

# Important changes affecting Residence and Domicile for UK Tax Purposes

The UK tax landscape has been changing rapidly in recent years, particularly for individuals moving to or from the UK. This briefing summarises two important recent developments in relation to:

- residence and domicile for UK tax purposes;
- claiming the remittance basis.

## Residence and domicile for UK tax purposes

### What's new?

UK residence for tax purposes is generally based on the number of days spent in the UK. An individual will normally be treated as non-resident if his or her visits to the UK do not exceed 183 days in a particular tax year (or an average of 90 days over four tax years).

Until now, it has been generally accepted that days of arrival and departure do not count towards the total days spent in the UK. However, a recent Special Commissioners' ruling has upheld a claim by H.M. Revenue & Customs (HMRC) that all nights spent in the UK by a wealthy British expatriate should be taken into account.

### Why does it matter?

We should emphasise that the decision is expected to be appealed. However, it is likely to have far-reaching consequences. The main issues are as follows.

- Expats who visit the UK regularly will be able to spend significantly less time here if they want to remain non-resident. For example, many businessmen come to the UK every Monday and leave on Wednesday. They will now be treated as spending two days a week in the UK, rather than one.
- In the case the Commissioners ruled that nights spent in the UK should be taken into account retrospectively, from 1993 onwards. This makes the potential consequences even more serious. On this

basis, regular visitors to the UK may already have inadvertently become resident here and could face tax bills going back up to six years.

- This decision is particularly surprising because HMRC's argument contradicts their own published guidance on residence and domicile issues. Although this guidance is not legally binding, it is rarely departed from in practice and many people plan their visits to the UK on the basis of it.
- The Commissioners also upheld HMRC's claim that the taxpayer was still domiciled in the UK, although he had had a home in the Seychelles for many years and claimed to be domiciled there. In itself, the ruling does not appear to have significantly changed the existing law on domicile. However, it does indicate that HMRC appear to be adopting a more aggressive attitude. People who leave the UK may well find that their claims to have become domiciled elsewhere are more likely to be challenged in the future.

### What should I do?

This case potentially affects many regular visitors to the UK. It is a clear sign that HMRC are increasingly prepared to move the goalposts and can be expected to take a more proactive approach to residence and domicile issues in future.

As the decision made clear, residence and domicile status always have to be determined on the basis of all the facts in each case. Exactly how the case could affect you will therefore depend on your circumstances. If you think you may be affected – and particularly if you are currently non-resident but visit the UK regularly – you will need to review your situation carefully and keep a close watch on developments in this area.

## Claiming the remittance basis

### What's new?

If you are resident in the UK but not domiciled here, you may be aware that you are eligible to pay UK income tax and capital gains tax on what is known as the 'remittance basis'. This means that non-UK source income and gains

are generally only charged to UK tax if they are brought into the UK.

What you may not know, because this has not been widely publicised, is that if you want to take advantage of the remittance basis, you now have to claim it every year. This applies with effect from the 2005-06 tax year which ended on 6 April 2006. The change is due to the way the remittance basis rules have been rewritten in the Income Tax (Trading and Other Income) Act 2005.

### Why does it matter?

The change is important because from now on, if you don't claim the remittance basis in any tax year, you will not be entitled to it for that year – which means that you will have to declare all your worldwide income and gains arising in that year, and they will be fully subject to UK tax regardless of whether they are brought into the UK. If you do not comply with your reporting obligations and pay any additional tax due, you may also face interest and penalties.

### What should I do?

If you want to claim the remittance basis for 2005-06, you will need to take action soon, as the deadline for filing tax returns for this tax year is 31 January 2007. Depending on your circumstances, you will probably need to make sure that your tax return includes a specific claim for the application of the remittance basis, or alternatively write separately to H.M. Revenue & Customs to make a claim.

It is particularly important to act promptly if, like many non-domiciled UK residents, you do not currently file UK tax returns. Unless you contact H.M. Revenue & Customs, you could face a substantial tax bill even if you did not remit any funds to the UK in 2005-06 – and if you do contact them, they may well then send you a tax return, which will need to be filed by 31 January 2007.

We will of course be happy to assist if you have any questions about what you should do.

### Remittance planning: how can Burges Salmon help?

Claiming the remittance basis can save you a considerable amount of tax if you have assets outside the UK. There are various tax-planning techniques which can be used to maximise the availability of the remittance basis, such as:

- segregating income and capital outside the UK;
- strategies for funding UK and non-UK expenditure;
- techniques for converting income into capital;
- holding assets through offshore companies and/or trusts.

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This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case.

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