# PANCAKE DAY – END TO PERMANENT NON-DOMICILE STATUS AND CHARGING NON-DOMS I.H.T. ON U.K. RESIDENTIAL PROPERTY[1]

**Authors**
William Hancock
Daniel Simon

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In Sweden, it is traditional on Thursdays to lunch on a split pea soup followed by pancakes, jam, and cream. Before the Reformation, when Sweden was a Catholic country, it answered the need for a hearty meal before Friday fasting.

In Westminster Hall on Tuesday July 11 Peter Dowd, the Shadow Chief Secretary, was hungry. "Why are we waiting for the Finance Bill?" he asked. "We have waited and waited for the Finance Bill. I hope we get it this side of Christmas—we might get it next Pancake Thursday."

On Thursday July 13, the U.K. government came with pancakes and there was jam and cream. In written statements to both Houses of Parliament ministers confirmed that a Finance Bill will be introduced as soon as possible after the summer recess and that provisions previously announced, which were intended to take effect from April 2017, will take effect from that date. H.M. Treasury and H.M. Revenue and Customs then followed by publishing updated draft provisions for the second 2017 Finance Bill.

Hopefully the government will find an opportunity to get the bill to the floor of the House of Commons in September. At Question Time on Tuesday July 18, the Chancellor of the Exchequer and other ministers at the Treasury answered questions addressed to the Chancellor by members of the House of Commons. One, in reference to non-domiciled ("Non-Dom") status and offshore trusts, drew a response from the Financial Secretary to the Treasury Mel Stride, who confirmed that it is the government's intention to "legislate further, making it harder for non *doms* to avoid tax on funds withdrawn from trusts." Otherwise, nothing was said to add to the prior week's written statements.

The written statement to the House of Commons on July 13 was delivered by Mel Stride. He reminded the House that at the point at which a number of changes to the tax legislation were withdrawn from the Finance Bill introduced in March 2017, including changes to the tax treatment of the non-domiciled, his predecessor had stated that there was no policy change.

The statement to the House of Commons reads:

> Where policies have been announced as applying from the start of the 2017-18 tax year or other point before the introduction of the forthcoming Finance Bill, there is no change of policy and these dates of application will be retained. Those affected by the provisions should continue to assume that they will apply as originally announced.

William Hancock is a partner at Collyer Bristow LLP. He provides tax and estate planning advice for private clients and their families. He advises on domicile and residence, succession and inheritance, and the formulation of efficient strategies for the preservation, maintenance, and ultimate distribution of property through wills, trusts and charitable foundations.

Daniel Simon is a partner at Collyer Bristow LLP. He advises on all aspects of U.K. and offshore tax, trust and estate planning, and charity law. His practice focuses on U.K. and U.S. planning as well as providing Swiss, French, Italian, and Indian cross-border advice.

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> The Finance Bill to be introduced will legislate for policies that have already been announced. In the case of some provisions that will apply from a time before the Bill is introduced, technical adjustments and additions to the versions contained in the March Bill will be made on introduction to ensure that they function as intended. To maximise certainty about the exact provisions that will apply, the Government is today publishing updated draft provisions.[2]

Two of the supporting documents for the second 2017 Finance Bill relate to the end to the permanent Non-Dom status and charging Non-Doms inheritance tax ("I.H.T.") on U.K. residential property and can be found here.

The policy paper "Deemed Domicile: Income Tax and Capital Gains Tax - Updated Legislation," published on July 13, 2017, introduces the new rules for deeming individuals domiciled in the U.K. for tax purposes from April 2017.

The policy paper "Inheritance Tax on Overseas Property Representing UK Residential Property – Updated Legislation" introduces the new rules to ensure that individuals deemed domiciled under the new deeming provisions will be subject to I.H.T. on their worldwide income and gains.

The news story that the government will legislate for all policies that were included in the pre-election Finance Bill had been already foreshadowed in the background briefing notes published by Cabinet Office and the Prime Minister's Office on the occasion of the opening of Parliament on Wednesday June 21, 2017. The government said at the time that it intended that all those policies originally announced to start from April 2017 would be effective from that date. The justification for this was that the bill would implement budget decisions: The Queen's speech and background notes can be found here.

On Friday July 14, the government published a list of provisions that those affected "should continue to assume that they will apply as originally announced" – the list can be found here.

The budget decisions to which the briefing notes refer are the budget resolutions that were passed by the House of Commons at the close of the Spring Budget 2017 debate "on all of which a Bill is to be brought in." However, the motions passed related to the provisions contained in the first 2017 Finance Bill, then printed and introduced into Parliament, which only had legal effect insofar as they were brought in by the Finance Act 2017.

In the April wash up negotiations between the government and the opposition, the government agreed to drop the deemed domicile changes. Consequently, a motion from the chair that those provisions be given up was carried by the House of Commons on April 25 at the Third Reading of the Bill. The effect of that, and subsequently the dissolution of Parliament on May 3, is that the budget resolution decisions that had not been brought into law lapsed. In summary, the spring budget decisions announced by the government and accepted by the last Parliament were enacted by the first Finance Act 2017. Similarly, those rejected will be implemented by this Parliament, just as if they had been accepted by the previous one.

It has been said that:

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[2] U.K. Parliament, "Finance Bill: Written Statement," July 13, 2017, HCWS47.

> The rule of law stands for the view that decisions should be made by the application of known principles or laws. In general such decisions will be predictable, and the citizen will know where he is. On the other hand there is what is arbitrary. A decision made without principle, without any rules. It is therefore unpredictable, the antithesis of a decision taken in accordance with the rule law.[3]

It has also been said that:

> Whatever one thinks of this practice of backdating Budget legislation, one must concede that it does not drastically upset expectations. The law is merely enacted as was promised by prior public announcement, with effect from that date and no earlier. What is of more concern is legislation made retroactive prior to the announcement date, such that it could not have been expected, let alone acted upon, by the taxpaying public.[4]

In March 2002, then Solicitor-General Harriet Harman described the approach taken by the government of the time to retrospective legislation:

> The Government's policy before introducing a legislative provision having retrospective effect is to balance the conflicting public interests and to consider whether the general public interest in the law not being changed retrospectively may be outweighed by any competing public interest. In making this assessment the Government will have regard to relevant international standards including those of the European Convention for the Protection of Human Rights and Fundamental Freedoms which was incorporated into United Kingdom law by the Human Rights Act 1998.

Each year, at the Second Reading, the Chancellor of the Exchequer states under section 19(1)(a) of the Human Rights Act 1998, that in his view the provisions of the Finance Bill are compatible with the convention rights.

The government would presumably argue that it is in the public interest to have tax policy for the year implemented in line with the expectations at the time of the budget and that the taxpayer had due warning of this. Indeed many taxpayers will have arranged their affairs according to what was previously announced. If changes are only implemented from some future date, such as April 2018, these taxpayers may be disadvantaged. On the other hand, taxpayers will suffer tax that they would not have suffered if the changes were not introduced retrospectively. One might question whether the estates of individuals who died between April 6 and July 13 should be chargeable to I.H.T. on assets that were not chargeable to tax when they died.

Parliament rose for the summer recess on Thursday July 20. The Houses do not return again until September 5. Parliament will then rise again for the conference recess on September 14 before returning on October 9. If the bill is not debated before October, it seems unlikely that it will reach the statute book long before the end of November.

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[3] Geoffrey Marshall, "The Franks Committee: Report on Administrative Tribunals and Enquiries," (1957) 35 *Public Administration*.

[4] Geoffrey T. Loomer, "Taxing Out of Time: Parliamentary Supremacy and Retroactive Tax Legislation," *British Tax Review* 1 (2006).

It is now two years since the release of Summer Budget 2015[5] and the announcement of a change of policy in the fiscal treatment of those not U.K. domiciled. A change that was intended to create a fairer system while protecting the ability of the U.K. to continue to attract individuals to come to the U.K. and invest. What message does it send abroad about our constitutional principles that Parliament will be debating in September or October whether estates for which I.H.T. accounts were returned in April should be posthumously taxed?

The government's need to make the legislation retrospective (to the time of a previous parliament) typifies the wholly unsatisfactory way in which these changes to the taxation of Non-Dom individuals have been introduced – a manner that has been hugely damaging to the U.K.'s reputation for stability and reliability.

*"So, what's not to like? Too little jam and too little cream."*

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5 Summer Budget 2015 can he found here.