

# CSFI

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**The 'non-dom' issue: A round-table discussion on the UK government's proposed legislation. With John Chown (Chown Dewhurst), Russell Cohen (Farrer & Co), George Yeandle (PwC), Rudi Bogni and John Cullinane (Deloitte) held Tuesday, February 12, 2008 at the City Club, 19 Old Broad Street, London, EC2N 1DS, from 12:30-2:15pm.**

The issue of non-domiciled residents' tax has been front page news since the Conservatives and then the Government proposed, respectively, an annual charge of £25,000 with immediate effect and £30,000 after seven years for people to keep their status. Sadly the media coverage has created many myths. The first speaker said the £30,000 was just the tip of the iceberg and that the real measure was new anti-avoidance rules that treated non-domiciliary status as tax avoidance. It will be well-nigh impossible to remit funds for living expenses in the UK from what are now "clean" capital accounts; many remittances will be linked to prior gains, making the changes retrospective; the definition of remittance will be extended to include the cost of goods brought abroad and imported; gains on UK assets realised via an offshore company will be caught meaning that non-dom venture capitalists will avoid investing in the UK.

Another myth was that the seven-year rule would leave newcomers unaffected. That is only true if they do not require any funds from abroad. Furthermore rules on temporary non-residents have complicated things for people who have been resident, left the UK and then returned. Employers might balk at the paperwork involved in hiring foreign workers. A further complication for Americans is whether the £30,000 is treated as a "creditable tax" by the authorities in the US, which is the only government to tax on worldwide income. Based on the draft legislation the answer is currently "no". One consequence of the whole debacle could be that New York regains the ground it lost to London from the Sarbanes-Oxley affair.

The second speaker said advisers were struggling to advise clients on what they should do, given that legislation was still in draft form and only a matter of weeks from being implemented. He felt most people would have been happy to pay a £30,000 if that protected their non-dom status. The problem is they will still be affected by the anti-avoidance laws. He said the main problem was the perception that non-doms were under attack, particularly the Government's statement about non-doms making a "greater contribution to society". They were unsure whether there would be further attacks.

The third speaker said the current debate should be seen as a battle between the equity of taxing residents equally and the economic common sense of not driving people away. He felt that a modernising budget agenda would have struck a better balance than the Government did. Each income group would view it differently. The mega-wealthy may not mind paying £30,000 but will be worried about foreign income and assets. For "Polish plumbers" the £30,000 will not be relevant but they may technically find all the equipment they bring to the UK subject to charge. For the middle group the £30,000 would be

significant. He said it was a clear example of why policy should never be made to react to Opposition plans and should not be done on the hoof. One member said it was significant that neither the non-dom nor capital gains tax proposals had any accompanying paperwork as was usual in Budgets. Another member said the £30,000 fee and the anti-avoidance plans had been sitting on Treasury shelves for decades but had been cobbled together at the last minute.

Some members said that the Conservatives were as much to blame as the Government by bringing out their plan for a £25,000 annual fee to fund raising the inheritance tax ceiling. However another member said the Tory proposal sought to deal with a tax that was seen as unjustified in as a simple a way as possible, which was why they did not bring in any anti-avoidance plans.

The fourth speaker said it was important to remember that anyone with foreign earnings would lose their personal allowance from day one. This might only be worth £2,000 – 40% of £5,000 – but it would force employers to think about how they coped with it and whether they would raise “non-dom” workers’ salaries to offset that. That process would involve employees revealing more about their non-UK earnings than they might want to. One member pointed out that multinationals such as HSBC might be discouraged from moving personnel to London from its Asian bases. Another pointed out that for foreign students, many of whom stayed on to work in London, would find their education counting towards the seven-year rule.

The final speaker said that as a non-dom himself he believed the golden goose was “irrevocably dead”. He said non-doms were an easy target as they often didn’t vote. Many had thought the deal was that they brought their skills and spending power here in exchange from not suffering a penal tax rate. He pointed out that as well as 50% income and NI tax, private health insurance and security costs took that up to 70%. Only by not being taxed on remitted income did the deal seem sensible. Take that away and he would go to Malta, he said. He said the plan broke two basic rule of tax: ensure the overall tax burden stays below 40%; when you tax you it would be like plucking a chicken – make sure it can’t run away and scare the other chickens. He said he loved London but felt the authorities had misjudged how he felt about tax.

One member said London’s reputation had changed almost overnight from being a paragon of virtue to be one where the Government flip-flops, attacks non-doms and has runs on its banks. Another asked how the HMRC would police this given their other problems. Another pointed out there was a third alternative to paying the tax or leaving – and that was lying. Another said that the Greek shipping industry had started to move back to Athens since the Government’s review of 2003. This would be the final straw.

How will the plans turn out? The second speaker said the Government would make small changes and correct drafting errors. However large changes would undermine the Chancellor’s credibility. The fourth speaker agreed there would be further tweaking but no major changes. The first speaker said the lesson seemed to be that while Gordon Brown listens to no one, Alistair Darling only listens to Gordon Brown. The third speaker that the real fallout was the image of policymaking on the hoof and the whiff of xenophobia. The last speaker warned that the damage was worse than many believed and that it might be a future Government that reaps the whirlwind. Who will it affect? While the City is the major

victim, other victims include academia, which benefit from foreign lecturers and the health service that employs so many non-British doctors. All eyes and ears will be on the Budget on 12 March.