

RESIDENCE AND DOMICILE





Residence and domicile

Where you reside and your domicile can dictate the tax regime under which you fall. Specifically, where you reside and your domicile will impact whether you pay any UK tax on your overseas income, gains and estate on death.

Over recent years we have seen significant changes. With careful attention to your residence and domicile we can explain your tax position, the ability to claim for relief of double taxation and any opportunities to plan your affairs more tax efficiently.

If you are looking to leave the UK, return to the UK, spend longer in the UK, spend periods of time abroad or work overseas, you will need to understand how these rules impact you.

Residence

From April 2013, the Statutory Residence Test was introduced to measure whether an individual was resident in the UK or not. The old rules simply looked at the number of days you spent in the UK. The new rules now consider your ‘ties’ to the UK and overseas. If your situation is straight forward and you are in the UK for over 183 days a year with your home here, you will likely be UK resident. If you are in the UK for less than 16 days, or you work overseas and spend fewer than 91 days in the UK with less than 30 working, you will likely be automatically non-UK resident. However, where your case is not straight forward you should seek advice to check your position.

- **If you are non-UK resident then you only pay UK tax on your UK income, not foreign income.**
- **If you are UK resident and UK domiciled, then you pay UK tax on all your income whether it’s UK or abroad.**
- **If you are UK resident but not UK domiciled you might not have to pay UK tax on foreign income and gains.**

You do not pay UK tax on your foreign income or gains if:

- they are less than £2,000 in the tax year, and
- you do not bring them into the UK, for example, you transfer them to a UK bank account

If this applies to you, you do not need to do anything. However, you must report foreign income or gains of £2,000 or more, or any money that you bring to the UK. You can either:

- pay UK tax on them (you may be able to claim it back)
- claim the ‘remittance basis’

Claiming the remittance basis means you only pay UK tax on the income or gains you bring to the UK, but you:

- lose tax-free allowances for Income Tax and Capital Gains Tax (some dual residents keep them)
- pay an annual charge if you’ve been a UK resident for a certain amount of time

You pay an annual charge of either:

- £30,000 if you’ve been here for at least 7 of the previous 9 tax years
- £60,000 for at least 12 of the previous 14 tax years

UK residents have to pay Capital Gains Tax on their UK and foreign gains. However, non-residents only pay Capital Gains Tax on UK land and property or if they return to the UK within a permitted time.

In addition, where you leave the UK to move overseas, there are rules to enable you to claim a split year treatment.

There are also a number of specific rules should you work abroad and under the double tax treaties, relief may be claimed where tax has been paid in two countries. The position will vary dependent on whether you remain UK resident or not and also the length of time you go abroad for will depend on notifying HMRC. You would also need to consider other practical aspects such as if you are repaying a student loan. If you come out of the UK tax system HMRC will stop collecting payments and the student loan company will take over. You would also cease to make National Insurance Contributions which you may still want to continue to pay if you plan on coming back to the UK.

Domicile

Prior to 6 April 2017, if you were resident but not domiciled in the UK under common law the rules meant that you were only liable to pay UK tax on income and gains that arose in the UK, you could use the remittance basis and had some relief for overseas workdays.

However, from 6 April 2017 new deemed domicile rules came into force which mean if you are not domiciled in the UK under English common law you are now treated as domiciled in the UK for all tax purposes if you:

- have been UK resident for 15 out of the last 20 years
- if you were born in the UK, the UK was your domicile of origin; you were resident in the UK for 2017 to 2018 and later years (formerly domiciled rules)

If you meet the new deemed domicile rules you will no longer be able to claim the remittance basis and will be assessed on your worldwide income and gains on the arising basis.

The deemed domicile rules also impact Inheritance Tax. There were previous deemed domicile rules for Inheritance Tax only and you had to be UK resident for 17 out of the last 20 years.

If the remittance charge had been paid before 5 April 2017 then there may be rebasing provisions where assets are treated as sold and immediately re-purchased. However, there are conditions that should be reviewed together with an election process, should it make sense for this not to apply.

Where there are cash balances of mixed funds and elements that could be brought over to the UK tax-free, there was an election that needed to have been made pre 5 April 2019 to cleanse funds.

Temporary residency rules for those who return to the UK within a 5 year period, which allow the potential to claim the remittance basis with no charge, should also be understood.

If you are neither UK domiciled or deemed domiciled then you will only be subject to UK Inheritance Tax on your UK situs assets. From 6 April 2017, this also includes the value of shares in an overseas company that owns UK residential property, which previously used to be sheltered from Inheritance Tax. There are conditions you need to understand and these rules may well be extended to include commercial property in line with the changes to Capital Gains Tax for non UK residents.

Overseas trust

The new deemed domicile rules also have a big impact on overseas trusts. Where an individual is not UK domiciled under common law or the new deemed domicile laws, a trust set up with excluded property, i.e. overseas assets, is outside of the UK Inheritance Tax regime. Therefore for many, the deemed domicile rules may prevent future planning with overseas trusts from falling outside of the Inheritance Tax estate. If you are looking to undertake planning then you would need to do so before you become deemed domiciled and seek advice to understand these detailed rules.

For Income Tax and Capital Gains Tax a trust is generally dictated by the residence position of the beneficiaries and trustees. The Inheritance Tax position is that of the settlor. Measures can be taken to protect such trusts so that only Income Tax and Capital Gains Tax are payable on the settlor should they receive a distribution and there are conditions on ensuring this protection is not lost.

Non-resident landlords and indirectly held UK property

It is also worth noting that from April 2015 non-UK residents became subject to UK Capital Gains Tax on the sale of a residential property situated in the UK. Previously, as long as the individual was not UK resident in the UK for 5 years after the sale of any UK asset, they were not subject to Capital Gains Tax.

This change was to promote fairness compared with UK landlords. The rules do provide the option of rebasing the cost of the property to the market value at April 2015, which means any property purchased some time ago would benefit from an uplifted based cost.

The Capital Gains Tax rates for selling residential property is 18% and 28% as opposed to 10% and 20% for all other assets.

The rules were further extended and from April 2019 this legislation includes commercial property and indirect disposals of UK property such as the sale of shares in a company that owns UK property. Again similar rebasing rules apply to the cost of commercial property and base cost of shares as at April 2019.

There may be occasions where rebasing is less beneficial than the standard capital gain calculation, i.e. if there is a loss, and therefore an election can be made.

You must also report any capital gains within 30 days of the conveyancing even if you already complete a UK Self Assessment tax return, and this measure will be extended in 2020 for UK resident landlords also.

Richard Martin

"I had by chance seen an obscure piece of legislation on the HMRC website regarding the purchase of multiple properties. My solicitor knew nothing about it and doubted it would apply to my farm purchase. An internet search found little except a reference on the Ellacotts website. They guided me, my solicitor and surveyor through the process and I was delighted to save about £15,000."

John Forkun

"Ellacotts responses are prompt, to the point and they are always able to apply their technical knowledge and experience in a practical and simple way to the matter in hand. They were proactive in asking me "What if...?" to give me an idea of other options and issues to consider so that I can keep my tax bills to a minimum."



Meet some of our team

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