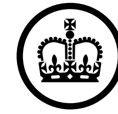
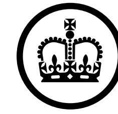


Reform of the taxation of non-domiciled individuals: a consultation

June 2011



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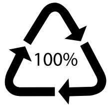

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Subject of this consultation	The Government announced a package of reforms to the taxation of non-domiciled individuals at Budget 2011. Its objectives are to encourage non-domiciled individuals to invest and do business in the UK, while also ensuring that they make a greater tax contribution, especially when they have been resident in the UK for many years.
Scope of this consultation	The consultation seeks responses from interested parties on the detailed policy design of the reforms announced at Budget.
Who should read this	Individuals, advisors, businesses and representative groups affected by, or with an interest in, the rules governing the taxation of non-domiciled individuals.
Duration	The consultation will run for 12 weeks from 17 June 2011. The closing date for responses is 9 September 2011.
Enquiries	All enquiries should preferably be sent via e-mail to: Non-doms@hmtreasury.gsi.gov.uk A postal address is also provided below.
How to respond	Mail address (e-mail above is preferable): James Hood Non-domicile taxation consultation Personal Tax Team HM Treasury 1 Horse Guards Road London SW1A 2HQ
Additional ways to be involved	The Government will consider meeting a range of interested parties on the issues raised in this consultation. The timing, format and venue for these meetings will be decided in due course. Confirmation will be provided to relevant parties during the consultation process.
After the consultation	The Government will publish a summary of the responses to this consultation in the autumn. Responses will inform the draft legislation which will be published for further consultation before Budget 2012.
Getting to this stage	This consultation document reflects joint analysis carried out by HM Treasury and HM Revenue and Customs. It has also been informed by informal discussions with external bodies and representative groups. It is the first public consultation on the taxation of non-domiciled individuals under this Government.

1 Introduction

1.1 The Government recognises that non-domiciled individuals ("non-domiciles") can make a valuable contribution to the UK economy – through the money they spend here, the funds they invest, the skills they bring as employees and the tax they pay. However, they currently benefit from tax rules that provide significant advantages over other taxpayers. Therefore, the objectives of the reforms outlined in this consultation are to:

- ensure that non-domiciled individuals, especially those who have been resident in the UK for many years, make a fair tax contribution; and
- encourage non-domiciles to invest in the UK, contributing to the Government's priority of generating economic growth.

1.2 The tax systems of all countries need to distinguish between permanent residents and those from abroad who have less connection with the jurisdiction. The UK does this using the well-established concept of domicile and recognises the limited nature of non-domiciles' links to the UK by having a dedicated set of tax rules for them. Under these rules individuals who are resident but not domiciled in the UK are:

- liable to UK tax on all their income and capital gains which arise in the UK; but
- only liable to UK tax on non-UK ("overseas") income and capital gains if they are remitted to the UK.

1.3 All other UK residents are liable to UK tax on all their worldwide income and capital gains. Annex B provides a description of the rules and the concepts of residence and domicile.

1.4 There is no intention to change the broad principles underlying these rules. However, the Government does believe that they should be reformed so that they both ensure fairness and play a more positive part in making the UK an attractive location for non-domiciles and their investment at a time of growing international competition.

1.5 There are two main reasons why the current rules fail to promote investment. Firstly, although the rules can provide a beneficial tax treatment, they only do so when non-domiciles leave their overseas income and capital gains outside the UK. This can actively discourage them from bringing their income or capital gains to the UK and undermine potential sources of inward investment. It is the Government's objective to remove these barriers.

1.6 Secondly, in some circumstances, the rules can be seen as complicated, difficult to use and unwelcoming to individuals who come to the UK, either permanently or on a short-term basis. This is contrary to the Government's wider commitment to creating a tax system that is more efficient and supportive of growth; more certain; more simple and easy to comply with; and with stronger incentives for investment and enterprise.

1.7 While it is right that the tax system encourages skilled individuals to come to the UK from abroad, the Government believes that non-domiciles should make a greater tax contribution than they do currently. This is especially the case when they have been resident in the UK for many years, benefiting from the UK's public services, infrastructure and stable political

environment over a long period. It is important that the reforms outlined in this consultation achieve this goal.

1.8 The Government announced a package of reforms at Budget 2011 designed to strike a balance between increasing the tax contribution made by non-domiciles and encouraging them to invest in the UK. These reforms include the following measures:

- increasing the existing £30,000 annual charge to £50,000 for non-domiciled individuals who claim the beneficial tax regime available to them ("the remittance basis") in a tax year and who have been UK resident in 12 or more of the 14 years prior to the year of claim;
- enabling non-domiciles to remit overseas income and capital gains tax-free to the UK for the purpose of commercial investment in UK businesses; and
- making technical simplifications to some aspects of the current rules to remove undue administrative burdens.

1.9 To provide stability and certainty, the Chancellor also announced at Budget 2011 that, following these reforms, there will be no other substantive changes to the taxation of non-domiciles for the remainder of this Parliament.

1.10 This consultation now seeks views on the detailed policy design of the measures announced in the Budget. The consultation is Stage 2 of the five stages of tax policy making set out in the Tax Consultation Framework at Annex A.

1.11 A summary of responses will be published by the Government in the autumn. Draft legislation will be published for comment later in 2011 with a view to including final legislation in Finance Bill 2012. It is intended that the proposals outlined in this consultation will take effect from 6 April 2012.

1.12 The Government is consulting separately on the introduction of a statutory definition of tax residence to provide greater certainty for taxpayers. This consultation document is also published on 17 June and can be found on HM Treasury's website at http://www.hm-treasury.gov.uk/consult_statutory_residence_test.htm. The issue of tax residence is relevant to many non-domiciles and the Government would welcome views on both consultations.

2 Proposed policy changes

2.1 This Chapter outlines the proposed design of the policy changes announced at Budget 2011.

Increasing the Remittance Basis Charge

2.2 The Government believes that non-domiciles should make a greater tax contribution. The tax rules can confer significant advantages on them that are not available to other UK resident taxpayers.

2.3 Non-domiciles have access to a tax regime, called the "remittance basis", that provides beneficial treatment of overseas income and capital gains. In 2008 an annual charge of £30,000 was introduced for non-domiciles who make a claim to be taxed on the remittance basis in a tax year and have been resident in at least seven of the nine tax years prior to the year of claim. This is known as the Remittance Basis Charge (RBC).

2.4 Individuals who do not wish to pay the RBC can instead choose to be liable to tax on all their worldwide income and capital gains whenever they arise (the "arising basis").

2.5 There are some exceptions. Resident non-domiciles with unremitted overseas income and capital gains of less than £2,000 arising or accruing in the tax year are automatically taxed on the remittance basis and are not liable to pay the RBC. Individuals under the age of 18 are also exempt from the charge.

2.6 Based on Self Assessment (SA) tax returns analysed to date, around 5,400 individuals paid the £30,000 charge in 2008-09.

2.7 The Government thinks it is right that non-domiciles who have been in the UK for more than a short period should pay an annual charge if they wish to retain access to the beneficial tax regime. It also believes that those who have been here the longest, enjoying the benefits offered by the UK's economy and society, should make a greater contribution than the current £30,000 charge to reflect their closer connection to the UK. By bringing the tax treatment of domiciled and non-domiciled individuals closer, the rules will be made fairer.

2.8 Therefore, the Government proposes to introduce a higher charge of £50,000 for those non-domiciles who claim the remittance basis and have been UK resident in at least 12 of the 14 tax years prior to the year of the claim. It intends that this will take effect from 6 April 2012.

2.9 The £30,000 charge will be retained for those who have been resident in at least seven of the nine years prior to the year of claiming the remittance basis, but fewer than 12 years.

2.10 The £50,000 charge will work in exactly the same way as the current £30,000 charge, namely:

- In each tax year the individual will have a choice whether to pay the charge or to be liable to UK tax on their worldwide income and capital gains. Any decision will depend on the individual's personal circumstances, such as the level of their overseas income and capital gains;

- Those who choose to pay the charge will make a claim to the remittance basis on an SA tax return after the end of the relevant tax year;
- Individuals will be able to opt in and out of the remittance basis from year to year. Choosing the arising basis in one year will not preclude claiming the remittance basis in a future year; and
- It will not be payable if the individual is under 18 or if they have unremitted overseas income and capital gains of less than £2,000 in the tax year.

2.11 Currently, UK resident non-domiciles with more than £2,000 of unremitted overseas income and capital gains in a tax year who choose to claim the remittance basis lose their entitlement to the UK personal allowance for income tax and the Annual Exempt Amount (AEA) for capital gains tax (CGT). This will continue to be the case regardless of any charge paid.

2.12 It is expected that the higher charge will be paid by long-term resident non-domiciles who have overseas income and capital gains of at least £100,000 in a tax year. Affected individuals with lower amounts of overseas income and capital gains are likely to pay less tax if they choose to be taxed on their worldwide income and capital gains. It is probable that most such individuals will decide not to pay the charge.

2.13 Some non-domiciles will pay more tax as a result of the higher charge. However, the remittance basis will continue to offer significant tax advantages and other elements of the reforms outlined in this consultation, such as the new incentive for business investment, stand to offer new benefits to the non-domiciled population that are not available to other UK residents.

2.14 The Government believes it would be counter-productive to go further and introduce more stringent tax measures that could drive many non-domiciles away or deter them from coming to the UK in the first place. It would undermine the important work the Government is doing to promote growth.

2.15 The Government made clear at Budget that the higher charge should be set at £50,000 and should apply after 12 years of residence. It would welcome evidence on the likely impact of introducing this higher charge. Chapter 3 contains a summary of the expected impacts.

Encouraging business investment

2.16 Under current rules, overseas income or capital gains remitted to the UK by resident non-domiciles claiming the remittance basis are liable to UK tax, regardless of the purpose for which they are used. This can be a significant disincentive for non-domiciles to invest in UK business and is a counter-productive feature of the rules. Removing this impediment would promote the UK's international competitiveness, help UK businesses to attract investment and send out a strong message to non-domiciles that the UK is a good place to invest.

2.17 In the 2011 Budget, the Chancellor announced that overseas income and capital gains remitted to the UK for the purpose of commercial investment in UK business would no longer be liable to UK tax. This consultation seeks views on the detailed design of this policy.

2.18 To ensure the policy is effective in its aim of attracting investment to the UK, the Government's objective is to design an incentive that is widely drawn and encourages active investment in a broad range of businesses and sectors. It should cater for the diverse types of commercial investment that non-domiciles want to make and at the same time support the Government's aim of fostering economic recovery based on a balanced economy.

2.19 The Government recognises that complexity can deter investment. Therefore, to make the investment incentive genuinely appealing to non-domiciles, the Government is clear that it should be free of unnecessary restrictions and be simple to use.

2.20 The Government particularly wants to promote investment where this creates new business activity or supports businesses that otherwise might find it hard to attract investment. This will help to generate jobs, tax receipts and wider economic benefits. However, the Government does not believe the incentive should be exclusively targeted on smaller and entrepreneurial businesses and welcomes investment in businesses of all sizes and maturity.

2.21 Whilst the aim is to draw the policy widely, this must be consistent with protecting Exchequer revenue and ensuring it is not open to abuse. In particular, it would be contrary to the Government's policy objectives if this incentive were used for the direct personal benefit of the individual or for other non-commercial purposes.

2.22 The sections below describe the main features that the Government proposes for the new incentive to achieve these objectives.

Types of business

2.23 In order to encourage investment in a broad range of businesses the Government proposes to allow tax-free remittances for investment in the following types of business. They would be classed as "qualifying businesses" for the purposes of this policy:

- Businesses carrying out trading activity: it is proposed that this will follow the generally understood definition of "trading" as developed in case law, namely that trade generally involves the exchange of goods or services with a customer for reward. Trading on a commercial basis must constitute a substantial proportion of the overall activities of the business in which the individual invests.
- Businesses undertaking the development or letting of commercial property: this is generally carried on as a commercial business but may not technically fall within the definition of trading activity. The Government recognises that non-domiciles often want to invest in commercial property and that including it will broaden the appeal of the incentive. To qualify for tax relief, development or letting of commercial property must constitute a substantial proportion of the overall activities of the business.

2.24 This broad definition extends to all sectors of the economy and caters for entrepreneurial businesses as well as more traditional ones. It would encompass many of the businesses and sectors in which non-domiciles want to invest, for example manufacturing, retail, technology and importing goods. It would also include financial services businesses where a trade is being carried out.

2.25 In keeping with the intention of drawing this policy widely whilst preventing abuse, there are only a small number of areas that the Government proposes specifically to exclude from the definition of a qualifying business. These exclusions would apply even if the business would otherwise fall under the definition contained in paragraph 2.23:

- Holding and letting residential property: the Government is concerned that including this type of activity would introduce an unacceptable risk of the scheme being used for non-commercial purposes, such as an individual using a business to acquire a residential property in which they live. However, it is not intended to exclude all types of investment in residential property. For example, investing in a business that builds and develops residential property would be permitted, provided

this business fell within the definition of trading activity. It is also proposed to allow investment in certain types of residential property such as nursing homes and hospitals where a commercial trade is carried on.

- Leasing: where the leasing of tangible moveable property (such as yachts, cars, furniture, pictures) or the provision of personal services (such as nannies, cooks, chauffeurs) is a part of the activities of the business. Excluding this type of business is consistent with the objective of ensuring the incentive is not used for non-commercial purposes or direct personal benefit.

2.26 The Government does not propose to make any other specific exclusions from the definition of a qualifying business.

Question 1

Are the proposed exclusions from the incentive appropriately drawn? Should other types of business be included or excluded?

Form of business

2.27 The Government proposes to stipulate that overseas income and gains must be invested in companies if they are to be classed as tax-free remittances.

2.28 It is concerned that extending relief on remittances to other forms of business, such as partnerships, trusts and sole traders would expose the Exchequer to an unacceptable risk of avoidance and might allow overseas funds to be used for purposes that are not clearly commercial. For example, partnerships have been prone to being used to create artificial losses that are deducted against an individual's income tax bill.

2.29 Confining the policy to companies will be simple and transparent. The Government expects that, in the vast majority of cases, non-domiciled investors will wish to invest in companies and that this will not put unnecessary or prohibitive restrictions on the incentive. Subject to the definition in paragraph 2.23 and the limited exclusions proposed in paragraph 2.25, investment could be made in companies in any sector.

2.30 The Government is considering whether the new incentive should also apply to investment in companies listed on a recognised stock exchange and companies quoted on exchange-regulated markets, such as AIM and PLUS quoted. This would allow non-domiciles to remit income or capital gains free of tax to invest directly in listed companies, including the buying and selling of existing share capital.

2.31 The inclusion of listed companies would be consistent with the aim of designing a policy that encourages a range of investment activity. It might also avoid the need for provisions to deal with situations where companies become listed or de-list during the period of investment. However, it could mean that the benefit of the incentive would be less targeted at the businesses which have the greatest difficulty raising capital. It could also risk creating administrative complexity, for example due to the potentially high volume of transactions in listed companies and the need to keep records of the numerous purchases and sales of shares.

2.32 The Government would therefore welcome views on whether it would be preferable to create:

- a relief that is focussed on unlisted companies and companies quoted on exchange-regulated markets such as AIM and PLUS quoted, reflecting the fact that these businesses have the most need for new sources of investment; or

- a wider relief that extends to companies listed on a recognised stock exchange.

Question 2

What would be the impact on both investment and complexity of extending the incentive to listed companies?

Channel of investment

2.33 A variety of investment vehicles already exist that enable individuals to invest in the UK, including offshore companies and trusts. The UK has rules to ensure that such investment vehicles pay their fair share of tax.

2.34 It is common for non-domiciles to hold money in offshore trusts but the tax treatment of remittances currently deters some offshore trusts and companies from investing in the UK. For this reason, it is not proposed to limit the new tax incentive to investments made directly by the individual. There will be no restriction on individuals remitting overseas income or capital gains which are held in investment vehicles or trusts. This will allow non-domiciles to invest in UK businesses using funds held in offshore companies and trusts without attracting a tax charge on the remittance.

2.35 The Government does not intend to introduce new rules on the tax treatment of income or capital gains generated in the UK by investments made in qualifying businesses through offshore channels. The existing tax treatment will continue to apply.

Form of investment

2.36 The Government recognises that funding UK companies through a mixture of share and loan capital is a normal commercial structure. It is common for non-domiciles to invest through preference shares and loans, as well as ordinary shares; often this is attractive as a means of reducing the risk of the investment.

2.37 Therefore, it does not propose to impose any restriction in this area and it will be possible for overseas income and capital gains to qualify as a tax-free remittance whether invested in shares or loans.

UK businesses

2.38 The Government wants to ensure that non-domiciles can invest in a range of companies, including those incorporated in other countries, and believes this will broaden the positive economic impact of this incentive. Therefore, it does not propose to restrict tax relief to investment in businesses that are resident in the UK or to businesses carrying out trades wholly or mainly in the UK. Relief will be extended to overseas income and capital gains remitted to invest in non-UK resident companies that have a permanent establishment in the UK.

2.39 While this approach would allow investments to be used for trades outside the UK, non-domiciled investors can already invest in such trades without remitting income or capital gains into the UK. It is therefore likely that in the vast majority of cases, non-domiciles will use the new incentives to invest in UK trades, which they cannot currently do without incurring a tax charge.

Companies holding shares in other companies

2.40 The Government proposes that the new tax incentive should also apply to overseas income and capital gains remitted to invest in companies which hold shares in other companies, provided the holding company only holds shares in businesses that:

- carry out business activity as defined in paragraph 2.23 and do not carry out excluded activity described in paragraph 2.25; and
- are companies; and
- are resident in the UK or have a permanent establishment in the UK.

2.41 The Government does not propose to introduce any other restrictions on the type of holding company that can qualify or the degree of ownership the company has over its subsidiary companies. This means that companies that hold shares in other companies and are resident outside the UK would be included. It also means that private equity companies and venture capital companies could qualify even where they do not have a majority ownership stake in the invested companies.

Size of investment

2.42 The Government would like to attract investment in the UK from non-domiciles regardless of their level of wealth. Therefore, it does not propose to set any upper or lower limit on the amount of overseas income or capital gains that can be remitted tax-free in a tax year for commercial investment in qualifying businesses. Imposing such limits would be restrictive and create complexity.

Connection to the qualifying business

2.43 It is not proposed to impose any restrictions on the investor's connections to the business in which they invest. The Government recognises that an investor may wish to work for or be a director of the business and that to prohibit this would undermine the effectiveness of the policy.

2.44 Investors will also be able to draw commercial remuneration from the company in which they invest. However, there will be provisions to prevent an investor taking non-commercial payments from the business as a way of converting their investment into tax-free money used for personal, rather than commercial, purposes. These are described in more detail in paragraph 2.52.

2.45 Equally, an investor may want to invest in a family-run business for which their children or other members of close family work. Therefore, these principles will extend to individuals who are connected to the investor and it is not proposed to impose any restrictions on such individuals working for, investing in or drawing commercial remuneration from the qualifying business.

Anti-avoidance

2.46 It is critical to ensure that Exchequer revenue is protected and that appropriate provisions are put in place to prevent abuse of the new rules for non-commercial purposes.

2.47 In particular, the Government is concerned to prevent:

- non-domiciles investing in low-risk businesses for a limited period and then taking out the original investment tax-free to enjoy in the UK; and
- investment leaking out from companies to individuals for non-commercial purposes during the period of investment.

2.48 At the same time the Government recognises that complicated anti-avoidance provisions could deter non-domiciles from using this new incentive and believes that both these risks can be tackled by relatively straightforward provisions.

2.49 Firstly, it proposes a provision to require that overseas income or capital gains remitted for investment in a qualifying business must be taken out of the UK when the investment is disposed of. It is proposed that this must take place within two weeks of the individual receiving the money generated by the disposal of the investment. If the original investment remains in the UK for longer than this period after receipt of the money, it will be treated as a taxable remittance of the original income or capital gains used for the investment and be subject to the usual remittance basis rules. However, there will be provisions to allow individuals to reinvest the overseas income or capital gains in other qualifying businesses without the need to take them back out of the UK, provided this takes place before the end of a period of two weeks after receipt of the money generated by the disposal of the original investment.

2.50 This provision means that it would be unnecessary to impose restrictions on the length of time for which the investment must be held. It also avoids the need for complicated rules to govern how the money can be used in the UK after disposal of the investment.

2.51 It is not intended to create detailed rules to identify which particular holding of shares in or loans to a company is related to the income or capital gains used for the investment. This would be complicated to legislate and to administer. Therefore, the amount of overseas income or capital gains used to fund the qualifying investment will be identified with the first amounts of value taken out of the business which are not a permitted commercial payment until the amount of the income or gains have been matched.

2.52 Secondly, the Government proposes to introduce a provision to prevent the value of the investment leaking out to the individual either directly through payments or loans which are not arms-length or through transactions designed to pass value to the individual. For example, it would not be permitted for the company to use the funds invested to guarantee loans made to the individual; nor would it be possible to make payments to a third party which are linked to payments made to the individual. This would not prevent an individual or a connected person enjoying commercial levels of remuneration from the company in which they invest or receiving dividends or interest out of profits made by the business after the investment has occurred.

2.53 In addition, there will be provisions to prevent non-domiciles buying a pre-existing business from themselves by selling it to a new company funded by income remitted from overseas. This would create no new business investment in the UK and would merely transfer legal ownership whilst the individual continues to own the business.

Question 3

Are the proposed anti-avoidance provisions suitable? Would it be appropriate to require remitted income or capital gains to be taken out of the UK or reinvested within two weeks of the disposal of the investment?

Claiming the relief

2.54 This policy will not require non-domiciles to invest in businesses that are approved or vetted by the Government. To do so would create onerous burdens for businesses and potential investors, as well as operational costs for Her Majesty's Revenue and Customs (HMRC). However, it is important for the Government to be able to monitor the policy, assess its effectiveness and police the new rules.

2.55 Any non-domicile who uses this business investment incentive would already be required to complete an annual SA tax return under current rules in order to claim the remittance basis. This is not a new requirement. The Government's preference is to make it mandatory for an individual who pays tax under the remittance basis and remits income or capital gains for business investment to make a claim for this new relief on their SA tax return.

2.56 The Government is conscious that it would be counter-productive to require extensive disclosure. Therefore, it proposes only to request basic information related directly to the business investment incentive. Under this approach the individual could be required to state:

- whether they had remitted income or capital gains to the UK for investment in a qualifying business;
- how much they had remitted for this purpose; and
- in what businesses they had invested.

2.57 The information would enable the Government to monitor how the funds remitted for qualifying business investment are used in the UK. The Government would not require disclosure about the source of income or capital gains remitted to the UK for the purpose of investment or the channel through which they were remitted. Additional disclosure in connection with remittances made for purposes other than business investment or other aspects of the remittance basis would not be required as part of the claim for relief.

Question 4

Would a mandatory requirement to claim the relief for business investment on a Self Assessment tax return be an appropriate way of monitoring the policy? If not, what alternative monitoring approach would be appropriate?

Interaction with the remittance basis charge

2.58 Individuals who make tax-free remittances under the business investment scheme will still be required to pay the annual £30,000 or £50,000 charge in full if they have been resident in the UK for the relevant number of years and elect to be taxed on the remittance basis. It is not proposed to reduce or waive the remittance basis charge for these individuals. To do so would introduce significant complexity and cost to the policy. The Government considers that the proposed tax relief for business investment provides a strong investment incentive notwithstanding the possible requirement for an individual to pay the remittance basis charge.

2.59 Individuals who choose to be taxed on all their worldwide income and capital gains instead of paying the remittance basis charge will, by definition, not benefit from the business investment incentive because their overseas income or capital gains will be liable to UK tax when they arise and before they are remitted to the UK.

Summary

2.60 Overall the Government believes the features set out above will help to drive new sources of investment to the UK. However, it wants to ensure that the policy is genuinely attractive to non-domiciles and, to help design an effective policy, comments are welcomed on any of the points outlined in the sections above.

2.61 The Government is committed to creating a stable environment for non-domiciles to invest and, accordingly, there will not be any time limit on the availability of this investment incentive.

Question 5

Would the policy as outlined be an effective means of encouraging investment in the UK?

Simplifying the existing remittance basis rules

2.62 The Government recognises that aspects of the remittance basis rules can in some circumstances be complicated to operate in practice. While much of the complexity is inherent in the structure of the remittance basis, the Government believes that scope exists to simplify the rules in a way which can benefit individuals, their employers and their advisors.

2.63 The principles which the Government believes appropriate when assessing proposals for simplification are that they should:

- have no material Exchequer cost, either directly or by opening up new opportunities for tax avoidance;
- deliver clear and material benefits, either by materially reducing administrative burdens for a significant number of people or by decreasing uncertainty which might currently be deterring non-domiciles from coming to the UK; and
- be simple to legislate.

2.64 The Government will consider simplifications to the rules, provided these principles are met.

2.65 There are four areas where representations have already been made to simplify or formalise the rules and which the Government intends to address through legislation. These are:

- nominated income;
- foreign currency bank accounts;
- taxation of assets remitted to and sold in the UK; and
- Statement of Practice 1/09.

2.66 These simplifications are described in detail below.

Question 6

(a) Do you think the proposed solution for each simplification would be effective?

(b) Can you propose other ways in which the remittance basis rules could be simplified, provided they meet the principles described in paragraph 2.63?

Nominated income

2.67 Non-domiciles who have been UK resident in at least seven of the past nine tax years are liable to an annual charge of £30,000 if they claim the remittance basis. The rules governing the payment of this charge can be very complicated and result in significant administrative burdens and inconvenience for the taxpayer.

2.68 Those who elect to pay the charge are required to nominate an amount of their overseas income and capital gains which is taxable on the arising basis and is deemed to generate an additional tax charge of £30,000.[1] This must be in addition to the UK tax to which they are otherwise liable on income and capital gains arising in the UK or remitted to the UK. This nomination ensures that the £30,000 is a tax charge on overseas income and gains rather than a standalone levy.

2.69 There are complicated rules to ensure that an individual cannot subsequently remit any of the income or capital gains which they have nominated before other overseas income and capital gains which would be taxed in the UK when remitted.[2] In the absence of these rules, it would be possible for an individual to reduce significantly the amount of tax they pay on the income or capital gains which they remit to the UK.

2.70 Individuals can encounter significant administrative difficulties where they fail to keep their nominated income and capital gains segregated from other income and capital gains. In such situations, an individual might inadvertently remit some of their nominated income and capital gains to the UK. This will mean that they become subject to complicated identification rules which trace the origin of each payment and ensure that the nominated amounts are always the last to be remitted.

2.71 To avoid some of these complexities, it is common for an individual to open an overseas bank account which has the sole purpose of holding funds to generate sufficient income to be nominated for the purposes of the annual charge. Whilst this should allow the individual to avoid the identification rules, the need to set up a special overseas bank account involves additional expenditure and administrative obligations. Moreover, even where an individual has a dedicated bank account for their nomination, it cannot be guaranteed that they would never inadvertently make remittances from the account.

2.72 The Government recognises that this can result in excessive and unhelpful complexity which is hard for the taxpayer to understand. It therefore proposes to amend the legislation to allow individuals to remit the first £10 of income or capital gains which they nominate free of tax and without becoming subject to the identification rules. This will enable them to nominate up to £10 of their foreign income or capital gains for the purposes of the £30,000 charge without having to ensure they do not subsequently remit any part of that nominated amount to the UK. Many individuals only nominate a small amount of foreign income or capital gains and so this simplification would remove the risk of them inadvertently remitting the nominated income and triggering the identification rules.

2.73 This would significantly reduce the need to maintain an overseas bank account solely for the purposes of nominating income and capital gains, whilst making the nomination rules less administratively onerous.

2.74 The remaining rules applying to nominated income and capital gains will remain unaltered.

[1] Section 809C of the Income Tax Act (ITA) 2007

[2] Sections 809I and 809J ITA 2007

Foreign currency bank accounts

2.75 Individuals who operate bank accounts denominated in a currency other than sterling face particular issues relating to CGT because foreign currency bank accounts (FCBAs) are chargeable assets for the purposes of CGT.[3] This means that a withdrawal of funds from such an account constitutes a part disposal of the account on which a capital gain or loss can arise.

2.76 There is an exemption from CGT where sums are deposited in an individual's FCBA in order to be used for personal expenditure outside the UK.[4] However, the exemption does not extend to all sums in FCBAs. This means that, whenever a withdrawal is made from a FCBA and the exemption does not apply, fluctuations in exchange rates are almost certain to give rise either to a chargeable gain or an allowable loss.

2.77 The calculations of gains and losses can often become extremely complicated and require detailed records to be kept until all deposits in the account have been withdrawn, which may be for very long periods. However, over time capital gains and losses on FCBA transactions tend to broadly balance each other: as a consequence, in many cases the administrative burden is disproportionate to the final tax payable or losses allowable.

2.78 These problems are particularly relevant to individuals taxed on the remittance basis as they are more likely than other people to make regular use of FCBAs and cannot rely on the Annual Exempt Amount (AEA) to cover smaller net chargeable gains arising on the accounts. The Government acknowledges these difficulties and believes they should be addressed.

2.79 It therefore proposes a straightforward and comprehensive solution whereby all sums within an individual's FCBA will be removed from the scope of CGT. This would apply to non-domiciled and domiciled individuals alike.

2.80 It is likely that such a measure would require some rules to protect the Exchequer, for instance, to counter the effect of arrangements that are neutral in economic terms but result in an exempt gain on an FCBA being matched by an allowable loss on another asset.

Taxation of assets sold in the UK

2.81 Under the current remittance basis rules, assets purchased overseas using foreign income or capital gains are normally liable to tax when they are brought to the UK. Limited exemptions exist for certain assets purchased out of overseas income or capital gains. These are known as exempt assets. These exemptions[5] apply where an asset is:

- a work of art or antique brought to the UK to be displayed in public;
- an item of personal clothing, footwear or jewellery;
- an item brought to the UK temporarily (up to 275 days in total) or for repair; or
- worth less than £1,000.

2.82 However, these exemptions are not available where the asset in question is sold in the UK[6] and, as a result, if it is sold the individual will be liable to UK tax on the initial cost of the asset in question.

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[3] Section 21(1)(a) of the Taxation of Chargeable Gains Act (TCGA) 1992

[4] Section 252(2) TCGA 1992

[5] Section 809Z to Section 809Z5 ITA 2007

[6] Section 809Y(3) ITA 2007

2.83 This means that individuals can be faced with a tax charge when they bring such assets to the UK, even in cases where they have only been remitted for the purposes of being sold. The Government recognises that this situation has the potential to make the UK less attractive as a place for the sale of assets by non-domiciled individuals.

2.84 This particularly affects assets, such as works of art, where the current rules strongly discourage non-domiciles from bringing the asset to the UK for sale. This undermines some areas of the UK's economy, including the art market and auction houses, to the advantage of the UK's competitors. It also creates complexity in the rules on remitted assets and imposes a tax charge on income that may not actually be enjoyed in the UK.

2.85 The Government therefore proposes to build on the existing exemptions and introduce a new provision which would remove the tax charge on remitting an exempt asset to the UK where it is subsequently sold in the UK. This exemption would cover situations where an exempt asset which is brought to the UK temporarily is sold and the purchaser retains the asset in the UK.

2.86 However, there is a need to prevent individuals using the proposed exemption as an opportunity to bring their overseas income and capital gains into the UK tax-free by using the proceeds of a sale of their assets for their personal use. Therefore, the exemption would include a provision that, in order to be exempt from a tax charge, all of the proceeds from any sale must be taken out of the UK within two weeks of the money being received by the individual. The Government would welcome views on whether this is a suitable period of time.

2.87 This proposed exemption would apply to all exempt assets and would not be restricted to any particular class of asset or sector of the economy. This would be in line with the underlying principle that non-domiciles using the remittance basis should only be liable to UK tax on overseas income and capital gains to the extent that they are enjoyed in the UK.

Question 7

Would two weeks be a suitable period of time before which the proceeds of the sale of an exempt asset should be taken out of the UK?

Statement of Practice 1/09 – employees with duties in the UK and overseas

2.88 Statement of Practice (SP) 1/09 was introduced following the changes made to the remittance basis in Finance Act 2008 and came into effect on 6 April 2009. It replaced SP 5/84 which had broadly the same purpose.

2.89 The full text of SP 1/09 is published on the HMRC website at http://www.hmrc.gov.uk/manuals/eimanual/EIM40306.htm.

2.90 SP 1/09 applies to employees who:

- are resident but not ordinarily resident in the UK;
- are taxed on the remittance basis; and
- carry out duties both in the UK and overseas under a single contract of employment.

2.91 Such individuals will typically have their employment income paid into a single overseas bank account. This will by definition hold a mixture of UK and overseas earnings, meaning that it is a "mixed fund". Mixed funds are accounts containing more than one kind of income, capital gains or capital, or containing income, capital gains or capital of more than one tax year.

2.92 For individuals in these circumstances, employment income attributable to duties performed outside the UK is not subject to UK tax provided it remains overseas. Therefore, in order to establish tax liability, there needs to be a way of distinguishing income attributable to overseas duties from income attributable to UK duties.

2.93 There are statutory rules which determine how this should be achieved[7] (the "mixed fund rules"). Under these rules, such individuals are required to establish their UK tax liability on the basis of each individual payment into the account over the course of a tax year. In the specific circumstances of employees who are not ordinarily resident, the mixed fund rules can be administratively complicated to apply in practice to employment income. This is because each payment of salary would have to be apportioned in relation to the work done in the pay period. This apportionment would vary from pay period to pay period creating a large administrative burden to track these changes as payments are made from the mixed fund.

2.94 The purpose of SP 1/09 is to reduce this complexity by removing the obligation from such employees to operate the mixed fund rules. Instead, they can establish their UK tax liability by apportioning the total income they receive in the year on the basis of the number of days they work in the UK compared to the number of days worked overseas over the whole year rather than pay period by pay period.

2.95 SP 1/09 simplifies the process for making transfers of money to the UK out of a mixed fund containing employment income from a single employment. This allows such employees to calculate their tax liability by reference to the total amount transferred out of a mixed fund during the whole tax year rather than by reference to individual transfers.

2.96 SP 1/09 is very widely used by expatriate employers and employees, and is important to business. The Government is seeking to put this non-statutory practice on a statutory footing to provide expatriate employees and their employers with greater clarity and certainty. This will preserve the features and details of the current practice.

2.97 There are some specific issues for SP 1/09 on which the consultation process will seek to clarify whether the simplified legislative treatment should apply. These are listed below.

Employee becomes not UK resident part way through a tax year and continues to deposit money into a bank account

2.98 The Government expects that this situation would usually only arise in a year in which an employee was leaving the UK permanently. If this is the case, the provisions which allow the tax year to be split into periods of residence and non-residence in certain circumstances (currently contained in Extra Statutory Concession A11), should apply and there would be no need for separate provision in the legislation that will replace SP 1/09.

2.99 However, the Government would welcome views on whether there are any other circumstances in which this situation would arise and, therefore, whether specific legislative provision might be necessary.

Employee holds bank accounts containing employee share scheme transactions in respect of non-UK situs assets

2.100 The Government considers that such accounts should only fall within the simplified treatment if the employee has little or no control over how the transactions are paid. For example, it is common that, when shares or share options which are acquired by virtue of the employment vest to the employee, the amount treated as earnings at that date will be paid through the payroll

[7] Sections 809Q and 809R ITA 2007

into the same account as salary payments. The simplified treatment should apply to such transactions.

2.101 However, the Government does not propose that accounts containing capital gains from share scheme transactions should qualify for simplified treatment because the employee can control when and into which account the transactions are paid after the shares have vested.

Question 8

Should the situations outlined in paragraphs 2.98 to 2.101 fall within the new statutory treatment for employees who are not ordinarily resident and carry out duties in the UK and overseas? Are there any other situations which are not covered by SP 1/09 and might require legislative provision?

3 Summary of impacts

3.1 This Chapter provides an initial assessment of impacts. As part of the consultation process, the Government would like to further explore the range of likely impacts with interested parties.

3.2 At Budget 2011, the Government published a policy costing showing the Exchequer impact of the package of measures outlined in this consultation. The Office for Budget Responsibility (OBR) has certified that this costing represents a reasonable and central view given the information currently available. The costing is available on HM Treasury's website at http://www.hm-treasury.gov.uk/d/2011budget_policycostings.pdf

Increasing the Remittance Basis Charge

Policy objective

3.3 Individuals who are resident but not domiciled in the UK have access to the beneficial remittance basis of taxation. This reform aims to bring the tax treatment of domiciles and non-domiciles closer and to ensure that those non-domiciles who have been resident in the UK the longest make a greater tax contribution.

Policy change

3.4 The introduction of a higher charge of £50,000 for those non-domiciles who are resident in the relevant tax year, have been resident in the UK in at least 12 of the 14 years prior to that year, and who elect to be taxed on the remittance basis in that year.

Other options considered

3.5 The Government considered the level at which the increased charge should be set and the length of residence before it should apply. The Government believes that the policy announced at Budget ensures greater fairness without acting as a prohibitive disincentive to those who wish to come to the UK.

Figure 3.A: Impacts of increasing the Remittance Basis Charge

Exchequer impact	This policy is expected to yield around £80m per year for the Exchequer in steady state. This includes the impact of behavioural change as outlined in the policy costing published at Budget. The final impact on the Exchequer will be confirmed at Budget 2012.
Economic impact	The policy could have a negative economic impact in isolation. However, it is one element of a package of reforms which is expected, overall, to have a positive impact on the economy and contains new incentives for non-domiciles.
Impact on individuals and households	Only individuals already paying the £30,000 charge are likely to be affected by this policy. It is estimated that around 3,500 such individuals will choose to pay the higher £50,000 charge in 2012-13. This amounts to an additional £20,000 for each year they choose to pay. It is assumed that only those who have significant levels of overseas income and gains in the relevant tax year will choose to pay the charge. Affected individuals who are non-domiciled and choose not to pay the charge will lose access to the remittance basis of taxation. They will become liable to UK tax on their worldwide income and gains ("the arising basis") and will be required to disclose all their worldwide income and gains on a SA tax return. It is estimated that around 3,500 individuals will choose to move to the arising basis in 2012-13. Figures for number of individuals are rounded to the nearest 500.
Equalities impacts	This policy is not expected to have any negative equalities impact. Any non-domiciled individual who has been resident in the UK for the relevant period will have a choice whether to pay the increased charge and retain access to the remittance basis, or to be taxed on their worldwide income in the same way as all other UK resident taxpayers.
Impact on business including civil society organisations	It is not expected that there will be a significant increase in administrative burdens. The vast majority of expatriate employees are assigned to the UK for 6 years or less and so this policy will not affect them or their employers.
Operational impact (HMRC or other public sector delivery organisations)	Any individual who pays the new £50,000 charge will already be paying the £30,000 charge, so there are not expected to be any significantly increased operational costs for HMRC.
Other impacts	No other impacts have been identified.

Encouraging business investment

Policy objective

3.6 The current charge to UK tax on overseas income and capital gains remitted to the UK by individuals claiming the remittance basis can be a strong disincentive to invest in UK business. Removing this disincentive will promote the UK's international competitiveness and send out a message to non-domiciles that the UK is a good place to invest.

Policy change

3.7 Overseas income and capital gains brought to the UK by remittance basis users will no longer be liable to UK tax if they are used for the purpose of commercial investment in a qualifying business.

Other options considered

3.8 Consideration has been given to how widely this option should be drawn and what businesses and types of investment should be included in the policy. This consultation seeks views on the detailed design of the policy.

Figure 3.B: Impacts of business investment incentive

Exchequer impact	This policy is estimated to have a direct cost to the Exchequer of around £20m per year in steady state. This excludes any Exchequer gain from tax receipts that may be generated as a result of additional investment caused by the policy. The final impact on the Exchequer will be confirmed at Budget 2012.
Economic impact	The policy is expected to have a positive economic impact by attracting additional inward investment from non-domiciles. This would help businesses across a wide range of sectors to grow and expand, increasing economic activity and creating additional employment, with resulting benefits for the Exchequer. There is currently no data to indicate how income or gains remitted to the UK are used. Therefore, it is very difficult to quantify the potential impact of this policy on the economy. Once implemented, information provided on SA tax returns could enable the effectiveness of this policy to be measured.
Impact on individuals and households	There is no requirement for remittance basis users to provide information about their unremitted foreign income so it is difficult to quantify how many will benefit from this new incentive. Some individuals will pay less tax on remittances of foreign income and capital gains, if they are currently making remittances for business investment. There are also expected to be significant benefits from the investment opportunities this policy will make available. No-one will pay more tax on remittances of foreign income and capital gains as a result of this policy. Those who benefit will mainly be wealthy and moderately wealthy individuals, but no minimum investment is required so the option will be open to any non-domicile who wishes to invest in UK business, regardless of the level of personal wealth. The policy is designed to be as simple as possible to operate, to ensure minimal costs for those wishing to use this incentive to invest. Although individuals may need to make additional declarations on their SA tax returns if a decision is made to require claims for relief, the information required would be limited. As affected individuals would already be submitting an annual SA tax return, this would not be a large additional administrative burden.
Equalities impacts	This policy is not expected to have any negative equalities impact. It will provide new opportunities that will be available to all resident non-domiciled individuals.
Impact on business including civil society organisations	There will be no significant increase in the administrative burden or compliance costs for businesses or civil society organisations. Qualifying businesses will benefit from increased investment helping to generate growth, additional employment and further economic activity. It is not possible to calculate how much additional investment may be generated for businesses of different sizes.
Operational impact (HMRC or other public sector delivery organisations)	Although there is not expected to be a significant impact, there will be limited compliance costs for HMRC if it is decided following the consultation to require an individual to claim the relief as part of the Self Assessment process. Such costs would include amending HMRC forms to enable a claim to be made, and the capture and processing of that information.
Other impacts	No other impacts have been identified.

Simplifying the existing remittance basis rules

Policy objective

3.9 Some aspects of the remittance basis charge can be complicated to administer and difficult to operate. Although some complexity is inherent in the structure of the remittance basis, a central objective is to ensure that the rules for the taxation of non-domiciles are as transparent and easy to understand as possible without creating risks of significant Exchequer cost.

Policy change

3.10 There are four proposed changes:

- **Nominated income**: legislation will be amended to allow individuals to remit the first £10 of income or gains which they nominate without becoming subject to the identification rules.
- **Foreign Currency Bank Accounts (FCBAs):** all sums within individuals' FCBAs will be removed from the scope of CGT.
- **Taxation of assets remitted to the UK:** any exempt asset brought to the UK and sold will not be taxed as a remittance, provided the proceeds from the sale are taken out of the UK within a defined period of time.
- **Statement of Practice 1/09**: the concessionary treatment set out in SP 1/09 for international employees who are taxed on the remittance basis will be placed on a statutory basis.

Other options considered

3.11 Further technical simplifications have been considered but not taken forward at this point because, in the Government's view, they would not deliver significant benefits, would have a material Exchequer cost or would be complicated to legislate.

Figure 3.C: Impacts of simplifications to existing rules

Exchequer impact	This policy is expected to cost the Exchequer around £5m per year in steady state. The final impact on the Exchequer will be confirmed at Budget 2012.
Economic impact	These changes are not expected to have a direct economic impact but will have an indirectly positive impact. The complexity of the current rules, and the administrative burdens this can create, may act as a disincentive to invest or do business in the UK. The simplifications will help to remove those disincentives.
Impact on individuals and households	There will be no material impact on the amount of tax paid for any individual. However, these simplifications will significantly reduce the administrative burden of operating and complying with the rules for many individuals who claim the remittance basis.
Equalities impacts	This policy is not expected to have any negative equalities impact. The proposed simplifications stand to benefit any resident non-domiciled individual.
Impact on business including civil society organisations	It is expected there would be a reduction in administrative burdens for employers, particularly those with employees on tax equalisation contracts, and for agents with clients taxed on the remittance basis whose compliance obligations will be reduced.
Operational impact (HMRC or other public sector delivery organisations)	The overall reduction in compliance burdens caused by these simplifications will decrease the operational costs for HMRC associated with remittance basis taxpayers.
Other impacts	No other impacts have been identified.

4 Summary of questions

4.1 This chapter summarises the main issues for consultation, on which the Government invites responses. In responding, interested parties are reminded that Chapter 1 sets out the Government's key objectives and that, wherever possible, comments should be supported by relevant evidence.

4.2 The issues for consultation are as follows:

Business Investment

- Question 1: Are the proposed exclusions from the incentive appropriately drawn? Should other types of business be included or excluded?
- Question 2: What would be the impact on both investment and complexity of extending the incentive to listed companies?
- Question 3: Are the proposed anti-avoidance provisions suitable? Would it be appropriate to require remitted income or capital gains to be taken out of the UK or reinvested within two weeks of the disposal of the investment?
- Question 4: Would a mandatory requirement to claim the relief for business investment on a Self Assessment tax return be an appropriate way of monitoring the policy? If not, what alternative monitoring approach would be appropriate?
- Question 5: Would the policy as outlined be an effective means of encouraging investment in the UK?

Simplification

- Question 6(a): Do you think the proposed solution for each simplification would be effective?
- Question 6(b): Can you propose other ways in which the remittance basis rules could be simplified, provided they meet the principles described in paragraph 2.63?
- Question 7: Would two weeks be a suitable period of time before which the proceeds of the sale of an exempt asset should be taken out of the UK?
- Question 8: Should the situations outlined in paragraphs 2.98 to 2.101 fall within the new statutory treatment for employees who are not ordinarily resident and carry out duties in the UK and overseas? Are there any other situations which are not covered by SP 1/09 and might require legislative provision?

5 The consultation process

5.1 This consultation is being conducted in line with the Tax Consultation Framework. There are five stages to tax policy development:

Stage 1: Setting out objectives and identifying options.

Stage 2: Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3: Drafting legislation to effect the proposed change.

Stage 4: Implementing and monitoring the change.

Stage 5: Reviewing and evaluating the change.

5.2 This consultation is taking place during Stage 2 of the process. The purpose of the consultation is to inform the detailed policy design of the measures announced at Budget

How to respond

5.3 The Government welcomes comments and responses to this consultation. The key consultation questions are summarised in Chapter 4. All e-mail correspondence should be sent to non-doms@hmtreasury.gsi.gov.uk by close of business on Friday 9 September 2011.

5.4 This consultation document is available on the Treasury website at http://www.hm-treasury.gov.uk/consult_nondom_tax_reform.htm. Where possible, all correspondence should be sent electronically. Alternatively, mail correspondence can also be sent to the following address:

James Hood
Non-domicile taxation consultation
Personal Tax Team
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

5.5 When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality disclosure

5.6 Information provided in response to this consultation document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

5.7 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it

would be helpful if you could explain to us why you regard the information you have provided as confidential.

5.8 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury or HM Revenue and Customs (HMRC). HM Treasury and HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

5.9 This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

A The code of practice on consultation

A.1 This consultation is being conducted in accordance with the Code of Practice on Consultation that sets the following criteria:

- Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A.2 If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer
Consultation Coordinator, Better Regulation and Policy Team
H M Revenue & Customs
Room 3E13, 100 Parliament Street
London, SWA 2BQ

020 7147 0062 or e-mail hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

B Definitions

B.1 In determining an individual's liability to UK tax, there are three aspects that need to be considered:

- Residence

  There is currently no full statutory definition of residence for tax purposes. The current rules are based on a mixture of limited legislation, case law and HMRC guidance. Residence in part depends on the amount of time an individual spends in the UK. For example, an individual will always be resident if they spend 183 days or more in the UK in a tax year. Individuals will also be resident if they come to the UK temporarily and spend 91 days or more per year in the UK on average over a four-year period. However, other 'non-time' factors can be significant, such as accommodation, family, economic interests and social ties. Interested parties should note that the Government is consulting separately on the introduction of a full statutory definition of tax residence.

- Ordinary residence

  This is different from residence. The word 'ordinary' indicates that residence in the UK is typical. If an individual has always lived in the UK, they are ordinarily resident in the UK for tax purposes. Individuals are treated as ordinarily resident if they usually live in the UK (or intend to do so), or come to the UK regularly and these visits average 91 days or more per tax year. Ordinary residence (like residence) is not simply a question of the number of days a person is physically present in the UK over a period of time.

- Domicile

  This is a general law concept and is not defined for tax purposes. Broadly speaking, it is where an individual has their permanent home or intends to settle permanently. The law ascribes a domicile to every person at birth, usually inherited from their father. Individuals who have lived, or come to live, in the UK for a number of years can retain non-domicile status if they can show that they do not intend to remain in the UK permanently or indefinitely.

B.2 Individuals who are resident and domiciled in the UK are liable to UK tax on all their worldwide income and capital gains whenever they arise. This is known as the **arising basis**.

B.3 Those who are resident and non-domiciled or not ordinarily resident in the UK are eligible to claim the **remittance basis** of taxation. This means that they are:

- liable to UK tax on all UK income and gains; but
- only liable to UK tax on their non-UK income and capital gains if they are brought (remitted) to the UK. Non-UK income and capital gains left outside the UK are not liable to UK tax.

B.4 Those who are not resident in the UK are, subject to the provisions of double tax treaties, generally:

- liable to UK tax on UK trade, rental and employment income;

- liable to UK tax on income from savings and investments where they arise from a source in the UK, limited to the amount of withholding tax deducted;
- not chargeable to capital gains tax on the disposal of UK assets unless the gain is made on the disposal of assets situated in the UK that are used or held for the purposes of a UK trade; and
- not liable to UK tax on their overseas income and gains.

B.5 The UK tax treatment of non-UK income and capital gains can be summarised as:

	Domiciled	Non-Domiciled
Resident and ordinarily resident	**Arising basis -** all non-UK income and capital gains taxable when they arise	**Eligible for remittance basis** on non-UK income and capital gains
Resident but not ordinarily resident	**Eligible for remittance basis** on non-UK income but not on non-UK capital gains	**Eligible for remittance basis** on non-UK income and capital gains
Not resident	No tax on non-UK income and capital gains	No tax on non-UK income and capital gains

HM Treasury contacts

This document can be found in full on our website at:
hm-treasury.gov.uk

If you require this information in another language, format or have general enquiries about HM Treasury and its work, contact:

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