MARCH 2016

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Residence and domicile

A guide to understanding the terms residence and domicile as well as their legal and tax implications.

A large part of a person's legal identity is based upon where they live at any one time and how long they will be staying there. If you stay in the UK for a prolonged period of time, you are going to be liable for tax at some point.

The exact point and how much tax you will have to pay will depend in large part on whether residence or domicile applies to you.

Residence

Residence is principally concerned with how much time an individual spends in the UK in a single tax year, or string of tax years. The longer you stay the more likely you will be taxed on any income and gains you make during that time period.

On 6 April 2013 'residence' moved from being a general term with no legal definition to a set of codified tax laws. This is known as the statutory residence test, which at its most basic level follows this rule:

- if you spent 183 days in the UK during one tax year, you are considered a resident in the UK.

There are a couple of caveats in the form of further tests to ascertain your residence status if you are not considered a UK resident by the rule above.

Automatic overseas tests

If any of the following apply to your situation you will automatically be considered a non-resident for that particular tax year:

- if you were a resident for 1 or more of the proceeding 3 tax years but have spent less than 16 days in the UK during the current one
- you were not a resident for the last 3 years and spent less than 46 days in the UK this tax year
- you work full time overseas (averaging at least 35 hours a week) and spend fewer than 91 days in the UK, of which no more than 30 were spent working.

UK tests

You will be considered a UK resident if:

- you have a home in the UK for a period of at least 91 consecutive days in which you spend sufficient time and either don't have an overseas home or haven't spent more than 30 days there; or
- you worked full time in the UK for 365 days with no significant break and you work 3 hours a day or more.

Sufficient ties test

If you do not meet any of the automatic overseas or UK tests, you will use the sufficient ties test to work out your residence. If you were not a UK resident for 1 or more of the 3 tax years preceding the one you are considering, you need to work out if you have any of the following:

- a family tie
- an accommodation tie (a place to live in the UK)
- an employment tie (more than 3 hours work per day for 40 days in a tax year)
- a 90-day tie (spent more than 90 days in the UK in the last 2 previous tax years).

We can help you understand tax residence.

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Residence and domicile

Domicile

Domicile is the country a person officially sees as their permanent home. Most of the time this will be the country that you were born in, as an individual is automatically assigned the same domicile as their father. This is known as a person's domicile of origin.

Your domicile of origin will remain in place even if you move abroad, unless you take deliberate actions to change it.

Your permanent home is an important factor when it comes to income tax, capital gains tax (CGT) and inheritance tax (IHT). If you are an expat living abroad, your 'deemed domicile' will be used by HMRC to calculate your estate. Your deemed domicile will be the UK for the purposes of IHT if:

- you were domiciled in the UK for the 3 years preceding the transfer; or
- you were a resident of the UK for 17 of the last 20 tax years.

If you want to change your legal domicile, you must be over the age of 16 and be able to satisfy a number of criteria. These criteria usually vary from case to case and each application will be judged on its own merits. The basics of an application will typically be:

- settling in another country separate from your current domicile
- providing convincing evidence that you are planning to live in your new location permanently.

We can advise you on domicile.

Future changes

There are 2 planned changes to domicile taking place from April 2017.

People who have been resident in the UK for more than 15 of the last 20 tax years will be treated as deemed UK domiciled for all tax purposes and won't be able to use the remittance basis.

Secondly, people who are UK domiciled at birth will revert to UK domicile for tax purposes whenever they are resident in the UK. This applies even if they have acquired a domicile in another country.

Residence, domicile and tax

Although they relate to distinct parts of a person's legal identity, residence and domicile are closely linked when it comes to tax.

A general rule is that those who are not domiciled in the UK (sometimes referred to as 'non-doms') are not liable for tax on income or gains under £2,000 every tax year provided they do not bring them into the UK.

There are 2 further rules of taxation that apply here. The 'arising basis' means that an individual will pay UK tax on all of their worldwide income and gains in the tax year they arise, whether or not they originated in the UK.

The 'remittance basis' involves paying UK tax on your UK income and gains in the tax year they occur in, but you only pay UK tax on income and gains from overseas if they are brought to the UK. Bringing gains or income back to the UK is usually equated with transferring them to a UK bank account.

There is an annual charge for long-term UK resident non-doms who want to use the remittance basis. This charge depends on how long they have been resident in the UK and is in addition to any tax due.

The date of the tax years being considered is also a factor.

For tax years **before** 6 April 2013:

- the arising basis applies to worldwide income and gains made by UK residents, ordinary residents and UK domiciled individuals
- if you were not a UK resident, an ordinary resident or domiciled in the UK, the arising basis applies to UK income and gains and the individual can choose to pay UK tax on foreign income and gains on either the arising or remittance basis.

For tax years **after** 6 April 2013:

- the arising basis applies if you are a UK resident and UK domiciled
- for UK residents who are not UK domiciled, the arising basis applies to UK income and gains and an individual can choose to pay UK tax on foreign income and gains using either the arising or remittance basis.

'Ordinary' residency as a legal tax term was abolished as of April 2013.

Getting advice

The rules surrounding residency and domicile can get a little complex, but making sure you get your status right is important as it will have a big effect on whether you need to pay tax.

We can help you get to the bottom of this area of tax and ensure you remain compliant with the current system and any future changes.

Our team can help you with tax management.