



Non-domiciled individuals

The UK tax rules which concerns individuals who are non UK domiciled changed considerably in April 2008.

Until 5 April 2008 an individual who was resident in the UK but was either not domiciled ('non-dom') here or not ordinarily resident in the UK was taxed on the 'remittance basis' for income and capital gains arising outside the UK. These individuals were taxed only on income and capital gains that were 'remitted' or brought into the UK in the tax year.

From the start of the 2008 tax year many individuals who previously had paid little or no UK tax became subject to new rules which significantly changed their liability to UK tax. In addition the rules which defined residency in the UK were considerably tightened up.

We offer below a short summary of the main points of interest to non-domiciled individuals. However, the rules can be extremely complicated and proper advice should be taken to ensure the optimum tax treatment of non-UK income and capital gains.

What is domicile?

Domicile status is important for any individual who has income and capital gains arising outside the UK. Domicile is a general law concept and is not defined in tax law for either income tax or capital gains tax.

Some of the main points to be considered in relation to domicile are:

- You cannot be without a domicile
- You can only have one domicile at a time
- You are normally domiciled in the country where you have your permanent home
- Your existing domicile will continue until you can acquire a new one
- Domicile is distinct from nationality or residence, although both can have an impact on your domicile
- The fact that you register and vote as an overseas elector is not normally taken into account when deciding whether or not you are domiciled in the UK.

In addition there are three types of domicile relevant to income tax and capital gains tax that may need to be considered, domicile of origin, domicile of choice and domicile of dependence.

Basic concept of a remittance

Two conditions must be in place for a remittance to arise. Firstly property, money, or consideration for a service, must be brought into the UK for the benefit of a relevant person and secondly, the funds for that property etc must be derived directly or indirectly from the overseas income and gains. These rules are much wider than the old rules.



Claiming the remittance basis – all taxpayers

The starting point of liability for all non-doms is that overseas income/gains are taxable on the arising basis just as they are for any UK domiciled individual.

A non-dom has the option of making a claim for the remittance basis to apply, but in doing so they automatically forfeit the right to the annual personal allowances threshold and the annual exemption for CGT.

Relevant foreign income

Relevant foreign income is income from a source outside the UK which is not income from your employment.

Although this list is not exhaustive, relevant foreign income will include:

- dividends from foreign companies
- the profits of a property business (rental income)
- the profits of a trade, profession or vocation which is carried out wholly outside the UK
- pensions and annuities
- interest
- royalties.

Relevant person

Essentially a remittance can be within the scope of UK tax if it is for the benefit of any person who, in relation to the taxpayer (ie the non-dom with overseas income/gains), is within the definition of a relevant person.

The list includes the following:

- the taxpayer
- their spouse or civil partner
- a partner with whom they are living as a spouse or civil partner
- any child or grandchild under 18 years of age
- a close company in which any relevant person is a shareholder
- a trust in which any relevant person is a beneficiary.

Small amounts of foreign income

There is an exemption for taxpayers that are employed in the UK, are not domiciled here and who have small amounts of foreign income. If all the following



criteria are met, these individuals will not be liable to UK tax on their foreign income, either when it arises or when it is brought to the UK.

The criteria are as follows:

- the taxpayer is resident in the UK
- the taxpayer is not domiciled in the UK
- the taxpayer is employed in the UK
- the taxpayer is a basic rate taxpayer (based on worldwide income and gains)
- the taxpayers income from overseas employment for the tax year is less than £10,000
- any overseas bank interest for the tax year it is less than £100
- all overseas employment income and interest is subject to foreign tax
- the taxpayer has no other overseas income or gains
- the taxpayer is not otherwise required to complete the Self Assessment tax return

If required, a taxpayer who meets all the conditions above can still elect to be taxed on the remittance basis.

Continuing to benefit from the remittance basis

The main situation where a non-dom will be able to benefit from the remittance basis without making a claim and will therefore retain their allowances is when they remit to the UK all but a maximum of £2,000 of their income and gains arising abroad in the year.

In these cases, taxpayers:

- Are automatically taxed on the remittance basis
- Do not lose any entitlement to income tax or capital gains allowances
- Are not subject to the remittance basis charge (RBC).

Long term resident – the seven year rule

Matters become more complex and serious when an individual falls within the definition of a long term UK resident. This will arise when the individual has been resident in the UK in seven out of the nine UK tax years preceding the one for which liability is being considered. For these purposes a part year of residence counts as a full year. In considering the position for 2010/11 it is necessary to look at the individual's UK residence position going back as far as 2001/02 (ie to 6 April 2001). If they have been UK resident for at least seven of those years then they will be classed as a long term resident for the purpose of the remittance basis.

Essentially the long term resident (who must be 18 years of age or over at some time in the tax year concerned) can only claim the benefit of the remittance basis if they pay an additional £30,000 in addition to the tax on any income or gains remitted. This sum is known as the 'remittance basis charge' (RBC).



If a non-dom decide to claim the remittance basis and has been a 'long term' resident in the UK, they may have to pay the RBC.

The RBC is an annual tax charge of £30,000. It is tax on a part of the foreign income and/or gains which you leave outside the UK and is payable in addition to any UK tax that has to be paid on either UK income and/or gains or foreign income and/or gains remitted to the UK.

The RBC is not avoided where there is a failure to nominate specific income/gains and such failure may result in duplicate or higher taxation in future years.

In the 2011 Budget, the Government announced plans to introduce the following reforms from April 2012:

- Removing the tax charge when non-domiciles remit foreign income or capital gains to the UK for the purpose of commercial investment in UK businesses.
- Simplifying some of the administrative burdens for non-domiciles.
- Increasing the existing £30,000 annual charge to £50,000 for non-domiciles who have been UK resident for 12 or more years and who wish to retain access to the remittance basis of assessment. The £30,000 charge will be retained for those who have been resident for at least seven of the past nine years and fewer than 12 years.
- It was also announced that there will be no other substantive changes to the rules for non-domiciled individuals for the remainder of the current Parliament.

Residency rules

Whilst, technically, the major changes relate to the position of non domiciled individuals, the new regime concerns non domiciled individuals who are also resident in the UK. Residence in the UK is determined by being in the UK in excess of 182 days in any tax year (6th April to 5th April) or by being resident in the UK for an average of 91 days in any tax year, taking the average of the tax year in question and the three previous tax years.

Previously, only whole days spent in the UK were counted towards establishing residence, and days of arrival and departure are generally ignored. From 6 April 2008, nights spent in the UK count as a day of UK residence, significantly reducing the time an individual can spend in the UK before becoming UK resident, and thus possibly liable to UK tax on worldwide income and gains.

Double taxation agreements

The UK has Double Taxation Agreements (DTAs) with a large number of countries around the world. One of the purposes of a DTA is to prevent taxpayers having to pay tax twice. When a taxpayer is resident both in the UK and in another country and the UK there are special rules for determining which of the countries is regarded as a taxpayers country of residence for the purposes of the agreement.



Where a DTA exists between the UK and another country, it will usually have the effect of reducing the amount of foreign tax to be paid.

Inheritance Tax

There is no suggestion of a change to the status of non domiciled individuals with regard to UK inheritance tax. The current position is that non domiciled individuals are liable to UK inheritance tax only on assets situated in the UK, unless they have been resident in the UK in seventeen out of the preceding twenty years. If this is the case, they will be deemed to be domiciled in the UK and liable to UK inheritance tax on their worldwide assets.

Appealing a decision of HMRC

Taxpayers can appeal against HMRC's decision in relation to issues of:

- residence in the UK
- ordinary residence in the UK
- domicile
- claim to relief from UK tax.

Self-assessment return

Many non-domiciled individuals are likely to be required to submit self-assessment tax returns in the UK. Where an individual has foreign income and gains or issues of residence and domicile they will be unable to file online using HMRC's software. This will normally mean that a paper return will be required for which the deadline is 31 October following the end of the tax year (rather than 31 January for electronic submission). It may be possible for taxpayers to submit electronically (by 31 January) if they use electronically supplied software.