

Domicile and Residency

Domicile

Domicile is an important concept for your personal law issues such as succession and capacity to marry. It also has a specific meaning for UK Inheritance Tax (IHT).

Common Law Domicile

Under English law, everyone has one domicile at a particular time.

There are three types:

- 1) **Domicile of Origin** – this is normally your father's domicile at birth;
- 2) **Domicile of Dependency** – this generally applies to children under 16 if their father acquires a new domicile; and
- 3) **Domicile of Choice** – This is a domicile chosen by an individual after the age of 16. It can displace a Domicile of Origin or Dependency and any previous Domicile of Choice with another Domicile of Choice, depending on the circumstances and the intention of an individual. The two key elements are one's physical presence in the jurisdiction with an intention to remain there permanently. If either element is missing, you will not acquire a Domicile of Choice. Practical steps can be taken to acquire a new Domicile of Choice, but the onus is on you to establish the change.

Deemed Domicile

Domicile is also relevant for IHT:

- 1) Individuals domiciled in the UK are subject to IHT on their worldwide assets; and
- 2) Individuals not domiciled in the UK are subject to IHT on their UK assets only.

For IHT purposes, if you have been resident in the UK for 15 out of the last 20 tax years you have a Deemed Domicile in the UK. You can lose your Deemed Domicile if you leave the UK and there are at least 6 tax years as a non-UK resident in the 20 years before the relevant tax year of assessment.

Different Domiciles

Where spouses have different IHT domiciles, the spouse exemption is restricted: gifts from the UK domiciled spouse or civil partner to the non-UK domiciled spouse or civil partner are exempt up to £325,000 in addition to their Nil Rate Band of £325,000. However, there is no limit on the exemption for gifts between spouses with any other combination of domiciles.

Election

Non-UK domiciled spouses and civil partners can elect to be treated as UK domiciled for IHT purposes only, either during the lifetime of or within 2 years after the death of the UK-domiciled spouse. The effect of the election is to make all gifts between spouses exempt from IHT. An election may be made by a non-UK domiciled individual either during the lifetime of their UK domiciled spouse or following their death, as long as the spouse was domiciled in the UK during the seven years ending with the date of death.



Formerly Domiciled Residents

With effect from 6 April 2017, a new Deemed Domicile rule applies exclusively to non-UK domiciled individuals who were both born in the UK and who had a Domicile of Origin in the UK at the time of their birth. This category is residents known as "formerly domiciled residents" given that they are likely to have left the UK but have returned.

A formerly domiciled individual will acquire a Deemed UK Domicile for IHT purposes from the start of their second tax year of continuous UK residence but would lose their Deemed Domicile status from the start of their first tax year of non-residence.

For Capital Gains Tax (CGT) and Income Tax purposes, a formerly domiciled individual will acquire a Deemed UK Domicile for Income Tax and CGT purposes as soon as they become UK resident (that is, from the start of the first tax year in which they assume or resume UK residence as set out below).

Residency

You are liable to UK income and capital gains tax on UK and non-UK source income and gains for a particular tax year if you are resident in the UK*. UK residency is determined by a Statutory Residence Test (SRT) which, in general terms, provides that a person is automatically resident if present in the UK for 183 days or more, has their only home in the UK or works full time in the UK. You may be determined automatically resident overseas under other provisions of the SRT.

The number of your designated UK ties in a tax year determines residency where the automatic provisions cannot.

The connecting factors (known as "ties") are:

- 1) Designated family members in the UK;
- 2) Accommodation available continuously for at least 91 days and used for at least 1 night;
- 3) Work in the UK of at least 40 days;
- 4) Spending 91 days or more in the UK in either of the previous tax years; and

- 5) Spending more time in the UK than any other country (Leavers only).

Your status as a Leaver (resident in the UK in any of the 3 previous tax years) or an Arriver (non-UK resident in the UK all 3 previous tax years) determines how many days you can spend in the UK in light of your total UK ties for that tax year, as shown in the table below:

Arrivers

Day count	1 Tie	2 Ties	3 Ties	4 Ties
Up to 15	Non- Resident	Non- Resident	Non- Resident	Non- Resident
16 - 45	Non- Resident	Non- Resident	Non- Resident	Non- Resident
46-90	Non- Resident	Non- Resident	Non- Resident	Resident
91-120	Non- Resident	Non- Resident	Resident	Resident
121-182	Non- Resident	Resident	Resident	Resident
183+	Resident	Resident	Resident	Resident

Leavers

Day count	1 Tie	2 Ties	3 Ties	4 Ties
Up to 15	Non- Resident	Non- Resident	Non- Resident	Non- Resident
16 - 45	Non- Resident	Non- Resident	Non- Resident	Resident
46-90	Non- Resident	Non- Resident	Resident	Resident
91-120	Non- Resident	Resident	Resident	Resident
121-182	Resident	Resident	Resident	Resident
183+	Resident	Resident	Resident	Resident

Contact

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* If you are a resident in the UK but not domiciled, you can elect to be taxed on UK source income and gains and only foreign income and gains that are brought into the UK (the Remittance Basis).

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This document has been drafted and provided by Kingsley Napley LLP.

This document should be used for information purposes only. This information is based on current legislation and should not be relied on as an exhaustive explanation of the law or the immigration issues involved without seeking legal advice.

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