

# An Uncertain Future: What the Recent Tax Reforms in the United Kingdom and the United States Could Mean for Non-Domiciled Americans

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## I. INTRODUCTION

The United Kingdom (U.K.) has historically been a global destination for non-U.K. residents from around the world; whether it be for work, study, or tourism.<sup>1</sup> This started to change in 2016 when the U.K. voted to leave the European Union (EU) in a referendum, that has since been dubbed “Brexit.”<sup>2</sup> This referendum, driven by isolationist and nationalist ideals was partially in response to a desire by the British people to halt the historically massive influx of immigrants that threatened to permanently alter the British character of the U.K.<sup>3</sup>

Although the U.K. remains the most attractive global destination to live and work, as many as one-third of non-British workers are strongly considering leaving the U.K, with high-skilled workers most likely to leave, as the effects of the referendum begin to set in.<sup>4</sup>

Strongly connected to this shift in attitude by global jobseekers is the uncertain future of non-domiciles or “non-doms” for short.<sup>5</sup> Non-doms are persons living and possibly working in the U.K. that maintain their principal domicile outside of the U.K.<sup>6</sup> In recent years, the number of non-doms in the U.K. steadily rose from 83,000 in 1997 to 116,000 in 2013.<sup>7</sup> While this seems like a relatively small number in the context of the

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1. See Dr. Cinzia Rienzo, *Migrants in the UK Labour Market: An Overview*, MIGRATION OBSERVATORY (July 31, 2018), <https://migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-labour-market-an-overview/>; see also COMMONS BRIEFING, TOURISM: STATISTICS AND POLICY, 2019-20, HC (UK); see also *Patterns and Trends in UK Higher Education*, U. UK (Sept. 21, 2018), <https://www.universitiesuk.ac.uk/facts-and-stats/data-and-analysis/Documents/patterns-and-trends-in-uk-higher-education-2018.pdf>.

2. Kim Hjelmgaard & Greg Zoroya, *Exploding UK Immigration Helped Drive ‘Brexit’ Vote*, USA TODAY (June 28, 2016), <https://www.usatoday.com/story/news/world/2016/06/28/exploding-uk-immigration-helped-drive-brexit-vote/86424670/>.

3. *Id.*

4. William Booth & Karla Adam, *Brexit: Theresa May Secures Assurances from E.U. but May Not Be Able to Pass Her Deal in Parliament*, WASH. POST (Mar. 11, 2019), [https://www.washingtonpost.com/world/europe/in-a-big-week-for-brexit-parliament-will-vote-on-theresa-mays-deal-and-possibly-a-delay/2019/03/11/52d3f5d4-4403-11e9-94ab-d2dda3c0df52\\_story.html?no-redirect=on](https://www.washingtonpost.com/world/europe/in-a-big-week-for-brexit-parliament-will-vote-on-theresa-mays-deal-and-possibly-a-delay/2019/03/11/52d3f5d4-4403-11e9-94ab-d2dda3c0df52_story.html?no-redirect=on); see also Press Release, Deloitte, *Deloitte: UK Remains Highly Attractive to Overseas Workers but Could Face Skills Crunch* (June 27, 2017) [hereinafter Deloitte], <https://www2.deloitte.com/uk/en/pages/press-releases/articles/deloitte-uk-remains-highly-attractive-to-overseas-workers.html>.

5. See generally Deloitte, *supra* note 4.

6. *The Madness of King George III’s Non-Dom Tax System*, FIN. TIMES (Mar. 1, 2015), <https://www.ft.com/content/9545f01c-be78-11e4-8036-00144feab7de> [hereinafter *King George III*].

7. *Id.*

number of non-U.K. residents already in the U.K., non-doms have attracted attention from U.K. citizens and members of Parliament because many are popularly considered to be high-net-worth individuals divorced from the rest of British society, despite evidence that some are relatively low-paid workers, such as teachers.<sup>8</sup> Non-doms include citizens from around the world, including many Americans who, as a result of our “special relationship,” historically view the U.K. as the number one destination to live abroad as expatriates.<sup>9</sup>

American expatriates (referring to Americans living and working abroad), some of whom are non-doms themselves, have enjoyed a relatively stable tax regime both within the United States and within the U.K.; however, this has begun to change recently.<sup>10</sup> On December 22, 2017, President Trump signed into law the Tax Cut and Jobs Act of 2017 (Act).<sup>11</sup> The Act has been cited as the largest overhaul of the tax code since the reforms of 1986 under President Reagan.<sup>12</sup> Part and parcel to this grand overhaul was a change in the tax regime specific to American expatriates, which is already having an impact on them.<sup>13</sup> The Act did a number of things that affected the current and future tax status of American expatriates, unsettling the tax regime to which they had grown accustomed.<sup>14</sup> This shifting landscape is further complicated by both Foreign Bank Account Reports (FBARs) and the Foreign Account Tax Compliance Act (FATCA), two taxation compliance provisions that were already considered by some to be excessive compliance burdens placed on nonresident American citizens by the Bank Secrecy Act.<sup>15</sup> The burdens

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8. *Id.*; see *EU Immigration to the UK*, FULL FACT (Dec. 19, 2018), <https://fullfact.org/immigration/eu-migration-and-uk/>; see also Harriet Agnew, *Flight of the Non-Doms?*, FIN. TIMES (Mar. 9 2016), <https://www.ft.com/content/b482fc4e-c4f4-11e5-b3b1-7b2481276e45>.

9. Agnew, *supra* note 8; Daniel Freedman, *What to Know About Expat Americans Living in the UK*, FIN. TIMES ADVISOR (Aug. 28, 2018), <https://www.ftadviser.com/investments/2018/08/28/what-to-know-about-expat-americans-living-in-the-uk/>.

10. Freedman, *supra* note 9; *King George III*, *supra* note 6.

11. See H.R. REP. NO. 115-97 (2017).

12. *Tax Reform Readiness: Base Erosion and Anti-Abuse Tax*, PRICEWATERHOUSE COOPERS (Feb. 2, 2018), <https://www.pwc.com/us/en/services/tax/library/insights/tax-reform-readiness-base-erosion-and-anti-abuse-tax.html> [hereinafter *Tax Reform Readiness*].

13. See generally I.R.C. § 163 (2017).

14. Helen Burggraf, *Withers: What the US Tax Reforms Will Mean for US Expats*, INT’L INV. (Jan. 22, 2018), <https://www.internationalinvestment.net/internationalinvestment/news/3500236/witers-us-tax-reforms-mean-us-expats>.

15. See, e.g., Kim “Christine” Young Ran, *Considering “Citizenship Taxation”*: In Defense of FATCA, 20 FLA. TAX REV. 335, 358-59 (2017); Michael S. Kirsch, *Revisiting the Tax Treatment of Citizens Abroad: Reconciling Principle and Practice*, 16 FLA. TAX REV. 117, 122 (2014); Reuven S. Avi-Yonah, *The Case Against Taxing Citizens*, 58 TAX NOTES INT’L 389, 392 (2010).

took on new light for American expatriates due to the passage of the Act.<sup>16</sup> Not only are current and future American expatriates faced with a new domestic tax regime, but they must now contend with the new, unfriendly tax regime of the U.K.<sup>17</sup> As a background to all of this, there is the looming specter of Brexit and its potential disruption of the socioeconomic status of the U.K, which at the time of writing this Comment, was set to occur on March 29, 2019.<sup>18</sup>

Set against the forces of reporting obligations, new tax regimes, and one of the biggest shifts in global financial power and economic activity of the last two decades are current and future nonresident American citizens living and working in the U.K.<sup>19</sup> What does the future hold for them in the context of all these colliding forces? Will the new financial world they face make their lives easier? Harder? Or will they remain largely unaffected even as the U.K. and other non-doms prepare for a future that is likely less than beneficial to them?<sup>20</sup> This Comment will address these questions in four Parts. Part II will discuss the history of non-doms in the U.K., the development and passage of the Finance Act of 2017, and the significance of that Act and other related acts of Parliament for the non-doms in the U.K. Part III will discuss the domestic tax regime by analyzing the important changes made regarding nonresident American citizens found in the Tax Cuts and Jobs Act, as well as the financial reporting requirements faced by nonresident Americans. Part IV will briefly discuss the history of Brexit before shifting to an analysis of both the current economic consequences of Brexit and the potential economic consequences it is likely to have on the U.K., deal or no deal. Part V will discuss the nexus between these forces and what they mean together for nonresident Americans living or looking to live in the U.K.

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16. See Avi-Yonah, *supra* note 15.

17. See Joe Light, *U.S. Expats Face Hammering from New Tax Rules*, BLOOMBERG (July 31, 2018), <https://www.bloomberg.com/news/articles/2018-07-31/living-abroad-isn-t-so-idyllic-for-u-s-expats-facing-new-taxes>; *Non-Domicile Reforms Update: One Year On*, BLICK ROTHENBERG (July 2018), <https://www.blickrothenberg.com/getmedia/5009c067-9f04-4b06-b5bf-31763740f9ae/Non-dom-reforms-one-year-in.pdf.aspx> [hereinafter BLICK ROTHENBERG].

18. Booth & Adam, *supra* note 4.

19. See Ely Razin, *How Brexit Could Affect Finance, Real Estate and the Global Economy*, FORBES (Aug. 8, 2018), <https://www.forbes.com/sites/elyrazin/2018/08/08/how-brexit-could-affect-finance-real-estate-and-the-global-economy/#2b7e8fe640df>.

20. See generally ORG. FOR ECON. CO-OPERATION & DEV., OECD ECONOMIC POLICY PAPER NO. 16, THE ECONOMIC CONSEQUENCES OF BREXIT: A TAXING DECISION (Apr. 2016) [hereinafter OECD], <https://www.oecd.org/eco/The-Economic-consequences-of-Brexit-27-april-2016.pdf>.

## II. TAX LAW IN THE UNITED KINGDOM

The U.K. underwent a tax regime change that started to come into force in 2017.<sup>21</sup> Generally speaking, tax regime changes are fairly common in legislation.<sup>22</sup> However, this should not belie their importance as such reforms often reflect the influence of contemporary as well as historical, economic, social, and political pressures in a country, making them strongly context-specific as a reflection of a country's unique situation.<sup>23</sup>

The U.K.'s own unique situation led Parliament to pass the 2017 tax reforms, which consisted of provisions significant in the lives of U.K. non-doms.<sup>24</sup>

### A. *The History of Non-Domiciles in the United Kingdom; A Unique Situation*

The unique history of the non-dom tax regime in the U.K. dates back to 1798 when William Pitt the Younger (Pitt) was Prime Minister, King George III was the monarch, and the U.K. was at war with Napoleon.<sup>25</sup> It was during this period of wartime that Pitt came up with the idea for an income tax scheme for Great Britain.<sup>26</sup> The original British progressive income tax was introduced as a temporary means for paying for war against the forces under Napoleon.<sup>27</sup> While both Pitt's tenure as the head of government for Great Britain and his tax scheme came to an end in 1802, his progressive income taxation scheme would be revived again and again before settling into its modern incarnation in 1842.<sup>28</sup> The first modern income tax scheme introduced by Pitt at the closing of the eighteenth century, a scheme born of a war-weary empire, was also

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21. BLICK ROTHENBERG, *supra* note 17.

22. See generally Roel Dom & Mark Miller, *Reforming Tax Systems in the Developing World; What Can We Learn from the Past?*, OVERSEAS DEV. INST. (June 2018), <https://www.odi.org/sites/odi.org.uk/files/resource-documents/12280.pdf>.

23. *Id.*

24. Jonathan Riley et al., *April 2017 Changes for UK Resident Non-Domiciled Individuals*, (2016), <https://www.michelmores.com/sites/default/files/Changes-for-Non-UK-Domiciled-Individuals.pdf>.

25. *King George III*, *supra* note 6.

26. Sylvanus Urban, *Obituary, The Dean of Bristol*, 161 GENTLEMAN'S MAG., Jan.-June 1837, at 546-57.

27. *A Tax to Beat Napoleon*, HM REVENUE & CUSTOMS, <https://web.archive.org/web/20100724033906/http://www.hmrc.gov.uk/history/taxhis1.htm> (last visited on Mar. 19, 2019).

28. *Id.*; see also The Income Act 1842, 5 & 6 Vict. C. 35 (Eng.).

responsible for the beginning of the non-dom tax regime in what would eventually become the U.K.<sup>29</sup>

The non-dom tax regime in the U.K. began with the war against Napoleon, but it served a purpose very distinct from that of Pitt's income tax.<sup>30</sup> As stated before, Great Britain was at war and desperate for money, which is why the progressive income tax was introduced.<sup>31</sup> This tax, while of great benefit to the struggling nation, also had the potential to do significantly more harm than good if the tax was levied on those with foreign property in Great Britain as it was the home of the British Empire.<sup>32</sup> To avoid this outcome, Pitt introduced the non-domicile regime to shelter those with foreign property from Britain's wartime taxes.<sup>33</sup> This reasoning, born of a unique situation faced by a uniquely global nation, led to the creation and subsequent perpetuation of the non-domicile tax regime, a regime unique to the U.K. amongst all developed countries.<sup>34</sup> This tax regime's unique character was not only confined to the situation and country that created it but also extended to the provisions it entailed.<sup>35</sup>

*B. Non-Domiciled: What Did This Mean in the United Kingdom?*

The non-dom tax regime in the U.K. was singular amongst developed nations for the primary reason that it functioned as a homegrown tax haven in a very British fashion.<sup>36</sup> Due to its colonial history and reliance on foreign trade, U.K. law relating to domicile is often considered complex, and it differs from the laws of most other countries in that a domicile is distinct from the concepts of either nationality or residence.<sup>37</sup> "Domicile" in the U.K. has been interpreted at different times to mean: an embodiment of the allegiance of English natives to the Crown; to serve as a synonym for nationality; and to serve as the country of origin

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29. *King George III*, *supra* note 6.

30. *Id.*

31. Nichols, *supra* note 26.

32. *See King George III*, *supra* note 6.

33. *Id.*

34. Tom Begin, *Special Report-Britain's Home-Grown Tax Haven*, REUTERS (May 22, 2015), <https://uk.reuters.com/article/uk-britain-tax-nondoms-specialreport-idUKKBN00711320150522>.

35. *Id.*

36. *Id.*

37. Richard A. Westin, *Tax Exiles: A Comparative Study (Part 2)*, 24 *JITAX* 35, 36 (2013); *see also* Paul Webb, *UK Individual Taxation in the UK*, MONDAQ (Jan. 30, 2019), <http://www.mondaq.com/uk/x/776238/Capital+Gains+Tax/Individual+Taxation+In+The+UK>.

for the principle embodiment of the necessity of domicile.<sup>38</sup> Contemporarily, “domicile” has been ascribed an expansive meaning as a general legal concept referring to the place where a person is regarded by law as having a permanent home.<sup>39</sup> This means that a domicile can be in an entirely separate country from the one in which an individual resides.<sup>40</sup> It also means that it is entirely possible to abandon one domicile in order to set up another one in a different country.<sup>41</sup>

This flexible, general definition of a domicile was integral to the non-dom tax regime in the U.K. because it allowed persons to live in the U.K. while maintaining their domicile in another country; this formed the cornerstone of this regime as a homegrown tax haven because it allowed even U.K. citizens to take advantage of it.<sup>42</sup> The unusual facet of this cornerstone is that non-doms could continue to claim to be non-domiciled provided they paid an annual charge.<sup>43</sup> Non-doms could also be multigenerational provided that the non-dom can show that either the non-dom, their father, or grandfather was born overseas.<sup>44</sup> Additionally, beyond this cornerstone, the regime itself was very generous in its actual provisions.<sup>45</sup> The non-dom tax regime offered non-domiciliaries a variety of benefits related to a remittance basis of taxation: inheritance tax, income tax, offshore assets, and capital gains.<sup>46</sup> The remittance basis of taxation, which an individual who is a non-dom could elect to be taxed on, meant that the person who chose this would be liable to the U.K. tax on income and capital gains normally but would only be liable to the U.K. tax on foreign income and gains that were remitted to the U.K.<sup>47</sup> For the first seven years, there was no charge for this special treatment, but this changed once the person resided in the U.K. for at least seven of the

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38. Domicile of origin was treated akin to nationality in *In re O'Keefe* [1940] Ch. 124 (U.K.) (also published in ARTHUR T. VON MEHREN & DONALD T. TRAUTMAN, *THE LAW OF MULTISTATE PROBLEMS* 542-44 (1965)).

39. Westin, *supra* note 37.

40. *Id.*

41. *Id.*

42. Begin, *supra* note 34.

43. Vanessa Houlder, *The FT Guide to Being a Non-Dom*, FIN. TIMES (Feb. 13, 2015), <https://www.ft.com/content/519e15d8-b38d-11e4-9449-00144feab7de>.

44. James Ball, *Non-Dom Status: Living and Working in the UK, Without Paying All Your Tax in the UK*, GUARDIAN (Apr. 7, 2015), <https://www.theguardian.com/money/2015/apr/07/non-dom-tax-status-living-working-paying-tax-uk>.

45. *Id.*

46. Riley et al., *supra* note 24.

47. Arabella Murphy & Claire Weeks, *20 Questions: The Reforms to the Taxation of Non-UK Domiciliaries*, TAX J. (Oct. 6, 2017), <https://www.taxjournal.com/articles/20-questions-reforms-taxation-non-uk-domiciliaries-05102017>.

previous nine taxable years, where the fee was £30,000; if a resident was in the U.K. for at least twelve of the previous fourteen tax years, the fee was £60,000; and if a resident was in the U.K. for seventeen years of the preceding twenty tax years, then the fee was £90,000.<sup>48</sup> These annual remittance basis charges, while fairly steep, were usually outweighed by the many tax benefits that this tax regime offered.<sup>49</sup>

A benefit that offset the annual remittance tax basis charges was inheritance tax.<sup>50</sup> Before April 6, 2017, the inheritance tax, which is the U.K. equivalent of an estate and gift tax—meaning that it applies on death and lifetime gifts—was only applicable to a person's assets situated in the U.K.<sup>51</sup> This was a far more limited tax basis than an individual deemed to be domiciled in the U.K., as such a person is liable to inheritance tax on his worldwide assets.<sup>52</sup> Furthermore, a non-dom could avoid or significantly mitigate even this limited inheritance tax basis by creating an excluded property trust, containing only non-U.K. assets, before a person is domiciled or deemed domiciled in the U.K.<sup>53</sup> Such an excluded property trust, which tends to benefit the individual or settlor of the trust, remains outside the scope of U.K. inheritance tax indefinitely, even after the settlor or his children are deemed to be domiciled in the U.K.<sup>54</sup> This trust even allows the non-dom settlor to exclude the trust from income tax if he claims the remittance basis and the trust remains outside of the U.K.<sup>55</sup> Closely held, offshore companies were also used in a similar manner to shield assets such as homes and art collections from U.K. taxes on their increases in value, provided that the share-owners were neither domiciled nor deemed domiciled in the U.K.<sup>56</sup>

The excluded property trust also provided other offsets to the remittance charged to non-doms.<sup>57</sup> The settlor of the trust was also not

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48. *Id.*

49. *See generally id.*

50. Riley et al., *supra* note 24.

51. *Id.*

52. Stuart Janaway, *Changes to the UK Taxation of 'Non Doms,'* OSBORNE CLARK (July 14, 2016), <https://www.osborneclarke.com/insights/changes-to-the-uk-taxation-of-non-doms/>.

53. Riley et al., *supra* note 24.

54. *Id.*

55. *Id.*

56. Juliette Garside, *Permanent Non-Dom Tax Status to Be Abolished, Chancellor Announces,* GUARDIAN (July 8, 2015), <https://www.theguardian.com/uk-news/2015/jul/08/non-dom-tax-status-abolished-individuals-born-uk-budget-george-osborne>; *see also* Alison Cartin, *Summer Budget 2015: Significant Changes to UK Tax for Non-Domiciled Individuals,* BCLP (July 8, 2015), <https://private-wealth.bclplaw.com/insights-resources/blog-post/summer-budget-2015-significant-changes-to-uk-tax-for-non-domiciled-individuals>.

57. Cartin, *supra* note 56.



liable to U.K. taxes on capital gains as they arose in the excluded property trust, unless that individual is a U.K. resident that decided to remain in the U.K. permanently and indefinitely.<sup>58</sup> The settlor and any U.K. resident beneficiary is liable to pay U.K. tax on any capital benefits derived from the excluded property to the extent that the capital benefit can be matched with income or gains of the trust, unless any U.K. beneficiary who pays the remittance can shelter a benefit enjoyed outside of the U.K.<sup>59</sup>

C. *The 2017 Changes to the Non-Dom Tax Regime: Why It Was Changed*

The taxation benefits that non-doms could take advantage of were considerable, and while the tax regime was tolerated for decades, political and socioeconomic forces converged and reached critical mass in 2015, eventually resulting in the 2017 tax regime reforms.<sup>60</sup> The general public perception of non-doms during these years was of billionaires, jet-setters, and business moguls that were exploiting the non-dom tax status, and that there were “more non-dom people in the U.K. than there are people living in offshore tax havens like Jersey.”<sup>61</sup> Compounding this perception that only the wealthy were making use of the non-dom tax regime was that many wealthy non-doms were buying up some of the most valuable property in cities like London while not paying their perceived fair share of taxes.<sup>62</sup> Furthermore, some wealthy non-doms were using their tax status in ownership-shifting techniques to avoid paying substantial taxes on offshore companies, legally moving wealth worth billions of pounds out of the country and out of sight for the tax collectors.<sup>63</sup> Finally, there was the general rise of antimigrant sentiment in the U.K. around the time that both helped drive Brexit and this perception of non-doms as wealthy foreigners seeking to take advantage of the British people.<sup>64</sup>

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58. *Id.*; see Taxation of Chargeable Gains Act 1992, c. 12, part III, ch. II, § 86 (Eng.), <http://www.legislation.gov.uk/ukpga/1992/12/section/86/enacted>.

59. Taxation of Chargeable Gains Act 1992, c. 12, part II, ch. II, § 87 (Eng.), <http://www.legislation.gov.uk/ukpga/1992/12/section/87/enacted>.

60. Riley et al., *supra* note 24.

61. *King George III*, *supra* note 6; Jenny Anderson, *Britain's Elite Still Enjoying a Tax Break 100 Years Old*, N.Y. TIMES (Mar. 2, 2015), <https://www.nytimes.com/2015/03/03/business/dealbook/a-century-old-tax-break-for-the-rich-and-mobile-in-britain.html>.

62. See Agnew, *supra* note 8.

63. Begin, *supra* note 34.

64. Hjelmgaard & Zoroya, *supra* note 2.

British politicians were quick to capitalize on the public perception of non-doms to push for tax regime reform.<sup>65</sup> On April 8, 2015, Ed Miliband, who was then the leader of the Labour Party, took advantage of the growing criticisms of non-doms to make an electoral campaign pledge to abolish the non-dom tax regime.<sup>66</sup> The move was warmly welcomed by most, in part because of growing resentment towards wealthy foreigners, but also in part because Labour had previously assaulted the non-dom tax regime in 2008, under Prime Minister Brown, with reforms that had stopped shy of abolishing the special provisions entirely.<sup>67</sup> The criticism of the pledge—that it was just Labour repeating its pattern of pushing policies that seem less about restoring equitable tax treatment and more about demonizing success—was short-lived, as the pledge passed out of their hands.<sup>68</sup> Sensing the widespread popularity of the pledge to reform the non-dom tax regime, George Osborne, who was Chancellor of the Exchequer at the time, unveiled an overhaul of the system that July.<sup>69</sup>

*D. The 2017 Changes to the Non-Dom Tax Regime: What Was Changed and What Stayed the Same*

The overhaul was first unveiled by Osborne in the Summer Budget of 2015, eventually coalesced in the Finance (No. 2) Act 2017, with additional changes made in the 2017/2018 finance bill that appears in the Finance Act 2019.<sup>70</sup> Changes were made regarding almost the entirety of the non-dom tax regime.<sup>71</sup> The four main changes are as follows.<sup>72</sup> One, non-doms will be deemed domiciled for all tax purposes once they have been resident in the U.K. for more than fifteen of the last twenty years; once this determination is made, a non-dom will be able to use the remittance basis and will be taxed as a regular U.K. resident on all income

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65. *All Must Pay*, ECONOMIST (Apr. 11, 2015), <https://www.economist.com/britain/2015/04/11/all-must-pay>.

66. *Id.*

67. *Id.*

68. *See No to No-Doms*, ECONOMIST (Apr. 11, 2015), <https://www.economist.com/leaders/2015/04/11/no-to-non-doms>.

69. Agnew, *supra* note 8.

70. *See* Finance Act 2017, No. 2, c. 32, § 29 (Eng.), <http://www.legislation.gov.uk/ukpga/2017/32/part/1/crossheading/domicile-overseas-property-etc/enacted>. *See generally* Finance Act 2018, c. 3 (Eng.), [http://www.legislation.gov.uk/ukpga/2018/3/pdfs/ukpga\\_20180003\\_en.pdf](http://www.legislation.gov.uk/ukpga/2018/3/pdfs/ukpga_20180003_en.pdf); Finance Act 2019, c. 1 (Eng.), [http://www.legislation.gov.uk/ukpga/2019/1/pdfs/ukpga\\_20190001\\_en.pdf](http://www.legislation.gov.uk/ukpga/2019/1/pdfs/ukpga_20190001_en.pdf).

71. *See generally* Riley et al., *supra* note 24.

72. Ian Perrett et al., *The UK Non-Dom FAQs*, WITHERS WORLDWIDE (Nov. 21, 2016), <https://www.withersworldwide.com/en-gb/insight/the-uk-non-dom-faqs>.

and gains.<sup>73</sup> Two, as regular U.K. taxpayers, non-doms are now taxed on all assets (income, capital gains, and inheritance tax) around the world (double taxation treaties prevent double taxation in many cases).<sup>74</sup> Three, people born and domiciled in the U.K. are no longer able to claim to be non-doms so long as they reside in the U.K.<sup>75</sup> Four, assets held in trusts now offer other benefits if established before the party is deemed domicile, but once that determination has been made, the party will be taxed when they or their immediate family (spouse or children) start to receive any benefit from the trust.<sup>76</sup> Other benefits still offered to excluded property trusts, established before the settlor is domiciled or deemed domiciled, are the following: protection from taxes on gains on an arising basis provided no further assets are added after the settlor becomes domiciled; and a remittance basis of taxation to shelter the trust will continue until the settlor is deemed domiciled, and once that occurs the settlor's non-closely related beneficiaries (children over the age of eighteen or grandchildren) can receive distributions with no U.K. tax liability.<sup>77</sup> There were other, minor changes that will not be discussed in this Comment because their impact to non-doms is insignificant within this discussion's context.<sup>78</sup>

Parliament, in reforming the non-dom tax regime, wanted to avoid making the changes so extreme and inclusive as to drive out all of the 116,000 non-doms, many of whom were responsible for either attracting great wealth or for providing much-needed skilled labor, and so Parliament kept some aspects of the regime the same while also providing something of a grace period for transition.<sup>79</sup> In addition to attracting wealth to the U.K., Parliament was also worried that being too harsh would both drive off non-doms—a group that paid £9bn in taxes during 2014-15, or an average of £105,000 per person, even with the tax benefits of the non-dom regime—and harm the significant amount of non-doms that paid taxes on all their income and capital gains from around the world.<sup>80</sup>

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73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *See generally* Riley et al., *supra* note 24.

78. *See generally* Murphy & Weeks, *supra* note 47.

79. *King George III*, *supra* note 6; *see also All Must Pay*, *supra* note 65.

80. Vanessa Houlder, *Non-Doms Pay Average £105,000 in UK Tax*, *Data Show*, FIN. TIMES (Aug. 31, 2017), <https://www.ft.com/content/f96bb528-8e4f-11e7-a352-e46f43c5825d>; HM REVENUE & CUSTOMS, STATISTICS ON NON-DOMICILED TAXPAYERS IN THE UK 2007-08 TO 2016-17 (July 26, 2018), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/728630/Statistical\\_commentary\\_on\\_non-domiciled\\_UK\\_taxpayers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728630/Statistical_commentary_on_non-domiciled_UK_taxpayers.pdf); Simon Bowers, *Non-Dom Status Claimed by 800 UK-Born Taxpayers Living in Britain*,

Therefore, the altered non-dom tax regime retained the benefits afforded to excluded property trust as mentioned in the preceding paragraph.<sup>81</sup> Additionally, individuals that lack any prior connection to the U.K. can follow the remittance basis for their first fifteen taxable years, and they can continue to follow the remittance basis indefinitely if the remittance basis user avoids remitting to the U.K. anything derived from foreign income or gains.<sup>82</sup> Finally, the remittance basis still applies automatically to non-doms during their first seven years of U.K. residence before the annual fee sets in.<sup>83</sup> Upon implementation of the regime reforms, Parliament offered a one-year grace period for non-doms to adjust their funds to separate out foreign funds for the purpose of remittance, and it expanded the availability of Business Investment Relief exemptions to certain qualifying non-doms to use their foreign income to invest in the U.K. without triggering a taxable remittance.<sup>84</sup> Even with these continued benefits, the changes to a 200-year old tax regime were significant; their impact on Americans living in the U.K. will be discussed in Part V.<sup>85</sup>

### III. TAX LAW IN THE UNITED STATES

As stated in the introduction, the United States underwent a tax regime change that started to come into force once President Trump signed the Tax Cut and Jobs Act of 2017.<sup>86</sup> Much like how the non-dom tax reform reflected a significant shift in the tax landscape for non-U.K. residents, so too did this Act for Americans currently or considering living abroad.<sup>87</sup> Compounding this change are the additional burdens of both FBARs and FATCA.<sup>88</sup>

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GUARDIAN (May 29, 2015), <https://www.theguardian.com/politics/2015/may/29/non-dom-status-claimed-by-800-british-born-taxpayers-living-in-uk>.

81. See generally Riley et al., *supra* note 24.

82. Dominic Lawrance, *UK Resident Non-UK Domiciliaries: The Remittance Basis*, CHARLES RUSSEL SPEECHLYS (Apr. 19, 2018), <https://www.charlesrussellspeechlys.com/en/news-and-insights/insights/private-wealth/2016/uk-resident-non-uk-domiciliaries-the-remittance-basis>.

83. *Id.*

84. Perrett et al., *supra* note 72; KPMG, NON DOM CHANGES (Aug. 2016), <https://home.kpmg/content/dam/kpmg/uk/pdf/2016/08/Proforma-non-dom-changes-2016.pdf>.

85. *Briefing Note—Non Dom Tax Changes*, SMITH & WILLIAMSON (Nov. 29, 2018), <https://smithandwilliamson.com/en/insights/briefing-note/briefing-note-non-dom-tax-changes> [hereinafter *Briefing Note*].

86. See H.R. REP. NO. 115-97 (2017).

87. *Briefing Note*, *supra* note 85; *Tax Reform Readiness*, *supra* note 12.

88. Young Ran, *supra* note 15.

A. *The U.S. Tax System and Americans Abroad Before 2017*

The United States has a worldwide income taxation system in place, which means unlike a country that possesses a territorial income taxation system, a U.S. taxpayer remains subject to American income tax no matter where in the world that person is.<sup>89</sup> The reach of the U.S. taxman, however, is limited, as a taxpayer may expatriate following citizenship renunciation or permanent residence relinquishment accompanied by a physical departure from the United States; the result of either choice is that he is subject to income tax on that portion of his income from sources in that person's first tax jurisdiction.<sup>90</sup> Expatriates, while enjoying a lower taxable income, are subject to a one-time exit tax and remain subject to I.R.C. § 877, which imposes a ten-year, post-expatriation continuance tax.<sup>91</sup> Once abroad, American citizens and residents may also be entitled to a foreign earned income exclusion that reduces taxable income.<sup>92</sup> U.S. taxpayers could also conduct business through foreign corporations thereby avoiding taxes on income generated by that corporation as long as the income is not remitted to the United States.<sup>93</sup> The system also had statutory provisions such as FBARs and FATCA, which were designed to prevent tax evasion by U.S. citizens and residents living and working abroad.<sup>94</sup> Created by the Bank Secrecy Act in 1970, FBARs require U.S. persons to report their foreign bank and financial accounts each year.<sup>95</sup> While FBARs are only required if the aggregate balance in the foreign accounts exceed \$10,000 at any time during the calendar year, the penalties for failing to comply with this reporting are steep.<sup>96</sup> Enacted in 2010, FATCA was created so that the United States would be able to exercise enforcement influence over foreign financial institutions that maintain U.S. accounts and nonfinancial foreign entities that present a

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89. See generally Reuven S. Avi-Yonah, *Constructive Unilateralism: U.S. Leadership and International Taxation* (Univ. of Mich. Pub. Law Research Paper No. 463, 2015), <https://ssrn.com/abstract=2622868>.

90. I.R.C. § 877A(g)(2) (2018); Treas. Reg. § 1.1-1 (Oct. 10, 2019); 8 U.S.C. § 1481 (2012).

91. I.R.S. Pub. 519, *U.S. Tax Guide for Aliens* 50 (2017); I.R.C. § 877.

92. I.R.C. § 911 (2018).

93. See Henry Ordower, *The Expatriation Tax, Deferrals, Mark to Market, The Macomber Conundrum and Doubtful Constitutionality*, 15 PITT. TAX REV. 1, 12-20 (2017).

94. See generally Young Ran, *supra* note 15.

95. See 31 U.S.C. § 5314 (2004).

96. *Id.* § 5321(a)(5). Criminal penalties of up to \$500,000 and ten years in prison may also apply. *Id.* § 5322; *id.* § 1010.840.

high risk of U.S. tax avoidance.<sup>97</sup> FATCA also imposes reporting requirements on U.S. citizens and residents who hold foreign financial accounts if the total value of that person's foreign bank and investment account is \$50,000 on the last day of the tax year or more than \$75,000 at any point during the tax year.<sup>98</sup> Both FBARs and FATCA requirements must be followed by an individual if applicable.<sup>99</sup> The tax system in place prior to the passage of the Act in 2017 was arguably a reasonable one, albeit with some potentially perilous penalties if not followed exactly.<sup>100</sup>

*B. The U.S. Tax System and Americans Abroad After the Passage of the American Tax Cuts and Jobs Act of 2017*

The Act is the first time in three decades that the U.S. tax code was fully reformed.<sup>101</sup> The Act has in general eased tax filings and processing for Americans in the United States; however, the same cannot be said for Americans living and working abroad.<sup>102</sup> Generally speaking, the provisions of the U.S. tax system regarding individual Americans abroad has remained in place.<sup>103</sup> Nonresident Americans must still file FBARs, FATCA reports, and any other applicable reports.<sup>104</sup> Foreign income exclusions and foreign tax credit provisions have also remained the same for the most part.<sup>105</sup> The foreign income exclusion however has been altered in the way that it is calculated going forward.<sup>106</sup> Inflation for the exclusion had previously been calculated off of the regular consumer price index, but the Internal Revenue Service (IRS) now uses the chained consumer price index instead, which means that a lower inflation rate is

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97. Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities, 78 Fed. Reg. 5874 (Jan. 28, 2013).

98. See DEP'T OF THE TREASURY, INSTRUCTIONS FOR FORM 8938 (2012).

99. The IRS website warns taxpayers that "[t]he Form 8938 filing requirement does not replace or otherwise affect a taxpayer's obligation to file [the FBAR form] . . . individuals and domestic entities must check the requirements and relevant reporting thresholds of each form and determine if they should file Form 8938 or [the FBAR form], or both." *Comparison of Form 8938 and FBAR Requirements*, IRS, <http://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements> (last visited Mar. 25, 2019).

100. See generally Young Ran, *supra* note 15; see also Kirsch, *supra* note 15.

101. *Tax Reform and U.S. Expats: The Good, the Bad and the Same*, CPA PRAC. ADVISOR (Feb. 7, 2018), <https://www.cpapracticadvisor.com/tax-compliance/news/12396204/tax-reform-and-us-expats-the-good-the-bad-and-the-same> [hereinafter *Tax Reform*].

102. See *id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

now used to calculate the increases for this exclusion.<sup>107</sup> This means that taxes for persons using this exclusion will increase over time.<sup>108</sup> Other alterations were made in tax brackets, exemptions, and deductions.<sup>109</sup> Tax brackets are now more expansive, which means that an American abroad might now be in a lower tax bracket, and the standard deductions have now doubled.<sup>110</sup> Significantly, the amount that an individual is now able to give as a tax-exempt gift is now approximately eleven million per person.<sup>111</sup> Other relatively minor deductions were also made.<sup>112</sup> All individual tax provisions expire in 2025, unless Congress votes to extend them.<sup>113</sup>

An area that saw significant change involved corporations.<sup>114</sup> The Act implemented a territorial tax system for corporations and added the Base Erosion and Anti-Abuse Tax.<sup>115</sup> This means that even domestic corporations, provided that the corporation owns at least 10% of the foreign corporation, can take advantage of this new system.<sup>116</sup> These corporations are now able to deduct any dividends earned on foreign-sources.<sup>117</sup> Also, the corporate tax rate was lowered from the previous 35% to 21%.<sup>118</sup> Many foreign tax credits were also eliminated for corporations, except in a few situations.<sup>119</sup> The Act also amended I.R.C. § 163 by lowering the amount a corporation can deduct as a business interest expense from the previous 50% to 30% of adjusted taxable income.<sup>120</sup> Furthermore, § 951A was added to the tax code to tax global intangible low tax income.<sup>121</sup> In essence, this new tax code affects shareholders of controlled foreign corporations and was implemented to curtail corporations from exploiting the new territorial tax system by moving

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107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *See* Burggraf, *supra* note 14.

112. *Tax Reform, supra* note 101.

113. Burggraf, *supra* note 14.

114. *Id.*

115. I.R.C. § 245A(a) (2017).

116. *See id.*

117. *Id.*

118. *See id.* § 11(a)-(b).

119. *Id.* § 245A(a).

120. *Id.* § 163(j); *see also id.* § 163(j)(8).

121. *Id.* § 951A.

their intellectual property overseas.<sup>122</sup> The tax law changes implemented by the Act are ultimately fairly limited, as many individuals still face onerous reporting requirements, and many of the new tax benefits went to corporations.<sup>123</sup>

#### IV. THE LOOMING SPECTER OF BREXIT

As previously stated, in 2016, the U.K. voted to leave the EU in a referendum popularly known as Brexit.<sup>124</sup> March 29, 2019, was the date that Brexit was formally set to occur as of the writing of this Comment.<sup>125</sup> The looming specter of Brexit casts a large shadow over the economic future of the U.K. and the EU's very chances of survival.<sup>126</sup> Next will be a brief discussion of the history behind Brexit, before shifting to an analysis of the current and potential financial consequences Brexit is likely to have on the U.K., deal or no deal.

##### A. *Brexit in Brief*

The U.K. attempted to leave the EU prior to 2016.<sup>127</sup> In fact, the U.K. attempted to leave the European Economic Council (E.E.C.), a precursor to the EU, in 1975 in a vote driven primarily by a desire to retain U.K. sovereignty.<sup>128</sup> The vote affirmed the decision to remain in the E.E.C.<sup>129</sup> The Euroscepticism that began in the 1970s formed the roots of the conservative Tory party and would only grow as the U.K. became closer with mainland Europe.<sup>130</sup> This growing tension came to a head in Prime Minister David Cameron's November 10, 2015, speech to the EU in which he outlined four major concerns: (1) the balance of economic governance between the U.K. and the portion of the EU known as the Eurozone;

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122. See, e.g., Lowell D. Yoder et al., *Tax Reform: Taxation of Income of Controlled Foreign Corporations*, 14 DTR 3 (Jan. 22, 2018), <https://www.mwe.com/wp-content/uploads/2019/01/Bloomberg-BNA-Daily-Tax-Report-Tax-Reform-Taxation-of-Income-of-CFCs.pdf>.

123. See *Tax Reform*, *supra* note 101.

124. Hjelmgaard & Zoroya, *supra* note 2.

125. Booth & Adam, *supra* note 4.

126. See Ian Bond et al., *Europe After Brexit Unleashed or Undone?*, CTR. FOR EUR. REFORM (Apr. 2016), <https://www.cer.org.uk/sites/default/files/pbeuafterBrexit15april16.pdf> (discussing the stability of the EU post Brexit); see also Dominic Webb, *Brexit: Trade Aspects*, in BRIEFING PAPER 3-5 (House of Commons Library No. 07694, 2016).

127. See Matthew Elliott, *Seven Lessons from Britain's 1975 EEC Referendum*, TELEGRAPH (June 5, 2015), <http://www.telegraph.co.uk/news/newsttopics/eureferendum/11652504/Seven-lessons-from-Britains-1975-EEC-referendum.html>.

128. *Id.*

129. *Id.*

130. See Sam Wilson, *Britain and the EU: A Long and Rocky Relationship*, BBC, <http://www.bbc.com/news/uk-politics-26515129> (last visited Mar. 25, 2019).



(2) the competitiveness of the U.K. in the single market; (3) the balance of Member State's sovereignty versus the authority of the EU; and (4) immigration concerns.<sup>131</sup> The EU responded by essentially agreeing to all of Cameron's requests; nevertheless, Cameron held a referendum vote that resulted in a vote to leave the EU.<sup>132</sup> Those that voted to leave were largely older people driven by worries about immigration, a populist backlash against wealthy foreigners, and concerns over sovereignty.<sup>133</sup>

*B. Brexit and the Current State of the U.K. Economy*

Brexit had an almost immediate impact on the economic health of the U.K. that is still being felt today.<sup>134</sup> The U.K. was a leading G7 economy before the referendum, but in the years since the referendum, it has dropped to the bottom.<sup>135</sup> The pound's low value since the vote has also resulted in higher inflation rates.<sup>136</sup> Of several European capitals, London is the only city where apartment rent has decreased in the last couple of years even as home prices have declined throughout the U.K.<sup>137</sup> Commercial service exports, such as travel, tourism, and education, have stagnated since the referendum passed.<sup>138</sup> Business investment and trade has slowed so much that the GDP of the U.K. is now about 1.2% lower than expected prior to the referendum.<sup>139</sup> In short, the 2016 referendum has already adversely impacted the U.K. economy.<sup>140</sup>

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131. Letter from David Cameron, Prime Minister, U.K., to Donald Tusk, President, European Council (Nov. 10, 2015), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/475679/Donald\\_Tusk\\_letter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf).

132. See European Council Conclusion (EUCO) No. 1/16 of 19 February 2016, 2016 O.J. (C 69) 1; Steven Erlanger, *Britain Votes to Leave E.U.; Cameron Plans to Step Down*, N.Y. TIMES (June 23, 2016), <https://www.nytimes.com/2016/06/25/world/europe/britain-brexit-european-union-referendum.html>.

133. Robert Hutton, *The Roots of Brexit*, BLOOMBERG (Mar. 20, 2019), <https://www.bloomberg.com/quicktake/will-uk-leave-eu>.

134. See generally OECD, *supra* note 20.

135. Therese Raphael, *Brexit Knocks the Wind Out of the U.K. Economy*, BLOOMBERG (Jan. 14, 2019), <https://www.bloomberg.com/opinion/articles/2019-01-14/the-economic-damage-of-brexit-in-charts>.

136. *Id.*

137. *Id.*

138. Terence Huw Edwards et al., *Brexit Hasn't Happened Yet—and Britain Is Already Poorer*, QUARTZ (Oct. 24, 2018), <https://qz.com/1435311/britain-is-already-feeling-the-financial-consequences-of-brexit/>.

139. Dharshini David, *What Effect Has Brexit Had on the UK Economy?*, BBC (Feb. 10, 2019), <https://www.bbc.com/news/business-47168866>.

140. See *id.*

C. *Brexit and Potential Financial Consequences, Deal or No Deal*

Countries should theoretically be able to leave the EU without committing political and economic suicide, and that could still be the case.<sup>141</sup> The U.K. could accept former Prime Minister Theresa May's deal, which was heavily adopted by current Prime Minister Boris Johnson. This deal grants a transition period to allow the U.K. and EU to agree on a trade deal and give businesses time to adjust in addition to passing into law issues regarding citizen's rights and the Irish border question.<sup>142</sup> This is the best case scenario, as the economic impact of leaving the EU on the U.K.'s terms is significantly better than if no deal is reached.<sup>143</sup> If no deal is reached, trade—both imports and exports—would suffer immediately: the U.K. does not have the infrastructure or experience to handle such a monumental shift.<sup>144</sup> That is not even taking into account the fact that the U.K. will not be able to export food to the EU for at least a few weeks following a no-deal Brexit, nor is the U.K. ready for the sheer volume of inspections required to police something as mundane as the EU food standards.<sup>145</sup> Services, which make up 80% of the British economy, are likely to suffer considerably as well.<sup>146</sup> In summary, the Bank of England predicts that a no-deal Brexit could, at best, be a 2.5% hit to the economy, and at worst a 5% hit, both of which are significant regardless and “the shock to [the] economy would be felt by generations to come.”<sup>147</sup>

V. THE OUTLOOK FOR AMERICAN NON-DOMS IN THE UNITED KINGDOM

Americans currently or potentially looking to work and live abroad in the U.K. must contend with the non-dom tax regime changes, the Act, and the looming specter of Brexit.<sup>148</sup>

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141. Simon Tilford, *A No-Deal Brexit Will Destroy the British Economy*, FOREIGN POL'Y (Oct. 2, 2018), <https://foreignpolicy.com/2018/10/02/a-no-deal-brexit-will-destroy-the-british-economy/>.

142. *Brexit: Your Simple Guide to the UK Leaving the EU*, BBC (Mar. 26, 2019), <https://www.bbc.com/news/uk-46318565>.

143. See generally Tilford, *supra* note 141.

144. *Id.*

145. Chris Giles & Delphine Strauss, *How Would a No-Deal Brexit Affect the UK Economy*, FIN. TIMES (Mar. 30, 2019), <https://www.ft.com/content/27e7a1cc-3b57-11e9-b72b-2c7f526ca5d0>.

146. *Id.*

147. William Schomberg, *UK Economy Dodges No-Deal Brexit Hit, for Now*, REUTERS (Mar. 22, 2019), <https://www.reuters.com/article/us-global-economy-britain/uk-economy-dodges-no-deal-brexit-hit-for-now-idUSKCN1R31PS>.

148. *The Impact of Brexit for Non UK Domiciliaries*, FOCUS MAG. (Dec. 2016), [https://www.focus-info.org/includes/documents/2016/f/foc56\\_finance\\_law.pdf](https://www.focus-info.org/includes/documents/2016/f/foc56_finance_law.pdf) [hereinafter *Impact*].

*A. The Good*

Nonresident Americans who are or may become U.K. non-doms continue to enjoy many benefits.<sup>149</sup> From the U.K. perspective, they can still create an excluded property trust prior to being domiciled and enjoy benefits arising from it provided no changes are added after the settlor is domiciled, and even then their non-closely related beneficiaries can receive distributions with no U.K. tax liability.<sup>150</sup> Additionally, for individuals that lack any prior connection to the U.K., they can follow the remittance basis for their first fifteen taxable years, and they can continue to follow the remittance basis indefinitely if the remittance basis user avoids remitting to the U.K. anything derived from foreign income or gains.<sup>151</sup> Also, the remittance basis still applies automatically to non-doms during their first seven years of U.K. residence before the annual fee sets in.<sup>152</sup> From the U.S. perspective, the Act actually changed very little for individuals, so Americans abroad can still make foreign income exclusions while continuing to benefit from the U.K./USA Double Taxation Convention.<sup>153</sup> Additionally, Americans abroad might be in lower tax brackets now, and they can now give larger tax-exempt gifts.<sup>154</sup> American corporations now benefit from a host of beneficial tax changes as noted earlier.<sup>155</sup> Together, these different taxes paint a relatively rosy picture for American non-doms.<sup>156</sup>

*B. The Bad*

Unfortunately, roses have thorns. From the U.K. perspective, the time period allowed to use the remittance basis is much more limited, as is the ability to even claim non-dom status in the first place.<sup>157</sup> Careful financial management is more important than ever if Americans want to make use of excluded property trusts.<sup>158</sup> From the American perspective, individuals

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149. Riley et al., *supra* note 24.

150. *See generally id.*

151. Lawrance, *supra* note 82.

152. *Id.*

153. *Tax Reform*, *supra* note 101; UK/USA Double Taxation Convention, U.K.-U.S., July 19, 2002, <https://www.irs.gov/businesses/international-businesses/united-kingdom-uk-tax-treaty-documents>.

154. UK/USA Double Taxation Convention, U.K.-U.S., July 19, 2002, <https://www.irs.gov/businesses/international-businesses/united-kingdom-uk-tax-treaty-documents>; Burggraf, *supra* note 14.

155. *See Tax Reform*, *supra* note 101; *see also* Burggraf, *supra* note 14.

156. *See Tax Reform*, *supra* note 101.

157. Perrett et al., *supra* note 72.

158. *Id.*

will gradually be taxed more over time as the basis for the foreign income exclusion will fail to keep up with inflation, and Americans still have burdensome tax reports to follow.<sup>159</sup> Additionally, because of how the two tax regimes interact now, the tax benefit of creating an offshore corporation is now severely limited as any gain arising from that corporation will have to be taxed in either the U.K. or the United States, if it is remitted, or mixed with the domestic assets of either one.<sup>160</sup> Also, the Double Taxation Convention allows for limited double-taxing on assets of Americans living in the U.K. for the first ten years, if the purpose of relocating was to avoid taxes.<sup>161</sup> Together these regimes mean that while Americans can still enjoy benefits of being a non-dom, the changes in the U.K. tax regime combined with the American tax regime mean that the benefits are now far more limited for individuals.<sup>162</sup>

### C. *The Future*

Despite the new tax regime changes, the future for American non-doms is uncertain as the new regime has made non-doms of all stripes reconsider the U.K. in favor of alternative, more tax friendly locations; approximately a quarter of wealthy non-doms are doing this because of Brexit, deal or no-deal.<sup>163</sup> Already, the number of non-doms in the U.K. has dropped from 118,000 in 2015-16 to 91,100 in 2016-17.<sup>164</sup> All signs indicate that both the new non-dom tax regime and Brexit, especially a no-deal Brexit, are pushing out non-doms, especially if freedom of movement becomes restricted.<sup>165</sup> There is a chance that the U.K. will change its tax tune, at least about non-doms who are likely to become important wealth generators once the U.K. finally withdraws from the EU.<sup>166</sup>

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159. See *Tax Reform*, *supra* note 101.

160. See Lawrance, *supra* note 82; see also Ordower, *supra* note 93.

161. UK/USA Double Taxation Convention, *supra* note 154.

162. See Lawrance, *supra* note 82; see also Ordower, *supra* note 93; *Tax Reform*, *supra* note 101.

163. Ollie Williams, *Is This the Death of the Non-Dom? Wealthy Eschew Britain's Elite Tax Status*, FORBES (Nov. 18, 2018), <https://www.forbes.com/sites/oliverwilliams1/2018/11/28/is-this-the-death-of-the-non-dom-wealthy-eschew-britains-elite-tax-status/#a7634c95c667>.

164. *Sharp Fall in 'Non-Doms' Could Damage UK Economy, Says Expert*, OUT-LAW (Aug. 1, 2018), <https://www.out-law.com/en/articles/2018/august/fall-non-doms-damage-uk-economy/>.

165. *Impact*, *supra* note 148.

166. See Julian Davies, *UK Resident Non-Doms to Grow in Importance Post-Brexit*, PRIV. BANKER INT'L (Sept. 5, 2018), <https://www.verdict.co.uk/private-banker-international/thought-leaders/uk-non-doms-post-brexit/>.

## VI. CONCLUSION

Right now, Americans should be wary of moving to the U.K. as non-doms. The significant shift in the non-dom tax regime alone should cause them to rethink such a move.<sup>167</sup> The added burdens of American taxation, while not as significant of a regime change, should also be considered.<sup>168</sup> Ultimately, Americans should wait and see whether the Brexit vote scheduled to occur later this spring results in a deal or no deal, because either way the economic fallout will be significant, and the U.K. might just change its mind about non-doms.<sup>169</sup>

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167. See *Briefing Note*, *supra* note 85.

168. See *Tax Reform*, *supra* note 101.

169. James Blitz et al., *Brexit Timeline: Key Dates in the UK's Divorce from the EU*, FIN. TIMES (Mar. 22, 2019), <https://www.ft.com/content/64e7f218-4ad4-11e7-919a-1e14ce4af89b>; see also Davies, *supra* note 166.