

Non-domiciled individuals

Domicile is different to residence or nationality, and whilst it is possible to be resident in more than one place at any one time, it is only possible to be domiciled in one jurisdiction. Determining the domicile of an individual can be difficult, and advice should be sought.

Individuals that are domiciled outside of the UK can benefit from considerable tax advantages in the UK.

Types of domicile

ORIGIN: A domicile of origin is acquired by an individual from their father or mother (if unmarried) at birth; the individual will inherit the domicile of their parent. Domicile is not acquired purely by virtue of being born in a country.

CHOICE: If an individual leaves the country in which they have a domicile of origin to permanently settle in another jurisdiction, whilst establishing significant and lasting ties to the new jurisdiction, it could be argued that they have adopted a domicile of choice in the new jurisdiction.

There is no defining factor in determining whether the new domicile of choice has been successfully acquired and HMRC will look at factors such as their residence, business interests and social and family interests to determine the domicile position.

DEPENDENCE: Until the age of 16 the domicile of an individual will follow that of the person they are legally dependent on. If the domicile of the individual that the person is dependent on changes, so will theirs.

DEEMED DOMICILE: An individual will be 'deemed domiciled' in the UK if they are not ordinarily domiciled in the UK but have been resident in the UK for 15 of the previous 20 tax years.

The tax position for non-domiciled individuals

REMITTANCE BASIS: If an individual is non-domiciled in the UK they can elect to be taxed on the remittance basis of taxation via a claim on their self-assessment tax Return.

The remittance basis allows individuals to ringfence their overseas income and gains from UK taxation to the extent that they are remitted (brought to) the UK.

Individuals can opt in and out of the remittance basis year on year if they choose, however, once a claim is made for a particular tax year, the foreign income and gains of that year will be taxable in any future year that it is remitted to the UK.

If an individual makes a claim for the remittance basis, they will lose their entitlement to the UK personal allowance and UK Capital Gains Tax Annual Exemption. Both allowances are maintained, however, if the individual makes a claim for the remittance basis and their unremitted foreign income and gains do not exceed £2,000.

Remitted income is taxed as non-savings income, and therefore overseas dividends that are remitted to the UK will be taxed at non-savings rates and not at the rates for dividends.

In some cases, assets derived from foreign income and gains, brought to the UK will also be classed as a remittance.

Any income or gains that arose prior to the individual coming to the UK will be classed as clean capital and can be remitted to the UK without incurring a tax charge. This is on the basis that no other sources of income or gains are paid into the account holding this clean capital, after the individual's arrival in the UK.

ARISING BASIS: Non domiciled individuals that do not make a claim for the remittance basis will be taxed on the worldwide arising basis and therefore their worldwide income and gains.

If the individual is also subject to taxation on their overseas income in another jurisdiction, it may be possible to claim a foreign tax credit per the double taxation treaty to negate the eventuality of double-taxation.

NON-RESIDENTS: Non-residents are taxed on their UK source income as it arises, however their foreign income is not taxable.

Additional considerations

THE REMITTANCE BASIS CHARGE (RBC): Individuals can claim the remittance basis tax-free for a certain period of time. Once individuals have been resident for 7 of the previous 9 tax years in the UK, a charge must be paid to HMRC to claim the remittance basis. The charge is a yearly amount and sits on top of the tax due to HMRC for the tax year in question. The RBC is presently set at the following rates:

- the charge for individuals who have been UK resident for at least 7 of the last 9 years is £30,000;
- the charge for individuals who have been resident in the UK for at least 12 of the last 14 years is £60,000.

TEMPORARY NON-RESIDENTS: The remittance basis only applies for taxpayers in years in which they are resident in the UK. If an individual uses the remittance basis and then departs the UK and ceases to be resident, income and gains remitted in the intervening period when non-resident may still be caught by UK taxation if the individual returns to the UK in the future. If an individual uses the remittance basis in a tax year and:

1. Has been resident in at least 4 of the previous 7 tax years before becoming non-resident;
2. Returns to the UK and resumes residence within 5 years of their departure;
3. Has remitted foreign income and gains to the UK in the intervening non-resident period.

If all three of the above apply, the remitted income and gains in the intervening period will be taxed on the individual in the year they resume residence in the UK.

MIXED FUNDS: A mixed fund is typically an overseas bank account that contains multiple sources of income, gains or clean capital.

There are statutory ordering rules for determining which part of the mixed fund is deemed to be remitted to the UK first and detailed analysis should be sought should an individual want to remit to the UK from a mixed fund.

Income and gains from the current year are deemed to be remitted in priority to earlier years. Individuals must take care when organising their overseas accounts, as income and gains with a lower rate or those that carry no tax consequences such as clean capital, can become trapped by income or gains of a later year.

Prior to coming to the UK, good tax planning would see an individual maintaining multiple overseas accounts and organising the accounts so that they are not considered mixed funds by HMRC.

It would therefore be advisable for individuals using the remittance basis to hold separate offshore bank accounts for:

1. Non-taxable clean capital, such as pre-arrival earnings and inheritances;
2. Foreign capital gains;
3. Foreign income.



OVERSEAS WORKDAY RELIEF (OWR): OWR is a beneficial exemption that is available to non-domiciled taxpayers, claiming the remittance basis, who work for a UK employer but spend a percentage of their time working overseas.

The relief permits individuals to ringfence and keep the overseas workday proportion of their earnings, outside of the UK. In turn, this proportion of their earnings is exempt from UK taxation, which, would usually lead to a repayment of the PAYE and therefore tax deducted at source, upon the filing of the Tax Return.

The relief is only available for three consecutive years of UK residence and the earnings are required to be paid into a qualifying overseas bank account.

There is additional criteria to be met and further professional advice should be sought should overseas workday relief be applicable.

Summary action list

- Ascertain your tax status for each UK tax year and plan accordingly.
- Would you benefit from the use of the Remittance basis?
- Review your UK Income Tax position regarding income arising in the UK and abroad.
- Review any liability to Capital Gains Tax or Inheritance Tax on your UK or worldwide assets.
- Take professional advice.

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