NON-DOM REGIME

The UK is a popular jurisdiction for people to relocate to from other countries. The tax regime is favourable for individuals who are UK resident but not UK domiciled ("non-doms"). Even so, the rules are complex. Careful planning is required if an individual wishes to minimise their exposure to UK tax while they are UK resident.

This summary card provides an overview of the UK tax system for the UK resident individual who retains a foreign domicile, and highlights some of the key planning opportunities and pitfalls.

RESIDENCE

An individual's UK residence status for a tax year is determined by applying the Statutory Residence Test (SRT). The SRT is a detailed framework of rules, which define residency based on a number of factors including the amount of time spent in the UK and the location of family, work, accommodation and homes.

The flowchart overleaf provides an overview of how these complex rules work.

UK ARRIVAL DATE

One of the most critical details relevant to tax planning is the date on which an individual becomes resident in the UK for tax purposes under the SRT.

The UK tax year runs from 6 April to 5 April. Depending on the specific circumstances, an individual could be treated as UK tax resident from their date of arrival, or they could become resident from the 6 April before or after they arrive.

DOMICILE

Domicile is a common law concept. An individual acquires a domicile of origin at birth, usually based on their father's domicile at that time.

A domicile of origin is difficult to displace, but an individual can acquire a domicile of choice by taking up permanent residence in a new jurisdiction and severing ties with the country of their domicile of origin.

WHY DOMICILE MATTERS

An individual who is resident in the UK but non-UK domiciled can opt for taxation on the remittance basis (see below) in respect of their non-UK income and capital gains.

Retaining a foreign domicile is also favourable for inheritance tax (IHT) purposes. Non-UK situs assets held by a non-UK domiciled individual are generally outside the scope of UK inheritance tax.

INCOME & CAPITAL GAINS

An individual who is UK resident but not domiciled in the UK is subject to taxation on their UK source income and UK capital gains.

If the remittance basis is available, the tax charge on the individual's non-UK source income and non-UK capital gains is limited to the extent that the income or capital gains are remitted to the UK. The ability to use the remittance basis is a key benefit available to UK resident individuals who retain a foreign domicile.

CLAIMING THE REMITTANCE BASIS

In most cases, the remittance basis does not apply automatically. The remittance basis is either claimed (or not claimed) annually.

When an individual claims the remittance basis, he or she gives up their entitlement to the tax-free personal allowances for income tax and capital gains tax. For wealthier individuals, the benefits of the remittance basis will generally outweigh the loss of these allowances.

REMITTANCE BASIS CHARGE

After longer periods of UK residence, the individual is required to pay the remittance basis charge if they wish to claim the remittance basis for a particular tax year.

- Once the individual has been resident in at least 7 out of the previous 9 tax years, the annual remittance basis charge is £30,000.
- Once the individual has been resident in at least 12 out of the previous 14 tax years, the annual remittance basis charge is £60,000.

The individual is able to review their position after the end of a tax year and decide whether it will be beneficial to pay the charge. The choice can be made on a year-by-year basis, as part of the tax return filing process.

DEEMED DOMICILE

From 6 April 2017, an individual who has been UK resident in at least 15 out of the previous 20 tax years is deemed to be domiciled in the UK for all tax purposes (income tax, capital gains tax and inheritance tax) – even if they retain a foreign domicile under common law.

The key consequences of becoming deemed domiciled in the UK are as follows:

- Inability to claim the remittance basis of taxation.
- Liability to inheritance tax in respect of worldwide assets, not just UK-situated assets.

In some cases, the exposure to UK inheritance tax on the worldwide estate of an individual who is deemed domiciled in the UK may be mitigated by the application of certain IHT treaties between the UK and other countries.

Tax year of UK residence	Level of annual remittance basis charge payable
Year 1	Nil
Year 2	Nil
Year 3	Nil
Year 4	Nil
Year 5	Nil
Year 6	Nil
Year 7	Nil
Year 8	£30,000
Year 9	£30,000
Year 10	£30,000
Year 11	£30,000
Year 12	£30,000
Year 13	£60,000
Year 14	£60,000
Year 15	£60,000
Year 16 +	Remittance basis no longer available (deemed domiciled in the UK)

PROTECTED TRUSTS

Before a UK resident non-UK domiciled individual becomes deemed domiciled in the UK, they may wish to consider settling non-UK assets into a non-UK resident trust.

Certain offshore trusts created before an individual becomes deemed domiciled have protected status for UK tax purposes. Broadly, as long as the individual does not add further assets after becoming deemed domiciled (either directly or indirectly) and no benefits are received from the trust, capital gains and non-UK income arising within the trust are not subject to UK tax.

Non-UK assets settled on trust by a non-UK domiciled individual prior to the point of becoming deemed domiciled are also outside the scope of inheritance tax.

WHAT IS A REMITTANCE?

A tax charge arises if a remittance basis user remits their non-UK income or non-UK gains to the UK.

A transfer of cash representing non-UK income or gains from an overseas bank account to a UK bank account is the most common example of a remittance.

The following scenarios can also give rise to remittances:

- Paying for UK goods or services provided in the UK from an overseas account.
- Paying outside the UK for a service provided in the UK (subject to certain exceptions).
- Settling a credit card (even a non-UK credit card) used for UK expenditure with funds from a non-UK bank account.
- Repaying (or paying interest on) a debt incurred in the UK.
- Repaying (or paying interest on) a debt incurred outside the UK, where the loan funds are used in the UK.
- Borrowing on the security of non-UK income/gains and using the loan funds in the UK.
- Purchasing a physical asset abroad and importing the asset to the UK (subject to certain exemptions).

GIFTS MADE ABROAD

If an individual donor makes a gift of non-UK income/gains to a relevant person, i.e. their spouse, partner, minor child or minor grandchild, who then remits the income/gains to the UK, this is considered to be a taxable remittance by the donor.

The same applies where an individual transfers non-UK income/gains to a closely held company in which they are a participator, or a trust of which they (or another relevant person) is a beneficiary, and the company or trust remits the income/gains to the UK.

Where an individual makes a gift of non-UK income/gains to a party who is not a relevant person, e.g. an adult child or family friend, the gift recipient can remit the income/gains to the UK without triggering a taxable remittance for the donor, but only if the donor does not benefit.

BUSINESS INVESTMENT RELIEF

BIR is designed to encourage non-UK domiciled individuals to invest in UK businesses.

An individual can remit their non-UK income/gains to the UK without triggering a taxable remittance if they make a qualifying investment, and they make the appropriate relief claim.

- The investment must be by way of a subscription for shares or a loan to a private limited company, which is either carrying on a commercial trade or will trade within 5 years.
- The target company must not be listed on a recognised stock exchange.
- A trade includes generating income from land or property (including residential property) on a commercial basis.
- The individual must not receive any abnormal benefits from the company.
- If the investment is sold, the proceeds must be taken out of the UK or reinvested in a new qualifying investment within 45 days to avoid a taxable remittance at that point.

OVERSEAS WORKDAY RELIEF

A UK resident non-UK domiciled individual who performs some of their employment duties outside the UK may qualify for Overseas Workday Relief. During the first 3 years of UK residence, an employee who is eligible for OWR is only taxed on earnings from employment duties performed outside the UK if those earnings are remitted to the UK.

In the absence of OWR, employment income received by a UK resident non-UK domiciled individual will be taxable in the UK irrespective of where duties are performed, unless the work is exclusively performed outside the UK.

PRE-ARRIVAL TAX PLANNING

Significant tax can often be mitigated by taking relatively simple steps before becoming UK resident.

Key planning points include:

- Taking advice to establish the date on which UK residence will commence.
- Identifying and maximising pre-arrival "clean capital" (funds which derive from pre-residence income or gains and can be remitted to the UK free of tax).
- Structuring overseas bank accounts to segregate clean capital from post-arrival non-UK income/gains, to enable tax efficient remittances of clean capital to the UK during residency.
- Rebasing assets for capital gains tax purposes prior to UK residency, to minimise tax on future disposals.
- Reviewing existing offshore structures, investments and business interests and restructuring where appropriate.

LIFE INSURANCE POLICIES

Life insurance bonds are a type of investment "wrapper", usually funded by the payment of a premium which is then used by the life company to buy an investment portfolio. They are popular in a number of jurisdictions for tax and succession planning reasons.

Where an individual holds a non-UK life insurance policy and is contemplating a move to the UK or has already become UK resident, advice should be sought on the UK tax implications.

A chargeable event can occur on a withdrawal of cash from the policy on a surrender or when the policy matures. Chargeable event gains are subject to income tax at the individual's highest marginal tax rate. Income tax rates are progressive in the UK (20%, 40% and 45%).

However, it is possible to make annual withdrawals of up to 5% of the value of the premium paid without triggering a chargeable event gain. An 'unused' 5% allowance from one year is carried forward and can be used in future years.

Chargeable event gains on non-UK policies cannot be protected from UK taxation by the remittance basis, even if the proceeds are kept outside the UK.

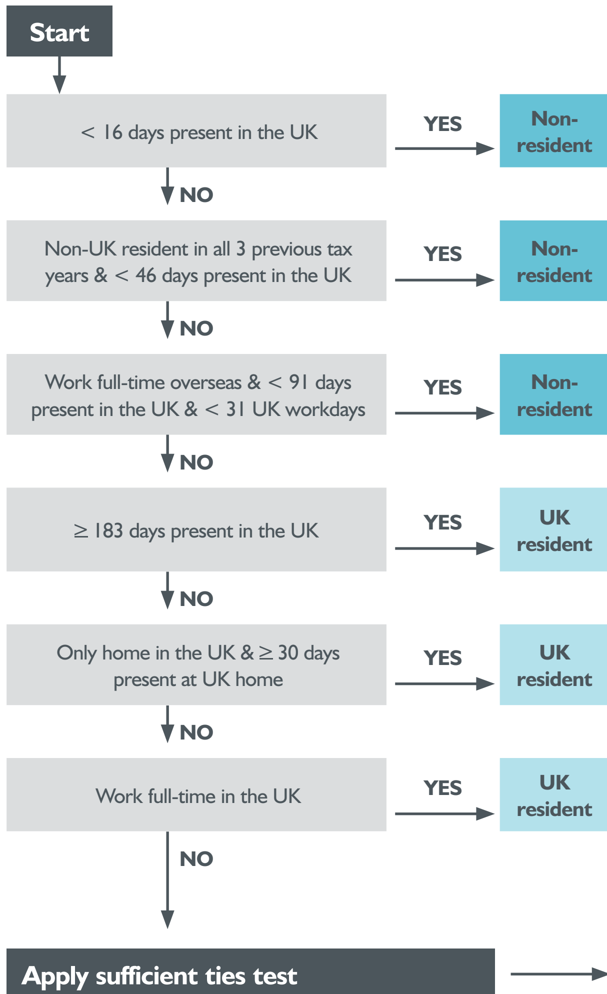
UK 'anti-avoidance' rules can impose an annual tax charge on certain policies (Personal Portfolio Bonds) where the policyholder has the ability to select underlying investments. The rate of charge is at least 15% of the capital value.

OFFSHORE INCOME GAINS

Capital gains realised on certain offshore investment funds are subject to income tax rates (maximum rate 45%) rather than capital gains tax rates (maximum rate 20%).

1. AUTOMATIC TESTS

Answer questions for the tax year (6 April to 5 April)



The information contained in this document is for information only. It is not a substitute for taking professional advice. In no event will Dixon Wilson accept liability to any person for any decision made or action taken in reliance on information contained in this document.

2. SUFFICIENT TIES TEST

Residence status determined by number of UK ties and number of days present in the UK

Possible UK ties

Family tie — Applies if any of the following are UK resident during the tax year: spouse, civil partner, cohabiting partner, minor child. Exemptions may apply for children in full-time education. ☐

Accommodation tie — Applies if UK accommodation is available for a continuous period of at least 91 days during the tax year, and at least one night is spent at the accommodation. ☐

Work tie — Applies if more than 3 hours of UK work performed on at least 40 days during the tax year. ☐

90-day tie — Applies if more than 90 days present in the UK in at least one of the previous 2 tax years. ☐

Country tie — **The country tie is only relevant for individuals who were UK resident at some point during the previous 3 tax years.** Applies if more days present in the UK during the tax year than in any other single country. ☐

Use the appropriate table below to determine residence status

ARRIVER

Non-resident throughout the previous 3 tax years

Number of days in the UK in a tax year	0 or 1 ties	2 ties	3 ties	4+ ties
<16 days	NR	NR	NR	NR
16 – 45	NR	NR	NR	NR
46 – 90	NR	NR	NR	R
91 – 120	NR	NR	R	R
121 – 182	NR	R	R	R
183+	R	R	R	R

LEAVER

UK resident in one or more of the previous 3 tax years

Number of days in the UK in a tax year	0 ties	1 tie	2 ties	3 ties	4+ ties
<16 days	NR	NR	NR	NR	NR
16 – 45	NR	NR	NR	NR	R
46 – 90	NR	NR	NR	R	R
91 – 120	NR	NR	R	R	R
121 – 182	NR	R	R	R	R
183+	R	R	R	R	R

NR **Non-resident** R **Resident**

DIXON WILSON
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