

Residence and domicile in the UK for individuals

The following is a brief overview of the concepts of UK residence and English common law domicile which can determine an individual's liability to UK tax, and the tax advantages attendant upon having non-UK domicile (often referred to as 'non-dom') status. It is envisaged that it will be of particular use to those considering moving to the UK.

As the following is intended as an overview guidance only, specific advice should be sought in particular circumstances.

Domicile

Domicile is the UK's connecting factor for a multitude of legal issues relating to individuals, such as succession and tax, and helps to determine whether UK law or foreign law applies in certain circumstances. There is no definition of domicile and it is best thought of as a subjective concept. A person can only ever have one domicile at any point. There are three types of domicile:

Domicile of origin - this is generally the domicile of one's father at the time of one's birth, though will be the mother's domicile if one's parents are not married. This domicile remains throughout one's life and will be a person's domicile unless he or she has acquired one of the other two types of domicile.

Domicile of dependency - children under the age of 16 will automatically obtain the domicile of the person upon whom their domicile is dependent (usually their father) if that person changes their domicile by, for example, obtaining a new domicile of choice. Also, a woman who married before 1 January 1974 took the domicile of her husband as a domicile of dependency.

Domicile of choice - only individuals over 16 can obtain a domicile of choice and they do so if they move to another jurisdiction with the intention to remain there permanently or indefinitely. This will be a question of fact at any point. Simply moving to another country for a work placement for a number of years, for example, will be insufficient to establish a domicile of choice in that country, without the requisite intention. All factors relating to a person's life and evidence of a person's intentions will be used to determine whether a domicile of choice has been acquired or not.

It should be noted that a person can only be domiciled in a place governed by a single system of law. So strictly speaking a person is domiciled in 'England' or 'Northern Ireland' rather than 'the UK', though this note will continue to refer to 'the UK' for ease of reference.

For tax purposes, domicile determines a person's liability to inheritance tax. A person domiciled within the UK is liable to UK inheritance tax (IHT) on their worldwide assets whilst a person who is not domiciled within the UK will only be liable to IHT on any UK situs assets. IHT is charged on the making of a gift and on death. It is charged at a rate of 40% over a threshold called the 'nil-rate band', which currently stands at £325,000 (an additional nil-rate band in relation to the main home will be introduced in 2017). Being non-domiciled can therefore have advantages for IHT purposes.

In certain circumstances a person can be deemed to be domiciled within the UK for inheritance tax purposes, and therefore liable to IHT on their worldwide assets, if they have spent a more than 17 out of the previous 20 years resident in the UK. This is irrespective of whether or not that individual has a UK domicile. There are proposals to reduce this to 15 out of the previous 20 years from April 2017, and this will apply for all tax purposes.

Residence

Just as domicile determines an individual's liability to IHT, residence determines an individual's liability to income tax and capital gains tax (CGT). Broadly speaking, those resident in the UK are liable to income tax and CGT on their worldwide income and gains, whilst those not resident in the UK are liable only to UK income tax on UK income, and are generally exempt from CGT (with certain exceptions where the property concerned is UK residential property). As mentioned above, residence can also bring an individual into the UK IHT net.

Unlike domicile, residence is an objective concept which, since 6 April 2013, has been set down in statute. A person will be resident in the UK if they meet certain tests, which look at the number of days a person spends in the UK per tax year, and what connections they have to the UK.

The remittance basis of taxation

An individual who is not domiciled within the UK but resident in the UK has the opportunity to elect for the remittance basis of taxation. Under this basis of taxation, only income or gains which arise in the UK, or which are remitted to the UK from abroad, are taxed in the UK. Income and gains arising abroad and not remitted to the UK are not subject to UK income tax or CGT. Benefits that are received in the UK but connected to unremitted income and gains are taxed by way of a complex set of anti-avoidance rules. These rules have steadily become more stringent in recent times. An annual remittance basis charge of between £30,000 and £90,000 applies to those electing for the remittance basis if they have been resident here for more than seven of the past nine tax years. The new deemed domicile rules which will apply from April 2017 will prevent any person who is deemed domiciled from being able to take advantage of the remittance basis.

Double Tax Agreements

Persons with assets in more than one jurisdiction may be subject to tax in more than one country. The UK has an extensive network of double tax agreements with other countries in relation to income and capital gains tax, and a more limited number of double tax agreements in relation to inheritance tax. These may provide relief where assets are at risk of double taxation.

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