

# ACTIVE PRACTICE UPDATES

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**McCleary & Company Ltd.**

Chartered Accountants & Registered Auditors

## RESIDENCE AND DOMICILE

How your status affects how much UK tax you pay.

For most people living in the UK, the question of what income and gains should be included on their tax return is an easily answered question because they are both UK-domiciled and UK tax resident. Anyone domiciled and resident in the UK needs to report their worldwide income and capital gains on their return.

However, what happens if you are either non-UK domiciled but UK resident, or UK-domiciled but non-UK resident? In these circumstances, different rules apply.

The last four years have seen big changes to tax legislation in this area as the Government sought to widen the scope of what can be taxed within the UK with respect to all taxes, particularly with regards to non-domiciled individuals, or 'non-doms' as they are more commonly referred to.

Non-doms make a significant contribution to UK tax revenues, but there is evidence that their numbers are falling.

Last year it was estimated that there were 78,300 non-dom taxpayers in the UK, who contributed an estimated £7.5 billion in tax revenue to the Treasury. This is compared to an estimated 90,500, who contributed around £9.5bn in taxes in 2016/17.

The decline of this small but significant group of taxpayers has been partly attributed to the changes in tax legislation regarding 'deemed domicile', which have made their status in the UK less attractive and partly due to political issues.

Ongoing Brexit uncertainty and concerns over the impact of a potential new Labour government, with Labour indicating it may scrap non-dom status if it wins a general election, have led some to reconsider whether the UK remains an attractive base for them in terms of their finances.

### NON-DOMICILED TAXPAYERS

A non-dom is a UK resident whose permanent home, or domicile, is outside of the UK.

An individual may have more than one tax residence, but they can only have one domicile at any given time.

Every individual has a domicile, which you acquire at birth, normally from your father. This is not necessarily your country of birth or the country that you live in.

The domicile of origin acquired at birth can be changed to a domicile of choice once you are over 16, but a change in domicile can be difficult to prove and substantiate to HMRC.

Your domicile is broadly defined as the country you consider to be your permanent home, but working out which country you are domiciled in can be complicated with many factors to consider.

As it is up to you to determine your own domicile status and with significant amounts of tax often at stake, talk to us for help determining your position.

To further muddy the waters, from 6 April 2017, changes to UK tax legislation meant that a UK resident for tax purposes in 15 of the previous 20 tax years is deemed domiciled for UK income tax, capital gains tax and inheritance tax purposes.

For some long standing non-doms it is therefore important they review their position now and plan for the impact this can have.

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## WHY IS DOMICILE IMPORTANT?

Domicile determines your liability for income tax, capital gains tax and inheritance tax in the UK.

Most non-doms resident in the UK are wealthy individuals and the tax at stake is sizeable.

The attraction of non-dom status is that you may not need to pay UK tax on any income or gains that arise outside of the UK.

As a non-dom taxpayer, you can choose to be taxed on either the actual basis or the remittance basis.

Under the actual basis, you are taxed like any other UK-domiciled and resident taxpayer is on their worldwide income and gains.

Under the remittance basis, you are only taxed on your UK earnings and gains.

Any income or gains arising outside of the UK is not taxed unless you choose to bring that money into the UK, enabling non-doms to shelter foreign wealth outside of the remit of HMRC by electing to be taxed on the remittance basis.

Using the remittance basis comes at a big price for long-term non-dom residents, with those who have lived in the UK for seven out of the last nine tax years having to pay £30,000 a year to maintain this status.

This increases the longer you remain in the UK, as those living in the UK for 12 of the last 14 tax years must pay £60,000 a year.

However, for many this is still significantly less than the UK tax they would pay otherwise and this tax levy alone earned the Treasury £315 million in 2016/17.

The deemed-domicile tax rules meant that those who stayed in the UK for a long time, and benefited from claiming the remittance basis, are in danger of losing this tax break and paying tax on their worldwide income and gains instead.

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## BECOMING UK TAX RESIDENT

Your UK tax residence status is determined by the statutory residence test, which consists of four components:

- how much time you have spent in the UK in a tax year?
- automatic overseas test
- automatic UK test
- sufficient ties test.

Put simply, you will be considered a non-UK resident for tax purposes if you meet the automatic overseas test.

You will, however, be considered a UK resident if you do not meet the automatic overseas test and you meet either the automatic UK tests or the sufficient ties test.

If you spend more than 183 days in the UK in a tax year, you will usually be a UK resident, although this calculation is not as straightforward as it sounds.

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## DOUBLE TAXATION TREATIES

As you can be a tax resident in more than one country at one time, you can find yourself subject to tax on the same income and gains in more than one country.

Usually when this occurs, you will not have to report the income or gains on the tax returns in both countries as most nations have tax treaties in place to set out which country should tax you on any particular source of income.

Where a treaty does not exist and tax is paid in both countries, the UK will normally allow you to credit the foreign tax paid on that income against the tax due in the UK on the same income. You cannot get a tax refund through this credit, though.

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## UK-DOMICILED, NON-UK RESIDENTS

Millions of UK nationals live or work abroad in 2019, and many of those own residential properties in the UK which they rent out.

Any profits that arise from letting out these properties is subject to UK income tax, regardless of their tax residence status.

Withholding tax is usually deducted by letting agents or tenants to cover any potential tax due to HMRC, but this is often the incorrect amount.

If this applies to you now or in the future, you can elect to be a non-resident landlord with HMRC.

Where such an election is made, rents may be received without deducting withholding tax on the condition that the income is reported through a UK self-assessment tax return.

 [Talk to us about your tax status.](#)