

## Introduction

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The liability of individuals to UK tax is affected by their residence and domicile status. Different combinations of residence and domicile affect how the various types of income are taxed and whether capital gains tax (CGT) and inheritance tax (IHT) are payable.

The purposes of this section are:

- To outline how an individual's residence status and domicile are determined.
- To explain the effect of these concepts on income tax, CGT and IHT.

In order to make this section as useful as possible in what is a complex area, income tax liability is explained first by outlining what is taxable for each combination of residence, ordinary residence and domicile, and again by reference to which individuals are liable to tax on each type of income.

This section is only concerned with individuals and the three taxes mentioned. It does not cover national insurance, which has its own rules, nor the tax position of companies, trusts, clubs, societies or other legal entities.

## Residence, ordinary residence and domicile

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Three status concepts have an effect on an individual's UK tax liabilities.

They are:

- Residence: the status of an individual in any one tax year.
- Ordinary residence: the residence status of an individual on a regular basis.
- Domicile: the country or jurisdiction that may be regarded as an individual's permanent home.

Despite the importance of these concepts, tax legislation contains little to define them.

The information in this section, and in guidance on residence and domicile generally, is based on decisions of the courts and accepted HM Revenue and Customs (HMRC) practice.

An individual's residence and domicile status is the same for income tax, CGT and IHT, but an additional status of deemed domicile exists for IHT. An individual may be resident in more than one country at the same time, or may be resident in no country in a tax year. However, every individual must have one, and only one, domicile.

### Residence

Residence status for a particular tax year (the year from 6 April to 5 April) is determined in accordance with a number of tests.

#### Time spent in the UK

- Individuals are definitely resident in the UK if they spend more than 182 days in the UK in the tax year.
  - The days may be accumulated over any number of visits in the year.
  - Since 6 April 2008, any day on which a person is present in the UK at midnight is counted as a day of presence in the UK for the residence test.

- There is an exception to the 'midnight' rule. People who stop in the UK while in transit between two places outside the UK are not counted as present in the UK provided that they leave the following day and, while in the UK, they do not engage in activities unrelated to the journey itself, such as attending a business meeting.
- Individuals who come to the UK during the tax year to stay indefinitely are regarded as UK resident for that tax year, even though the period spent in the UK that year might be less than six months.

However, an HMRC concession allows the tax year to be split for most purposes (see page 4, 'Split year treatment').

- Individuals who spend no time in the UK during a tax year are non-resident for that year.

If residence status can be determined purely by these two tests, further tests need not be considered. Where an individual has spent some time in the UK in a tax year, but the time does not amount to 183 days or more, further tests are used.

### **Leaving the UK**

Individuals who have been resident in the UK can only become non-resident if they leave the UK. Individuals who make frequent visits abroad, for example, business trips, are not considered to have left the UK if their home and settled domestic life remain in the UK. This is so even if their absences mean that they have spent less than 183 days in the UK in a tax year. An individual who claims to have left the UK and become non-resident will have to specify the date on which this occurred.

### **The habitual and substantial test**

Individuals are resident in the UK if they make 'habitual and substantial' visits to the UK.

- Visits are habitual if they continue for four consecutive tax years.
- Visits are substantial if they average more than 90 days in a tax year.
  - The average is taken over a maximum of four tax years.
  - Days spent in the UK beyond a person's control, for example, because of illness, are excluded.
- Under this rule, individuals previously not resident in the UK normally only become resident in the fifth tax year, unless it is clear from the outset that they intend to make habitual and substantial visits. In that case, they are resident from the first tax year.
- Individuals who have been resident in the UK remain resident if they go abroad with the intention of returning to the UK for substantial visits.

### **Temporary immigrants**

Individuals who come temporarily to the UK remain non-resident if:

- They have no intention of staying in the UK for three years or more, and
- They have no intention of establishing a permanent home in the UK, and
- They are in the UK for less than six months.

Individuals who come to the UK intending to stay at least two years are treated as resident from the date of arrival until the date of departure.

## Temporary emigrants

Individuals who go abroad to take up full-time employment become non-UK resident from the day after the date of departure (by concession) provided their contract of employment lasts for at least a complete tax year.

- They can return to the UK for occasional visits, provided that any duties they perform in the UK are incidental to their duties abroad and the visits are not more than 182 days in any tax year, or an average of more than 90 days a tax year.
- Whether duties are incidental depends on the nature of the work. Normally, if the UK duties are similar to those carried out abroad they are not regarded as incidental. For example, an overseas director attending a board meeting in the UK is not performing an incidental duty, while an overseas representative reporting to a UK employer for instructions is probably carrying out an incidental duty.

The rules are similar for individuals who leave the UK to work full-time on a self-employed basis or who have several part-time employments that together represent full-time employment. By concession, non-residence status is extended to an accompanying spouse or civil partner.

It can be more difficult to determine the residence status of an individual who goes abroad for a purpose other than full-time employment or self-employment.

- An individual who leaves the UK intending to live abroad for at least three years is normally treated as not UK resident from the outset.
- An individual who goes abroad for a period of at least one tax year for a 'settled purpose' is normally treated as not UK resident from the outset. A settled purpose exists where there is a fixed object or intention with which the individual is going to be engaged for a long period.
- If the intention is not clear initially, the individual will probably be treated as provisionally resident, but the status will be subject to adjustment retrospectively if the absence turns out to last at least three years.
- Individuals who wish to divest themselves of UK resident status are often advised not to visit the UK at all in the first complete tax year of absence.

Provided there is no doubt that the individual has moved house, family and settled domestic life abroad, visits to the UK that do not exceed the 90-day or 182-day thresholds will not cause difficulty.

## Ordinary residence

An individual who is resident in the UK year after year is ordinarily resident in the UK.

- An individual who comes to the UK for a single visit of more than 182 days in a tax year will be resident for that year but not ordinarily resident.
- An individual who leaves the UK for only one tax year may not be resident in the UK for that year but might remain ordinarily resident.
- Individuals who come to the UK and are resident for more than four tax years become ordinarily resident from the fifth tax year.
  - If it is clear from the outset that they intend to make habitual and substantial visits, they will be regarded as ordinarily resident from the start.
  - If they intend to stay in the UK for three years or more, they will normally be regarded as ordinarily resident from the start.
  - If they arrive with no clear intention, but decide at some point to stay for at least three years, they will become ordinarily resident from the date of that decision.

- Individuals going abroad for full-time employment or self-employment are treated as not ordinarily resident from the day following the date of departure. By concession this treatment is extended to an accompanying spouse or civil partner.
- Individuals going abroad for any other purpose are provisionally regarded as not ordinarily resident from the day after the date of departure, if it is clear that they intend to stay away for at least three years.
- Individuals who go abroad without a clear intention to stay away for at least three years remain provisionally ordinarily resident in the UK. Their status may be retrospectively adjusted if their absence turns out to be three years or more.
- Students who come to the UK to study are not regarded as ordinarily resident in the UK unless the period of study is expected to last more than four years or they intend to stay in the UK, or make habitual and substantial visits to the UK, after their course has finished.
  - If they do expect to be resident in the UK for more than four years, they will be ordinarily resident from the time of arrival.
  - If they do not expect to be resident in the UK for more than four years, but do in fact stay on, they become ordinarily resident from the fifth year.

## **Split year treatment**

The strict rule is that residence and ordinary residence status is determined for a whole tax year. However, by concession the tax year can be split for income tax purposes in some circumstances.

- An individual who has not been ordinarily resident in the UK but comes to the UK for at least two years is taxed as a resident only from the date of arrival.
- An individual who has been resident in the UK and leaves to live abroad for at least three years is taxed as a resident only up to and including the date of departure.
- An individual who has been resident in the UK and leaves to take up full-time employment abroad (in circumstances that meet the conditions for non-residence) is taxed as a resident only up to and including the date of departure.

Split year treatment is much more limited for CGT (see page 15, 'Temporary non-residence').

## **The effect of tax treaties**

The rules described above are those prescribed by the UK's law and practice, but it is possible for them to be overridden if the terms of a double tax treaty provide otherwise. Double tax treaties are designed to avoid cases of double taxation (where the same income or gains would be taxed in the UK and in another territory) and to prevent tax avoidance and evasion. However, a tax treaty cannot create a liability to tax where the domestic law of the country concerned does not provide for it. The UK has the widest tax-treaty network in the world, currently encompassing 111 active treaties.

Tax treaties provide for relief from double taxation by one of two methods – 'credit relief' and relief by exemption. The UK tends to favour credit relief in its treaties, under which an item of income or gains that is taxable both in the UK and in the other territory is not thereby exempted from UK tax, but the taxpayer is allowed to set the foreign tax against the UK tax on that income or those gains. Many other countries prefer the exemption method, under which income or gains taxed abroad are exempted from tax in the home country. Nevertheless, many of the UK's treaties confer exclusive rights to tax in some circumstances to the other territory.

Where an individual is treated as resident in the UK under UK law and in another country under that country's law, the treaty between the UK and that other country (where there is one) will usually apply a series of tests to determine in which of the two countries the individual is to be

deemed resident for the purposes of the treaty. These tests normally apply criteria in a defined order of priority (looking at where the individual's permanent home is situated and where the individual's centre of vital interests is located, then at more tenuous links such as the individual's nationality).

An example of how a tax treaty may override domestic UK law is in the area of income tax on earnings from employment. Although each treaty is different, most follow the model published and revised from time to time by the Organisation for Economic Cooperation and Development (OECD). Under the model treaty, a resident of country A who derives employment income in country B will not be taxable in country B (but only in country A) if:

- a. The non-resident spends no more than 183 days in country B in the relevant tax year.
- b. The earnings are not paid by or on behalf of an employer in country B.
- c. The payments are not borne by a permanent establishment that the employer has in country B.

Treaties will define what constitutes a 'permanent establishment'. In most treaties, business profits (including those of a self-employed person) will be taxable in a country only if the person carrying on the business has a permanent establishment in that country from which the person derives the profits.

The UK also has a number of treaties that confer the right to personal allowances on a reciprocal basis to residents of the other country, irrespective of what the UK's domestic rules may prescribe.

While the UK has 111 treaties covering income, corporation and capital gains taxes, it has only a handful dealing with inheritance tax.

## **Domicile**

Domicile is a general concept with application to matters such as the validity of wills and intestacy law, as well as taxation. A person's domicile is the country that is that person's natural home to which that person would eventually expect to return after a stay abroad. It is a much more permanent concept than residence. Most people retain the same domicile throughout their lives and do not change it even if they live for long periods abroad.

Although the term 'UK domicile' is often used in taxation, technically there is no such thing. What is meant by UK domicile is domicile in England and Wales, Scotland or Northern Ireland. In some countries, the term 'domicile' is used to mean the right of residence, or even the place of residence. This is not its meaning in the UK.

Domicile is usually only relevant to UK tax liability if the individual is resident or ordinarily resident in the UK. Non-domiciled status can confer tax advantages for income tax, CGT and IHT.

There are three types of domicile.

### **Domicile of origin**

Every individual has a domicile of origin at birth. In England and Wales, this is normally the domicile of the father.

- A child's domicile is therefore not necessarily the same as the child's country of birth or nationality.
- An illegitimate child, or one born after the father's death, takes the mother's domicile.
- It is difficult to change a domicile of origin.

In Scotland, a child takes the domicile of the parents where the parents have the same domicile and the child lives with one or both of them.

In other circumstances (eg parents with different domiciles), the child is domiciled in the country with which the child is for the time being most closely connected.

### **Domicile of dependency**

A domicile of dependency arises in two circumstances.

- Up to age 16, if the relevant parent changes domicile, the child's domicile also changes. This is called a domicile of dependency.
- A wife's domicile is independent of her husband's domicile, but if they married before January 1974, she took her husband's domicile on marriage and retains it until she acquires a new domicile of choice of her own. This rule does not apply to US nationals.

### **Domicile of choice**

An individual can acquire a new domicile, called a domicile of choice, by moving to a new country with the intention of living there permanently and not returning to the domicile of origin.

There are no set rules on what is required to change domicile, but the following actions would be an indication:

- Physically living in the new country.
- An expressed intention to stay there permanently.
- Buying a house there and disposing of all private residences in the country of origin.
- Establishing a business or getting a job there.
- Making a will there.
- Taking up the country's nationality if possible and giving up nationality of the country of origin.
- Involvement in the local community and voting in the new country if possible.
- Having one's family, friends and business interests in the new country.
- Breaking or minimising domestic, business and social ties with the country of origin.

None of these is conclusive on its own and not all are essential, but the existence of several of them together suggests a new domicile of choice has been acquired. Where a person has acquired a domicile of choice, it can only be abandoned if the individual no longer lives in the country and intends to live elsewhere permanently. When an individual abandons a domicile of choice without acquiring a new domicile of choice, the individual automatically reverts to the domicile of origin.

### **Self-assessment**

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 residence and remittance basis 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 CGT liability. Domicile status is generally only relevant to UK residents who have income or gains arising abroad.

The residence and remittance basis pages also include a section for people to claim the remittance basis of taxation, or to state that their unremitted income and capital gains are less than £2,000, in which case they are entitled to the remittance basis without claim. The remittance basis is explained on page 9, 'The remittance basis'.

The tax return requires various other pieces of information to be given to support each particular claim, such as the 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 and in some cases the reasons for their presence.

It is not necessary for individuals to obtain advance agreement from HMRC that they are non-resident or not domiciled. However:

- Any claim on the residence supplementary pages may be subject to HMRC enquiry in the same way as any other information on a tax return.
- A taxpayer who wants to claim non-UK domiciled status and has income or gains affected by that status can submit HMRC form DOM1 before completing a tax return. The form requests a great deal of detailed information to enable HMRC to form a view on the individual's domicile, and there may be further correspondence. If HMRC agrees that the individual is not UK domiciled, it will not enquire into domicile status when the return is submitted, unless it believes that the individual's circumstances have changed or the facts given were incorrect.
- Obtaining advance agreement of non-UK domicile status may be useful if an individual intends, for example, to realise a large gain that would not be taxable if the individual is not UK-domiciled and makes the appropriate remittance basis election. It also avoids an enquiry after the return has been submitted, which is unlikely to be completed before the tax payment date.
- An individual who has a UK domicile of origin and claims non-domicile status on a tax return has to state the date on which the individual's domicile is considered to have changed.
- If a person claims non-domicile status on a tax return for the first time and has not obtained advance agreement, HMRC will normally open an enquiry to check whether the claim is valid.

## Personal allowances

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UK residents are entitled to various personal allowances against their income (see the separate topic 'Income Tax Basics: types of tax and income').

### 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.
- 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 (see above), regardless of the above rules.

Individuals who claim the remittance basis of taxation are not entitled to any personal allowances. Individuals who claim the remittance basis of taxation are not entitled to any personal allowances. (The remittance basis is explained on page 9, 'The remittance basis'.) This restriction does not apply to individuals who 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 2010/11. 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
£7,085 @ 20%	£1,417
Total	£1,661

However, her liability 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
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Non-residents can request that no tax be 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 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 on her total UK income less the personal allowance.

# Income tax liability by reference to status

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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 separate topic 'Income Tax Basics: types of tax and income', 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 parts of this section explain what the remittance basis is, who can claim it and to which income it applies.

In this section, 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

Non-UK domiciled taxpayers (and others in some limited circumstances) may be taxed on the remittance basis on their overseas income.

- The remittance basis is given without claim to certain people, however long they have been resident in the UK, namely:
  - If their total unremitted income and gains for the tax year in question are less than £2,000.
  - If they have no UK income or gains other than taxed investment income of up to £100 and make no remittances to the UK.
- People who claim the remittance basis are not entitled to personal allowances and the annual CGT exemption.
- Long-term residents who claim the remittance basis have to pay a £30,000 annual charge.

## Meaning of remittance

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**

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.
- For example, an adult entitled to use the remittance basis who has been resident in the UK for the six tax years 2003/04 to 2008/09 can use that basis for 2009/10 without paying the charge, but for 2010/11 will either have to pay the £30,000 charge or be subject to tax on the arising basis.
- People who are entitled to the remittance basis without claim are not liable to pay the £30,000 charge, 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 that person has 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. Investment income from the Republic of Ireland is 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 but 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 their 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 8, '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**

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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.

<b>Residence and domicile status</b>	<b>Business carried on wholly or partly in UK</b>	<b>Business carried on wholly overseas</b>
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 11, '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

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### The general rules

Individuals are liable to 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 CGT, 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 page 15, 'Temporary non-residence').
- 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 CGT on gains wherever in the world they arise.

Individuals who are resident but 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 the making of a claim 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 CGT purposes.

## Temporary non-residence

Individuals who have been UK resident cannot escape CGT 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 CGT.

- 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.

However, the above rules will not allow the UK to tax the gains if exclusive taxing rights in respect of those gains are assigned to another country under a double tax treaty.

## Overseas companies and trusts

There is complex anti-avoidance legislation that prevents people from avoiding CGT 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 CGT 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.

However, the above rules will not allow the UK to tax the gains if exclusive taxing rights in respect of those gains are assigned to another country under a double tax treaty.

## **Inheritance tax**

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The extent of liability to IHT in the UK is determined by whether an individual is domiciled in the UK. For IHT there is an additional concept of deemed domicile.

### **Deemed domicile**

An individual is deemed to be domiciled in the UK, even if 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 the change of domicile. 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 IHT.

### **Inheritance tax liability**

Individuals who are domiciled, or deemed to be domiciled, in the UK are subject to IHT on all their property, wherever in the world it is situated, subject of course to various exemptions and reliefs that are explained in the separate topic 'Inheritance Tax: key features'.

Individuals who are not domiciled and not deemed domiciled in the UK are subject to IHT 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 IHT.
- National Savings and 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.
- Financial Services Authority (FSA) authorised unit trusts and open-ended investment companies (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 IHT (in contrast to the CGT rule), bearer shares are situated where the certificate of title is held. Non-UK domiciled individuals can use bearer shares to avoid IHT on interests in UK companies.

Property situated outside the UK and held in a trust escapes IHT 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 IHT by placing them into a settlement. For IHT, it does not matter if the settlor is also a beneficiary of the settlement, although this may affect the settlor's income tax and CGT.

## Tax planning key points

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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.

- People who are entitled to claim the remittance basis need to consider carefully whether such a claim is worthwhile.
- Claiming the remittance basis will result in the loss of personal allowances and CGT annual exemption.
- Long-term residents (those resident in the UK for at least seven of the previous nine tax years) must pay a £30,000 annual tax charge if they claim the remittance basis.
- The remittance basis generally imposes onerous record-keeping requirements.
- If the individual can keep 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.
- Where any cross-border income or gains are involved, always consult the terms of the double tax treaty, if any, between the UK and the relevant other country.

*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 2010, which are subject to change.*