

Introduction

Under the self-assessment system, individuals are responsible for determining their own residence and domicile status and calculating their UK tax liability in accordance with the status claimed.

Individuals required to complete a UK tax return must complete the non-residence supplementary pages if, in the tax year concerned, they consider themselves to be:

- Not resident in the UK.
- Not ordinarily resident in the UK.
- Resident in the UK for part of the tax year.
- Not domiciled in the UK, and it is relevant to their income tax or capital gains tax liability. Domicile status is generally only relevant to UK residents who have income or gains arising abroad.

The tax return requires various other pieces of information to be given to support each particular claim, such as number of days spent in the UK where non-residence status is claimed. Non-residents should therefore keep detailed records of their movements in and out of the UK.

Personal allowances

UK residents are entitled to various personal allowances against their income (see the Essential Guide 'Main types of income and how they are taxed').

Entitlement of non-residents

Some non-UK residents are entitled to the same personal allowances as UK residents to set against income taxable in the UK. They must fall in one of the following categories:

- A citizen of a state in the European Economic Area. This is the European Union (including the UK) plus Iceland, Liechtenstein and Norway.
- Commonwealth citizens.
- People who are or have been employed in the service of the British Crown.
- Widow or widower of a person who was employed in the service of the British Crown.
- Employed in the service of any UK missionary society.
- Employed in the service of any state under Her Majesty's protection.

- Residents of the Isle of Man or the Channel Islands.
- Former UK residents living abroad for the sake of their health or the health of a family member living with them.

Residents and/or nationals of several other countries are entitled to personal allowances under the terms of double taxation agreements. These are agreements that regulate the position of individuals who are resident in more than one state or have income that could be taxable in more than one state.

For the tax year 2008/09 onwards, individuals who claim the remittance basis of taxation are not entitled to any personal allowances. (The remittance basis is explained below.) This restriction does not apply to individuals who have unremitted overseas income of less than £2,000 in the year in question (and are entitled to the remittance basis of taxation without making a claim).

Limit on income chargeable on non-residents

Although non-residents are taxable on UK investment income, a non-resident's total UK tax liability is limited to an amount calculated by excluding investment income, state pensions and certain other social security benefits, and personal allowances.

Example

Fleur, a non-UK resident, is entitled to the basic personal allowance in 2009/10. Her UK income consists of interest (received gross) of £10,000 and property letting income of £6,000. The tax on her total UK income is:

Total income	16,000
Less personal allowance	6,475
Taxable income	9,525
Tax	
£2,440 @ 10% (savings)	244.00
£7,085 @ 20%	1,417
Total	1,661

However, it is limited to the tax due on the £6,000 property letting income without giving any personal allowance. This is:

£6,000 @ 20%	1,200.00
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Non-residents can request that no tax is deducted at source from UK savings income.

Savings income is most income from investments other than dividends and income from property.

If they do not make the request, any tax deducted must be added to the limit on UK tax liability.

For example if £1,000 had been deducted from £5,000 of Fleur's interest, the limit on her UK tax liability would be the £1,200.00 calculated above plus the £1,000 deducted.

This is more than her tax calculated in the normal way, so she would be liable to the full £1,661.00 on her total UK income less the personal allowance.

Income tax liability by reference to status

Residence, ordinary residence and domicile status, and various combinations of these, all affect the extent to which UK and overseas income is taxable in the UK.

In general, where income is liable to UK tax, the liability is on all the income as it arises under the rules for the various types of income.

These tax rules are explained in the Essential Guide 'Income tax basics for individuals', and are not covered here. This basis is called the arising basis.

In some circumstances, income is taxed only to the extent that it is remitted to the UK. This is called the remittance basis. Subsequent sections of this Essential Guide explain what the remittance basis is, who can claim it and to which income it applies.

In this Essential Guide, references to income being taxable mean it is taxable on the arising basis unless otherwise stated.

All references to employment income include income from a directorship.

The remittance basis

Until 5 April 2008, all non-UK domiciled taxpayers (and others in some limited circumstances) were taxed on the remittance basis on their overseas income.

They were also entitled to personal allowances and the annual capital gains tax exemption.

This has changed with effect from 2008/09.

- The remittance basis is still given without claim to anyone whose total unremitted income and gains for the tax year in question are less than £2,000, however long they have been resident in the UK.

- People who claim the remittance basis are not entitled to personal allowances and the annual capital gains tax exemption.
- There are tighter rules for determining what is a remittance and how much of a remittance is taxable. Extra-statutory concessions on remittances have been withdrawn.
- Long-term residents who claim the remittance basis have to pay a £30,000 annual charge.

Meaning of remittance

The rules up to 5 April were supposed to catch a wide range of types of remittance but they nevertheless had several loopholes.

Since 6 April 2008, income and gains are treated as remitted to the UK if the following two conditions are met:

- Money or property is brought to, received in or used in the UK by or for the benefit of a 'relevant person', or services are provided in the UK for the benefit of such a person.
- The property or consideration for the service consists of or is directly or indirectly derived from the income or gains; or the income or gains are used abroad in any direct or indirect way to pay for the property or service.

The rules are extended to remittances made by means of a gift to another person, and to remittances involving connected operations, in both cases subject to detailed rules.

However an outright and unconditional gift to another person who then brings the money into the UK is not a remittance.

A 'relevant person' is:

- The taxpayer, the taxpayer's spouse or civil partner, and their children or grandchildren, aged under 18.
- A person with whom the taxpayer is living as if married or in a civil partnership.
- Certain companies and settlements from which any individual relevant person can benefit.

There are a few exemptions to the rules defining remittances of property purchased out of foreign income. They include:

- Personal effects.
- Assets costing less than £1,000.
- Assets brought into the UK for repair.
- Assets in the UK for a total period of less than 275 days.

- Works of art brought into the UK for public display.
- Certain assets bought before 12 March 2008 (Budget day), subject to some conditions.

There are detailed rules for determining how much of a remittance is income or gains where the remittance comes from a fund consisting of income and capital that arose from various sources and in various years.

Remittances from an account that is purely capital are not taxed. However, an amount will not be recognised as capital if it is income of a past year.

The annual charge

From 6 April 2008, certain people entitled to use the remittance basis may only do so if they pay an annual tax of £30,000.

- Adults (that is people aged 18 or over) are liable to the charge in any particular tax year if they claim the remittance basis and have been resident in the UK for at least seven of the nine tax years immediately preceding the year in question.
- If they do not claim the remittance basis, they are taxed on all their worldwide income and gains as they arise.
- Anyone who has been resident in the UK for fewer than seven of the preceding nine tax years can claim the remittance basis without paying £30,000.
- All years of residence before 2008/09 count. For example, an adult entitled to use the remittance basis who has been resident in the UK for four years by April 2008 will only be able to use that basis for three more years before they have to either pay the £30,000 annual tax charge or be subject to tax on the arising basis.
- The remittance basis is given without claim to anyone whose unremitted income and gains for the year in question are less than £2,000, however long they have been resident in the UK.
- Any person aged under 18 can claim the remittance basis without paying the annual charge, however long they have been resident in the UK.
- Where the £30,000 charge is paid, it is treated as tax on unremitted amounts. People can choose the unremitted income or gains on which the £30,000 is paid. Those sums will then not be taxed when they are eventually remitted to the UK.

Resident and ordinarily resident

Individuals who are resident and ordinarily resident in the UK are liable to UK tax on their worldwide income

as it arises. However, only 90% of a foreign pension is taxable.

Individuals who are resident and ordinarily resident **but not domiciled** in the UK may be taxed on the remittance basis (subject to a claim where necessary) on:

- Income from an employment performed wholly outside the UK, provided the employer is not resident in the UK. Note that if the employment is performed partly in the UK, all the earnings, including those for the work done abroad, are taxable.

An individual in this position may benefit from having employment contracts with separate companies (for example, two different group companies) for the UK and overseas duties, so that earnings for the overseas duties may be taxable on the remittance basis.

- Income from self-employment carried on wholly outside the UK and the Republic of Ireland.
- Investment income arising outside the UK. Since 6 April 2008, investment income from the Republic of Ireland has been eligible for the remittance basis.
- Pensions arising abroad, except for certain Irish pensions, which are taxable on the arising basis less the 10% deduction.

All other income of foreign domiciliaries who are resident and ordinarily resident in the UK is taxable on an arising basis.

This includes income from employment performed wholly overseas for a UK employer, and income from self-employment carried on partly within and partly outside the UK.

Resident but not ordinarily resident

Individuals who are resident but not ordinarily resident in the UK are taxable on all their income wherever it arises with the following exceptions:

- Earnings from employment performed overseas are eligible for the remittance basis.

This is so regardless of domicile status, the residence of the employer and whether the employment is carried on wholly or only partly abroad.

For example, a UK domiciled not ordinarily resident employee might work for a British company spending seven months of the year in the UK and five months abroad.

The earnings for the five months abroad are eligible for the remittance basis.

- Income from UK government securities is not liable to tax.

Individuals who are not domiciled in the UK are eligible for the remittance basis on the same categories of income from self-employment, investments and pensions as non-UK domiciliaries who are resident and ordinarily resident in the UK.

British, other Commonwealth and Irish citizens, whatever their domicile status, are eligible for the remittance basis on the same categories of income from self-employment, investments and pensions as non-UK domiciliaries, except for self-employment and pension income arising in Ireland, which is taxable on an arising basis.

Not resident and not ordinarily resident

Individuals who are both non-resident and not ordinarily resident are liable to UK tax only on the following income:

- Earnings from employment performed in the UK, regardless of domicile status or the residence of the employer.
- Income from property in the UK.

The letting agent, or tenant if there is no agent, must deduct basic rate tax from the income less certain expenses, and pay the tax to HMRC, unless the non-resident has obtained HMRC approval to receive income without tax being deducted.

The non-resident normally has to show that his or her tax affairs are in order and give an undertaking to comply with all UK tax obligations in future.

Tax deduction is not normally required from rent of less than £100 a week.

- The UK state pension, and savings and dividend income arising in the UK, subject to the limit on UK tax liability (see page 1, 'Limit on income chargeable on non-residents').
- In practice, non-residents are generally not taxable on UK investment income.
- Investment income connected with a trade carried on in the UK through a branch or agency.
- Other UK pensions, except for pensions arising from employment overseas.
- Income from self-employment carried on in the UK.

Income from UK government securities and income arising overseas is not taxable.

Domicile status has no effect on tax liability for non-residents.

Not resident but ordinarily resident

Individuals who are non-UK resident but are ordinarily resident in the UK are taxable on the same categories of income as individuals who are neither resident nor ordinarily resident, with one difference:

- Income from UK government securities is taxable if the recipient is ordinarily resident in the UK.

Income tax liability by reference to income type

Residence, ordinary residence and domicile status affect the UK tax liability on different types of income in differing ways.

Employment income

Employment earnings are taxed by reference to residence status and the place where the employment is carried on, as set out below.

Residence status	Employment performed wholly or partly in the UK		Employment performed wholly outside the UK
	UK duties	Non – UK duties	
Resident and ordinarily resident	Taxable	Taxable	Taxable if employer UK resident and/or taxpayer UK domiciled, otherwise eligible for the remittance basis
Resident but not ordinarily resident	Taxable	Eligible for the remittance basis	Eligible for the remittance basis
Not resident	Taxable	Not taxable	Not taxable

Seafarers who are resident and ordinarily resident in the UK may qualify for a special foreign earnings deduction.

Self-employment

Income from self-employment is taxed according to residence and domicile status and whether the business is carried on wholly or partly in the UK, or wholly outside the UK.

Residence and domicile status	Business carried on wholly or partly in UK	Business carried on wholly overseas
Resident, ordinarily resident and domiciled	Taxable	Taxable
Resident and not domiciled, whether or not ordinarily resident	Taxable	Eligible for the remittance basis
Resident, not ordinarily resident, domiciled – UK, Commonwealth and Irish citizens	Taxable	Eligible for the remittance basis, except that business wholly in Ireland is on arising basis
Resident, not ordinarily resident, domiciled – others	Taxable	Taxable
Not resident	Taxable on UK profits only	Not taxable

Investment income including income from property

Investment income is taxed according to residence and domicile status and whether it arises in the UK or elsewhere.

- All investment income arising in the UK, except income from government securities, is taxable regardless of residence and domicile status.
 - However, the tax liability of non-residents on savings income (other than income connected to a UK trade) is limited to any tax deducted at source.

- Non-residents can request that interest is paid to them gross.
- In practice, these rules mean most non-residents are not taxable on savings income.
- Income from property in the UK is always taxable. Tax may be deducted at source where the landlord is non-resident (see page 3, 'Not resident and not ordinarily resident').
- Income arising overseas is taxable only on UK residents.
 - Foreign domiciliaries are eligible for the remittance basis,
 - UK, other Commonwealth and Irish citizens who are not ordinarily resident in the UK are eligible for the remittance basis.
- Tax on income from UK government securities is determined by ordinary residence status only.
 - Individuals who are ordinarily resident in the UK are taxable.
 - Individuals who are not ordinarily resident in the UK are not taxable.

Pensions

Pensions are taxable according to residence and domicile status and the residence of the payer.

- Pensions arising in the UK are taxable regardless of residence status, with two exceptions:
 - Non-residents are not liable to tax on the state pension.
 - Non-residents are not liable to tax on UK pensions arising from employment overseas.
- Pensions arising outside the UK are taxable only on UK residents.
 - The amount taxable on the arising basis is 90% of the pension.
 - Foreign domiciliaries are eligible for the remittance basis with no 10% deduction.
 - UK, other Commonwealth and Irish citizens who are not ordinarily resident in the UK are eligible for the remittance basis with no 10% deduction.
 - Pensions arising in Ireland are generally taxable on the arising basis with a 10% deduction, even if the recipient is non-UK domiciled or not ordinarily resident in the UK.

Capital gains tax

The general rules

Individuals are liable to capital gains tax (CGT) if they are UK resident or ordinarily resident in the UK or both.

Non-residents

Individuals who are neither resident nor ordinarily resident in the UK are not liable to capital gains tax, regardless of where the assets are situated or the gains arise, with two exceptions:

- There are special rules taxing gains made by temporary non-residents (see 'Temporary non-residence' below).
- Non-residents are taxable on gains on assets used in a trade carried on through a branch or agency in the UK.

Foreign currency

Where assets are bought or sold in a foreign currency, the cost of the assets and the sale proceeds are converted into sterling at the exchange rate at the date of acquisition and sale respectively.

Domicile

UK domiciled residents are liable to capital gains tax on gains wherever in the world they arise.

Residents who are not domiciled in the UK are liable to tax on all capital gains that arise in the UK. Gains that arise outside the UK are taxed on the remittance basis, subject to a claim being made where necessary.

- Where the remittance basis is used and part of the sale proceeds are remitted to the UK, the remittance is treated as made first out of the chargeable gain.

For example, if Gerhard sells an asset for £100,000, which results in a chargeable gain of £30,000 and remits £40,000 to the UK, £30,000 of the remittance will consist of chargeable gains and be taxable.

- No tax is charged on remittances of gains that arose while the individual was neither resident nor ordinarily resident in the UK.
- Bearer shares in UK companies are treated as located in the UK for capital gains tax purposes.

Temporary non-residence

Individuals who have been UK resident cannot escape capital gains tax by disposing of an asset while they are resident and ordinarily resident outside the UK for a short period.

They must be resident and ordinarily resident outside the UK for at least five tax years to escape tax.

- Individuals who have left the UK are taxable on gains made after leaving the UK if all the following conditions are met:
 - They were UK resident for any part of at least four out of the seven tax years immediately before the year of departure.
 - They become not resident and not ordinarily resident for a period of less than five tax years.
 - They owned the assets before they left the UK.
- Such individuals are taxable in the year of departure on gains made at any time in that tax year, before or after departure.

The year is not split between resident and non-resident periods.

- Gains made after the year of departure are taxed in the tax year in which the individual resumes UK residence.
- Non-UK domiciled temporary non-residents are eligible to be taxed on non-UK gains on the remittance basis.
- Assets acquired and disposed of during a non-resident period are exempt.

There are special rules to prevent abuse by converting assets acquired in the UK into assets acquired while abroad.

- Individuals who are not resident and not ordinarily resident for more than five tax years are not taxable on gains made during complete tax years of non-residence.
 - Such individuals remain taxable on gains made in the year of departure and arrival in the UK, regardless of when disposals occur during those years, if they were UK resident for any part of at least four out of the seven tax years immediately before the year of departure.
 - If they were non-UK resident for the whole of at least four of the seven tax years immediately before the year of departure, they are taxable only on gains made before the date of departure and after the date of return. In other words, the tax years of departure and return are split.

Overseas companies and trusts

There is complex anti-avoidance legislation that prevents people from avoiding capital gains tax by placing assets in a non-UK resident company or trust.

- UK resident shareholders in a non-resident company may be taxable on gains made by that company if the company is controlled by a small number of shareholders.
- UK residents who place assets in overseas trusts are liable to any capital gains made by the trust if they or a range of relatives can benefit in any way from the trust.
- UK beneficiaries of non-resident trusts may be taxable on trust gains if they receive payments from the trust.

Up to 5 April 2008, foreign domiciliaries were generally not caught by these rules and could often avoid capital gains tax on assets in the UK by placing them in an overseas trust.

From 6 April 2008, these anti-avoidance rules extend to non-domiciled shareholders of non-resident companies and to non-domiciled individuals who have placed assets in an offshore trust from which they can benefit. They are eligible for the remittance basis, subject to claim where necessary.

Trustees can elect to exclude unrealised trust gains that accrued up to 5 April 2008 from being taxed on non-UK domiciled beneficiaries under the new rules.

Inheritance tax

The extent of liability to inheritance tax (IHT) in the UK is determined by whether an individual is domiciled in the UK.

For inheritance tax there is an additional concept of deemed domicile.

Deemed domicile

An individual is deemed to be domiciled in the UK, even though he or she is domiciled outside the UK under general law and for other tax purposes.

- In general, individuals are deemed to be domiciled in the UK if they have been resident in the UK for at least 17 out of the previous 20 tax years.
- An individual who emigrates and acquires a non-UK domicile is deemed to be domiciled in the UK for the three years after their domicile changes.

In practice, absence of more than three years may be necessary because the new domicile may not be established immediately after departure.

Deemed domicile has no relevance to taxes other than inheritance tax.

Inheritance tax liability

Individuals who are domiciled, or deemed to be domiciled, in the UK are subject to inheritance tax on all their property, wherever in the world it is situated, subject of course to various exemptions and reliefs that are explained in the Essential Guide 'Inheritance tax'.

Individuals who are not domiciled and not deemed domiciled in the UK are subject to inheritance tax only on property that is situated in the UK.

- When an individual who is not resident, not ordinarily resident and not domiciled in the UK dies, any foreign currency bank account in the UK is not subject to inheritance tax.
- National Savings & Investments and certain other government investments are ignored if they are owned by people domiciled in the Channel Islands or Isle of Man, whether or not they are UK resident.
- Certain government securities issued after 28 April 1996 are excluded if they are owned by individuals who are ordinarily resident abroad, irrespective of domicile.
- FSA authorised unit trusts and OEICs are not subject to IHT if owned by non-domiciliaries or trusts established by them.
- Tangible assets and land are situated where they are physically located.
- Registered shares are normally situated where they are registered.
- For the purposes of inheritance tax (in contrast to the capital gains tax rule), bearer shares are situated where the certificate of title is held. Non-UK domiciled individuals can use bearer shares to avoid inheritance tax on interests in UK companies.

Property situated outside the UK and held in a trust escapes inheritance tax if the settlor (the person who put the assets into trust) did not have a UK domicile at the time the assets were transferred to the trust.

An individual who is about to be deemed domiciled in the UK can protect overseas assets from inheritance tax by placing them into a settlement.

For inheritance tax, it does not matter if the settlor is also a beneficiary of the settlement, although this may affect the settlor's income tax and capital gains tax.

Conclusion

People who are resident, ordinarily resident and domiciled in the UK cannot escape liability to UK tax by holding assets or receiving income abroad.

Tax planning opportunities are much greater for individuals who are not resident, not ordinarily resident or not domiciled in the UK, but they must take care that they have correctly determined their status.

However, the changes to the remittance basis from 6 April 2008 impose an additional UK tax burden on people who have been resident in the UK for more than seven years and have limited opportunities for planning using offshore trusts and companies.

For 2009/10:

- UK resident but non-UK domiciled or individuals not ordinarily resident in the UK need to ensure their affairs are well organised for this the first year affected by the new remittance regime.

- In particular, they need to consider whether it is prudent to claim the remittance basis and suffer the loss of personal allowances (unless certain exceptions apply). Long-term residents (those resident in the UK for more than six out of the past nine tax years) will be required to pay a £30,000 annual tax charge when claiming the remittance basis.
- Furthermore, a change in the definition of 'remitted to the UK' to include non-cash remittances; a wide definition of 'relevant persons' receiving UK remittances and onerous record keeping requirements required in order to determine 'nominated income/gains' further complicate the issue.
- If the individual can keep their unremitted foreign income and gains at the end of the tax year to less than £2,000, the remittance basis can be used without making a claim and personal allowances retained.

This guide is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking action on the basis of the contents of this publication.

The guide represents our understanding of the law and HM Revenue & Customs practice as at May 2009, which are subject to change.