

# **UK domicile status for tax purposes – Making sure your client's tax return is correct**

**Client name:**

**UTR:**

## **Why you have received this letter**

We believe your client may be affected by new rules that apply if they're not domiciled in the UK under common law.

This letter refers to the new rules which were introduced from 6 April 2017, which changed the UK domicile status for tax purposes. These rules were made under the Finance Act (No 2) 2017.

## **About the rules**

If your client is not domiciled in the UK under common law and they meet either condition A or B below, we will apply these new rules to them. This means that we will treat them as domiciled in the UK for tax purposes (known as 'deemed UK domiciled').

The rules are summarised below for ease of reference:

### **Condition A**

Your client is 'deemed UK domiciled' if they:

- were born in the UK
- have the UK as their domicile of origin
- are resident in the UK after 5 April 2017

If they were born in the UK and have a UK domicile of origin at birth, they can get a domicile of choice outside the UK under common law. They can do this if they've resided in another country or law territory with the intention of staying there permanently.

If they then return to the UK on or after 6 April 2017 and become UK resident for that year, they will automatically be deemed domiciled in the UK for tax purposes, under Condition A.

### **Condition B**

This condition applies after 6 April 2017 and affects individuals who are non-UK domiciled under common law and have been UK resident for at least 15 of the 20 tax years immediately before the tax year being considered.

All UK tax years of residence must be counted including:

- tax years where they were under the age of 18
- any tax year they were resident for part of the tax year (for example, if they leave or arrive in the UK during a tax year)

## **What this means for your client**

They may have become deemed UK domiciled under one of the above conditions and have to pay UK tax using the 'arising basis'. This means they:

- cannot claim to be taxed on the remittance basis
- must report all their worldwide income and gains in their UK tax return using the arising basis

## **How to report your foreign income and gains using the arising basis**

Using the arising basis, your client will pay UK tax on:

- income and gains from the UK
- income from outside the UK
- gains from the disposal of their assets, wherever they are in the world

However, they must declare all of their foreign income and gains on their tax return. Even if:

- they have already been taxed in another country
- they do not bring them to the UK

If the foreign income or gains have already been taxed in another country, you may be able to claim a credit in the UK for the tax paid in another country. For more information about this, go to [www.gov.co.uk](http://www.gov.co.uk) and search for 'HS263'.

Appendix A and B enclosed give more detail which your client will need to consider.

### **What you need to do now**

Please discuss this letter with your client and check if they meet any of the conditions to be deemed UK domiciled.

If they are deemed UK domiciled ensure they complete boxes 23, 23.1, 23.2 and 23.3 of the SA109 'Residence, remittance basis etc' supplementary pages.

Please discuss the enclosed Appendix A and B with your client and make sure that they report to us all their worldwide income and gains correctly. Please ensure that they include any foreign income or gains they've remitted since 6 April 2019 that are from a year where they claimed the remittance basis.

For more information about the changes, you can:

- go to **[www.gov.uk/government/collections/deemed-domicile-changes-from-6-april-2017](http://www.gov.uk/government/collections/deemed-domicile-changes-from-6-april-2017)**
- contact us on 03000 511811 between the hours of 9am and 5pm – please note that this number is only available for three months from the date at the top of this letter
- email us at [wmbc.mailboxbelfast@hmrc.gov.uk](mailto:wmbc.mailboxbelfast@hmrc.gov.uk)

We recognise the value of professional agents helping customers with their tax. For information about the required standards for agents, go to

**[www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents](http://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents)**

Yours faithfully

**WMBC Compliance**  
HM Revenue and Customs



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## Appendix A

### Changes to consider under both Condition A and Condition B as a deemed UK domicile

#### Using the remittance basis offshore income and gains from earlier years

If you've used the remittance basis in earlier years and bring any of those earlier years' foreign income or gains to the UK at a later date, you'll need to pay any UK tax that is due. This applies even if you're using the arising basis to pay UK tax for that year.

Typical examples of foreign income and gains which you need to report include:

- interest from overseas savings
- dividends from foreign companies
- income from overseas pensions and property
- foreign employment and self-employment income
- capital gains from the disposal of overseas assets and property
- certain income or gains paid out of a trust
- income or gains retained or accumulated in certain types of trust (for example, settlor interested trusts)
- income or payments that are an individual's based on anti-avoidance legislation, including the Transfer of Assets Abroad provisions
- services and benefits provided in the UK that are paid for with offshore income or gains

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## Appendix B

### Transitional provisions to consider as a deemed UK domicile taxed on the arising basis under Condition B

#### Rebasing of foreign assets for Capital Gains Tax purposes

Rebasing allows market value at 5 April 2017 to be used in order to calculate the gain or loss on the disposal of a foreign asset. This is only available if you were deemed UK domiciled under condition B on 6 April 2017.

#### Special rules affecting overseas trusts

You may have settled an offshore trust before you became deemed UK domiciled. If so, you may be able to take advantage of special rules about those trusts. These new rules mean that you'll not have to pay UK tax on any overseas income and gains from the trust as they arise. But you'll still have to pay UK tax on any UK income from the trust and any amounts from "Offshore income gains"

This is a special 'protected' status for trusts.

Offshore income gains (OIGs) from a tax year that the settlor of an offshore trust is deemed UK domiciled are not automatically protected under the trust protection rules. This is because OIGs are not included in the definition of "relevant foreign income" under section 830 ITTOIA 2005. Regulation 19 of the Offshore Funds (Tax) Regulations 2009 states that OIGs will be treated as an individual's "relevant foreign income" only if the remittance basis applies to the individual for the tax year in question. Individuals who are deemed domiciled under "the 15 of the last 20 years" rule cannot qualify for the remittance basis. This means OIGs in a trust settled by them cannot be treated as Protected Foreign Source Income.

If you become deemed UK domiciled we will also tax the value of any benefits that you, or in certain circumstances a close family member, receive from the offshore trust. We will do this from the point you become deemed UK domiciled. This is instead of taxing any income or gains. We will apply this charge if we can match the value of the benefit with protected foreign source income or gains from the trust structure. As you can no longer use the remittance basis, this charge will apply to benefits that you have received anywhere in the world.

It's possible for a trust to lose this special protected status if the trust becomes 'tainted'. This can happen for example, where loans are made between the deemed domiciled settlor and a trust where:

- the settlor makes a loan to the Trust on non-commercial terms
- the settlor takes a loan from the Trust and pays excessive interest on that loan to the Trustees
- a fixed term loan agreed before you become deemed domicile on non-commercial terms is not put on to commercial terms at the end of the fixed term
- interest on a loan is capitalised
- interest due on a loan is not paid

If a trust is 'tainted' then the deemed domicile settlor will have to pay UK tax on an arising basis on all income and gains from the trust structure.

For more detailed guidance on trust protections and capital gains tax changes, go to:

**[www.gov.uk/government/publications/trust-protections-and-capital-gains-tax-changes](https://www.gov.uk/government/publications/trust-protections-and-capital-gains-tax-changes)**

### **Important note**

The majority of transitional provisions only apply if you are deemed UK domiciled under Condition B and not UK domiciled under common law.

Please check your position carefully.



# Corresponding with HMRC by email

Use the following information to decide whether you want to deal with us by email. We take the security of personal information very seriously. Email is not secure, so it's very important that you understand the risks before you email us. We will not deal with you by email unless you tell us you accept the risks of doing so.

## About the risks

The main risks associated with using email that concern HMRC are:

- confidentiality and privacy – there's a risk that emails sent over the internet may be intercepted
- confirming your identity – it's crucial that we only communicate with established contacts at their correct email addresses
- there's no guarantee that an email received over an insecure network, like the internet, has not been altered during transit
- attachments could contain a virus or malicious code

## How we can reduce the risks

We'll desensitise information, for example by only quoting part of any unique reference numbers. We can also use encryption. We're happy to discuss how you may do the same but still give the information we need.

## If you do not want to use email

You may prefer that we do not respond by email, for example because other people have access to your email account. If so, we're happy to respond by another method. We'll agree this with you either by telephone or in writing via post.

## If you do want to use email

If you would like to use email as one of the ways HMRC will contact you, we'll need you to confirm in writing by post or email:

- that you understand and accept the risks of using email
- that you're content for financial information to be sent by email
- that attachments can be used

If you are the authorised agent or representative we'll need you to confirm in writing by post or email that your client understands and accepts the risks.

Please also:

- send us the names and email addresses of all people you would like us to use email with - you, your staff, your representative, your agent, for example
- confirm you have ensured that your junk mail filters are not set to reject and/or automatically delete HMRC emails

## How we use your agreement

Your confirmation will be held on file and will apply to future email correspondence. We'll review the agreement at regular intervals to make sure there are no changes.

## Opting out

You may opt out of using email at any time by letting us know.

## More information

You can find more information on HMRC's privacy policy, visit [www.gov.uk/help/privacy-policy](http://www.gov.uk/help/privacy-policy)