

FOCUS ON

# Non-domiciled individuals

Under UK law, an individual is domiciled, broadly, where he has his 'permanent home'. This is not the place that he happens to be living temporarily from time to time, but the country which he regards as his real long-term homeland.

## Domicile

It is often very loosely described as the country in which a person plans to ultimately settle or retire. Everyone must be domiciled in one territory at any particular time in their life. However, the concept of domicile is distinct from nationality, residence or citizenship. It is not possible for an individual to have 'dual domicile' status under UK law.

There are three types of domicile which are explained briefly below:

**Domicile of origin** - An individual acquires a domicile of origin automatically at birth. This is normally the domicile of his father (or that of his mother if his father died before he was born or his parents were unmarried at his birth). It will not necessarily be his country of birth. A domicile of origin will remain with an individual unless it is replaced by a domicile of dependency or a domicile of choice.

**Domicile of dependency** - The domicile of an individual will change if the domicile of the person on whom he is dependent changes. This broadly applies to children under 16 where the person they are dependent upon changes their domicile. There are special rules for married women whose marriages occurred pre 1 January 1974.

**Domicile of choice** - A domicile of choice can only be acquired by individuals aged 16 or over. To acquire a domicile of choice a person must sever his ties with the country of his former domicile and settle in another country with the clear intention of making it his permanent home, for the rest of his days.

Merely being a resident in another country for a long period of time is not in itself sufficient to prove that a person has acquired a domicile of choice; there must be evidence that he intends to live there permanently and even be buried there. If a person were to abandon their domicile of choice, their domicile would revert to their domicile of origin and this therefore requires careful consideration and planning.

## Why it Matters – Income Tax and CGT

If an individual is resident in the UK but is not domiciled here, income and capital gains arising abroad may be taxed on the 'remittance basis' rather than the arising basis. Under the remittance basis, foreign income or gains are not charged to UK tax unless and until they are remitted to (broadly speaking "brought into" or "otherwise enjoyed in") the UK.

The Finance Act 2008 introduced an annual levy of £30,000, known as the 'Remittance Basis Charge' for claiming the remittance basis, for individual who have at least £2,000 of unremitted foreign income and gains, who are 18 or over and who have been UK resident in 7 out of the previous 9 UK tax years.



From April 2015, for individuals who claim the remittance basis and have been resident for 12 out of the previous 14 years the remittance basis charge will be £60,000 per annum (increased from £50,000 when this extra charge was introduced in April 2012) for individuals who have been UK resident for 17 out of the previous 20 years, the charge will be £90,000 per annum.

The definition of a remittance is both complex and wide-ranging. A detailed explanation is beyond the scope of this briefing and it is essential that careful planning be put into place to ensure that no funds are remitted to the UK unintentionally as there could be tax charged on these amounts. If an individual is keen to make remittances to the UK, the source of those remittances will also need to be carefully considered to ensure this is done in the most tax-efficient manner.

### **Inheritance Tax (IHT)**

Non-domiciled individuals are only subject to IHT on any UK situs assets (for example, real property located in the UK) whereas UK domiciled individuals are subject to IHT on their worldwide assets.

For IHT purposes only, a person who is not domiciled in the UK as described above will be treated as though he were domiciled in the UK (“deemed domicile”) if he has been resident in the UK in not less than 17 of the 20 years of assessment ending with the year of assessment in which the relevant time falls. The deemed domicile rules can be overridden by the double tax treaty in place with certain countries (including India and Pakistan).

### **Further changes on the horizon**

In recent years, domicile rules and the remittance basis of taxation have been popular targets for tinkering by successive UK governments. It is therefore important for Non-Doms to keep a close eye on developments or to seek regular advice from specialist tax advisors.

In the 2015 summer budget, the Chancellor announced

that, subject to consultation, there will be further significant changes to the ‘Non-Dom rules’. Broadly, from 2017/2018, an individual is likely to be deemed domiciled for income tax, capital gains and IHT purposes if he has been UK resident for at least 15 out of the last 20 tax years. There is also the suggestion of a 5 year long ‘tail’ rule being implemented for those who leave the UK and become non-resident having previously acquired a deemed domicile under the 15 year rule. In essence, they will continue to be treated as UK domiciled for the 5 tax years after departure from the UK.

An individual will also be deemed domicile where they had a UK domicile of origin and then subsequently left the UK and acquired a non-UK domicile of choice but later resumed residence in the UK at some point – even if they have lived outside the UK for many years and had previously acquired a domicile of choice overseas.

The changes are still part of draft legislation but the above is an indication of what is likely to happen once the Finance Bill 2016 becomes law.

### **Contact us**

For further information on UK domicile status, speak to your usual MHA MacIntyre Hudson advisor or:



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