

Briefing document

Overview of taxation of non-UK domiciliaries

Introduction

UK resident, non-UK domiciled individuals may be eligible to pay tax on the remittance basis of taxation. Where this applies, most foreign income and gains are only subject to UK taxation if they are remitted to (brought into) the UK. In some cases the remittance basis applies automatically. In other cases, it must be claimed if it is to apply. Individuals who have been UK resident for a specified number of tax years will need to pay a remittance basis charge if they claim the remittance basis.

Non-UK domiciled individuals are only within the scope of inheritance tax on UK situated assets, and on certain foreign assets that derive value from UK residential property.

Individuals are deemed to be UK domiciled in some circumstances which means that the remittance basis is generally unavailable and the individual's worldwide assets are within the scope of inheritance tax.

This note provides a high-level overview of the tax position of UK resident non-UK domiciliaries. The Appendix contains a flowchart illustrating key factors to consider with regards to the remittance basis of taxation. This note is not comprehensive and, where relevant, advice should be taken.

The remittance basis

Where the remittance basis applies, UK source income and gains are taxable as they arise, but most types of foreign income and gains are only chargeable if they are remitted to the UK, whether this is in the tax year in which the foreign income or gains were made or a later tax year.

If the remittance basis does not apply the arising basis applies instead, under which worldwide income and gains are taxable.

Claiming the remittance basis

Deciding whether or not to pay tax on the remittance basis is an annual decision. There is no minimum period over which the remittance basis must apply.

The remittance basis can be claimed by individuals who are legally non-UK domiciled and who are not deemed UK domiciled for income and capital gains tax purposes. An individual is deemed UK domiciled if he or she:

- Was UK resident in at least 15 of the previous 20 tax years ('long-term UK residence'), and/or;
- Is UK resident, was born in the UK and has a UK domicile of origin ('formerly domiciled residents').

Remittance basis claims are only relevant if the remittance basis does not apply automatically. The remittance basis applies automatically if in a given tax year a UK resident, legally non-UK domiciled individual:

- Has less than £2,000 unremitted foreign income and gains in the tax year, whether or not deemed UK domiciled (i.e. deemed UK domiciled individuals are automatically taxable on the remittance basis if this condition is met), and/or;
- i) Has not made any taxable remittances to the UK; ii) has no UK gains and UK source income of at most £100 taxed investment income, iii) is not deemed UK domiciled and; iv) either, was UK resident in 6 or fewer of the preceding 9 tax years, or is under 18 throughout the tax year.

It is possible to opt out of the automatic remittance basis and pay tax on the arising basis instead. This may be preferable in some circumstances, such as where foreign dividends or interest received will be remitted (see below).

Effect of claiming the remittance basis

As noted, claiming the remittance basis means that most foreign income and gains are only chargeable if and when they are remitted to the UK. The points below should also be borne in mind.

Personal allowances

Personal allowances are lost if the remittance basis is claimed. These include the capital gains tax annual exemption and income tax personal allowance, to the extent it is available. The personal allowance is tapered for individuals with income in excess of £100,000, and is reduced to nil for individuals with income of at least £125,140 (based on the 2021/22 personal allowance of £12,570).

Remitted dividends and interest

Dividends that are taxable as they arise are taxable at rates of 0%, 7.5%, 32.5% or 38.1%, depending on the level of the individual's income. This applies to both UK dividends and to foreign dividends taxable on the arising basis. Similarly, interest that is taxable on the arising basis can potentially be taxed at 0% up to certain limits. Dividends and interest taxable on remittance are taxable as general income at rates of 20%, 40% or 45% (or 19%, 20%, 21%, 41% or 46% for Scottish residents).

Foreign capital losses

Remittance basis claimants are only able to claim relief for foreign capital losses if an election is made in order for loss relief to be available. If the election is not made the individual cannot claim relief for foreign capital losses even in tax years to which the arising basis applies, until and unless the individual becomes UK domiciled or deemed UK domiciled. This is a complicated area which is not explained in detail in this note. Please contact your usual Deloitte contact or the contact at the end of this note if you wish to discuss this point.

The amount of the Remittance Basis Charge (RBC)

The RBC is payable by individuals who both claim the remittance basis and who meet the minimum residency requirements. The amount of the charge depends on how an individual has been UK resident, as follows:

- If the individual was UK resident in 7 of the previous 9 tax years, the RBC is £30,000.
- If the individual was UK resident in 12 of the previous 14 tax years, the RBC is £60,000.

Deciding whether or not to claim the remittance basis

A number of factors should be taken into account when deciding whether or not to claim the remittance basis. The points to consider include the points set out below.

Tax liability in the year of potential claim

The tax liability in the tax year under consideration depending on whether the remittance or arising basis apply should be considered, taking into account the RBC, where relevant. In some cases the individual's level of foreign income and gains will be sufficiently high or low to provide a clear indication as to whether or not there is merit in claiming the remittance basis and paying the RBC. In other cases the decision may be less immediately clear.

By way of indication, an additional rate (45%) taxpayer with taxable income in excess of £150,000 would incur an income tax liability of £30,000 if he or she received a further £66,667 of income, and £60,000 if additional income of £133,333 were received. This assumes that no foreign tax for which the UK would allow a tax credit has been paid on the income, and that the income is not dividend income.

Higher and additional rate taxpayers pay 20% capital gains tax on most chargeable gains beside gains made on disposal of residential property, to which a 28% capital gains tax rate applies. To generate a capital gains tax liability of £30,000 or £60,000, non-residential property gains of £150,000 or £300,000 would need to be made respectively. For residential property gains, the comparable figures are £107,143 and £214,285. It is again assumed that no foreign tax has been paid.

Likelihood that funds will be remitted

The extent to which foreign income and gains are likely to be needed in the UK should be considered. In particular, consideration should be given to the individual's living expenses, and funds available to pay them.

Overseas tax position

Where relevant, the tax liability in an overseas jurisdiction(s) may need to be considered. This would involve considering whether or not the overseas jurisdiction would allow relief in respect of the payment of the RBC against the foreign tax liability.

Compliance

If tax is paid on the arising basis of taxation, the individual's worldwide income and gains must be calculated and disclosed to HMRC. If tax is paid on the remittance basis of taxation, UK source income and gains must be disclosed to HMRC, but most foreign income and gains only need to be disclosed to HMRC if they are remitted to the UK. You may wish to bear in mind the

time and expense associated with obtaining and analysing foreign information for UK tax purposes and disclosing this information to HMRC.

HMRC may request further information if they wish to enquire into an individual's tax position.

Overseas companies and trusts

In some cases, individuals may hold interests in foreign companies or have established or be able to benefit from trusts. Individuals can, in some circumstances, be chargeable to income tax and/or capital gains tax on income received or gains made by such companies and trusts. Tax charges can apply even if the individual does not receive funds from or otherwise benefit from the trust or company.

While UK resident individuals are often chargeable on income received and gains made by trusts which they have established, a specific regime applies to trusts settled by non-UK domiciled individuals who are not formerly domiciled residents, under which foreign income and capital gains may only be taxable as and when a UK resident receives a benefit from the trust.

Furthermore, trustees of trusts established by non-UK domiciled individuals who are not formerly domiciled residents may only be within the scope of inheritance tax on UK assets, and certain foreign assets that derive value from UK residential property.

The tax positions outlined above do not change due to the settlor subsequently becoming deemed UK domiciled due to long-term UK residence, though care should be taken as the position may change if a deemed UK domiciled settlor adds value to an existing trust set up before deemed UK domicile commenced.

These rules are complicated and are not considered in detail in this note. Please contact your usual Deloitte contact or the contact listed at the end of this note if you wish to discuss this point.

Find out more...

This note reflects the law in force as at 6 April 2021. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk.

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Appendix

This flowchart is intended to provide guidance as to whether or not i) the remittance basis is available, ii) the remittance basis applies automatically, and iii) if not, if the remittance basis can and should be claimed. This flowchart is broadly indicative and full consideration should be given to your facts and circumstances.

