

UK Residence and Domicile

including new rules for UK Residence from April 2013

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If you are an individual moving to the UK your UK tax treatment will depend on whether you are “resident”, “ordinarily resident” or “domiciled” in the UK. The rules are complex and due to be changed fundamentally by new rules coming into force in April 2013. This guide describes briefly: (1) residence and domicile and the new rules; and (2) how residence and domicile affect your UK tax liabilities.

You should always seek detailed professional advice in respect of your own circumstances.

(1) Residence and Domicile

Current Rules of UK Tax Residence

Under the current rules you are likely to become resident for UK tax purposes in a number of circumstances including: moving to the UK permanently or with a purpose (such as employment) involving a stay of 2 years or more; spending 183 days or more in the UK in any one UK tax year (running from 6 April to the next 5 April); spending 91 days or more in the UK on average per UK tax year over a period of 4 years; or have sufficiently strong ties with the UK and a sufficiently UK based lifestyle pattern to suggest that you are resident in the UK for tax purposes.

The Proposed New Tax Residence Rules

From 6 April 2013 the UK will introduce a new ‘statutory’ test which will clarify the UK tax residence status of visitors in a completely new manner. The new rules will apply for Income Tax, Capital Gains Tax and Inheritance Tax purposes. (There will also be ‘transitional rules’, including an election for periods before 2013/14).

Arriving in the UK or Leaving the UK?

To apply the new test it is first necessary to decide whether you are an “arriver” or a “leaver” as the test treats these two classes of people differently.

- An **arriver** is a person who was not resident in the UK during the three previous tax years
- A **leaver** is a person who was a resident in the UK during one or more of the three previous tax years

'Tests' of UK Tax Residence

The new rules provide for two 'tests' for residence:

- An **automatic** residence test which can deem you automatically to be a non-UK resident or automatically a UK resident for tax purposes; and
- A **'sufficient ties with the UK'** test governing more complex cases

Satisfying the 'automatic' test will eliminate the need to determine the position under the 'sufficient ties to the UK' test.

Test One: Automatic Residence or Non-Residence

This test involves looking at the number of days you spend in the UK or reasons for being based in or out of the UK such as for work purposes.

For example an individual will be automatically:

- **Non-resident** if he is an arriver and is present in the UK for fewer than 46 days in a tax year
- **Resident** in a tax year if he carries out full time work in the UK

A 'day' counts where the individual is present in the UK at midnight at the end of a day. There is a transit exemption where transit follows the day of arrival and there is no related business conducted in the UK during transit.

Up to 60 days in any UK tax year can be disregarded for exceptional circumstances, including illness/injury; national or local emergencies.

The definition of a working day is currently 3 hours of work or more but may be extended to 5 hours.

Test Two: 'Sufficient Ties to the UK'

In the case of an individual who has more complex affairs and does not automatically qualify as either non-UK resident or UK resident, it will be necessary to consider the combination of days spent in the UK and any 'sufficient ties' they have to the UK.

These factors are combined in the following way to determine when a person is UK resident:

| Days in the UK | Number of connection factors needed to be UK Resident | |
|--------------------|---|---------------------|
| | Arriver | Leaver |
| Fewer than 16 days | Always non-resident | Always non-resident |
| 16-45 days | Always non-resident | 4 or more |
| 46-90 days | 4 | 3 or more |
| 91-120 days | 3 or more | 2 or more |
| 121-182 days | 2 or more | 1 or more |
| 183 days or more | Always resident | Always resident |

'Sufficient Ties' to the UK include the following:

- Having a spouse, civil partner, common law partner and/or minor children resident in the UK. A child will not be a relevant tie if their main purpose for being in the UK is to attend an educational establishment and they spend no more than 20 days in the country out of term time. If the child is under 18, the child's residence will only be a UK tie for you if you see them within the UK for more than 60 days during the tax year
- Owning or having access to UK accommodation for a continuous period of 91 days in a UK tax year and spending at least one night in that accommodation might evidence a sufficient tie to the UK
- Work, including self-employment, resulting in 40 days or more work in the UK during the tax year

- Where you have spent more than 90 days in the UK in either of the previous two tax years or if you have spent more time in the UK than elsewhere in a tax year
- If you are a 'leaver' and have spent more days in the UK in a tax year than in any other single country
- If you do not satisfy any of the automatic tests or the sufficient ties to the UK test, you will be considered non-UK resident for UK tax purposes

Ordinary Residence

The current legal concept of 'ordinary residence' will be removed except for certain exemptions relating to working outside the UK. This may be more of an issue for UK residents where the 'remittance basis' applies to their non-UK income. We expect a transitional rule will be introduced in this area for the two years after the new regime begins.

Domicile

When might I become UK domiciled?

Most likely, if:

- Your father was domiciled in the UK when you were born and you have not subsequently moved to another country, made it your permanent home and cut ties sufficiently with the UK to transfer your domicile to that other country
- Your father was not domiciled in the UK when you were born but you have moved to the UK to live and made it your permanent home

For the purposes of UK Inheritance Tax, you will also be deemed to be domiciled in the UK if you have been UK tax resident for 17 out of the preceding 20 tax years. As explained above, from 6 April 2013 tax residence will be determined under the new statutory residence test, which consequently will also be relevant for domicile and IHT purposes.

(2) How Residence and Domicile Affect Your UK Tax Liabilities

Consequences of becoming UK Tax Resident

- If you are not UK tax resident, then generally you will be liable to UK Income Tax only on income which has a UK source (such as rental income deriving from UK real property, or interest on a UK bank account) and will not be liable at all to UK Capital Gains Tax, even if you sell assets located in the UK
- If you become UK tax resident, however, then the starting point is that you will become liable to UK Income Tax on all income (wherever in the world it arises) and to UK Capital Gains Tax on all worldwide gains – though double taxation relief might apply if your income or gains are also subject to tax in another country

What if I become UK Tax Resident but not UK Domiciled?

- In such a case, you will be able to claim the 'remittance basis' of taxation. You will then only pay UK tax on non-UK income or capital gains if you bring them in ('remit' them) to the UK, or are treated for tax purposes as doing so – for example, by purchasing an asset overseas and bringing it to the UK
- If you have been UK tax resident for 7 out of 9 tax years you can claim the remittance basis for any given tax year by paying an annual fee of £30,000
- From 6 April 2012 if you have been UK tax resident for 12 out of 14 tax years, you may continue to claim the remittance basis for any given tax year by paying an annual fee of £50,000

If I am UK Tax Resident but not UK Domiciled can I make investments in the UK without triggering a tax charge?

With effect from 6 April 2012 no UK tax will be payable where a remittance basis user remits non-UK income or gains to the UK for the purpose of making a commercial investment in a UK business. Briefly, the relief is available, where the remittance basis user makes an investment in shares or loan capital in a "qualifying company", that is not a listed company and whose activities substantially comprise trading, developing or letting property, or research and development.

UK Inheritance Tax

- If you are not domiciled (or deemed to be domiciled) in the UK, then you will be potentially liable to UK Inheritance Tax only on any assets that are situated in the UK (such as UK real property). (Note, a common IHT planning measure for non-UK domiciles has been for them to hold UK assets through non-UK companies, so they could say they hold non-UK situated assets. However, the UK Government has recently announced tax changes to take effect from April 2013, which will prevent this planning being used in relation to high value (£2m plus) residential property.)
- If you are domiciled (or deemed to be domiciled) in the UK, then all of your worldwide assets are potentially subject to UK Inheritance Tax. If your spouse is also domiciled or deemed domiciled in the UK then assets may be left to them free of any Inheritance Tax. The government is now looking to increase the amount that is exempt if your spouse is not domiciled, from the current £55,000 to £325,000, and to allow your spouse/civil partner to elect to be treated as UK domiciled for UK IHT purposes. This looks set to come into force in April 2013

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