

DOMICILE FOR UK TAX PURPOSES

Domicile is a legal concept which impacts on an individual's UK tax position. Simplistically, an individual is domiciled in the place they consider to be their permanent home and where they have the closest ties. It is a concept that is separate to nationality and legal residence or citizenship. It is possible for an individual to have dual nationality, but they can only be domiciled in one place.

Determining domicile status involves an analysis of family heritage, personal intentions and other factors such as country of residence. There were changes to the taxation of non-UK domiciled individuals who are long term UK residents from 6 April 2017.

Why does residence and domicile matter?

The default position for a UK resident is that they will be taxed on the arising basis of taxation, meaning that worldwide income and gains will be taxable in the UK, even if offshore income and gains have already been taxed in another country. In many cases relief will be given for the foreign tax paid, but full disclosure must still be made in the UK.

A UK resident but non-domiciled individual may have a choice of whether to use the arising basis of taxation or the remittance basis of taxation (more on this basis below). In addition, the inheritance tax (IHT) exposure for a non-domiciled individual may be limited to UK assets. Determining UK residence and domicile status is therefore crucial to making the correct tax disclosures and payments in the UK.

Types of Domicile

- Domicile of origin - is acquired at birth and tends to follow the domicile of the father if parents were married at the individual's birth. The domicile of origin continues to operate until either the individual acquires a domicile of dependency or a domicile of choice.
- Domicile of dependency - up to the age of 16, a child's domicile will follow that of their father. If the individual's father acquired a domicile of choice, the child will also obtain a new domicile.
- Domicile of choice - is acquired if an individual decides to settle permanently in a new country, ideally severing ties with their original country of domicile. This is difficult to achieve.

- Deemed domicile - is only relevant to UK tax law. In circumstances where an individual's domicile under general law remains unchanged, HMRC may nevertheless deem them to be UK domiciled for tax purposes.

Position for non-UK domiciled individuals who are not deemed UK domiciled

UK residents who are domiciled outside of the UK can elect to be taxed on the remittance basis, meaning they pay UK tax on their UK source income and gains, while non-UK income and gains are taxable only to the extent that they are remitted to the UK. A charge is levied on those electing to be taxed on the remittance basis once they have been resident for seven of the last nine tax years. The charge is £30,000, or £60,000 depending on the length of time the individual has been resident in the UK. Claiming the remittance basis means that an individual is not entitled to some UK tax allowances and consequently it may be more cost effective to be taxed on the arising basis, bringing worldwide income and capital gains into the charge to UK tax.

Deemed domicile for tax purposes

Since 6 April 2017, a deemed domicile concept applying for IHT was extended to income tax and capital gains tax. From then, the period of residence for deeming an individual to be UK domiciled is at least 15 out of the previous 20 years, reducing the number of UK residents who are able to claim the remittance basis, bringing more taxpayers into an arising basis of taxation on worldwide income and gains. Such individuals are also liable to IHT on their worldwide assets.

The revived UK domicile

Also from 6 April 2017, where individuals born in the UK and who were UK domiciled at birth but who later acquired a domicile of choice elsewhere will usually be deemed UK domiciled for tax purposes upon a return to the UK. This will not revive their domicile of origin under general law but will effectively revive it for UK tax purposes, meaning there will be no option to claim the remittance basis of taxation while worldwide assets will be subject to IHT.

Losing deemed domicile

Individuals who are domiciled or deemed to be domiciled in the UK have no access to the remittance



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basis of taxation and are subject to UK IHT on their worldwide assets. Even if an individual changes their domicile or ceases to become UK resident after becoming deemed domiciled, the tax analysis does not change immediately.

Losing deemed domicile before 6 April 2017

Prior to 6 April 2017, an individual with a UK domicile was treated as domiciled for UK IHT purposes for three tax years after losing their UK domicile under general law, even if they had been non-resident for longer.

An individual who is deemed to be domiciled in the UK for tax purposes, could only lose their deemed domicile status by being non-UK resident for four consecutive tax years.

Losing deemed domicile after 6 April 2017

It is possible for an individual who is deemed to be domiciled in the UK under the 15 year rule (resident for 15 of the last 20 tax years) to lose their deemed domicile status. This is quickest done by having six complete consecutive tax years of non-UK residence. Once they resume UK residence, the year count is effectively reset.

There is a slight difference in the UK IHT definition of deemed domicile which can result in loss of deemed

domicile status for UK IHT purposes after four complete consecutive years of non-UK residence, though the year count is not reset until six complete consecutive years of non-UK residence.

Evidence of domicile

Domicile is not defined in tax law, and there is no specific guidance from HMRC as to how domicile should be established. It is important that steps are undertaken to evidence domicile, especially where a domicile of choice outside the UK is claimed.

An individual must have the intention of remaining permanently in the country they are electing as their home country for non-UK domicile status to apply. In many situations, the lack of evidence is challenged on an individual's death with the UK tax authorities seeking to tax the worldwide estate, leaving executors with a problem.

How can Moore Kingston Smith assist me?

Establishing your own and your family's domicile status will enable accurate planning and disclosure for tax purposes in all jurisdictions. This is especially important for estate planning including drafting of wills and creating structures to protect family assets.