

# UK non-domicile briefing

## Möglichkeiten für nicht ansässige Einzelpersonen

Laut Aussage der Steuerbehörde des Vereinten Königreiches erhalten „Jene, die im Vereinten Königreich residieren, aber ihren Wohnsitz nicht hier haben, eine Sonderbesteuerung bezüglich Einkommen und Gewinnen, die außerhalb des Vereinten Königreiches erzielt werden“.

Im allgemeinen ist es wahrscheinlich, daß eine Person mit anderer Staatsangehörigkeit als der des Vereinten Königreiches, die im Vereinten Königreich lebt, in der Lage ist ihre Geschäfte so aufzubauen, daß sie einen Vorteil aus dieser Besteuerung ziehen kann. Die Person muß sich der vorhandenen Möglichkeiten bewußt sein und die Bedeutung für ihre eigene persönliche Situation verstehen.

Diese Zusammenfassung soll eine grundlegende Richtlinie für all die Gebiete sein, wo eine geeignete Planung vorteilhaft sein könnte. Sie sollte nicht Ersatz für eine professionelle Beratung betrachtet werden, denn diese Beratung hängt von den jeweiligen Umständen der betroffenen Einzelperson ab.

## Residenz und Wohnsitz im Vereinten Königreich

Die Residenz ist eine komplexe Angelegenheit. Die Bezeichnungen Residenz und gewöhnliche Residenz sind in den Steuergesetzen nicht klar definiert. Die Richtlinien in Steuersachen beruhen bezüglich ihrer Begriffsbestimmung weitgehend auf gerichtliche Verfügungen.

Der Wohnsitz ist ein Begriff allgemeiner Gesetzgebung. Es gibt zahlreiche Faktoren, die den Wohnsitz betreffen, aber ganz allgemein gesagt, hat man seinen Wohnsitz in dem Land in dem man sein ständiges Zuhause hat. Der Wohnsitz unterscheidet sich von der Staatsangehörigkeit oder der Residenz. Man kann nur einen Wohnsitz zu einem bestimmten Zeitpunkt haben.

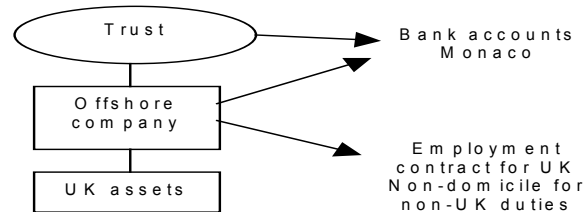
## Allgemeine Planung

Vermögenswerte im Vereinten Königreich könnten sich im Besitz einer Gesellschaft mit niedriger steuerlicher Rechtssprechung („Offshore“) befinden, die wiederum Treuhändern eines nach freiem Ermessen handelnden Offshore-Trusts gehören könnte. Diese Vermögenswerte könnten geschäftliche Vermögensaktiva umfassen, wie z.B. Aktien an einer Gesellschaft oder Eigentum im Vereinten Königreich.

Diese Struktur wird gewöhnlich verwendet, um sicherzustellen, daß die nicht ansässige Person keine direkte Aktienhaltung an der Offshore-Gesellschaft hat, und um das Risiko herabzusetzen, daß die Steuerbehörde anführt, daß die Offshore-Gesellschaft im Vereinten Königreich residiert aufgrund der dortigen Anwesenheit der Einzelperson als Mehrheitsaktionär. Dies garantiert ebenfalls, daß die Treuhänder keine Vermögenswerte besitzen, die sich direkt im Vereinten Königreich befinden.

Diese Struktur könnte **Vorteile bei Kapitalgewinnsteuern und Erbschaftssteuern** bringen im Vergleich zu einem direkten Besitz durch die Einzelperson. Der Vorteil bei Kapitalgewinnsteuern ist nicht auf die Hauptresidenz der Familie anwendbar, die davon befreit ist.

Man muß vorsichtig sein, was den Besitz von Eigentum im Vereinten Königreich durch Offshore-Gesellschaften betrifft, da gemäß den jüngsten Entscheidungen des Oberhauses des britischen Parlaments Residenten des Vereinten Königreichs, die Gesellschaften mit Überseebesitzümern kontrollieren, im Rahmen des vermutlichen Gewinns, den sie durch die Nutzung der Besitztümer erzielen, einkommenssteuerpflichtig werden könnten.



Ein Gehalt, das aufgrund eines Anstellungsvertrages bei einer Offshore-Gesellschaft bezogen wird, kann **von der Einkommensteuer befreit werden**, vorausgesetzt, daß die nicht ansässige Person ihre Pflichten für diese Gesellschaft vollständig im Ausland ausübt und dieses Gehalt nicht ins Vereinte Königreich überführt.

## 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.

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*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.