

Residence & Domicile - Proposed Changes

Government consultations on a statutory definition of residence and the reform of the taxation of non-domiciled individuals

The following is a brief overview of the two consultation documents recently issued.

Statutory residence test

It is intended that the proposals will apply from 6 April 2012. They aim to determine an individual's residence status simply and objectively.

Part A – Conclusive non-residence test. This test takes precedence over the Residence test (Part B) in the situation where an individual satisfies conditions from both tests. Under this test, an individual is considered to be non-resident if they satisfy any of the following conditions:

They are present in the UK for 9 days or fewer in the current tax year;
This limit increases to 44 UK days or fewer for individuals who have been non-resident throughout the previous three tax years;
Employees who leave the UK to work full-time abroad can spend up to 89 days in the UK in the tax year (including a maximum of 20 workdays).

Part B – Conclusive residence test. Under this test, an individual is treated as UK-resident for the tax year if they:

Spend at least 183 days in the UK; or
Own one or more homes (not accommodation advertised for sale or let and the individual lives in another residence), all in the UK; or
Work full-time (more than 35 hours per week) in the UK with at least 75% UK duties for a continuous nine-month period.

Part C – Other connecting factors and day counting. This is the default test, distinguishing between *Arrivers* (not UK-resident in all of the previous three tax years) and *Leavers* (UK-resident at any time in the previous three tax years). This test applies only to those individuals whose residence status is not conclusively determined by Part A or Part B.

Under this test a sliding scale of UK days and UK connecting factors determines residence, but 183 UK days always makes the individual resident. The proposed connecting factors are:

1. Family – the individual's spouse, civil partner or common law equivalent (unless the individual is separated from them) or minor children are resident in the UK;

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- 1 Accommodation in the UK – the individual has access to accommodation in the UK and they, or their family (as above), make use of it as a place of residence during the tax year (subject to certain exemptions);

- 2 Substantive work in the UK - 40 or more UK workdays in the tax year;
- 3 Previous UK presence - 90 UK days or more in either of the two previous tax years;

Or

- **More time spent in the UK than in other countries in the tax year (for leavers only).**

The sliding scale of UK days and UK connecting factors is as follows:

Days spent in the UK	Minimum number of connecting factors to make an individual arriving (i.e. not resident in the previous three tax years) in the UK a UK tax resident	Minimum number of connecting factors to make an individual leaving the UK a UK tax resident
Fewer than 10 days	Always non-resident	Always non-resident
10 – 44 days	Always non-resident	4
45 – 89 days	4	3
90 – 119 days	3	2
120 – 182 days	2	1
More than 182 days	Always resident	Always resident

Non-domiciles

Remittance basis charge

It was announced in the 2011 budget that an annual £50k Remittance Basis Charge (RBC) will be introduced from 6 April 2012 for non-domiciles resident in 12 of the previous 14 tax years.

Although the Government believes it will be counter-productive to extend this further, it is not thought that this increase will deter wealthy foreign nationals from sheltering foreign income and gains. This increase should not generally affect those working long-term in the UK, many of whom have paid tax on the arising basis since 6 April 2008.

Encouraging business investment

The proposal for tax-free remittances for non-domiciles investing in UK “qualifying businesses” should be attractive. The following are proposed to be classed as “qualifying businesses”:

- Companies carrying out trading activities;
- Companies undertaking the development or letting of commercial property.

Specific exclusions are likely to be:

- Companies holding and letting residential property (although it is proposed that investing in companies which build and develop residential property or which manage residential property where a commercial trade is carried on, e.g. nursing homes and hospitals, would qualify);
- Companies leasing tangible, moveable property, e.g. yachts, cars, furniture etc.
- Companies providing personal services, e.g. nannies, cooks, chauffeurs.

Nominated income

To prevent the complicated identification rules being triggered by individuals inadvertently remitting some of their nominated income and capital gains to the UK, it is proposed that the remittance of up to £10 of the nominated amount will be ignored.

Foreign currency bank accounts

It is proposed that all sums within an individual's foreign currency bank accounts (FCBAs) be removed from the scope of capital gains tax. This would apply to non-domiciled and domiciled individuals.

This welcome change removes the need to calculate capital gains or losses on part disposals when funds are withdrawn from FCBAs.

Taxation of assets sold in the UK

The existing exemptions for the following assets brought to the UK will be extended so that the tax charge is removed on bringing an exempt asset to the UK that is subsequently sold, provided the proceeds are taken out of the UK within two weeks of being received by the individual:

- Works of art or antiques brought to the UK to be displayed in public;
- Items of personal clothing, footwear or jewellery;
- Items brought into the UK temporarily (up to 275 days) or for repair; or
- Items worth less than £1,000.

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