

# UK non-domicile briefing

## Possibilités offertes aux personnes non domiciliées au Royaume-Uni

Selon les services fiscaux britanniques (Inland Revenue) “Les personnes qui résident au Royaume-Uni mais qui n’y sont pas domiciliées bénéficient d’un régime fiscal spécial en ce qui concerne les revenus et les gains qu’elles réalisent hors du Royaume-Uni”.

De façon générale, une personne d’une autre nationalité que britannique vivant au Royaume-Uni sera probablement en mesure de structurer ses affaires de façon à profiter de ce régime fiscal. Cette personne doit connaître les possibilités qui s’offrent à elles et comprendre ce qu’elles impliquent dans son cas personnel.

Cette note a pour but de donner des directives générales en ce qui concerne les domaines dans lesquels une planification fiscale adéquate pourrait être utile. Elle ne saurait remplacer les conseils d’un professionnel qui seront adaptés au cas précis de la personne concernée.

## Résidence et domicile au Royaume-Uni

La question de la résidence est complexe. Les termes “résidence” et “résidence habituelle” ne sont pas définis par les lois fiscales (Taxes Acts). Les indications données par les services fiscaux sur leur sens se basent très largement sur la jurisprudence.

Le domicile est un concept de droit général. De nombreux facteurs contribuent à la définition du domicile mais, de façon générale, on est domicilié dans le pays dans lequel se trouve notre adresse permanente. Le domicile se distingue de la nationalité ou de la résidence. On ne peut avoir plusieurs domiciles en même temps.

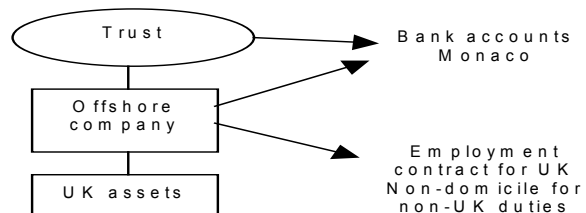
## Planification fiscale ordinaire

Des biens britanniques peuvent être détenus par une société constituée dans une juridiction à faible taxation (société “offshore”) qui peut à son tour être détenue par les trustees d’un trust discrétionnaire offshore. Ces biens peuvent être des biens de sociétés, comme, par exemple, des actions d’une société britannique, ou des biens immobiliers.

Cette structure est habituellement utilisée pour assurer qu’une personne non domiciliée au Royaume-Uni ne détienne pas directement d’actions de la société offshore et afin de réduire le risque que les Services fiscaux soutiennent que la société offshore est résidente au Royaume-Uni en raison de la présence de cette personne en qualité d’actionnaire principal. Elle assure également que le trustee ne détienne pas de biens directement situés au Royaume-Uni.

Cette structure peut comporter **des avantages en matière d'impôt sur les plus-values et de droits de succession** par rapport à la situation où la personne est directement propriétaire. L'avantage concernant l'impôt sur les plus-values ne s'appliquera pas à la résidence familiale principale qui en est exonérée.

La prudence est recommandée quant aux biens immobiliers britanniques propriété de sociétés offshore car certaines décisions récemment prises par la Chambre des Lords prévoient que des résidents britanniques qui contrôlent des sociétés détenant des biens à l'étranger puissent être soumis à l'impôt sur le revenu calculé sur le profit présumé qu'ils retirent de l'occupation des biens immobiliers.



Un salaire perçu d'une société offshore, en vertu d'un contrat de travail, pourra être **exonéré de l'impôt sur le revenu** si la personne non domiciliée au Royaume-Uni exerce entièrement à l'étranger ses fonctions pour cette société et si elle ne verse pas physiquement ce salaire au Royaume-Uni.

## BASIS OF TAXATION

Further details concerning the taxation of Earned income, Investment income, Capital gains and Inheritance taxes are provided below.

### Earned income

If you are **resident in the UK** you will normally pay UK tax on all your earned income, wherever it arises. As well as earnings for employment, earned income includes items such as pensions and income from a trade, profession or vocation. You may, however, be entitled to a reduction in the UK tax you have to pay if you receive overseas earnings and spend long periods abroad, or if you receive an overseas pension. In certain cases where you are resident but not ordinarily resident in the UK, or resident but not domiciled there then the Revenue may deal with your overseas income on the “remittance basis”.

### Investment income

A summary of the position concerning the taxation of investment income is given in the table below:

	<i>Investment income</i>	
	<b>Arising in the UK</b>	<b>Arising outside the UK</b>
<b>Residence status and domicile</b>		
Resident and ordinarily resident, and domiciled	Liable	Liable
Resident and ordinarily resident, not domiciled	Liable	Liable if received in the UK 1
Resident but not ordinarily resident, domiciled	Liable	Liable 2
Resident but not ordinarily resident, not domiciled	Liable	Liable if received in the UK 1
Not resident but ordinarily resident, domiciled	Liable 3, 4	Not Liable
Not resident but ordinarily resident, not domiciled	Liable 3, 4	Not Liable
Not resident and not ordinarily resident, domiciled	Liable 3, 4	Not Liable
Not resident and not ordinarily resident, not domiciled	Liable 3, 4	Not Liable

Notes:

1. You are taxable on the whole of the income arising in the Republic of Ireland.
2. If you are a Commonwealth (this includes a British) citizen or an Irish citizen, the remittance basis applies, unless the income arises in the Irish Republic, in which case note 1 applies.
3. Subject to possible relief under a double taxation agreement.
4. The charge to tax may be limited

## Capital gains tax

A summary of the position concerning the taxation of capital gains is given in the table below:

	Gains on disposal of	
	UK assets 1	overseas assets
<b>Residence status and domicile</b>		
Resident and ordinarily resident, and domiciled	Liable	Liable
Resident and ordinarily resident, not domiciled	Liable	Liable if received in the UK
Resident but not ordinarily resident, domiciled	Liable	Liable
Resident but not ordinarily resident, not domiciled	Liable	Liable if received in the UK
Not resident but ordinarily resident, domiciled	Liable 2	Liable
Not resident but ordinarily resident, not domiciled	Liable 2	Liable if received in the UK 2
Not resident and not ordinarily resident, domiciled	Not Liable 3, 4	Not Liable 4
Not resident and not ordinarily resident, not domiciled	Not Liable 3, 4	Not Liable 4

Notes:

1. There is no liability if the disposal is of certain UK Government Securities.
2. Subject to possible relief under a double taxation agreement.
3. Liability will arise if the assets were used or held for the purposes of a trade, profession or vocation carried on in the UK through a branch or agency or by the branch or agency.
4. Gains arising during a period of temporary non-residence may be chargeable

## Inheritance tax

You or your personal representatives may be liable to inheritance tax if you transfer anything of value, such as

- a lifetime gift, or
- the deemed transfer to your personal representatives on your death. Liability to UK inheritance tax depends on your domicile at the time you make the transfer.

If the value of your gift or the assets in your estate are above the threshold, then inheritance tax may be due.

### Which assets are taxable in the UK?

Generally, if you are domiciled, or deemed to be domiciled, in the UK, inheritance tax applies to your assets wherever they are situated.

If you are domiciled abroad, inheritance tax applies only to your assets in the UK (s. 6(1)). However, if you are domiciled abroad there is no charge on excluded assets and certain other types of UK assets may also be removed from the tax charge (see [below](#)).

## DEFINITIONS

### Meaning of 'residence', 'ordinary residence' and 'domicile' for tax purposes

#### Residence and ordinary residence

The terms '**residence**' and '**ordinary residence**' are not defined in the Taxes Acts. The guidelines are largely based on rulings of the Courts. A Revenue decision on your residence status will be taken on the facts in your particular case.

Even if you are resident (or ordinarily resident) in the UK under these rules, the terms of a double taxation agreement with another country might affect your final tax position if, for example, you are resident in both that country and the UK.

#### Residence

To be regarded as **resident** in the UK you must normally be physically present in the country at some time in the tax year. You will always be resident if you are in the UK for **183 days** or more in the tax year. **There are no exceptions to this.** You count the total number of days you spend in the UK - it does not matter if you come and go several times during the year or if you are in the UK for one stay of 183 days or more. If you are in the UK for less than 183 days, you may still be treated as resident for the year under other tests.

The normal rule is that days of arrival in and departure from the UK are **ignored** in counting the days spent in the UK, in all the various cases where calculations have to be made to determine your residence position. (This rule is not relevant to the concessionary split year treatment where a person coming to or leaving the UK part way through a tax year is resident from the date of arrival or to the date of departure.)

#### Ordinary residence

If you are resident in the UK year after year, you are treated as ordinarily resident in the UK. You may be resident but not ordinarily resident in the UK for a tax year if, for example, you normally live outside the UK but are in this country for 183 days or more in the year. Or you may be ordinarily resident but not resident for a tax year if, for example, you usually live in the UK but have gone abroad for a long holiday and do not set foot in the UK during that year.

#### Domicile

Domicile is a general law concept. It is not possible to list all the factors that affect your domicile, but some of the main points are explained below. The domicile concept is currently under government review.

Broadly speaking, you are domiciled in the country where you have your permanent home. Domicile is distinct from nationality or residence. You can only have one domicile at any given time.

- **Domicile of origin**

You normally acquire a **domicile of origin** from your father when you are born. It need not be the country in which you are born. For example, if you are born in France while your father is working there, but his permanent home is in the UK, your domicile of origin is in the UK.

- **Domicile of dependency**

Until you have the legal capacity to change it your domicile will follow that of the person on whom you are legally dependent. If the domicile of that person changes, you automatically acquire the same domicile (**a domicile of dependency**), in place of your domicile of origin.

- **Domicile of choice**

You have the legal capacity to acquire a new domicile (**a domicile of choice**) when you reach age 16. To do so, you must broadly leave your current country of domicile and settle in another country. You need to provide strong evidence that you intend to live there permanently or indefinitely. Living in another country for a long time, although an important factor, is not enough in itself to prove you have acquired a new domicile.

February 2003

*We believe that the information in Briefing to be correct at the time of going to press, but we cannot accept any responsibility for any loss occasioned to any person as a result of any action or refraining from action as a result of any item herein*

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**Married women**

Before 1974, when you married you automatically acquired your husband's domicile. After marriage this domicile would change at the same time as your husband's domicile changed. If your marriage ended, you kept your husband's domicile until such time as you legally acquired a new domicile.

From 1 January 1974 your domicile is not necessarily the same as your husband's domicile. It is decided by the same factors as for any other individual who is able to have an independent domicile. If, however, you were married before 1974 and had acquired your husband's domicile, you retain this after 1 January 1974 until such time as you legally acquire a new domicile.

**Inheritance tax; domicile and resident definitions**

For inheritance tax purposes, there is a concept of 'deemed domicile'. Even if you are not domiciled in the UK under general law you will be treated as domiciled in the UK at the time of a transfer if

- you were domiciled in the UK within the three years immediately before the transfer, or
- you were 'resident' in the UK in at least 17 of the 20 income tax years of assessment ending with the year in which you make a transfer.

Resident has the same meaning as for income tax purposes

**How do I know in which country the assets are situated?**

This is decided according to general law, but subject to any special provisions in a double taxation agreement. The normal rules for the more common types of asset are that:

- rights or interests in or over immovable property (such as, land and houses) and chattels (household and personal goods, paintings etc.) are situated where the property is located
- coins and bank notes are situated wherever they happen to be at the time of the transfer
- registered shares or securities are situated where they are registered
- bearer securities are situated where the certificate of title is located at the time of the transfer
- goodwill is situated where the business, to which it is attached, is carried on
- an interest in a partnership is situated in the country whose law governs the partnership agreement
- debts are situated where the debtor resides
- bank accounts are situated at the branch where the account is kept.