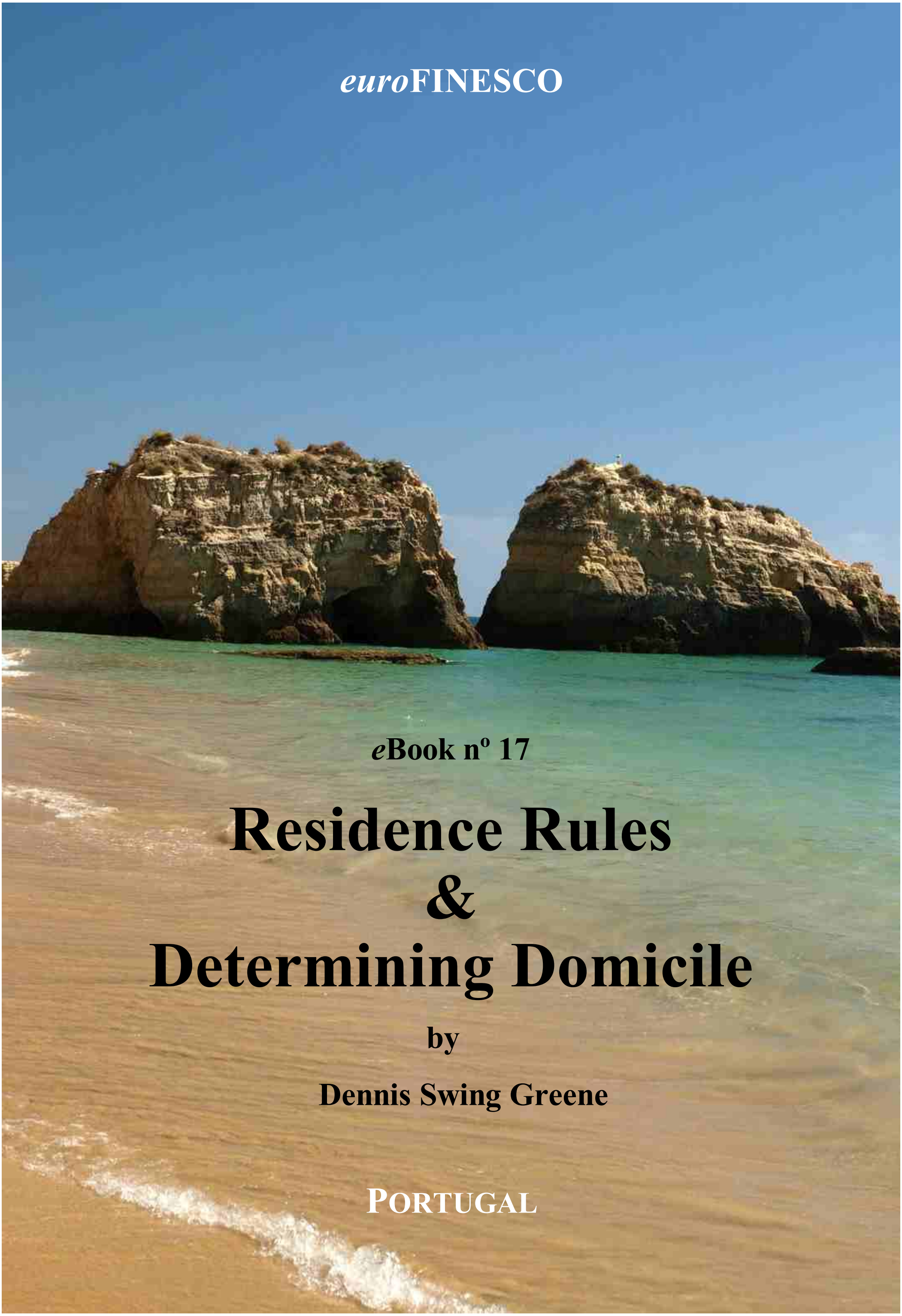

*euro*FINESCO

*e*Book nº 17

Residence Rules & Determining Domicile

by

Dennis Swing Greene

PORTUGAL

Ficha Técnica:

9ª Edição: *euro*FINESCO *e*Book nº17
Residence Rules & Determining Domicile
Autor: Dennis Swing Greene
Designer: Maria de São José Belchior Horta
Distribuição: *euro*FINESCO*s.a.*
Tiragem: Internet
Executado: Abril 2018

euro*FINESCO *s.a.

HEADQUARTERS
Rua do Sol, 4
8200-448 GUIA (Algarve)
tel: +351 289 561 333
fax: +351 289 562 061

Lisbon Branch
Rua António Maria Cardoso, 15, 4ºD
1200-273 LISBOA (Chiado)
tel: +351 21 342 4210
fax: +351 21 342 4212

Madeira Branch
Rua do Aljube, 61, 2º Dtº
9000-067 FUNCHAL (*Sé*)
tel: +351 291 221095
fax: +351 291 221103

Internet
e-mail: info@eurofinesco.com
www.eurofinesco.com
Portugal
mobile: +351 96 910 2813

Table of Contents

At ***euro*****FINESCO**, we take pride in being a frontrunner in fiscal and expatriate services in Portugal, playing a leading role in interpreting Portuguese fiscal legislation as plain English for the foreign resident community since 1991.

PORTUGUESE TAXATION

- *IRS* - Individual Income Tax Returns
- *IRC* - Income Tax Preparation for Portuguese Nominee Companies as well as Non-Resident Companies
- Fiscal Residency Transitions to Portugal
- Fiscal Representation for Non-Resident Individuals
- Fiscal Representation for Companies

INTERNATIONAL TAX ISSUES

- Bilateral Tax Treaties
- Jurisdiction Conflict Resolution
- Compliance Issues

PERSONAL TAX PREPARATION

The Portuguese tax system offers surprising opportunities to the foreign resident. When properly prepared, Portugal can prove to be a "tax haven within Europe" for you.

PORTUGUESE "*IRS*" INCOME TAX RETURNS

FINESCO specializes in helping foreign residents by preparing their annual Portuguese *IRS* Income Tax Returns.

NOMINEE COMPANIES FOR PORTUGUESE PROPERTY

- Meeting basic compulsory compliance commitments;
- Liaison between *Finanças* and Company Owners.
- Resourcing information to Owners;

-

FISCAL REPRESENTATION

- Protecting your Valuable Investment
- Meeting Compliance Requirements
- Resourcing Key Information
- Liaison with *Finanças*
- Personalised Service
- Payment Facility
- Plain English

DOCUMENTATION

We can assist you by cutting through the bureaucracy:

- *"Residências"*
- Portuguese Wills
- Driving Licences
- Rates Exemptions
- Fiscal Numbers
- Medical Cards

SMALL BUSINESS FORMATION

We can help expatriates launch new businesses in Portugal:

- Choosing the right structure
- Accountancy Services
- Social Security & VAT

The rules for Inheritance Tax in overseas locations differ greatly from country to county. While some forms of taxation in the European Union may have experienced different degrees of tax harmonization in recent years, the same cannot be said for Gift and Inheritance Tax. The process of Estate Planning for foreign residents with assets in different jurisdictions can be exceedingly complex and requires particular attention to structure and detail. Internationally, different national laws that govern asset succession are a confusing labyrinth:

- In some countries, real property is governed by situs law and personal property by the law of domicile.
- There are countries that will recognize foreign wills and entities such as trusts if drafted to comply with the statutes of country of domicile.
- Some Civil Law countries do not recognize trusts within the meaning of the law of equity, but may (or may not) recognize foreign trusts of non-resident foreigners or foreign domiciliaries.
- Some countries will apply the law of the deceased's domicile with respect to wills and estates, while others will apply the law of the country of Nationality.

CROSS BORDER ESTATE PLANNING

Cross Border Planning for individuals becomes important when assets and income are split between two or more jurisdictions. If you are a foreign resident, married to a foreigner, have foreign sources of income, or have assets in a foreign jurisdiction, Cross Border Planning may be necessary to avoid unforeseen harsh tax consequences. Anytime foreign legislation is introduced into a plan, complexity is the inevitable outcome because contradictory foreign laws must be accounted for. Because laws are so different in the international arena, planning in advance becomes essential for a satisfactory result.

Global Estate Planning involves connections between different countries. These connections typically arise when a citizen of one country resides in another, or owns property in a foreign country, or has beneficiaries such as a spouse, children or other beneficiaries who live abroad.
All foreign jurisdictions regulate the typical events in a human's life. Birth, death, marriage, divorce, bankruptcy, and the passing of property at death are governed by all modern societies. Regulations differ, adding complexity to any planning across borders. Typical differences exist among jurisdictions:

- Who is entitled to assets;
- How much the Revenue is entitled to;
- Legal definitions of seemingly identical terms;
- The legal validity of typical estate planning tools such as wills or trusts.

The legal structures by which nations have attempted to build predictability into the international system of resolving cross border disputes are a patchwork of conventions, treaties, and conflicting court opinions that change frequently. In the face of these divergences and conflicts, a global estate planner is expected to effect the individual's wishes for the distribution of assets, minimize red tape, such as probate and administration costs, mitigate taxes, and look into the future and predict the outcome of an individual's distribution scheme, and plan for unforeseen events. It should come as no surprise then that Cross Border Estate Planning is an absolute essential for anyone living abroad.

1. Residency Laws for EU Citizens in Portugal

In August of 2006, Portugal passed a Residency Law, regulating the free circulation and residency of EU Citizens in Portugal. Transposing the EU Directive of 2004, this legislation changes basic assumptions and definitions while greatly simplifying the compliance process for EU citizens. The statutes define three phases and are in harmony with similar measures being adopted throughout the 25 member countries of the European Community and Switzerland.

Phases of Residency

The government also announced an upcoming overhaul in the Law of Immigration to control non-EU workers migrating to Europe.

- *Phase 1*: Free Circulation - *up to 3 months*

For periods less than three months, all that is required for an EU citizen to travel in Portugal is an Identity Card or Passport. No visa and no registration are required.

- *Phase 2:* Residency - *more than 3 months*

If citizens wish to stay beyond three months, they must register with the *Câmara* (local Council) in the town where they reside within 30 days following the initial period. Beyond presenting proper identification, the registration includes a self-declaration, stating the basis of the Residency:

a) Employment or Self-Employment,

b) Health Insurance and Declaration of Means (*no lower than Portuguese national standards)*,

c) Education or d) Family.

The purpose behind the Means Test and health insurance is to assure that new arrivals will not be a burden on Portugal's social support system. Based on the self-declaration principle, no documentation is required to accompany this application. A Residency Registration Certificate is to be issued in the act and is valid for 5 years.

- *Phase 3:* Permanent Residency - *more than 5 years*
  After five years, a permanent Residency Card is required. This document is issued by the *Serviços de Estrangeiros e Fronteiras*. The only required documentation is an Identity Card or Passport and the original *Certificado de Registo* from the *Câmara*. Upon application, the foreign resident receives an acknowledging certificate with the final card (*Cartão de Residência*) to follow within 15 days.

The green, 3-fold *Residências* remain valid and may be exchanged on demand.

Loss of Residency
As a foreign resident, one may continue to travel freely within the EU. Residency status will only be lost when absent from Portugal for 2 consecutive years or when there is evidence of abuse of rights, fraud or a marriage of convenience.

Fines
Those who fail to comply with the new regulations will subject to the following fines:

Lack of Registration:	€400 - €1,500
Ongoing non-compliance:	€500 - €2,500
Negligence:	half of the above

Impact of the EU Directive
Since these basic steps are to be adapted by all member states of the European Union, the implications of these fulcrum points may be far reaching. With these changes, the non-residency period reduces to 90 days. Whether this will lead to an eventual harmonisation with the 183 day rule for fiscal residency remains up in the air for the time being. A second divergence that may have bearing on fundamental definitions is the new 5 year Permanent Residency status. Such a principle could easily lead both to a change in the UK Ordinarily Resident status (currently after only 3 years) as well as influence Domicile of Choice contentions for those wishing to shed their Domicile of Origin status. Like so many other gradual changes of harmonisation of principles within Europe, a clear picture has as yet to emerge as to the limits of nation state sovereignty and those that transcend throughout the Union.

An Historical Perspective

The current UK rules on residence and domicile can be traced back to the introduction of Income Tax in 1799 to meet the cost of the Napoleonic wars. This was imposed upon all income arising from property in Great Britain, whether or not the person was resident here, and on all income of those defined as being resident in the UK. However those present for some temporary purpose, with no view or intent of establishing residence, were not taxed as residents. Those who had been ordinarily resident, and had gone overseas for occasional residence abroad, continued to be taxed as residents. Income from foreign assets was subject to tax if it was remitted to the UK, but not if it was kept offshore. (The remittance basis was devised primarily as a means of taxing income from British plantations in the Americas.)

The regime has changed little since its introduction. By 1800 the definition of residence had been tightened so that those in the UK for 6 months, even if for a temporary purpose, were treated as resident. In 1803 Schedule D was introduced, charging tax on residents in respect of profits from property, wherever situated, and non-residents for property in Great Britain and on the profits of activities exercised.

During the twentieth century, occasional reforms have concentrated upon tightening up the remittance basis. In 1914 and 1940 it was tightened to cover fewer types of foreign income, and there was further tightening in 1956 and 1974. When Capital Gains Tax was introduced in 1965, it was charged on individuals who were resident or ordinarily resident, and the remittance basis applied to gains from foreign assets for those who were non-domiciled. Most recently, in 1993, the ‘available accommodation’ rule, under which those with accommodation in the UK might be regarded as resident for any year they visited, was abolished.

The Current Rules

The rules determining whether someone is resident, ordinarily resident, and/or domiciled in the UK are largely based on case law and reflect the development of the income tax system from its introduction in 1799. UK resident individuals who are both ordinarily resident and domiciled in the UK are liable to tax on their worldwide income and gains, wherever these arise. UK residents who are not domiciled in the UK are liable on overseas income and gains only to the extent that these are remitted or received in the UK. The way in which the rules work in practice, together with some of their implications, are highlighted through a series of hypothetical case studies.

The extent to which an individual is liable to UK tax will depend on whether s/he is:

- resident; and/or
- ordinarily resident; and/or
- domiciled in the UK.

These terms are not defined in detail in statute. They are in practice largely based on case law, mainly deriving from the 19th and early 20th centuries. The residence rules and the concept of domicile and how these impact on an individual's liability to UK tax are explained in booklet IR20, which provides a comprehensive statement of the Revenue's interpretation of the application of the rules in practice. An extract from the latest version of that booklet (December 1999) is set out in Annex A. This chapter, for the sake of simplicity, sets out a broad summary of the rules.

Residence

The residence basis of taxation defines the individuals who have a liability for tax in the UK. Non-residents are not generally liable to income or capital gains tax, except on income arising in the UK. They may, however, pay VAT and excise duties, and usually pay national insurance contributions on work they do in the UK for a UK employer. Individuals who are, or become, non-resident in the UK may well, of course, be resident and subject to tax in another country. The terms 'resident','ordinarily resident' and 'domiciled' are also used for other purposes in income and capital gains tax – for example, the residence, ordinary residence and domicile of the settlor of a trust may be material in determining the residence of trustees in particular circumstances.

The circumstances in which individuals are treated as UK resident for tax purposes include the following:

- they spend 183 days or more in any tax year or more than 90 days on average over a period of up to 4 years;
- they come to the UK intending to live permanently or for at least three years;
- they come to the UK for a purpose (for example employment) that will mean that they remain for at least two years (whether or not, in a particular year, they spend 183 days); and
- they usually live in the UK and go abroad for short periods, for example on business trips

People who have been treated as tax resident may lose that status:

- if they leave the UK permanently, or to live abroad for at least three years, and
- their return visits since leaving are less than 183 days in any tax year, and average less than 91 days per tax year over the period of absence; or if they leave the country to take up full time employment abroad and their absence covers a complete tax year, and their return visits do not exceed the 91 day average.
- For the purposes of the various day counting tests, days of arrival and departure have historically not normally taken into account.

Ordinary Residence

Broadly, being ordinarily resident means being resident year after year. Individuals are treated as ordinarily resident if they usually live in the UK (or intend to do so), or come to the UK regularly (or intend to do so), and these visits average 91 days or more per tax year.

Statutory Residence Test Rules

The statutory residence test rules were legislated in April 2013. Those not resident in the UK in all of the previous three tax years but present in the UK for fewer than 45 days in the current tax year will be considered not resident as will those resident in UK in one or more of the previous three tax years but present in the UK for fewer than ten days.

Those who leave the UK to carry out full-time work abroad, providing they spend less than 90 days and fewer than 20 days working in the UK, will also be considered non-resident.

Individuals will continue to be automatically considered resident if they are in the UK for more than 183 days a year, work full-time in the UK or their only home and their family is in the UK.

If these conditions do not confirm residency status, individuals not resident in the UK in any of the previous three years are categorised as "arrivers" while those who have been resident in one or more of the previous three tax years are categorised "leavers'.

Residency of both will be decided by the number of "*connection factors*" - including family residence and whether they have accessible accommodation in the UK - which apply to them. The number of factors which determine residency will depend on which category they are in and the amount of time they have spent in the UK in the current and previous tax years.

The paper admitted the status of the vast majority of people would not be affected by the test and that it will simply make residency status easy to discern.

Introducing a statutory residence status is a basic change to the British tax system. It is essential to create a workable, well-conceived and reasonable test that can stand the test of time.

For further information, please consult *e*Book nº 22
RESIDENCE RULES: *the EU, Portugal and the UK*

Domicile

It is important to stress that, while the concept of domicile is an important characteristic identifying those who pay tax in the UK on their worldwide income, it is not in itself a tax concept, but one of general law. It is distinct from nationality, residence or citizenship. Individuals acquire a "domicile of origin" at birth, which usually follows their father's domicile. Until the age of 16, their domicile will follow that of the person on whom they are legally dependent – a "domicile of dependency". After the age of 16, an individual can acquire a "domicile of choice" by providing evidence that they intend to settle permanently or indefinitely in another country. There are special rules for married women who married before 1 January 1974.

Domicile also plays a part in determining liability to Inheritance Tax. Individuals domiciled overseas pay Inheritance Tax to the UK exchequer on wealth situated in the UK. They become liable on their worldwide wealth either when they acquire a domicile in the UK or when they are deemed to be domiciled under special rules for Inheritance Tax. These special rules apply to those who have been resident in the UK for seventeen out of the last twenty years. However if property outside the UK is put in a trust before an individual becomes UK domiciled for Inheritance Tax purposes, it will be excluded from the charge to Inheritance Tax, even if the individual continues to enjoy the property after they are domiciled.

Resident individuals who are both ordinarily resident and domiciled in the UK are liable to tax on their worldwide income and gains, wherever these arise.

Remittance Basis

UK residents who are not domiciled in the UK are liable on overseas income and gains only to the extent that they are remitted to or received in the UK. This is called the remittance basis of taxation. It applies where a UK resident who is not domiciled receives:

- employment income, where the employer is not resident in the UK and the duties of the employment are performed wholly outside the UK;
- pensions and other earned income arising outside the UK;
- investment income arising outside the UK; and
- gains on disposal of overseas assets.

The remittance basis also applies where a UK resident who is not ordinarily resident receives:

- employment income, in respect of duties which have been performed outside the UK;
- pensions and other earned income arising outside the UK (and the Republic of Ireland), if the individual is a Commonwealth citizen (which includes a British citizen) or a citizen of the Republic of Ireland; and
- investment income arising outside the UK (and the Republic of Ireland), where the individual is a Commonwealth citizen or a citizen of the Republic of Ireland.

A Summary of the Residence and Domicile Rules

UK Status			Income Tax on Employment	Income Tax on Savings Income	Capital Gains Tax	Inheritance Tax
Resident	Ordinarily Resident	Domiciled				
✓	✓	✓	Worldwide (1)	Worldwide (2)	Worldwide	Worldwide
✓	✓	✘	Worldwide (1,3)	Worldwide (2,4)	Worldwide (4)	UK
✓	✘	✓	Worldwide (5)	Worldwide (2,6)		Worldwide
✓	✘	✘	Worldwide (5)	Worldwide (2,4)	Worldwide (4)	UK
✘	✓	✓	Duties in UK	UK Source (7)	Worldwide (4)	UK
✘	✓	✘	Duties in UK	UK Source (7)	Worldwide (4)	UK
✘	✘	✓	Duties in UK	UK Source	None (8)	Worldwide

For Income Tax and Capital Gains Tax all sources are taxed on the full amount of the income or gain arising except:

(1) Foreign Earnings Deduction of 100 per cent may apply – this only applies to seafarers.

(2) Special rules apply for foreign pensions in certain circumstances.

(3) Where an individual is non-domiciled and works for a non-resident company, earnings from employment wholly outside the UK are taxed on the Remittance Basis.

(4) Foreign sources taxed on the Remittance Basis.

(5) Income from duties of employment performed overseas taxed on Remittance Basis.

(6) Commonwealth and Irish citizens taxed on the Remittance Basis for all foreign sources (except Irish sources).

(7) Taxable on UK source income and FOTRA Securities ("*Free of Tax to Residents Abroad*").

(8) Gains on the disposal of assets used or held etc. for the purposes of a trade carried on in the UK by a branch or agency are chargeable.

4. Application of Residence & Domicile Rules

The vast majority of British nationals whether they were born in the UK or overseas, or whether their family origins are overseas, remain unaffected by any consideration of whether they are resident, ordinarily resident or domiciled for tax purposes because, for example, they are clearly resident on an ongoing basis in the UK, or because they have no unremitted foreign income and no foreign assets.

In 2002, data from Self Assessment returns indicates that there are around 100,000 individuals who benefit from the remittance basis of whom:

- 65,000 are non-domiciled residents; and
- 33,000 are resident, but not ordinarily resident.

Of these, around 75,000 completed an employment schedule with UK employment income of about £8 billion, giving an average annual income of just over £100,000. A smaller subset of 16,000 also returned foreign earnings totalling £800 million which were not remitted to the UK and therefore not liable to tax, giving an average foreign earnings of £50,000.

Routine Self Assessment information on non-domiciled residents by industrial sector is not available, but an analysis of the top 40 largest employers of resident non-domiciles – with 11,000 non-domiciled resident employees – showed that two-thirds were in banking and financial services, 10 per cent were in the oil industry, and 20 per cent were in manufacturing (particularly electronics) and others. Self Assessment data will, of course, only cover individuals within Self Assessment. There is no centrally held data on the above lines for individuals falling outside Self Assessment.

THE RULES IN PRACTICE

The rest of this chapter uses hypothetical case studies to illustrate how current rules work in practice, in a range of situations common to the increasingly globalised world.

Long-term Conditions

Example 1 illustrates the differential treatment of individuals with a long-term connection to the UK, depending on their domicile status. It highlights a case in which, for relatively non-mobile people, the precise status accorded to them under the rules can have a marked effect on their tax liabilities and can produce different treatment between two individuals spending the same amount of time here.

Example 1

Adam & Bill have lived in the UK all their lives. Both are now 50. Adam is UK domiciled. He is resident and ordinarily resident and is taxed on his worldwide income and gains. Bill is domiciled overseas. He is treated as resident and ordinarily resident and pays tax on UK income and gains. Income and gains with a non-UK source are taxed only when remitted to the UK.

Temporary Conditions

Visitors to the UK might have foreign source income and gains that derive from their activity prior to arriving in the UK. Example 2 shows how individuals with different types of income and different domiciles are taxed.

Example 2

Clive and Dan both take up work at the UK headquarters of a foreign company. Clive is a US citizen seconded to the UK for 9 months to work for the company. He is domiciled in the States. Whilst he is in the UK, he realises substantial gains in the US from his investments there. Provided he remits nothing from the US, he will be taxed only on the UK income.

Dan is domiciled in the UK. He has various overseas investments. He has been working in the States on a 24-month assignment before returning to work with the company in London. Apart from that, he has lived in the UK all his life. He kept his foreign investments while he was abroad, but realises substantial gains from them after returning to the UK. After his return, he pays tax on the whole of his income and gains.

Under the current rules, individuals spending a limited period here in single or successive tax years will be treated as resident here if their visits exceed certain limits. The rules can, however, produce different results for people who spend similar amounts of time here. In Example 3, this difference arises solely from the pattern of arrival and departure.

Example 3

Eugene & Ferdinand visit the UK and both spend 185 days in one year. Eugene comes to the UK for one continuous period and is treated as resident in the UK.

Ferdinand makes numerous visits to the UK during the year and is treated as not resident, because days of arrival and departure are ignored for the purposes of establishing residence.

Losing a long-term connection

A long-term connection to the UK can be severed in various ways under the current rules. Example 4 illustrates how different results can arise, depending on the timing and duration of absences from the UK.

Example 4

Gail, Helen and Iain are resident and ordinarily resident and have always lived in the UK. They decide to go abroad to work full time. Gail leaves the UK on 5 April and works abroad for just over a year. She visits the UK on a number of occasions during the year, spending 80 days here in total. When she returns she has lived outside the UK for a whole tax year and is treated as not resident and not ordinarily resident for that tax year. She will be taxed on UK source income only.

Helen leaves the UK on 7 April. She is away from the UK for 72 days and does not return to the UK at all until the end of her spell abroad. She has not been out of the UK for a whole tax year and is therefore treated as resident for the whole of the period she was away. She will be taxed on all her income and gains.

Iain leaves the UK on 5 April and stays away for 5 years. He comes back for 92 days a year (excluding days of arrival and departure). Because of the amount of time he spends in the UK, he is treated as resident and ordinarily resident throughout.

Moving From Temporary to Long-term Connection

In some cases, the current rules can produce a different result for individuals who spend precisely the same length of time here, depending on the intention of the individuals. In Example 5, the difference between individuals arises, not from the pattern of arrival and departure, but from the intention notified to the tax authorities.

Example 5

Jan and Kate both visit the UK regularly. Jan does not intend to make prolonged visits to the UK for the next 4 years. But in the event she visits the UK for 100 days a year for 4 years. She is treated as resident and ordinarily resident from the start of the 5th year only.

Kate intends to make prolonged visits to the UK for the next 4 years. She visits for 100 days a year. She is treated as resident and ordinarily resident from year 1.

Effects on Behaviour

Examples 6 to 8 provide illustrations of the way in which the residence and domicile rules can affect economic behaviour, and incentives to locate labour market participation, or even where to live. In Example 6, two individuals with different reasons for being in the UK are subject to the same tax treatment.

Example 6

Louise and Mona are domiciled overseas.

Louise is on secondment to the UK for 4 years. She has substantial income and gains in the US. She is treated as resident and ordinarily resident in the UK. She is taxed on all UK income, and on any US income and gains remitted to the UK.

Mona has lived in the UK for 40 years and has substantial financial interests. She too is treated as resident and ordinarily resident and is taxed on all UK income and on any non- UK income and gains remitted to the UK.

The two individuals in Example 7 both have capital and income arising overseas, and the way in which they use it determines the way in which it is taxed.

Example 7

Norman and Oscar are domiciled overseas.

Norman has never lived in the UK before. He comes to the UK and brings capital into the UK to start a business. He has income arising overseas, which he brings here to fund expansion of his UK business. He is taxed on all income and gains brought into the UK (provided they are in a taxable form).

Oscar is UK resident and ordinarily resident. He has lived in the UK for 30 years. He maintains his business interests outside the UK so that he can maximise benefits offered under the remittance basis.

In the next example, two skilled workers who stay in the UK for very different periods of time and with different intentions about which country will be their future home are taxed in similar ways while in the country.

Example 8

Paula and Quentin are highly skilled workers whose work permits have been fast-tracked through Home Office procedures because they are needed to fill UK skills gaps.

Paula takes a 4-year fixed contract in the UK and then returns to her home country. While in the UK, she is treated as ordinarily resident in the UK but domiciled overseas and is taxable on all her UK income plus any non-UK foreign income and gains she remits.

Quentin wants to come and live in the UK permanently; he likes London, has friends there and finds the climate pleasant. He intends to return to his country of origin to retire in 30 years time, though in fact he never does. He is also treated as resident and ordinarily resident here but domiciled overseas and pays tax only on UK income and gains remitted to the UK.

Complexity of the Current Rules

Finally, Examples 9 and 10 provide an illustration of the complexity of the current rules. Example 9 shows how changes to a pattern of visits may affect an individual's residence status under the averaging rules.

Example 9

Ruth and Seth leave the UK to work full time abroad. They leave the UK on 5 October and over the next four and a half years, they each make return visits to the UK.

Ruth visits the UK for 40, 80, 95, 95 and 90 days. She may be regarded as not resident and not ordinarily resident in the UK as her visits average less than 91 days a year taken over 4 years.

Seth visits the UK for 40, 40, 100, 95 and 90 days. Seth's visits also average less than 91 days over a four-year period, but he is viewed as having substantially altered his visits in year 3 and the averaging period is reset. Seth is treated as resident and ordinarily resident from year 3.

In the final example, the tax paid by the individuals is determined by the manner or sequence in which foreign earnings are brought into the UK.

Example 10

Tanya is UK resident and ordinarily resident but domiciled overseas.

Tanya has two sources of foreign income; a bank account yielding interest and a property from which she receives an ongoing source of rent. The rent is paid into the foreign bank account. Tanya closes the bank account by transferring the balance to a second overseas bank account. In the next tax year, Tanya remits all the money in the account to the UK. She is taxed on the rental income but not on the interest as the source upon which it arose had ceased before the beginning of the tax year in which the remittance was made.

Ulla and Veronica are also treated as resident and ordinarily resident in the UK but domiciled overseas. Both have come to the UK for 5 years, and have £10,000 investment income arising overseas. Both bring £10,000 here. Ulla transfers the investment income here straight away – she is liable to tax.

Veronica is able to bring other funds here from capital she holds overseas. She is not liable to tax in the UK on the £10,000 investment income arising.

International Experience

The following countries illustrate a broad overview of the rules and procedures in place in the member states of the Organisation for Economic Cooperation and Development (OECD). This demonstrates the variety of approaches used internationally which are currently used to determine residence for tax purposes.

The personal tax systems of all OECD countries define who is to be subject to tax and on what items of income and gains. In most countries individuals who are resident under the relevant domestic law definition are liable to tax on their worldwide income and gains, and non-residents are liable on income or gains arising in that country.

Each country has its own definition of what characteristics mark out “residents” and “non-residents”, with most being based, at least in part, on some degree of physical presence in the taxable period. In the majority of cases, anyone present in a country for 183 days or more during a taxable period is treated as resident there, but the detailed rules for defining residence vary considerably between countries. A number of countries (for example Ireland and Sweden) primarily define non-resident individuals by reference to their presence there on a short-term basis, considering the time spent in the country by the individual. Other countries (for example New Zealand, Spain and Portugal) additionally look at a number of other factors that demonstrate a physical connection with the country such as the presence of a permanent address, or the co-location of family.

In some, but not all, OECD countries there are special regimes for particular classes of resident. These usually fall into two broad categories. Firstly, a number of countries offer different treatment to residents who are in the country on a short-term basis, in some cases only where the individual was not previously resident there in the recent past.

The second broad category is represented by countries offering different treatment to particular groups of new arrivals. These groups include those with particular skills or training, such as researchers, or technicians for example in Denmark, Korea and Sweden, and executive/managerial personnel for example in Belgium and Luxembourg. There are also some special regimes for expats arriving in the country to work for a multinational company, for example in the Netherlands, or those who are on fixed or short term assignments.

The examples above look at tax status acquired by those arriving in the country. In a few countries, for example, Spain and Portugal, the potential tax treatment acquired in the country of destination (listed "tax haven") by those leaving the country is also considered in determining whether they lose their tax residence status in the country of departure.

The descriptions of the rules in other countries in the following table have been drawn from a range of publicly available sources, and include as much up to date information as possible. The Government would welcome comments on how they are applied in practice. This chapter sets out a broad summary of the rules and procedures in place in the member states of the Organisation for Economic Cooperation and Development (OECD). This demonstrates the variety of approaches which are currently used to determine residence for tax purposes.

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Australia	An individual who resides in Australia, including an individual whose domicile is there, unless the Commissioner of Taxation is satisfied that his permanent place of abode is outside Australia; or who has actually been in Australia, continuously or intermittently, during more than one half of the year of income, unless the Commissioner of Taxation is satisfied that his usual place of abode is outside Australia and that he does not intend to take up residence in Australia. A person's domicile for the purposes of the tests of residency is briefly either that of origin, choice or as ascribed by law. It is not defined by statute, but is a question of fact or degree. In certain circumstances (e.g. a working holidaymaker staying for a maximum of 1 year but barred from working for the same employer for more than 3 months) they will be considered non-resident even if staying for more than 183 days.	Residents: taxable on worldwide income. Non-residents: the assessable income is gross income derived from sources in Australia. (a) None. (b) New measures for qualifying individuals – tax exemption on foreign-source income – currently Taxation Laws Amendment Bill (7) 2002 before Australian Parliament which would apply where the person: • has not been an Australian resident at any time during 10 years before last becoming resident; • has not been resident for more than 4 years since last becoming resident; or • is holder of temporary entry visa and has not applied for permanent visa. Duration of exemption for 4 years (following which would become liable to tax on worldwide income). In addition, those eligible for certain superannuation treatment are also resident. Measure seeks to attract internationally skilled mobile labour and to assist in promotion of Australia as a business location. Exemptions would apply to: • foreign source income from assets regardless of when they were acquired; • capital gains or losses arising on assets other than those having necessary degree of connection with Australia; • interest withholding tax obligations; and • FIF rules.
Austria	Residence is determined according to circumstances. Major factors are physical presence, having a home at one's disposal, location of family and the centre of an individual's social and economic activities. A stay in Austria exceeding 6 months is deemed to establish a habitual place of abode there. A person who arrives in Austria in the course of a year will be considered resident from the date of arrival if it is his intention to stay.	Residents: (unlimited liability to tax) subject to tax on worldwide income. Gains from some assets, including securities, are not taxable if held for more than 1 year. Non-residents: (limited liability to tax) subject to tax on income arising in Austria. (a) Tax simplification measures for expats to cover expenses of maintaining household in Austria, educational expenses and home leave allowance if the individual: • has not had a residence in Austria during past 10 years and who is transferred from foreign employer to Austrian employer (subsidiary or PE of foreign company in Austria); • has employment contract with Austrian employer; • maintains his or her primary residence abroad; or • has assignment not exceeding 5 years. Totals up to 35 per cent of salary, within certain limits, which are deducted from the calculation of withholding tax.

Country | Definition of Residence | Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Belgium	Resident status does not depend only on physical presence but is defined as a person whose family home or place from which he manages his fortune, his business or his occupation is in Belgium. The place or residence of the household may be conclusive. Various categories of non-resident including: • individuals with a permanent home in Belgium (the expression 'permanent home in Belgium' means that a non-resident individual has established himself – together with his family, as the case may be – in Belgium in circumstances showing that he has not transferred his residence or the seat of his fortune to Belgium. In other words, such residence is temporary); • 'privileged' individuals without a permanent home who qualify for particular treatment under non-discrimination clauses in DTAs; and individuals without a permanent home in Belgium.	Residents: subject to tax on worldwide income. For capital gains not related to self-employment, only gains derived from the sale of land or buildings, or from the sale of shares to a non-resident company are subject to tax. Non-residents: taxable on income from Belgian sources. Variance between the categories is on the expenses which are tax deductible. (a) An employee is not taxable on amounts which his employer pays in order to reimburse expenses which are 'expenses attributable to the employer'; and as a non-resident, the foreign executive will not be taxable on foreign source income or on remuneration for activities carried out abroad. 4 categories of person qualify for this special treatment: • executive personnel requiring special knowledge and entrusted with responsibilities; • corporate directors exercising permanent functions; • special non-executive personnel whose recruitment in Belgium is very difficult; and • foreign research workers operating in scientific research centres or laboratories. The rules expressly exclude personnel whose recruitment abroad or assignment in Belgium is not indispensable and who could be replaced by Belgians. (b) As above.
Canada	Courts have held that an individual is a resident if Canada is where, in the 'settled routine' of his life, he 'regularly, normally or customarily lives'. In addition an individual is deemed resident for any year in which he *sojourns* (i.e. temporarily stays) in Canada for 183 days or more. Factors determining residence include regularity of visits to Canada; retention of a place of abode in Canada; whether spouse and children are in Canada; and whether living accommodation is bought or leased in a new overseas location.	Residents: taxed on worldwide income. Non-residents: taxed on Canadian source income. There are special tax rules and exceptions applying to individuals entering or leaving Canada with respect to the calculation of capital gains or losses and the general deemed disposition rule.
Denmark	Resident once an individual has lived in Denmark for 6 consecutive months (he will then be taxed as resident from date of arrival).	Residents: taxed on worldwide income. Non-residents: taxed on Danish source income. (a) A flat rate tax of 25 per cent (normally 39-59 per cent) on gross income of highly-paid, if working for Danish employer for up to 3 years in 7 year period (there are claw-back provisions if stay exceeds this, but there are proposals for these to be abolished). Technicians' relief for up to 3 years if employees working in Denmark for an external employer. Separation allowance for up to 2 years.

Finland	Present for more than 6 months continuous stay in any 12 month period or if they maintain a permanent home in Finland. Finnish citizens are still regarded as resident for 3 years from the date of departure, unless they can establish that no essential connections with Finland have been maintained.	Residents: taxed on worldwide income. Non-residents: taxed on Finnish source income. (a) Under a special expatriate tax regime, qualifying expatriates such as highly-paid employees whose duties in the service of a Finnish employer require special skills may elect to be taxed on their salary income at a flat rate of 35 per cent for up to 2 years.
France	An individual, whether a French or foreign national, is resident according to the French tax code if: • he has his permanent home or principal place of *sejour* in France (namely if he stays in France for more than 183 days per calendar year or spends more time in France than in any other country); • he carries out an occupation or employment in France, except where this is incidental to a foreign activity; or • the centre of his economic interests is in France.	Residents: subject to tax on worldwide income. Non-residents: taxed on French source income. (a) A foreign expatriate assigned to the French HQ of a multinational company may be eligible for tax relief for up to 6 years from the assignment date. The main benefit of this is relief from 'tax on tax' of tax equalisation packages.
Germany	Resident if individual has accommodation in Germany which is more than casual or temporary, or if he is physically present in Germany for more than 6 months consecutively which may fall in 2 calendar years.	Residents: subject to tax on worldwide income. Non-residents: normally subject to tax on certain defined income arising in Germany. In certain circumstances former residents of Germany who retain links to Germany have an extended tax liability as a non-resident for a certain period if emigrating to a lower tax country. (a) and (b) Non-residents may elect to be treated as residents if income subject to German taxation amounts to 90 per cent or more of their worldwide income or does not exceed certain limits – this allows them to claim full deductions.
Ireland	Resident if spending 183 days in Ireland in a tax year, or 280 in that and preceding tax year. No account taken of time spent in Ireland totalling 30 days or less in a tax year. Presence for a day means physical presence at the end of the day (midnight). Ordinarily resident if resident for three consecutive tax years. Ordinary residence status lost after being not resident for three consecutive tax years. Domicile follows general law principles, as UK.	Residents: (ordinarily resident, domiciled) liable to tax on worldwide income and gains. Residents: (not ordinarily resident, domiciled) liable on Irish source income and remitted foreign income; liable on worldwide gains. Residents: (not domiciled) liable on Irish source income and gains, and remitted foreign income and gains. Non-residents: (ordinarily resident, domiciled) liable on Irish source income, and worldwide gains. Non-residents: (not ordinarily resident, or not domiciled) liable on Irish source income and gains.
Country	**Definition of Residence**	**Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains**

Country	Definition of Residence	Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains
Italy	Resident individuals are those who for the greater part of the tax year are registered in the Italian civil registry, or have a residence or domicile in Italy as defined in the Civil Code.	Residents: subject to tax on worldwide income. Non-residents: subject to tax on Italian source income, with exemptions from tax on some bonds for certain non-residents.
Luxembourg	An individual is treated as resident if he is domiciled (i.e. has accommodation available for his use on a long-term basis) or 'habitually resident', defined as present in Luxembourg other than for a temporary purpose for more than 183 days in any year. Non-resident owners and directors of Luxembourg enterprises are deemed to have a *'fictive domicile'* there which results in tax liability on their worldwide income. However, non-resident directors who have never resided nor have a place of abode in Luxembourg and whose activities are regarded as a control function on behalf of nonresident lenders or investors are not deemed to have their domicile in Luxembourg.	Residents: taxable on worldwide income. Non-residents: taxable on income arising in Luxembourg. (a) Expatriates with managerial functions temporarily assigned to Luxembourg may be granted lump-sum allowances, normally for up to 5 years for those who become residents and 3 years for those who remain non-resident. The amount varies for married and unmarried individuals and there are also allowances for dependent children (with increases if they attend private fee-paying schools).
Netherlands	Residence is determined 'according to circumstances'. Major factors are physical presence, having a home at one's disposal, location of family and centre of economic and social activities. A person who leaves the Netherlands and returns within 1 year without having been resident elsewhere will remain resident in the Netherlands.	Residents: subject to tax on worldwide income. Non-residents: subject to tax on specific Netherlands source income. (a) A special facility called the '30 per cent' rule is available to individuals seconded to the Netherlands within an international group due to special knowledge. (b) An expatriate resident taxpayer can opt for non-resident status so that foreign investment income is not taxed.
Norway	A temporary stay in Norway will give the individual resident status from date of arrival if he remains for at least 6 months. Once tax resident, an individual retains this status for 4 years after departure unless away for more than 1 year and tax resident in another country. Due to abuse of the '1 year rule' above, the rule was replaced by a more limited relief from tax on employment income earned abroad which is tax exempt if taxpayer has lived abroad for at least 12 months. Short stays in Norway in a 6 or 12-month period do not result in loss of relief if stays are no longer than 6 days on average.	Residents: taxed on worldwide income. Non-residents: taxed on Norwegian source income. (a) Expatriates expected to reside in Norway for 4 years or less may be allowed a 15 per cent standard deduction from their gross income instead of itemised personal deductions. If expatriates have tax-equalisation package, their income is grossed up to include the amount of the tax reimbursement. This does not apply to income from directors' fees for Norwegian companies.

Portugal	Resident if individual: • is present in Portugal for more than 183 days in a calendar year; • occupies a house in Portugal on such terms that it may be presumed it is his intention to occupy it on a permanent basis; • belongs to the crew of a ship or aircraft having its home port in Portugal; or • A Portuguese national who gives up tax residence is considered resident for the next 4 years if the new residence is in a tax haven.	Residents: subject to tax on worldwide income. Non-residents: taxable on Portuguese source income.
Spain	Resident if an individual: • has a permanent presence in Spain for more than 183 days during a calendar year; • has his base or the base for his economic or professional activities in Spain; and • If one family member is resident, the entire family group is considered resident for tax purposes. A Spanish national who gives up Spanish tax residence is considered resident for the next 4 years if the new residence is in a tax haven.	Residents: subject to tax on worldwide income. Non-residents: subject to tax on Spanish source income.
Sweden	Present for more than 6 months in 12-month period. In addition, Swedish nationals and individuals who have been resident in Sweden for at least 10 years are deemed to be residents during the 5 years following their departure, unless they can prove that they have not maintained essential ties with Sweden.	Residents: subject to tax on worldwide income. Non-residents: normally subject to tax on income arising in Sweden but not on most interest and royalties. (a) Tax relief for foreign experts, researchers and other key persons who work in Sweden temporarily. 25 per cent of salary is tax-free along with some benefits (removals expenses, home leave travel, school fees). Tax relief is only for first 3 years in Sweden and intended length of temporary work must not exceed 5 years. Main criterion is that skills are impossible or extremely difficult to recruit in Sweden. An individual who has resided in Sweden at any time during 5 years preceding calendar year in which assignment starts is not eligible for the relief and it may only be granted if remuneration is paid by Swedish company, branch or permanent establishment.
Switzerland	Resident if an individual: • has their place of residence in Switzerland. This is defined as the place where a person dwells with the intention of living permanently and which therefore provides the centre of his personal and economic interest; • remains in Switzerland for more than 30 days and exercises activity of trade, business or employment; or • remains in Switzerland for more than 90 days where not engaged in gainful activity.	Residents: (unlimited tax liability) subject to tax on worldwide income, but not on capital invested or income derived from business, permanent establishments and real estate located abroad. Non-residents: (limited tax liability) subject to tax on Swiss source income. (a) Expatriates may claim certain specific deductions according to cantonal and federal law. Examples are costs for housing, moving, travelling and education.
Country	**Definition of Residence**	**Scope of Taxation and Special Expatriate Provisions for (a) Employment Income, (b) other Income and Gains**

<table>
<tr><td>UK</td><td>The extent to which an individual is liable to UK tax will depend on whether s/he is:
• resident; and/or
• ordinarily resident; and/or
• domiciled in the UK.
The circumstances in which individuals are treated as UK resident for tax purposes include the following:
• they spend 183 days or more in the UK in any tax year or more than 90 days on average over a period of up to 4 years;
• they come to the UK intending to live permanently or for at least three years;
• they come to the UK for a purpose (for example employment) that will mean that they remain for at least two years (whether or not, in a particular year, they spend 183 days here); and
• they usually live in the UK and go abroad for short periods, for example on business trips.
Individuals are treated as ordinarily resident if they usually live in the UK (or intend to do so), or come to the UK regularly (or intend to do so), and these visits average 91 days or more per tax year.</td><td>UK residents who are not domiciled in the UK are liable on overseas income and gains only to the extent that they are remitted to or received in the UK.
The remittance basis also applies where a UK resident who is not ordinarily resident here receives:
• employment income, in respect of duties which have been performed outside the UK;
• pensions and other earned income arising outside the UK (and the Republic of Ireland), if the individual is a Commonwealth citizen (which includes a British citizen) or a citizen of the Republic of Ireland; and
• investment income arising outside the UK (and the Republic of Ireland), where the individual is a Commonwealth citizen or a citizen of the Republic of Ireland.</td></tr>
<tr><td>USA</td><td>Nationals/citizens are resident. Non-nationals who have right of residence are resident under the substantial presence test if they are present in US on at least 31 days in a calendar year and the sum of the number of days present during that calendar year, together with the prescribed fraction of the days present in the 2 preceding years equals 183 days or more; or if they hold a green card. Various exceptions to the numerical substantial presence test are available for non-citizens. If an individual's 'tax home' is abroad and he is not in the US for 183 days or more during the current calendar year, he would not meet the substantial presence test.</td><td>US citizens and resident aliens: subject to tax on worldwide income.
Non-resident aliens: taxed on income effectively connected with a US business and certain other income from US sources.</td></tr>
</table>

RESIDENCY AND INHERITANCE TAX

	Nature of Tax	Scope	Situs for Non-Residents	*Criteria:* Domicile	*Criteria:* Residency	Non-Residency for Nationals
Austria	IHT	worldwide	✓	✘	✓	exempt after 2 yrs
Belgium	IHT	worldwide	✓	✘	✓	exempt after 2 yrs
Denmark	Estate Tax	worldwide	✓	✓(a)	✓	na
Finland	IHT	worldwide	✓	✘	✓	na
France	IHT	worldwide	✓	✘	✓	6 out of 10 yrs (b)
Germany	IHT	worldwide	✓	✘	✓	exempt after 5 yrs
Ireland	IHT ©)	worldwide	✓	✘	✓	5 years preceding
Italy	none (d)	national	✓(e)	✘	✘	na
Luxembourg	IHT	worldwide	✓	✘	✓	na
Netherlands	IHT	worldwide	✓	✘	✓	exempt after 10 yrs
Norway	IHT	worldwide	✓	✘	✓	only if taxed abroad
Portugal	none (f)	national	✓(f)	✘	✘	na (territoriality)
Spain	IHT (g)	worldwide	✓	✘	✓	na
Sweden	IHT	worldwide	✓	✘	✓	exempt after 10 yrs
Switzerland	IHT (h)	worldwide	✓	✘	✓	may vary with Canton
UK	Estate Tax	worldwide	✓	✓	✘	na

(a) Austria - Domicile has a similar meaning to Residency.

(b) France - applies to transferees (heirs) who are resident for more than 6 of the previous 10 years, irrespective of nationality;

© Ireland - IHT is called Capital Acquisitions Tax - "*CAT*".

(d) Italy - Registration Tax of up to 15% (spouse and children are exempt).

(e) Italy - Immoveable property is also assessed a Cadastral Tax at an aggregate rate of 3%.

(f) Portugal - Stamp Duty applies at 10% (immediate family members are exempt).

(g) Spain - IHT varies with each Autonomous Region.

(h) Switzerland - IHT is determined by each Canton.

The first step in developing an international estate planning solution for an individual and his family is to determine the jurisdictions with which the individual, his family and the assets and liabilities comprising his estate are connected. For individuals originating from the UK, the most important connecting factor is domicile.

Domicile is a general law concept which is 'borrowed' by tax systems. Domicile can be crucial for tax purposes but it also determines the appropriate system of personal law, which governs such things as the validity of marriage and the determination of succession rights for an individual and his family.

It should be noted that an individual is domiciled in a legal jurisdiction, which need not necessarily be a country. An individual cannot be domiciled in the USA or Australia, for instance, since these countries have federal legal systems; he would be domiciled in specific states in those countries, such as California or New South Wales. A UK domiciled individual could therefore move permanently to the USA but, because his employer relocates him regularly between states, retain his UK domicile.

1. Definition of 'Domicile'

The generally accepted definition of domicile is the place which people regard as their permanent home and with which they have the closest ties. It contains a dual element of actual residence in a place and an intention of remaining in that place permanently.

In law nobody is without a domicile. The five principles that govern domicile are:

* No one shall at any time be without a domicile.
* No one can at any time have more than one domicile.
* Domicile must relate to a territory subject to one law - a legal jurisdiction.
* A change of domicile may never be presumed.
* Domicile must be determined according to the English concept of domicile.

2. Domicile of Origin

In law the domicile of origin is that which a person acquires by law at birth. This will depend on the domicile of the appropriate parent at the time of birth (see Domicile of Children below). It will change only when a person acquires a different domicile through being dependent on a person whose own domicile changes, or acquires a domicile of choice in his/her own right.

The acquisition of another domicile will always displace that of origin, but the domicile of origin will be revived if a domicile of choice is abandoned without another domicile of choice taking its place.

3. Domicile of Children

Before 1 January 1974 a legitimate child's domicile changed automatically with that of the father and an illegitimate child's changed automatically with that of the mother.

The Domicile and Matrimonial Proceedings Act 1973 came into effect on 1 January 1974 and since that date the following rules have applied to the domicile of children.

A legitimate child

Domicile changes automatically with that of the father until the child is 16 (or marries under 16) unless:

(a) the child's parents are alive but living apart and either:
   - (I) the child's home is with the mother, and not with the father; or
   - (ii) the child had at any time domicile by virtue of (I) above & has not since had a home with the father.

(b) The child's mother is dead and at her death the child had a domicile by virtue of (a) above and has not since had a home with the father.

If either above applies, the domicile of the child will be that of the mother (if dead, her place of domicile at death).

An illegitimate child

Domicile changes automatically with that of the mother until the child is 16 years old or marries under the age of 16.

4. Domicile of Married Women

Before 1 January 1974 a married woman had the domicile of her husband and could not acquire a domicile independently of him so long as the marriage subsisted.

The effect of the Domicile and Matrimonial Proceedings Act 1973 was to give married women the same capacity as anyone else of having an independent domicile (whether a domicile of origin or of choice) unless they acquire a new domicile of choice.

In the case of a marriage subsisting immediately before 1 January 1974, a wife will retain the domicile which she had immediately before that date (i.e. the domicile of her husband), unless it can be demonstrated that she has acquired a domicile of choice. In such cases the facts to be taken into account in determining whether a domicile of choice has been acquired, must exist on or after 1 January 1974 or unless the marriage subsequently breaks down.

5. Deemed Domicile

Deemed or fictional domicile is a tax concept, which is designed to maintain or create a connection with a territory for tax purposes where the individual would not be considered domiciled there under the general law. Generally this applies for three years to individuals leaving the UK (and begins an Inheritance Tax quarantine period) and after seventeen years for individuals moving to the UK. In the UK it only relates to Inheritance Tax.

6. Domicile of Choice

Persons capable of acquiring an independent domicile can acquire a domicile of choice to replace their domicile of origin. To do this, they must reside in a place and form a clear and fixed intention of making their permanent home or indefinite residence there.

In some countries domicile is largely irrelevant for tax purposes or only affects capital taxes such as estate duty; in others, such as the UK, domicile is crucial and affects Inheritance Tax, Capital Gains tax and Income Tax.

Persons who have acquired a domicile of choice will revert automatically to that of origin if they leave the place in question and intend to abandon their permanent home or residence there.

The crucial test to be applied in immigration cases is whether a person has made the claimed domicile of choice his/her home with the intention of establishing a family there and/or remaining there indefinitely (unless something happens to cause a change of mind).

The length of residence is not in itself conclusive proof of whether a domicile of choice has been acquired because a person who has only just arrived in a particular country could satisfy the test if it were clear that he/she intended to live in that country permanently. Conversely, a person may have lived in a particular country for a considerable time (for example, for employment purposes) but may have no intention of remaining there.

When an individual acquires a new domicile of choice it is as if he is connected to his domicile of origin by a piece of elastic, known as the doctrine of continuance. If he abandons one domicile of choice for another then his domicile of origin revives, however briefly: the elastic drags him back to his first home despite the fact that he has severed all connections with it for many years. This could have the effect of triggering a further three-year deemed domicile quarantine period for UK Inheritance Tax purposes.

Prolonged actual residence is an important item of evidence of volition, but other facts and circumstances indicative of intention must supplement it. The residence must answer a qualitative as well as quantitative test. A domicile of choice must be a residence not for a limited period or particular purpose, but general and indefinite in its future contemplation. The intention must be a present intention to reside permanently, but it does not mean that such intention must be irrevocable. It must be an intention unlimited in period, but not irrevocable in character.

It is not necessary to show that the intention to make a home in the new country is irrevocable or that the person whose intention is under consideration believes that for reasons of health or otherwise he will have no opportunity to change his mind...the true test is whether he intends to make his home in the new country until the end of his days unless and until something happens to change his mind.

7. Assessing Domicile

As every event in a person's life can be of relevance to the question of domicile, it is essential for you to obtain as much evidence and information as possible.

Any declarations of intention to remain permanently, or to retire in a place, are important but should be viewed in the context of a person's actions to see whether the two are consistent.

In order to decide a person's intentions and therefore where that person was domiciled at the crucial time, you will need to take into account some, if not all, of the following. However, no single factor is of itself, proof of change:

1. *Permanent Residence:*
   - a long period of local residence;
   - Permanent Residency Permit (more than 5 years);
   - Inventory of Visits (if any) to the UK and lengths of stay.
2. *Residence of immediate family:*
   - Spouse: marry a person already locally domiciled;
   - If minor children, move family to Portugal.
3. *Statutory Declarations:*
   - Declaration as to where you intend to retire or live permanently (ie: Dom 1?);
   - Adoption of local Statutory Law, ie: legal system for drafting of "main" will.
4. *Property*:
   - Sale of all property in UK;
   - Purchase of principal residence in Portugal.
5. *Means:*
   - if employed: the nature and length of local employment;
   - if retired: where arrangements have been made to pay pension;
   - Domicile of Investment Portfolio Structure:
     - transfer of investments to a Portuguese-based structure;
     - any regular income paid to Portugal.
6. *Burial:*
   - Declared intention of burial in Portugal;
   - Possible acquisition of a burial plot.

7. *Nationality:*

   If married to a Portuguese national, eventual acquisition of citizenship.

8. *Children's Education:*
   - If any minor children, where are they being or to be educated.

9. *Voting:*
   - Exercise of political rights: are you on the electoral roll?
   - If so, where and for how long?

10. *Links to the local Community*:
    - Relinquishing membership of clubs, societies, etc. in the country of origin;
    - Establish membership of local clubs, associations, church affiliation;
    - Establishment of local banking and financial facilities;

    If working:
    - Establishment of local business / business contacts;
    - Development of local business interests, *e.g.* directorships;
    - Membership in local professional associations.

11. *Documentation:*
    - Where was your Driver's Licence issued?
    - What is the registered resident address?

12. *Taxation:*
    - Fiscal Residency;
    - Payment of local and state taxes.

Not all the above factors will need to be considered in every application.

8. DOM 1

A form, "DOM 1", is available from Inland Revenue which can be used where an individual considers they are non UK domiciled. However, it is only necessary for the Inland Revenue to consider your domicile if it is immediately relevant in deciding your UK income tax and/or capital gains tax liability. If you are non-resident, this will not be an issue, as you will not in any event be subject to UK capital gains tax or income tax on overseas capital gains and income.

Therefore, by ticking the non-domicile box in one's tax return, or completing form DOM 1, the Inland Revenue is unlikely to enter into correspondence regarding tax status, as your domicile will have no impact on your immediate UK income tax or capital gains tax liability.

For a non-resident, the only impact of non-domicile status is for UK inheritance tax. Unfortunately, it is difficult to get a ruling during one's lifetime. This is because Domicile is a status that is partially based on one's intentions which are not irrevocable by nature. Since it is human nature to change one's mind, the clear intention to live out one's days in a jurisdiction may be altered at another stage of life due to illness, the death of a loved one or other changes in circumstances.

Nevertheless, even though no ruling may be issued, the submission of "DOM 1" will at least be seen a declaration of intention and supportive evidence of one's clearly stated intentions.

9. Spouse

Care should be taken to avoid the situation that can arise where one spouse is domiciled for inheritance tax purposes in the UK and the other is domiciled overseas. In these circumstances, the spouse exemption, which normally covers the transfer of all assets between spouses on death, is restricted to £55,000 when a UK domiciled spouse transfers assets to a foreign domiciliary. This can lead to serious complications and in cases where domicile is an issue, couples are advised to review their inheritance tax position regularly.

Opportunities in Portugal

It may come as a surprise that filing a correct tax return in Portugal can actually save you money. Submitting a tax declaration is not synonymous with paying tax. The Portuguese tax code has generous allowances and unexpected exclusions on certain forms of income, broad deductions for numerous types of expenses and liberal tax credits for many common expenditures. Many people find their tax burden in Portugal to be significantly lower than in their country of origin. Note these examples:

Pensions

- In 2012, each pensioner is entitled to a pension allowance of over €4,000. This means that a retired couple, after personal allowances, typically receives the first ±€15,000 of pension earnings free of tax.
- Many pensions paid within EU and beyond are entitled to an appreciable exclusion applying basic principles of elimination of Double Taxation. If eligible, an occupational pension of €70,000 should have little or no tax to pay.

Non-Habitual Resident

- Only the Portuguese-source portion of a non-habitual resident's employment or self-employment income will be subject to Portuguese Income Tax. In addition, this income will be levied at a flat rate of 20%.
- Foreign-sourced income will be exempt from assessment in Portugal when assessed under the rules of standing Double Taxation Agreements or the like.

Disabilities Benefits

Sometimes the common consequences of aging qualify taxpayers for 60% or greater disability status and still not hurt your golf game. If you are eligible, you will enjoy enhanced deductions.

Income from Portuguese Property

When reported as Portuguese-sourced business income, final tax rates are 5% or less with no further tax liability in the home jurisdiction for Non-Residents.

Exclusions

Many forms of income benefit from generous exclusions, reducing taxable income and dropping the remainder into lower tax brackets.

Madeira and the Azores

The autonomous regions have lower tax rates on numerous forms of income including personal income tax and Property Transfer Tax**.**

Dividends

Dividends paid by Portuguese companies or from any country within the EU are entitled to a 50% exclusion and are taxed on the other half at marginal rates with withholding on national dividends.

Royalties

Resident taxpayers are entitled to a 50% exclusion the first €40,000 of Royalties earned and partial relief above this level.

Roll-Over Relief

If you sell your principal residence and fully reinvest the proceeds in a new home, the capital gain is exempt. This is to be extended eventually to new home reinvestment anywhere in the EU.

Nominee Companies

If you purchase property for investment purposes, using a Portuguese Nominee Company will provide many benefits including simplified bureaucracy and tax efficiency.

Inheritance Tax

Portugal abolished Inheritance Tax as of 2004. Transfers to immediate relatives (spouse, children, grandchildren, parents and grandparents) are tax exempt. All others pay only 10% Stamp Duty.

These and other benefits are entitlements under legislation. It is your right as a citizen to take maximum advantage of these tax breaks. Who knows? Portugal may prove to be a legal "*tax haven*" for you within Europe.

*e*Books from *euro*FINESCO

1) Offshore Companies: *Moving Onshore*
2) Self-Employed in Portugal
3) Requirements of the Common Reporting Standard
4) Setting Up Fiscal Residence
5) Capital Gains Tax on Portuguese Property
6) Portuguese Tax Code Summaries
7) "*VPT*" Unveiled
8) Tax-Efficient Investing in Portuguese Property
9) Income from Portuguese Property
10) Taxation on Portuguese Property
11) "S.C.I.": *Sociedade Civil Imobiliária*
12) Property Companies: *White-List or Portugal*
13) Nominee Companies for Portuguese Property
14) Fiscal Representation in Portugal
15) *"Permutas"* or Property Swaps
16) Estate Planning & Nominee Companies
17) "I.H.T." – Residence Rules & Determining Domicile
18) Moving to Portugal – *before, during & after*
19) Taxation of Pensions in Portugal
20) "I.R.S." Tax Credits
21) CGT Mitigation: *14 Arrows in the Quiver*
22) Residence Rules: *in the EU, Portugal and the UK*

Extracts from *Relocating to Portugal - Useful Information*

23) Acquiring Portuguese Citizenship
24) Visas and Legal Framework
25) Your Rights to Health Care
26) Access to Education
27) Recognition of Qualifications
28) Social Security Entitlements
29) Golden Residence Visa

30) Leaving Portugal - *Moving Back*
31) Non-Habitual Residence Status and the Alternatives
32) Trusts, Foundations and Fiduciary Structures