# Non-domiciled individuals

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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 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 includes:

- 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 (i.e. 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 taxpayer's income from overseas employment for the tax year is less than £10,000.
- Any overseas bank interest for the tax year 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.

**Long term resident**

Non-doms that wish to retain access to the remittance basis of taxation must pay an additional sum in addition to the tax on any income or gains remitted. This sum is known as the 'Remittance Basis Charge' (RBC).

With effect from 6 April 2015, The charge for individuals who have been resident in the UK for at least 12 of the last 14 years will be increased to £60,000 (2014-15: £50,000) and a new charge of £90,000 will be payable by individuals who have been resident in the UK for at least 17 of the 20 tax years. The charge for individuals who have been UK resident for at least 7 of the last 9 years is unchanged at £30,000. The Government is also consulting on changes to make the election to pay the remittance basis charge apply for a minimum of three years

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.

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.

**Residency rules**

Historically, residence in the UK was 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.

However, a new Statutory Residence Test (SRT) came into effect from 6 April 2013. The new statutory rules consist of the following three separate tests which are intended to provide greater certainty as to a taxpayer's residency status:

- an automatic non-residence test;
- an automatic residence test; and
- a "sufficient ties" test.

The SRT continues to looks at the number of days an individual spends in the UK but with a number of different tests associated with them.

**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 there are special rules for determining which of the countries is regarded as a taxpayer's 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.

**Capital gains tax**

From 6 April 2015, a new CGT charge comes into effect on the sale of UK residential property by non-UK residents. HMRC's guidance confirms that only the amount of the overall gain relating to the period after 5 April 2015 is chargeable to tax. Private residence relief where a property is the owner's only or main residence will continue to apply under certain circumstances.

The amount can be calculated by either:

- establishing the value of the property as of 5 April 2015 (known as 'rebasing') and then calculating the amount of gain over that value in the normal way;
- apportioning the whole gain on the basis of the time you held the property after 5 April compared to the total time the property has been owned.

Anyone that is not resident in the UK and sells a UK residential property will be required to notify HMRC and pay any CGT due within 30 days after the property sale is completed (i.e. the date when title is conveyed). The reporting and payment can be completed electronically. A non-UK resident taxpayer that is already within the UK's Self Assessment system for Income Tax and CGT will also have the option of paying any CGT due as part of their normal year-end tax payment.

**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 may be unable to file online using HRMC's software. If this is the case, 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.