

UK non-domicile briefing

Opportunità per non residenti

Secondo la legislazione dell'ufficio erariale inglese (Inland Revenue) "Chi risiede nel Regno Unito senza avervi il domicilio è oggetto di un particolare trattamento fiscale riguardo al reddito e agli utili di capitale prodotti all'esterno del Regno Unito".

In regola generale è probabile che una persona fisica non cittadina britannica che viva nel Regno Unito si trovi in una posizione di potere organizzare la propria attività in modo da usufruire di queste agevolazioni fiscali. La persona deve però essere al corrente delle possibili opportunità e saper valutare le conseguenze sulla sua situazione personale.

Questa presentazione deve essere intesa come l'esposizione di alcune linee guida basilari in aree nelle quali un'opportuna pianificazione fiscale potrebbe rivelarsi vantaggiosa. Non deve essere considerata come sostitutiva di una consulenza da parte di un professionista in materia che dipenderà ovviamente dalle specifiche circostanze personali della persona interessata.

Il concetto di "residenza" e "domicilio" nel Regno Unito

Il concetto di residenza è piuttosto complesso. I termini "residenza" e "residenza ordinaria" non sono definiti nei Taxes Acts. Le linee guida seguite dall'Erario Inglese ("Inland Revenue") circa il loro significato sono spesso ricavate dalla giurisprudenza.

Il "domicilio" è un concetto che appartiene alla legge generale. Molti sono gli elementi che entrano in gioco nella definizione del domicilio ma, di solito, si è domiciliati nel paese dove si ha un indirizzo permanente. La nozione di domicilio è distinta da quella di nazionalità o residenza. Non si può avere che un solo domicilio in un dato momento.

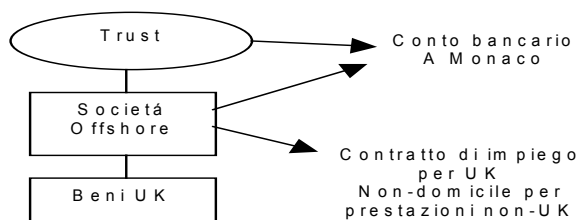
Soluzioni di pianificazione normalmente applicate

I beni nel Regno Unito potrebbero essere detenuti da una società offshore di una giurisdizione considerata overe imposte ridotte ("low tax jurisdiction"), che potrebbe essere a sua volta di proprietà dei trustees di un trust discrezionale offshore ("Offshore Discretionary Trust"). Tra questi beni potrebbero rientrare beni, come azioni in una società Inglese o proprietà immobiliari sul suolo britannico.

Questa è la struttura generalmente utilizzata per evitare che una persona fisica non domiciliata abbia una partecipazione diretta azionaria nella società offshore e per ridurre il rischio che l'Erario inglese sostenga che la società offshore è residente nel Regno Unito per la presenza della persona fisica nel Regno Unito come azionista maggioritario. Permette inoltre che i trustees non detengano direttamente alcun bene situato nel Regno Unito.

Questa struttura potrebbe comportare **vantaggi a livello dell'imposta sul reddito da capitale e delle imposte di successione** rispetto alla proprietà diretta dei beni da parte della persona fisica. Per quanto riguarda l'imposta sull'utile di capitale, la residenza familiare principale né è comunque esente e quindi tale agevolazione non è applicabile.

È necessario fare particolare attenzione in materia di proprietà di beni sul territorio britannico da parte di entità offshore, a seguito di recenti decisioni della House of Lords che potrebbero prevedere l'assoggettamento alle imposte sul reddito di residenti nel Regno Unito che controllano società proprietarie di beni all'estero, a causa del presunto beneficio di cui godrebbero tali persone fisiche per il fatto di occupare i beni immobiliari in questione.



Lo stipendio dato da una società offshore nell'ambito di un contratto di assunzione, può essere **esente dall'imposta sul reddito** a condizione che la persona fisica non domiciliata espliciti all'estero i le prestazioni a lei affidate dalla società e non versi tale stipendio nel territorio del Regno Unito.

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>	
	Arising in the UK	Arising outside the UK
Residence status and domicile		
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
Residence status and domicile		
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.