



## Introduction

An individual who is considering a move from the UK in order to work overseas will need to take into account a number of factors, including the impact of their move upon their tax position.

One aspect is the taxation regime of the country to which the UK expatriate is moving. The tax regimes of countries around the world vary considerably. Generally, most countries will levy a tax on at least any employment income earned in the country. Others will tax the worldwide income or capital gains of an individual, in addition, perhaps, to raising an inheritance/estate tax on the worldwide wealth of an individual if they should die whilst living in the overseas country. The exact tax regime applied will depend upon the country in question, as well as the personal circumstances of the UK expatriate, for example, the length of time they have lived in the country and/or whether they have purchased a permanent place of residence in the country. The Association of International Life Offices ("AILO") tax guides provide an overview of the tax regimes in a number of popular destinations for UK expatriates.

A UK expatriate's continuing liability to UK taxes will depend upon their residence, ordinary residence and domicile status. An individual who is both resident and domiciled in the UK is liable to income and capital gains tax on their worldwide income and gains, as well as inheritance tax on worldwide assets (as a consequence of their UK domicile). For UK tax purposes residence and domicile are generally defined as follows.

### Residence

In order to be tax resident in the UK an individual must be physically present in the UK at some time during a tax year. An individual's residence status in other countries is irrelevant in determining UK tax residency. In order to be classified as tax resident in the UK an individual must meet one of the following criteria:

- If an individual is physically present in the UK for at least 183 days in the current tax year they will be classed as resident.
- If an individual visits the UK, for any reason, in four consecutive tax years and the visits average more than 91 days per year they will be classed as resident from the start of the fifth year. Alternatively if an individual arrives in the UK with the intention of spending more than 91 days per year in the country they will be treated as resident from their day of arrival.
- If an individual intends to work in the UK for 2 years or more they will be classed as resident from the day of arrival in the UK.

From April 2008 any day in which an individual is present in the UK at midnight will count towards determining residence.

Whilst an individual's tax residency elsewhere is irrelevant in determining UK tax residency, if an individual is also classed as resident in another country, the terms of any tax treaty in place may determine where and how the individual is taxed.

### Ordinary Residence

The definition of ordinary residence considers the longer-term, compared to residence as above. Ordinary residence considers an individual's 'habitual' or usual place of residence rather than an individual's residence in a particular tax year. Depending upon an individual's circumstances, a UK expatriate may still be ordinarily resident in the UK, even if they are no longer resident. H M Revenue & Customs (HMRC) will normally look at ordinary residence over a three year period and once an individual has been non-resident for three complete tax years they will generally be considered to be not ordinarily resident in the UK.

### Domicile

An individual's domicile indicates the country which an individual considers to be their permanent home. Under UK law every individual has a country of domicile and this will impact upon their liability to certain taxes, such as inheritance tax. Domicile is different from residence and rarely changes. An individual usually acquires their father's domicile at birth and then retains this for life, unless an individual severs their ties with their original country of domicile and establishes a permanent home in another country.

Most UK expatriates moving overseas are usually UK domiciled and will retain the UK as their domicile. However, if an individual is moving overseas permanently, it is possible for the individual to acquire a new domicile in the country to which they have moved and established a new permanent place of residence. If a UK expatriate, who has acquired non-UK domicile, moves between foreign countries it is likely that their domicile will revert back to the UK until domicile is established in the country to which they have moved. The tax effect of changing domicile should also be considered in the adopted country of residence.

If an individual leaves the UK to work in an overseas country they will usually acquire non-resident and not ordinarily resident status, from the day after leaving the UK, if:

- The individual is sent overseas on a full time employment contract,
- The posting is for a period which includes a full UK tax year,
- Any return visits to the UK total less than the 183 days in any tax year and average less than 91 days per annum.

Normally an individual will be either resident or non-resident for a whole tax year, but HMRC allows, by concession, tax years to be split in the circumstances above in the years of arrival and departure, hence an individual may only be treated as resident for a part tax year.





## Expatriates not acquiring non-resident status

If a UK domiciled individual's overseas posting is not of sufficient length to allow them to acquire non-resident status they will continue to be treated as a UK tax resident and hence will continue to be taxed in the UK on worldwide income.

Such an individual will be liable to UK tax on any payments made in the foreign location, although they may be able to claim relief in respect of certain payments, such as reimbursement of travel and subsistence costs.

In addition, an individual may acquire a tax liability in the country they have moved to. However, an individual may avoid having to pay tax twice dependent upon any taxation treaties in place between the UK and the foreign country.

## Expatriates acquiring non-resident status

### Income Tax

If an individual acquires non-resident status they will no longer be taxable in the UK on worldwide income. Such an individual will only be liable to UK tax on income arising in the UK. Any income arising from overseas employment will not be taxable in the UK unless an individual carries out duties in the UK which are not considered to be incidental – such incidental duties could include, for example, travelling to the UK for training courses.

Generally, a UK expatriate not resident in the UK will be liable to UK income tax on investment income arising in the UK, including interest income, dividends and rental income.

Interest income received in the UK would normally have UK tax deducted at source at a rate of 20 per cent. An individual may apply to have such income paid gross provided he or she is not ordinarily resident in the UK. Such income would be taken into account when calculating an individual's tax liability.

Dividends from UK companies will always be paid net of withholding tax collected at source with an attaching tax credit. Such a tax credit may be used to meet all or part of an individual's tax liability. It is not possible to reclaim the tax credit if the individual does not owe any tax.

Any profit arising from renting out a UK property will be liable to UK tax. In determining such a profit a number of expenses are deductible from rental income, for example maintenance costs, management fees and mortgage interest in respect of any loans used for 'rental activity' such as purchasing the property. Generally, basic rate tax will be withheld from any net profit by the expatriate landlord's letting agent and will be remitted to HMRC. However, if a letting agent is not used the onus to withhold tax, in theory, falls upon the tenant, although HMRC will usually waive this requirement if the landlord makes a formal request to receive the rents in full and undertakes to settle any UK tax bill.

On becoming non-resident, a UK expatriate may still be able to claim a UK personal tax allowance against which to offset any taxable UK source income.

### Capital Gains Tax

Even if a UK expatriate individual is non-resident for income tax purposes they may still remain liable to UK tax on capital gains arising after they attain non-resident status. An individual's liability to UK capital gains tax will depend upon a number of factors, including the length of time an individual will spend overseas and the type of asset sold. An individual may still be liable to UK capital gains tax even if the asset is sold whilst they are not resident in the UK.

- In the individual's tax year of departure from the UK, and if the individual has been UK tax resident for four out of the seven tax years preceding departure from the UK, any gains made will be liable to UK capital gains tax, even if the gain is realised after leaving the UK.
- During any complete UK tax year when the individual is non-resident, any gains realised may be subject to UK capital gains tax, again, if the individual is a UK tax resident for four out of the seven tax years prior to departure. In such a case, unless an individual is non-resident for at least five complete tax years, they will be taxed on any gains arising from assets which were owned prior to leaving the UK. Such gains will be charged in the tax year when an individual returns to the UK. If the individual spends five or more tax years away from the UK they will not be liable to UK capital gains tax in respect of complete years away from the UK.
- During the tax year of an individual's return to the UK any gains realised will be subject to UK capital gains tax if the individual has been non-resident in the UK for less than five complete tax years.

Assets acquired and disposed of during complete years of absence from the UK may not be subject to UK capital gains tax, depending on an individual's circumstances. If any gain realised is subject to UK tax and is also subject to foreign capital gains tax then, subject to any taxation treaty, relief may be given under the treaty or, if no treaty is in place, under unilateral relief.

Specifically, if an individual sells their UK main residence, it should be fully relieved from UK capital gains tax. As a general rule this relief is available in full if the residence is sold within three years of an individual moving overseas and there has been personal occupation of the property at some point during the period of ownership.



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## **Inheritance Tax**

An individual's liability to UK inheritance tax is dependent upon the domicile of the individual. If they are domiciled in the UK then UK inheritance tax is raised on the individual's worldwide assets, including some lifetime gifts. However, if the individual is not domiciled in the UK, generally only assets located in the UK will be subject to UK inheritance tax. Even if an individual is non-resident and not ordinarily resident in the UK they may still be UK domiciled. If an individual is liable to foreign inheritance tax by virtue of residence, or otherwise, in that country then relief may be possible depending on any inheritance and gift tax treaties the UK has entered into. The UK has entered into around 10 such treaties.

## **National Insurance Contributions**

With regard to National Insurance, an individual's liability to continue to pay contributions in the UK will depend upon a number of factors, including the country to which the individual has moved, expected length of stay in that country and whether the individual has been sent overseas by a UK resident employer. As a general rule if the individual's employer has a place of business in the UK and the individual is ordinarily resident in the UK, as well as resident, up to the point of starting overseas employment, there will be a liability to pay UK national insurance contributions for the first 52 weeks the individual spends overseas. This period may be longer if the individual has moved to an EEA/EU country, or to a country with which the UK has a social security treaty in place. If there is no requirement for UK national insurance contributions to be paid an individual always has the option to pay voluntary contributions if this is appropriate to their personal circumstances.

## **Other Considerations**

A non-resident individual will not be able to make any further contributions to an Individual Savings Account (ISA) whilst overseas, although they will still benefit from UK income and capital gains tax relief with regard to any investments already held within the ISA. Similarly, any PEP or TESSA held by the individual may continue to be held with the associated UK tax benefits. However, it is possible that such investments will give rise to a foreign tax charge in the country where the individual is living.

With regard to pensions, a non-resident individual may continue to contribute to their UK pension if they wish. An individual can still get tax relief on contributions up to 100% of earnings. However if they have no UK earnings tax relief is still available on up to £3,600 of contributions per annum. If an individual moving overseas continues to be employed by a UK employer they may, subject to certain conditions, continue to be a member of the UK employer's pension scheme, as well as continuing to make contributions to the scheme.

## Expatriate Financial Planning

As a whole, the UK tax regime is less onerous for non-UK residents compared with the regime for individuals who are UK resident. Whilst the UK tax regime for an expatriate can be complicated and the tax regime of the country to which an individual is moving also needs to be considered, an expatriate should take care to plan when they move from the UK and tax advice should be sought.

In addition, if you are, or are about to become, an expatriate you should review your finances with a suitably qualified financial adviser. In particular, if you are about to leave the UK, you should plan and review your finances before making the move. You may wish to consider offshore investments, including offshore life products, in order to manage your tax liability and/or control when tax charges are made, as well as considering options available to you for estate planning.

Whilst the specific benefits of an offshore life product will depend upon your individual circumstances they do offer a number of potential benefits:

- Investments in an offshore life product grow virtually free of tax throughout the time the product is held, suffering only a small amount of irrecoverable withholding tax on investment funds located in certain countries.
- They allow you, in general, to manage when you take benefits and potentially to defer the benefits to a period that may be more advantageous to you from a taxation perspective.
- Offshore products often feature a strong range of the life company's own individual offshore funds and managed offshore funds specifically tailored to fit with the spectrum of clients' attitudes to risk. Offshore products also offer access to household name fund managers, including many international and specialist fund managers, thus providing access to funds that might not be available as direct investments.
- An offshore product has the flexibility to adapt to changes in your individual circumstances, including changes in your residency status.
- Most companies offering offshore life products are subsidiaries of global financial services companies.
- The offshore life companies are regulated in first class jurisdictions which benefit from strong regulatory controls.

*This document has been prepared on behalf of the members of the Association of International Life Offices ("AIILO") and relies on information and technical analysis provided by third party professionally qualified tax advisers. Whilst AIILO has used its best endeavours in selecting its advisers to ensure the accuracy of the information contained in this document, AIILO cannot be held responsible for any errors and omissions.*

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