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Tax Saving Tactics for Non-Doms

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Chapter 1

Introduction

Big changes to the tax treatment of people who are not UK domiciled (also known as non-doms) were announced in the October 2007 Pre-Budget Report. Further tax changes have also been made in subsequent Budgets.

As a result of all the chopping and changing, many non-domiciled individuals are not entirely sure how the new rules will affect them in practice. However, we're confident we will answer most of your questions in this guide.

The main changes have applied since April 6th 2008. The current tax regime for non-doms is far more restrictive than the old one. However, there are still tax benefits to be had from being non UK domiciled.

Our purpose is to explain all the changes in plain English and, most important of all, show you how you can still use your non-domiciled status to reduce your UK tax bill.

Scope of this Guide

The aim of this guide is to give you a thorough grounding in non-domicile tax issues. Please note that it does not cover **every** eventuality – that would be impossible in a general guide of this nature. So please bear in mind the general nature of the information contained here.

Individual circumstances vary so it's always vital to get professional advice before you do anything that may have tax consequences.

After reading this guide, however, we are confident that you will have a firm grasp of how non-domiciled people are taxed and

what you can do to pay less tax on your overseas income and capital gains.

As for jargon, there isn't very much of it you'll be pleased to hear.

Most of the time we refer to non-domiciled individuals as 'non-doms'. We sometimes refer to capital gains tax as just CGT. You may also see us talk about the 'taxman' when referring to HM Revenue & Customs, also known as HMRC.

Tax is all about tax years and some of the examples have dates in them. The UK is one of the few remaining countries that has a tax year which doesn't run from January to December. Our tax year runs from 6th April in one year to 5th April the next year.

Chapter 2

What is Domicile?

So what does domicile mean exactly?

Your domicile is essentially the country you regard as your permanent home. If you don't live there at present, you must intend to return there one day.

Domicile status has been an important part of the UK tax system for well over 100 years, although it's not just a tax concept. Its main purpose is determining legal 'connection' and deciding whether UK or foreign law applies in various situations. Most notably your domicile status determines how your estate will be 'divvied up' when you die. Various UK laws contain specific exceptions for non-domiciled people.

The main tax benefit of being non-domiciled has always been that you are entitled to the so-called 'remittance basis'. This generally means UK tax is only paid on your overseas income and capital gains when the money is brought back into the UK.

Other UK residents always pay tax on the 'arising basis'. This means you pay tax on your worldwide income and gains each year. It doesn't matter whether you bring the money into the UK or leave it abroad.

The new rules have made the remittance basis less attractive for many non-doms but there are still tax savings to be had, as we'll see shortly.

You may be interested to know that the remittance basis used to be available to everyone living in the UK but the concession was removed gradually over a number of years. Since the mid 1970s only non-domiciled individuals and those not ordinarily resident in the UK have qualified for this tax concession.

The 2008 changes are therefore the latest in a very long line of amendments and clampdowns.

The 3 Types of Domicile

There are three main types of domicile:

- **Domicile of Origin.** This is acquired when you're born and is usually your father's domicile. If your parents are unmarried, it's your mother's domicile. Domicile of origin continues unless you acquire a new domicile of choice.
- **Domicile of Choice.** You acquire a domicile of choice by voluntarily making a new country your permanent home with the intention of remaining there for the rest of your days.
- **Domicile of Dependency.** This type of domicile only applies to children under the age of 16. It only comes into the picture if there's a change in the father's domicile (or mother if the parents were unmarried). If this happens, the parent's new domicile of choice becomes the child's domicile of dependency.

UK Immigrants and Emigrants

In practice, there are mainly two types of non-domiciled people:

- Firstly, there are foreign nationals who come to live in the UK. They usually have a foreign domicile of origin, and provided they don't acquire a UK domicile of choice, will usually remain non-domiciled. Their children will generally also be non-domiciled, even if they were born in the UK and are UK nationals, provided they don't establish the UK as their domicile of choice.

- Secondly, there are UK nationals who have a UK domicile of origin and decide to emigrate. If they leave the UK permanently they may wish to establish a new domicile of choice overseas. If they succeed they'll become non UK domiciled.

If you leave the UK permanently you will also lose your UK resident status and will generally not have to pay UK income tax and capital gains tax. The extra benefit of losing your UK domicile is that you will also be exempt from UK inheritance tax on your overseas assets.

It's the first group – foreign nationals and their offspring living in the UK – that we'll focus on in this guide and it's this group that the new tax laws are aimed at.

Recent Case Law on Domicile

If you are to lose your overseas domicile of origin and instead be classed as having made the UK your domicile of choice, there are two key conditions to be satisfied:

- Firstly, there is a requirement to have residence in the UK and
- Secondly, you need to have an intention to live in the UK permanently or indefinitely

This was considered in a case before the Court of Appeal in 2008 (*Henwood v Barlow Clowes International Ltd*). In this case the judge said:

"...What has to be proved is no mere inclination arising from a passing fancy or thrust upon a man by an external but temporary pressure, but an intention freely formed to reside in a certain territory indefinitely. All the elements of the intention must be shown to exist if the change is to be established: if any one element is not proved, the case for a change fails..."

This therefore reinforces just how serious a change in domicile is.

The judge also said:

“...It seems to me that as a general proposition the acquisition of any new domicile should in general always be treated as a serious allegation because of its serious consequences...”

Residence

One of the requirements is that you establish a residence in the UK.

Essentially this means that you need to establish a home in the UK. Residence in this context doesn't necessarily mean tax residence but has a wider scope to include your main residence.

If you have more than one home in different countries the position is less clear and you need to look for the sole or chief residence.

This was reinforced in this case where the judge said:

“...Since a person can only have one domicile, it is necessary to identify which of the countries in which he has a home, if he has more than one, is the country of his domicile.”

Determining which is the chief or principal residence involves considering the quality of your residence in the various countries.

For instance in *IRC v Duchess of Portland* where the individual had residences in Canada and England, where she lived with her husband, the judge held that the court had to consider in which country she was an inhabitant.

In *Plummer v IRC* the individual in question had a domicile of origin in England but her family had moved to Guernsey.

She remained in England principally for the purpose of completing her education.

She intended, when she had finished her training and had some experience working in this country, to return to Guernsey, where she spent part of her time.

The judge held that the Special Commissioners were entitled to say that her chief residence was in England and that, as she had her chief residence in England, which was her domicile of origin, she had not acquired a domicile of choice in Guernsey.

Intention

This is where the taxpayer got caught out in the Henwood case.

Although this case was concerned with a UK domiciliary losing UK domicile by moving overseas (ie the exact opposite to where someone has a foreign domicile who is looking to move to the UK and not establish a UK domicile of choice), it is still useful to understand how the courts approach the issue of domicile.

In this case the judge held that where a person maintained homes in more than one country, his domicile had to be decided by reference to the quality of residence in each of those countries to ascertain in which country he had an intention permanently to reside.

Therefore you would need to ensure that if you did have multiple homes that you retained an intention to return overseas.

In the Henwood case they looked at the individual's actual lifestyle in the various countries (Mauritius and France in this case) to assess the quality of his residence:

"...So the question is whether Mr Henwood has established on a balance of probabilities that he has a domicile of choice in Mauritius. He has

had a residence there for many years. But it is the quality of his residence that matters and thus he has in effect to show that he preferred Mauritius to any other place in the world. He said that was so, but then of course these were self-serving statements.

He clearly had a very comfortable and convenient residence in France. He chose to say that France was not his domicile of choice, but in my judgment, he still had to provide a satisfactory answer to this further question: if France was not his domicile of choice, what did Mauritius have for him that France did not and that clearly enabled the court to say that he had chosen to settle in Mauritius in preference to any other place where he customarily resided?

For my part, I would not accept as a reason that he liked island life. He also liked French wine and culture. I have considered the relevant factors above and none of them in my judgment provides an answer to the question I have posed. In reality, if he did not consider that France was his domicile of choice, it is unlikely that Mauritius was..."

This case reinforces just how close your ties have to be to a country to support a change in domicile. It also makes clear just how difficult it can be to show a change from a domicile of origin to a domicile of choice (which is arguably good news for foreign domiciliaries moving to the UK!)

Simply having a strong presence in the country in itself will not be enough. Your residence and intention are also important factors.

Protecting Your Foreign Domicile

If you're a foreign national living in the UK, retaining your non-domiciled status is of key importance.

As we've seen above this means making sure you keep your domicile of origin and do not acquire a UK domicile of choice.

It's not as difficult as it sounds, and most foreign nationals will retain their foreign domicile.

If Revenue & Customs wanted to argue otherwise, the burden of proof would be on them and they would need to show that you had made the UK your sole or 'chief' residence and intend to remain here for the rest of your days.

It's difficult for the taxman to do this if a non-dom actually asserts the opposite! In practice, keeping overseas ties is the best evidence of a desire to return to your home country one day. This would include:

- Joining clubs and other social organisations in your home country.
- Holding assets in your home country
- Having bank accounts overseas
- Buying an overseas burial plot
- Subscribing to overseas newspapers
- Purchasing property abroad
- Making a will under the laws of your home country
- Retaining friends and family connections in your home country
- Visiting the home country occasionally

As stated earlier, a non-dom's children will also typically 'inherit' their father's overseas domicile of origin. Therefore they can also establish non UK domiciled status, even if they're UK born and bred.

It's vital though that they do not become UK domiciled by having the UK classed as their new permanent home. This is a risk many face. If they have few overseas ties (they may have never even visited the home country), they run the risk of being classed as UK domiciled in the future.

For most, however, this risk is probably more apparent than real. The non UK domicile will be kept, provided the ultimate intention

is to return overseas. Anything they can do to support this intention would be invaluable, in the event that the taxman argues they are UK domiciled. This could include visiting to the home country, reading local newspapers, opening an overseas bank account etc.

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