



DOMICILE/RESIDENCE

THE DOMICILE OF A PERSON IS DIFFERENT FROM THE TAX RESIDENCE OF AN INDIVIDUAL IN THE UNITED KINGDOM ("UK"). THE CONCEPT OF DOMICILE AND THE CONCEPT OF RESIDENCE HAVE DIFFERENT MEANINGS AND TRIGGER DIFFERENT CONSEQUENCES.



THE CONCEPT OF "DOMICILE"

It is an alien concept to civil law jurisdictions and often misunderstood. The domicile is used as a connecting factor to a system of laws to govern the individual's personal affairs from birth until death. It determines which jurisdiction will govern an individual's personal affairs. The domicile plays an important role:

- 1 > under general law, in personal matters, in case of divorce or succession; and
- 2 > in tax matters, as tax liabilities will vary in the UK if a person is domiciled or non domiciled in the UK. A non UK domiciled individual can opt for a particular tax regime, which can be advantageous.

WHAT DOES IT MEAN UNDER ENGLISH GENERAL LAW?

Each individual has one domicile at a time and it has a different meaning than residency. A person may have a domicile of origin, a domicile of choice, or a domicile of dependency. A domicile of a person continues until it is proved that a new domicile has been acquired.

A DOMICILE OF ORIGIN is attributed to an individual at birth. A legitimate child born during his father's lifetime will obtain the domicile of his father at the time of his birth when parents are married. When parents are unmarried, the domicile is the mother's domicile. The domicile of origin of an illegitimate child or a child born after his father's death will be the domicile of his mother at the time of his birth. This old English law concept is currently raising issues in light of the substantial changes to family law in case of same-sex parents and adopted child by same-sex couples.

DOMICILE OF DEPENDENCY refers to the child's domicile which changes with that of its parents until reaching 16.

DOMICILE OF CHOICE is acquired where a person is present in one country where he fixes his residence (in the sense of chief residence) and he has the intention to reside permanently or indefinitely.

The "domicile" of a taxpayer is **based on the individual's intentions to remain indefinitely in one geographical area**.

The assessment is based on factual considerations. The law of domicile is based on case law. Most disputes on "domicile" involve the subjective factor of intention. It is a complex matter involving detailed consideration of the facts concerning for example: family relationship, social ties, properties and assets, nationality, business, political affiliation, membership of clubs or societies, wills and testamentary dispositions, charitable interest.

TAX ASPECTS

A wider concept has been introduced on 6 April 2017 to determine the liability to taxation on a worldwide basis.

It is a fourth type of domicile for tax purposes including:

- 1 > **DEEMED DOMICILED**, i.e. a person who does not have a domicile in the UK and who has been UK resident for 15 out of the last 20 UK tax years; and
- 2 > **FORMERLY DOMICILED RESIDENT** i.e. a person who has a UK domicile of origin, was born in the UK, acquired a domicile of choice somewhere else, and return to live in the UK. For this category of persons, UK tax consequences may be significant, so specific advice is recommended.

AN INDIVIDUAL WITH A DOMICILE OUT OF THE UK means that

- (i) he/she does not have a domicile anywhere in the UK, meaning in England, Wales, Scotland or Northern Ireland. So, usually the father has a foreign domicile (e.g. father with domicile in Italy and son or daughter has a domicile in Italy while resident in the UK); or
- (ii) he/she was born in the UK, with a domicile of origin in the UK and has acquired a domicile of choice in another country and does not return to live in the UK.

Particularity: an individual can be non-domiciled under general law and treated as UK deemed domiciled for UK tax purposes.



TAX RESIDENCE IN THE UK

Tax residence determines the individual's liability to income tax and capital gains tax.

It is therefore crucial to assess whether an individual is resident in the UK for tax purposes.

The tax residence for an individual is determined by statute since 6 April 2013 (FA 2013 Schedule 45). Before that, it was based on case law and Guidance from Her Majesty's Revenue & Customs ("HMRC"), HMRC Guidance 6. The UK tax year is not a calendar year, thus, it starts on 6 April and ends on 5 April of the following calendar year for individuals.

STATUTORY RESIDENCE TEST UK tax residence is assessed using a **Statutory Residence Test ("SRT")**. The SRT combines certain rules with number of days of presence in the UK and

connecting factors, which consists of three parts: **(i)** The automatic overseas tests (conclusive non-UK residence) **(ii)** The automatic residence tests (conclusive UK residence); and by default **(iii)** The sufficient ties test.

Broadly speaking, an individual is tax resident in the UK if he or she spends more than 182 days in the UK. However, rules are much more complex and the length of time to become tax resident may be reduced depending on the connecting factors with the UK. Rules also vary depending on whether the individual is arriving in the UK or is a leaver. Requiring a lower number of days of presence for a leaver to become tax resident. One day for UK tax purposes counts as one day when one person is physically present in the UK at midnight.

DOUBLE TAX TREATY PROVISIONS It is important to point out the relevance of the double tax treaty provisions which can finally treat an individual as non-UK resident for the purposes of an applicable treaty while UK resident under the SRT.

SPLIT YEAR TREATMENT In the UK, an individual is either resident or non-resident in the UK for the entire tax year. There is, however, the possibility to be considered UK tax resident part of the year and non-UK tax resident the other part of the year when an individual arrives in the UK or leaves the UK. The full UK tax year could be split into two parts. It is called the 'Split Year Treatment'. The Split Year Treatment is available in limited situations. A claim must be made and it is subject to the UK tax authorities' approval (known as Her Majesty's Revenue and Customs). **The tax residence must be ascertained regularly because it triggers significant consequences. Particular scrutiny on tax residence when moving out of the UK and settling in another country.**

SPECIFICITY DURING THE PERIOD OF COVID-19 PANDEMIC The UK SRT has special rules applicable for day counting as a result of exceptional circumstances. However, the UK has done very little in respect of the amendments of the rules on UK residency.

EXCEPTIONAL CIRCUMSTANCES The exceptional circumstances exception applies where both of the following conditions are met: - The person ("P") would not be present in the UK at midnight on the day in question but for exceptional circumstances beyond P's control that prevent P from leaving the UK. - P intends to leave the UK as soon as those circumstances permit (Paragraph 22 (4), Schedule 45, FA 2013). Following the COVID-19 outbreak in March 2020, HMRC issued guidance for non-UK residents on circumstances that will be considered exceptional under the SRT during the COVID-19 outbreak. The guidance provides for an exception on day counting to individuals that cannot leave the UK and have to stay a longer period in the UK than expected. They do not mention rules for the individuals who cannot come back to the UK. The exception means that under exceptional circumstances only 60 days spent in the UK would be disregarded as days spent in the UK in the exercise of day counting for tax residence purposes. COVID-19 is an exceptional circumstance. During the COVID-19 pandemic, some individuals may have found themselves resident in the UK whereas they did not want to be resident, while other individuals may have put at risk their UK residency because they could not come back to the UK. The issue might have raised tax consequences for at least two tax years and might raise issues for some individuals.

EDMOND DE ROTHSCHILD'S INTERNATIONAL WEALTH PLANNING
NETWORK IS AT YOUR DISPOSAL FOR ANY FURTHER INFORMATION.

This document is issued by the Edmond de Rothschild Group.

It has no contractual value and is provided for information purposes only and does not constitute personalized legal, tax or accounting advice. This document should not be construed as an offer of financial products or services or a recommendation to buy or sell a financial instrument or to subscribe to a financial service. The information contained herein has not been reviewed in light of your personal circumstances or your specific objectives or needs. You should consult your own independent advisors. This document is based on information from external sources or documents deemed reliable. The Edmond de Rothschild Group endeavours to ensure that the information contained herein is accurate, complete and up to date but cannot guarantee its completeness or accuracy. Any investment involves risks, in particular the risk of loss of capital and fluctuations in value and return. In no event shall any entity of the Edmond de Rothschild Group, its directors or employees, be liable for any direct or indirect damages, losses, costs, claims, compensation or other expenses arising out of the use or distribution of this document or any decision taken in reliance thereon. Unless otherwise indicated, the sources used in this document are those of the Edmond de Rothschild Group. This document is confidential and intended solely for use by the Edmond de Rothschild Group and the persons to whom it is issued. Any reproduction or use of all or part of this document and its contents, in any form and for any purpose whatsoever, is strictly prohibited, except with the prior written consent of the Edmond de Rothschild Group. Copyright © Edmond de Rothschild Group - All rights reserved