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Residence and Domicile

Brief by the Association of Labour Providers on Clause 23 and Schedule 7

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Introduction
Clause 23 and Schedule 7 introduce the changes to remittance basis of taxation, announced in the 2007 Pre-Budget report.

The Association of Labour Providers represents labour providers that supply workers to the agricultural and food industries.

Executive summary
The proposals will catch large numbers of low paid migrant workers. If implemented they would cause some of the lowest paid workers to lose their personal tax allowances or to tie them (and their employers) up in a paperwork nightmare. However, the proposals are unworkable. The government does not understand the nature of employment in the UK. Most of these workers employed by labour providers are migrants from the Accession States, almost all are employed on a temporary basis and the majority work in Britain for only a short time. In any one year many will have employment income both in Britain and in their home country.

The issue
Clause 23 and Schedule 7 include the removal of personal allowances for income tax and the annual exempt amount for capital gains tax when a claim to use the remittance basis is made. This does not apply where unremitted foreign income and gains are less than £2,000.

Labour providers supply large number of migrant workers to the food industry. Most of these workers are not permanent immigrants, but rather short term migrants. Many have families, properties and income in their home country. They may work in the UK for just a few weeks at a time, so as to boost their incomes.

Some useful evidence on this was given in a report published by the DWP on 11 June 2008 *The impact of migration from the new European Union Member States on native workers* (http://www.dwp.gov.uk/mediacentre/pressreleases/2008/jun/emp087-110608.asp).

The following points is made on P.14

> It has been frequently observed that a substantial proportion of A8 migrants are likely to have returned to their home countries and that net migration is likely to be significantly less than gross migration. This is supported by evidence from the WRS, which includes a question on likely length of stay. For the most recent available data, 57% of registrants said

> that they intended to stay for less than 3 months, while only 12% said more than a year. This is supported by the fact that 52% of registrants were in temporary employment.

And on P.15

> The most robust evidence on the stock of A8 migrants, and hence on net migration comes from the Labour Force Survey. While the LFS is likely to somewhat underestimate the stock of A8 migrants in the UK, particularly those who have been here less than 6 months and those living in communal establishments, it is the most reliable available data on stocks. CHART 5 plots **cumulative** WRS registrations against the **stock** of A8 residents of working age. The patterns are consistent, and suggest a return rate of (very roughly) 40%, taking account of the fact that both the WRS and LFS are, for different reasons, likely to somewhat understate the numbers of A8 migrants.

Under the proposals any such workers who are resident in the UK and have just £2,000 of unremitted foreign income face either being taxed on their worldwide income or losing their personal tax allowances. This begs many questions. Short-term migrants do not count how many days they are in the UK. So are they resident or not and how is HMRC going to tell them? Then the employers of migrant workers do not distinguish between who is a migrant and who is not when dealing with HMRC so how does HMRC propose to inform each migrant of what it is that is expected of them?

The government estimate that there are around 100,000 non doms. There are well over half a million migrant workers employed in the food industry. In 2007 alone over 200,000 new workers from the Accession States registered under the Accession States Worker Registration Scheme. This considerably understates the number as many workers are not obliged to register and many of those who are supposed to do, do not. The Treasury bases its nondom figure on self assessments. Most migrant workers do not make self assessment returns. Indeed some probably overpay tax as they have tax deducted from pay but may never earn more than the personal allowance if they work in the UK for only a few months a year. The proposals are based on a false understanding of the nature of the labour market in the UK.

That HMRC do not understand the nature of migrant employment was confirmed in evidence given to the House of Lords Committee –

> "197. HMRC did not seem overly worried by the compliance issues. David Richardson (HMRC) thought that "In reality it is quite simple for most people … Although some choose to present it as complicated, I think it is nowhere near as complicated as some people might suggest" (Q 357). "There is the £2,000 *de minimis* which is equivalent to, if somebody has a foreign bank account with a five per cent return, something like £40,000 held offshore which is not an insignificant amount. If foreign income is below £2,000 they will be able to keep the personal allowance and stay on a remittance basis without further action. There will be no need for them to contact HMRC at all. It will simply follow naturally that their overseas income will not be taxable. In theory, that is simpler than the current provisions" (Q 355)."

The issue that concerns the ALP is not about offshore bank accounts but rather about employment income. HMRC do not seem to recognise that low paid migrant workers have employment income in two countries in the same year.

The House of Lords report supports the Association's arguments.

> "326. In our view HMRC are greatly underestimating the compliance difficulties for people of more modest means. We are firmly of the view that something further has to be done to make these provisions workable. (para 200)
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> 327. In our view the provisions as drafted with a *de minimis* level of £2,000 are essentially unworkable in practice. To address this, we prefer the approach of increasing the *de minimis* limit. However, so far as we are aware, there is no detailed work on what the *de*

minimis level should be to ensure that the great majority of these people are not troubled by these provisions and that HMRC is not burdened by compliance problems. Unless HMT/HMRC has some work of which we are unaware, or can produce some on a very short timescale, any increase will be a stab in the dark. (para 206)

328. We **recommend** that the *de minimis* limit should be increased to a level to take a big majority of the lower paid non-domiciles out of the scope of these provisions. The Government should introduce an amendment to achieve this. If there is no better basis for estimating what that level should be, we **recommend** that in this year's Bill the *de minimis* level should be increased to the amount of the individual's personal allowance (which this year is to be £6,035). (para 207)

329. We further **recommend** that HMRC should monitor over the coming year the effect of the increased *de minimis* level and, if it transpires that there is a large number of lower income workers still with compliance problems, the Government should provide a further increase in next year's Finance Bill, having established to what level the *de minimis* limit needs to be raised. (para 208)"

Joined-up government

Over the last few years the Home Office and Defra have commissioned a number of research exercises on the supply of labour to agriculture and migrant workers. This research appears to have been ignored by the Treasury. There is also no evidence that the work of the Low Pay Commission has been taken into account. Depriving low paid workers of their personal tax allowances on the grounds that they have £2,000 of income in their home country seems a long way from the purpose of the nondom proposals.