

CHAPTER 41

ORDINARY RESIDENCE AND DOMICILE

All references to booklet HMRC 6 unless stated otherwise.

41.1 Ordinary residence

Ordinary residence is less strictly defined than residence and is generally less important. Usually the terms resident and ordinarily resident go hand in hand but there are some important distinguishing factors. **Ordinary residence means habitual residence** - i.e. where an individual is typically resident in the UK year after year.

Part 3
Para 3.2

It is possible for an individual to be resident in the UK but not ordinarily resident. An example of this may be a short-term visitor. **A visitor may come to the UK for a short period, and be caught by the 183 day rule.** The visitor would be **resident** for that particular tax year, **but if they typically or habitually live abroad, they will probably be regarded as not ordinarily resident.** You will see this referred to as "R" but "NOR".

41.2 Ordinary residence - coming to the UK

Individuals coming to the UK permanently or for three years or more, **are regarded as both resident and ordinarily resident from the date of arrival.**

"Short-term" visitors will become ordinarily resident if they are caught by the "91 days on average" rule. For example, if an individual comes to the UK on a short-term basis and, after four years, HMRC finds that his visits to the UK over that four year period have exceeded 90 days on average, the visitor will be regarded as resident and ordinarily resident from the start of year five.

Also if an individual comes to the UK on a short-term basis, but his intentions change such that he will be spending more than 90 days per tax year in the UK, he will become resident and ordinarily resident, from the start of the tax year in which his **intentions change.**

Part 7
Para 7.5

If the intention is to visit the UK for more than 90 days on average, the individual will be ordinarily resident from the beginning of the tax year of the first visit.

Let us now consider ordinary residence from the point of view of a **long term** visitor.

If the individual owns or acquires accommodation on a long term lease in the year they arrive they will also be considered ordinarily resident from the date of arrival. However, if the individual disposes of the accommodation and leaves the UK within 3 years, they will not be considered ordinarily resident.

Part 7
Para 7.7.3

If, however, an individual comes to the UK and does not own or acquire accommodation on a long term lease, and at the outset he intends to stay in the UK for less than three years, he will not be ordinarily resident from the date of arrival. If it turns out that that individual is still in the UK three years later, he will be regarded as ordinarily resident from the beginning of the tax years in which the third anniversary of his arrival falls.

Part 7
Para 7.7.4

Illustration 1

Assume that an individual arrives in the UK in July 2007 with the intention of staying in the UK for two years. If the individual is still in the UK in July 2010, he will become ordinarily resident from 6 April 2010. Therefore, for the first two tax years he will be resident but not ordinarily resident. For 2010/11 onwards, he will be both resident and ordinarily resident.

The taxpayer would acquire ordinary residence status earlier than 2010/11 if, for example, he acquired accommodation in the intervening period. The purchase of a house or taking out a long lease on a property, would indicate an intention to remain for three years or more, and would make the individual ordinarily resident from the start of the year in which the accommodation was acquired. Equally, if he decided to stay in the UK for three years or more, he would become ordinarily resident from the beginning of the tax year in which the decision was made (or from date of arrival if later).

In the majority of instances, residence and ordinary residence go hand in hand.

41.3 Ordinary residence - leaving the UK

If an individual is leaving the UK permanently or indefinitely and has made a distinct break in their pattern of life, they will be both not resident and not ordinarily resident from the day after the date of their departure.

Part 8
Para 8.2

If their return visits to the UK average 91 days or more per tax year they will remain both resident and ordinarily resident in the UK.

If an individual is leaving the UK to work abroad full-time they will be treated as both not resident and not ordinarily resident from the day after their departure provided they will be absent from the UK for a complete tax year and their return visits will be less than 183 days per tax year and average less than 91 days per tax year.

Part 8
Para 8.5

It is possible to be not resident in the UK but remain ordinarily resident in the UK. For example, an individual who normally lives in the UK would be not resident for a tax year if they were not in the country at all during a tax year. However, as the UK is where they would usually be resident and is where they have their normal home, family ties and social connections, they would still be ordinarily resident in the UK.

Part 3
Para 3.2

41.4 Domicile

The concept of domicile is more important than ordinary residence in terms of the effect it has on an individual's UK tax liability. Domicile is a concept of general law, and is separate from residence and ordinary residence.

Part 4
Para 4.1

An individual is **generally domiciled in the country in which he has a "settled intention to permanently reside"**. This phrase has been quoted in tax cases where an individual's domicile status has been an issue. In simple terms, an individual is domiciled in the country in which he has his permanent home.

An individual can have one, and only one, domicile. It is possible for individuals to be resident in more than one country at the same time, however it is not possible for an individual to have dual domicile status.

There are three separate types of domicile - **domicile of origin, domicile of dependency, and domicile of choice**.

41.5 Domicile of origin

An individual normally acquires a domicile of origin from his father when he is born. This is not necessarily the country in which the individual is born. For example, if a baby is born to British parents whilst they are on holiday in Australia, the baby will be domiciled in the UK and not domiciled in Australia. **Domicile of origin usually follows the father**, but it can follow the mother or a legally appointed guardian.

Part 4
Para 4.3.1

41.6 Domicile of dependency

A child will have a domicile of dependency until he or she is legally capable of changing it. A person has a legal capacity to change their domicile on reaching the age of 16. Until then, if the parent or guardian changes his or her domicile status, the domicile status of the child will change with them. This is what we mean by domicile of dependency.

Part 4
Para 4.3.3

Before 1 January 1974, a woman automatically acquired the domicile of her husband on marriage. For marriages after January 1974 this is no longer the case. It is possible that a husband and wife could have different domicile statuses, although in most cases their permanent home will presumably be the same place, so they will have the same domicile.

Part 4
Para 4.3.3

41.7 Domicile of choice

This is a slightly misleading term, as it seems to imply that taxpayers can change their domicile at a whim. A taxpayer can merely change his personal circumstances in such a way as to leave HMRC to conclude that he is no longer domiciled in the UK.

Part 4
Para 4.3.2

To lose a domicile of origin in the UK, and establish a domicile somewhere else, the individual must leave the UK and settle permanently or indefinitely in another country. If an individual is trying to persuade HMRC that he has established a domicile of choice in a country other than the UK, HMRC will require evidence that the individual has abandoned his ties with the UK and settled permanently abroad. Factors such as his intentions, his permanent residence, his business interests and ownership of property will be relevant.

41.8 Determining domicile

There are a variety of factors that HMRC will look at in determining whether an individual has either lost a UK domicile or acquired one. In simple terms, it is far easier to acquire a UK domicile of choice than it is to lose one. The Government is very keen to argue that individuals are domiciled in the UK, because they are able to collect more tax from UK domiciliaries than from foreign domiciliaries.

To lose a UK domicile, the individual must essentially sever all ties with the UK. An indicator of this is the sale of UK properties and the acquisition of properties abroad. The individual must move abroad and take his family with him. It is prudent to keep return visits to the UK as low as possible.

Remember that the taxpayer must demonstrate a settled intention to reside permanently in another country. Too many return visits to the UK may lead HMRC to question whether the UK is, in fact, the place the taxpayer regards as "home".

Some taxpayers over the years have taken the rather extreme measure of purchasing a burial plot in their new country. The idea is to underline the fact that their final resting place will not be in the UK.

There is no single criteria which determines whether an individual is or is not domiciled in the UK. Instead a **"balance of probabilities" approach is taken.** The same is true in considering whether an individual has acquired a domicile of choice in the UK. Long-term residence in the UK could be an indicator that the individual is, in fact, UK domiciled.

This is by no means clear cut, as just because an individual may have been resident in the UK for, say, the last twenty years, it does not necessarily follow that that individual regards the UK as his permanent home. The Revenue have indicated that a long-term resident will need to demonstrate a substantial probability that he will return to the country of his permanent home in order to preserve non-domicile status. Long-term residence should therefore be regarded as an indicator rather than a conclusive factor in itself.

Whilst the concepts of citizenship and nationality are not necessarily the same as domicile, if a foreign national takes steps to acquire UK citizenship, this may well be an indicator that that foreign national has acquired a UK domicile of choice. The assumption here is that the foreign national would only apply for citizenship if he wanted to regard the UK as a permanent home.

Marriage may also be an indicator that an individual has acquired a domicile of choice in the UK. If, for example, a French national comes to the UK and marries a UK citizen, and they settle and start a family in the UK, it is probable that the French national has become a UK domiciliary.

Example 1

Annika was born in Sweden to parents who were married at the date of her birth. She has always lived in Sweden. Her father has German domicile, her mother is domiciled in the UK. Annika is 22.

In January 2011 Annika came to London on a one year acting course. She intends to return to Sweden in the summer of 2012.

For UK tax purposes in 2011/12 Annika will be:

- a) **Resident, ordinarily resident and domiciled**
- b) **Resident, ordinarily resident but not domiciled**
- c) **Resident but not ordinarily resident and not domiciled**
- d) **Not resident, not ordinarily resident and not domiciled.**

Example 2

Madge was born in Canada to Canadian domiciled parents. Her husband Guy was born in the UK to UK domiciled parents. They have been married for 40 years. They currently live in London but they are hoping to settle in Vancouver when they have saved enough money for their retirement.

Which of the following describes their current domicile status:

- | | Madge | Guy |
|----|---------------|---------------|
| a) | UK | UK |
| b) | Canada | UK |
| c) | UK | Canada |
| d) | Canada | Canada |

Answer 1

The answer is **C**

Annika is resident in 2011/12, as she will have spent more than 182 days in UK.

She is not intending to stay for more than 3 years so she is not ordinary resident.

Annika has a German domicile of origin. She may have obtained a Swedish domicile of choice. She is not settling permanently in the UK so she is not UK domiciled.

Therefore she is resident but not ordinarily resident and not domiciled in the UK.

Answer 2

The answer is **A**

Madge acquired a domicile of dependency in UK as they married before January 1974.

Guy has a UK domicile of origin. He lives in London so still UK domiciled. He may however acquire a Canadian domicile of choice on retirement.

Therefore they are currently both domiciled in the UK.