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Residence and domicile

A guide to the rules as they affect individuals, and why they matter.

Tax residence

In general, you are taxed by the country where you are 'tax resident'. It is possible to be tax resident in 2 or more countries simultaneously, because tax years of different countries overlap, or the laws conflict.

Where the same income or gain is taxed by 2 countries, a double taxation agreement between those countries is used to decide which country gets what proportion of the tax.

To determine whether you are tax resident in the UK you need to use the statutory residence test (SRT).

This test is relevant for periods from 6 April 2013 onwards; for earlier years you need to refer to court judgments relating to tax cases and HMRC guidance.

Using the SRT

You first need to calculate the number of days you spent in the UK in the tax year under consideration. A day counts if you were in the UK at midnight.

Next, check whether you are treated as being tax resident overseas and not in the UK. This applies if your days in the UK meet any of these following conditions:

- fewer than 91 days, you worked full time overseas with no significant breaks and spent fewer than 31 days working in the UK

- fewer than 46 days, and you were not resident in the UK in any of the 3 preceding tax years
- fewer than 16 days, and you were UK resident in one or more of the preceding 3 tax years.

If none of those conditions are met, you will be UK resident if you meet any of these conditions:

- 183 days or more present in the UK
- worked sufficient hours in the UK
- all homes are in the UK and have spent sufficient time in your present home.

Where none of those conditions apply, the SRT examines your personal ties to the UK, such as whether you had accommodation available in the UK, where you worked, and where your family lived.

The number of ties to the UK and the days spent in the UK, are included in a formula to determine your tax residence. This can be a complex procedure if you are internationally mobile.

We can help you decide whether you are tax resident in the UK.

Why it matters

When you are tax resident in the UK, and domiciled or deemed domiciled in the UK you must declare all of your worldwide income and gains on your UK tax return.

If you are non-resident, or UK resident but non-domiciled (known as non-dom), UK taxes may not be due on your offshore gains and income.

Leaving the UK

To escape the UK tax net on worldwide income/gains, you need to break the conditions which make you UK tax resident and become non-resident.

However, a temporary departure from the UK may not be enough to lose UK tax liability. For example, to avoid capital gains tax (CGT) on the disposal of assets situated in the UK you must be non-resident in the UK for at least 5 full tax years and resident in another country for that period.





Residence and domicile

When you leave the UK to take up residence elsewhere you should complete tax form P85, to claim any tax repayment due to you.

You should also take local tax advice about your tax obligations in your new country of residence.

Property in the UK

Rent

If you live overseas, but let out a property in the UK, you will be subject to UK income tax on that rental income.

Your letting agent, or tenant where there isn't an agent, is required to deduct income tax at 20% from the rents due under the non-resident landlord (NRL) scheme. You must pay any further tax due through your self-assessment tax return to HMRC.

You can ask HMRC for approval to receive the rent under the NRL scheme without tax deducted. Apply for this approval through your online account with HMRC, or by completing form NRL1 i.

HMRC will only grant permission for gross rental payments if your UK tax affairs are up to date.

You can be defined as a non-dom landlord for the NRL scheme if you live overseas for as little as 6 months per year. If this is the case you may still be treated as tax resident in the UK using the SRT.

Gains

When you sell a UK residential property, while you are not resident in the UK, any gain arising from that disposal will be subject to non-resident capital gains tax (NRCGT).

This tax applies to the portion of the gain accruing from 6 April 2015 onwards. The balance of the gain may be subject to ordinary CGT, depending on how long you have lived overseas.

The disposal which is subject to NRCGT must be reported to HMRC within 30 days of the completion date of the deal.

The NRCGT charge must also be paid by that date. However, if you are registered with HMRC for self-assessment you can opt to pay the tax due by 31 January allowing the end of the tax year in which the disposal occurred.

Talk to us about calculating the tax due when selling a property.

Domicile

Your domicile is your home country, but it is not necessarily the place where you were born.

You inherit the domicile of your father, subject to special rules for children with unmarried parents or who were adopted.

As an adult, you can change your domicile by moving permanently to another country, and acquiring the domicile of that country. The onus is on you to prove that you have chosen a new domicile, and it requires you to become tax resident in the new country.

Remittance basis

If you have a non-UK domicile status, in some circumstances you can choose whether you:

- pay UK tax on all your worldwide income and gains; or
- pay UK tax only on your foreign funds which you bring into the UK.

The latter option is called the remittance basis.

There is a charge to use the remittance basis if your non-UK income and gains amount to £2,000 or more per year, and you have been tax resident in the UK for 7 years or more. Currently you must pay an annual charge of between £30,000 and £90,000.

New domicile rules

If you are non-domiciled, you need to be aware of new rules which are effective from 6 April 2017. From that date, non-dom individuals won't be able to claim the remittance basis if they fall into either of these groups:

- A. those who have been tax resident in the UK for 15 out of the last 20 tax years
- B. those who were born in the UK but who claim to hold a non-UK domicile.

For group A the years of tax residence may include periods when the individual was aged under 18, and any years which are partially spent in the UK – known as split years.

These individuals are deemed to be UK domiciled for all taxes from the beginning of their 16th tax year of tax residence in the UK.

People in group B are deemed to be UK domiciled for all taxes immediately on 6 April 2017.

When remittance basis is not available you are taxed on all your worldwide income and gains, whether or not the offshore funds are remitted to the UK.

The remittance basis remains (and doesn't have to be claimed) if you have less than £2,000 per year of unremitted foreign income or gains.

To lose the deemed domicile treatment for income tax and CGT you have to become non-resident for 6 entire tax years. To remove deemed domicile status for inheritance tax purposes you need to be non-resident for more than 4 consecutive years complete tax years.

We can help you understand domicile and deemed domicile.