residence only
34.	Hungary 28 November 1977	c. OECD – residence only
35.	Iceland 30 September 1991	OECD variant – residence only, including social security pensions
36.	India 25 January 1993	c. OECD – residence only
37.	Indonesia 5 April 1993	c. OECD – residence only
38.	Ireland 2 June 1976	c. OECD – residence only
39.	Isle of Man 29 July 1955	No pensions article
40.	Israel 26 September 1962	Residence only – STT
41.	Italy 21 October 1988	c. OECD – residence only
42.	Ivory Coast 26 June 1985	c. OECD – residence only
43.	Jamaica 16 March 1973	Residence only – STT
44.	Japan 10 February 1969	c. OECD – residence only

	Country and date of arrangement	Analysis of the pensions provision[a]
45.	Jersey 24 June 1952	No pensions article
46.	Kazakhstan 21 March 1994	c. OECD – residence only
47.	Kenya 31 July 1973	5% maximum tax at source if STT
48.	Kiribati 10 May 1950	Residence only – STT
49.	Korea 21 April 1977	c. OECD – residence only
50.	Kuwait 23 April 1999	c. OECD – residence only – STT
51.	Latvia 8 May 1996	c. OECD – residence only
52.	Lesotho 29 January 1997	c. OECD – residence only
53.	Lithuania 19 March 2001	c. OECD – residence only
54.	Luxembourg 24 May 1967	OECD – residence only, including social security pensions
55.	Macedonia	Residence only, but social security pensions taxable at source unless a national of residence state
56.	Malawi 25 November 1955	Residence only – STT
57.	Malaysia 10 December 1996	c. OECD – residence only
58.	Malta 12 May 1994	c. OECD – residence only
59.	Mauritius 11 February 1981	c. OECD – residence only
60.	Mexico 2 June 1994	c. OECD – residence only
61.	Mongolia 23 April 1996	c. OECD – residence only, but social security pensions taxable at source
62.	Montserrat 19 December 1947	Residence only – STT

	Country and date of arrangement	Analysis of the pensions provision[a]
63.	Morocco 8 September 1981	c. OECD – residence only
64.	Myanmar 13 March 1950	Residence only – STT
65.	Namibia 28 May 1962	Residence only – STT
66.	Netherlands 7 November 1980	c. OECD – residence only, but non-periodic payments taxable at source
67.	New Zealand 4 August 1983	c. OECD – residence only
68.	Nigeria 9 June 1987	c. OECD – residence only (subject to specific limitations)
69.	Norway 12 October 2000	c. OECD – residence only, including social security pensions
70.	Oman 23 February 1998	c. OECD – residence only – STT
71.	Pakistan 24 November 1986	c. OECD – residence only
72.	Papua New Guinea 17 September 1991	Residence only – STT
73.	Philippines 10 June 1976	OECD – residence only
74.	Poland 16 December 1976	c. OECD – residence only
75.	Portugal 27 March 1968	c. OECD – residence only
76.	Romania 18 September 1975	c. OECD – residence only
77.	Russian Federation 15 February 1994	OECD – residence only
78.	St Kitts & Nevis 19 December 1947	Residence only – STT
79.	Sierra Leone 19 December 1947	Residence only – STT
80.	Singapore 12 February 1997	Residence only – STT, including social security pensions
81.	Slovak Republic 5 November 1990	c. OECD – residence only

	Country and date of arrangement	Analysis of the pensions provision[a]
82.	Slovenia	Residence only, but social security pensions taxable at source unless a national of residence state
83.	Solomon Islands 10 May 1950	Residence only – STT
84.	South Africa 21 November 1968	Residence only – STT
85.	Spain 21 October 1975	c. OECD – residence only
86.	Sri Lanka 21 June 1979	Residence only – STT
87.	Sudan 8 March 1975	c. OECD – residence only
88.	Swaziland 26 November 1968	c. OECD – residence only
89.	Sweden 30 August 1983	Residence only if also a national; otherwise taxable at source on 80% only
90.	Switzerland 8 December 1977	c. OECD – residence only
91.	Thailand 18 February 1981	No pensions article
92.	Trinidad and Tobago 31 December 1982	c. OECD – residence only
93.	Tunisia 15 December 1982	Residence only – STT
94.	Turkey 19 February 1986	c. OECD – residence only, including social security pensions
95.	Tuvalu 10 May 1950	Residence only – STT
96.	Uganda 23 December 1992	c. OECD – residence only
97.	Ukraine 10 February 1993	c. OECD – residence only
98.	United States of America 31 December 1975	c. OECD – residence only
	USA 2001	*Residence only, including social security pensions, but lump sum payments taxable at source*

	Country and date of arrangement	Analysis of the pensions provision[a]
99.	Uzbekistan 15 October 1993	c. OECD – residence only
100.	Venezuela 11 March 1996	Taxable at source in proportion to the term of employment there
101.	Vietnam 9 April 1994	c. OECD – residence only
102.	Yugoslavia 6 November 1981	Residence only, but social security pensions taxable at source unless a national of residence state
103.	Zambia 22 March 1972	Residence only – STT
104.	Zimbabwe 19 October 1982	c. OECD – residence only

[a] The abbreviations used here are:

OECD	provision is equivalent to OECD model convention art. 18;
c. OECD	provision is very similar to OECD model convention art. 18;
OECD variant	provision is a variant on OECD model convention art. 18;
STT	limitation on tax at source is only granted if pension is subject to tax in country of residence.

Résumé

Le Royaume-Uni n'a pas de taxe de sortie générale ou d'assujettissement à l'impôt élargi sur les anciens résidents. Il existe des dispositions limitées pour la reprise partielle par l'impôt des gains en capital qui ont été reportés sur des donations ou réinvestis si le cessionnaire ou l'investisseur devient un non-résident dans un certain nombre d'années. Il n'y a pas de reprise générale des allégements accordés avant l'émigration. À titre de faveur, les années d'émigration ou d'immigration sont habituellement réparties entre résident et non-résident.

L'article 10A TCGA 1992 (introduit en 1998) prévoit une "taxe de retour" spécifique. Aux termes de cet article, toute personne physique qui quitte le Royaume-Uni et y retourne dans les cinq ans est passible, dans l'année de son retour, de l'impôt sur les gains réalisés sur la vente des actifs effectuée pendant la période de résidence temporaire dans un autre pays. Cette disposition a été introduite afin d'éviter l'évasion fiscale en cas de non-résidence temporaire.

Le Royaume-Uni ne prévoit pas de *step-up* du coût de base en cas d'immigration. Néanmoins, la pratique de l'Administration fiscale en matière de crédit d'impôt étranger pour les gains en capital est généreuse, et le crédit sera accordé pour les taxes de sortie par imputa-

tion sur l'impôt du Royaume-Uni frappant une vente subséquente des actifs. Un allégement unilatéral est accordé pour les impôts sur le revenu généré ou les gains en capital acquis sur le territoire étranger, mais non sur le revenu généré ou les gains acquis dans le Royaume-Uni ou dans un pays tiers.

Le Royaume-Uni possède un vaste réseau de conventions de double imposition (CDI) dans plus de 100 pays. Seule la nouvelle CDI conclue entre le Royaume-Uni et les États-Unis (2001) contient une disposition générale reconnaissant la juridiction fiscale élargie du pays de la résidence (ou citoyenneté) précédente.

Près des deux tiers des CDI contiennent un article sur les gains en capital, et plus de la moitié de ces articles contiennent un paragraphe reconnaissant que le pays de la résidence précédente continue à exercer la juridiction. Lorsqu'une CDI contient une telle disposition et qu'une taxe de retour peut être perçue conformément à l'article 10A, il existe une double imposition potentielle dans le pays de la résidence temporaire et le Royaume-Uni. Dans ces conditions, le Royaume-Uni accordera un crédit d'impôt étranger pour l'impôt perçu dans le pays de la résidence temporaire (y compris sur les gains générés au Royaume-Uni ou dans un pays tiers).

Presque toutes les CDI du Royaume-Uni contiennent un article sur les pensions. Dans la plupart des cas, la pension n'est imposable que dans le pays de la résidence, bien qu'un certain nombre de conventions n'appliquent ce traitement que si la pension est imposable au Royaume-Uni. Quelques conventions prévoient une retenue à la source.

Les CDI du Royaume-Uni ne prévoient généralement pas d'assistance en matière de perception d'impôts. Néanmoins, à l'intérieur de l'Union européenne, la Directive sur l'assistance mutuelle en matière de recouvrement prévoit une telle assistance, laquelle peut s'étendre aux taxes de sortie.

Il n'existe pas de base juridique pour contester les dispositions de reprise partielle par l'impôt ou la taxe de retour du Royaume-Uni pour cause d'incompatibilité avec les droits de l'homme: la législation interne du Royaume-Uni n'intègre pas un droit de quitter le pays. Il semble improbable que ces dispositions puissent être contestées pour cause d'incompatibilité avec le droit communautaire: les dispositions relatives à la reprise peuvent se justifier par un souci de cohérence du système fiscal, et il est improbable que la taxe de retour constitue un obstacle à la libre circulation.

Zusammenfassung

Im Vereinigten Königreich gibt es keine allgemeine Wegzugsteuer oder erweiterte Steuerpflicht für ehemals ansässige Personen. Es gibt beschränkte Bestimmungen über die Besteuerung von Kapitalgewinnen, die mit Schenkungen oder Reinvestitionen erzielt wurden, wenn der Schenkungsempfänger oder Investor innerhalb einer bestimmten Anzahl von Jahren das Land verlässt. Es gibt aber keine allgemeine Zurückforderung von Entlastungen, die vor der Auswanderung gewährt wurden. In bezug auf Auswanderungs- oder Einwanderungszeiten wird gewöhnlich eine Teilung in Zeiten der Ansässigkeit und der Nicht-Ansässigkeit zugestanden.

Nach Artikel 10A TCGA 1992 (der 1998 eingeführt wurde) gibt es eine besondere "Rückkehrabgabe". Danach muss eine natürlich Person, die das VK verlässt und innerhalb von fünf Steuerjahren zurückkehrt, Gewinne, die sie während ihres vorübergehenden Aufenthaltes in einem anderen Land bei der Veräusserung von Vermögenswerten erzielt hat, im Jahr ihrer Rückkehr versteuern. Diese Bestimmung wurde eingeführt, um zu verhindern, dass durch eine befristete Nicht-Ansässigkeit Steuern vermieden werden.

Das VK kennt keinen *step-up* der Basiskosten bei der Einwanderung. Die Praxis in bezug auf die Anrechnung ausländischer Steuern auf Kapitalgewinne ist jedoch sehr grosszügig, und normalerweise werden auch Wegzugsteuern auf VK-Steuern angerechnet, die bei einer späteren Veräusserung der Vermögenswerte anfallen. Eine einseitige Entlastung wird für Steuern auf Einkommen oder Kapitalgewinne im anderen Land gewährt, nicht jedoch für Steuern auf Einkommen oder Gewinne im VK oder in einem Drittland.

Das VK hat mit mehr als 100 Ländern ein umfassendes Netz von Doppelbesteuerungsabkommen getroffen. Nur das neue Abkommen zwischen dem VK und den USA (2001) enthält eine allgemeine Bestimmung, die ein erweitertes Steuerrecht des ehemaligen Wohnsitzlandes (oder des Landes der ehemaligen Staatsbürgerschaft) einräumt.

Fast zwei Drittel der Doppelbesteuerungsabkommen enthalten einen Artikel über Kapitalgewinne, und mehr als die Hälfte dieser Artikel enthalten einen Absatz, der das fortgesetzte Besteuerungsrecht des ehemaligen Wohnsitzlandes anerkennt. Wenn ein Abkommen eine solche Bestimmung enthält und nach Artikel 10A eine Besteuerung erfolgt, besteht die Möglichkeit einer Doppelbesteuerung im Land des vorübergehenden Aufenthalts und im VK. In diesen Fällen würde das VK ausländische Steuern im Land des vorübergehenden Wohnsitzes anrechnen (auch Gewinne, die im VK oder einem Drittland anfallen).

Fast alle Doppelbesteuerungsabkommen des VK enthalten einen Artikel über Renten und Pensionen. In den meisten Fällen ist dabei vorgesehen, dass die Pension nur im Wohnsitzland besteuert werden kann, wobei allerdings nach einigen Abkommen eine solche Behandlung nur gilt, wenn die Pension dort tatsächlich besteuert wird. Einige Abkommen sehen die Möglichkeit einer Quellenbesteuerung vor.

Die Doppelbesteuerungsabkommen des VK sehen im allgemeinen keine Hilfe bei der Steuereintreibung vor. Innerhalb der EU ist eine solche Hilfe jedoch in der Richtlinie für gegenseitige Beitreibungshilfe vorgesehen und kann sich auch auf Wegzugsteuern erstrecken.

Es gibt keine rechtliche Grundlage, die VK-Bestimmungen über Zurückforderungen oder Rückkehrabgaben wegen ihrer Unvereinbarkeit mit Menschenrechten in Frage zu stellen, weil das Binnenrecht des VK kein Recht auf Verlassen des Landes kennt. Es dürfte auch unwahrscheinlich sein, dass diese Bestimmungen wegen ihrer Unvereinbarkeit mit dem EG-Recht in Frage gestellt werden, weil die Zurückforderungsbestimmungen durchaus mit der Notwendigkeit eines einheitlichen Steuersystems gerechtfertigt werden können und die Rückkehrabgabe kaum die Freizügigkeit behindern dürfte.

Resumen

El Reino Unido no tiene imposición general a la salida ni tributación de extensión ilimitada para los antiguos residentes. Existen disposiciones limitadas a la recuperación parcial durante cierto número de años en el impuesto sobre las ganancias de capital en donaciones o reinversiones cuando el contribuyente se convierte en no residente. No existe recuperación general en las desgravaciones concedidas antes de la emigración. En concesión graciable, los años de emigración o inmigración se reparten habitualmente entre el residente y el no residente.

El artículo 10 A TGCA 1992 (introducido en 1998) prevé un "impuesto al retorno". A tenor de este artículo, una persona física que salga del Reino Unido y vuelva dentro de los cinco años siguientes puede ver gravadas, el año de su vuelta, las ganancias obtenidas por la venta de bienes efectuada durante el período de residencia temporal en el otro país. Esta disposición se estableció para impedir la elusión fiscal por la no residencia temporal.

El Reino Unido no prevé *step-up* de los costes en caso de inmigración. Sin embargo, en la práctica, la Administración tributaria es generosa en materia de crédito fiscal extranjero en las ganancias de capital, concediendo dicho crédito respecto de los impuestos a la salida por imputación a la tributación del R.U. en la subsiguiente venta de bienes. Se otorga desgravación unilateral en los impuestos sobre la renta o las ganancias de capital obtenidas en territorio extranjero, no así en las obtenidas en el R.U. o un tercer país.

El R.U. dispone de una vasta red de convenios de doble imposición (CDI) con más de 100 países. Unicamente el nuevo CDI concluído con los Estados Unidos (2001) contiene una disposición general que reconoce la extensión de la jurisdicción fiscal del país de la residencia (o nacionalidad) anterior.

Casi las dos terceras partes de los CDI contienen una cláusula sobre las ganancias de capital, y más de la mitad de estas cláusulas tienen un párrafo reconociendo la potestad tributaria del país de la residencia anterior. Cuando un CDI contiene tal disposición y existe la posibilidad de establecer un impuesto de recuperación a tenor del artículo 10A puede existir una doble imposición en el país de residencia temporal y en el R.U. Si se produce, el R.U. otorgará un crédito fiscal extranjero por el gravamen percibido en el país de la residencia temporal (incluidas las ganancias obtenidas en el R.U. o en un tercer país).

Casi todos los CDI del R.U. contienen una cláusula sobre pensiones. La pensión tributa, en la mayoría de los casos, en el país de residencia, si bien en algunos convenios se aplica este tratamiento únicamente cuando la pensión es gravable en el R.U. Algunos CDI prevén una retención en la fuente.

En general, los CDI del R.U. no prevén asistencia en materia de recaudación fiscal. Sin embargo, la Directriz de la Unión Europea sobre asistencia mutua en materia de recaudación se refiere a la misma y puede ampliarse a los impuestos a la salida.

No existe base jurídica para rechazar las disposiciones sobre recuperación parcial por tributación al retorno en base a una posible incompatibilidad con los derechos humanos: la legislación interna del R.U. no integra el derecho a dejar el país. No parece probable que esta normativa sea rechazada alegando incompatibilidad con el derecho comunitario: las disposiciones relativas a la recuperación pueden justificarse por la necesidad de coherencia del sistema tributario y el impuesto no constituye obstáculo a la libre circulación.