GUIDE TO DOMICILE, REMITTANCE BASIS AND EXCLUDED PROPERTY

A WEALTH *of* DIFFERENCE

utmost™
WEALTH SOLUTIONS

utmost
WEALTH SOLUTIONS

For financial adviser use only. Not to be distributed to, or relied upon by, retail clients.

Utmost Wealth Solutions is the brand name used by a number of Utmost companies.

This guide is issued by Utmost International Isle of Man Limited and Utmost PanEurope dac.

4
QUICK GUIDE TO UK RESIDENT NON-DOMICILED (RND) STATUS

5
DOMICILE

7
THE REMITTANCE BASIS OF TAXATION

12
THE UK STATUTORY RESIDENCE TEST

14
EXCLUDED PROPERTY AND EXCLUDED PROPERTY TRUSTS

You should pay particular attention to the sections marked with this icon.

BEFORE YOU BEGIN

The purpose of this guide is to explain how foreign income and gains are taxed in the United Kingdom for individuals who are UK resident and/or non-UK domiciled.

The guide covers the following key topics:

› Domicile

› The Remittance Basis of Taxation

› The UK Statutory Residence Test

› Excluded Property and Excluded Property Trusts.

The information in this guide is based on our interpretation of current legislation and HM Revenue & Customs (HMRC) practice as at 1 September 2022. This may change in the future. The tax treatment of bonds may also change and is dependent on individual circumstances.

QUICK GUIDE TO 'UK RESIDENT NON-DOMICILED (RND)' STATUS

RND ELIGIBILITY

An individual may be able to claim 'UK resident non-domicile' tax status if they:

- ✓ Currently reside in the United Kingdom (UK) but previously lived overseas and are still non-UK domiciled.
- ✓ Consider their natural home to be another country and do not create sufficient ties with the UK to create a new UK domicile of choice.
- ✓ Have **not** become deemed domiciled due to the length of time they have been UK resident.

TAX BENEFITS OF RND STATUS

Access to the advantageous remittance basis of taxation as follows:

- ✓ NO INCOME TAX on non-UK income unless 'remitted'* to the UK.
- ✓ NO CAPITAL GAINS TAX on non-UK gains unless 'remitted'* to the UK.
- ✓ No Inheritance Tax on non-UK situs assets.

TAXATION CHOICES AFTER YEAR 7

A: **Pay the Remittance Basis Charge**
Pay an annual flat fee of £30,000 or £60,000 to continue to access the remittance basis of taxation in that tax year. Note in some cases the charge is not required - see page 7 for more details.

B: **Use the Arising Basis of taxation**
Pay UK tax on worldwide income and gains whether remitted to the UK or not with no need to pay the Remittance Basis Charge.

BENEFIT OF UTMOST'S PRODUCTS FOR RNDS

Similar advantages of remittance basis of taxation as follows:

- ✓ Potentially no need to pay Remittance Basis Charge in respect to product (although may still want to pay depending on other overseas assets)
- ✓ Full tax deferral**
- ✓ Wide range of permissible assets
- ✓ 5% tax-deferred withdrawals allowed
- ✓ Reduced reporting and accounting costs.

* 'Remitted': For example brought to, received or used in the UK.
** Some irrecoverable withholding taxes may apply in certain jurisdictions.

UWS PR 0105 | 11/22

DOMICILE

CONCEPT OF DOMICILE

Domicile is a legal concept under common law with the term itself deriving from the Latin word 'domus', which means 'home'. It is important to understand that a person's domicile can determine the extent of an individual's liability to UK taxation.

There are various types of domicile under UK law although, unlike residence, a person can only be legally domiciled in one country at any particular time. There are three territories for domicile in the UK; these being England and Wales, Scotland and Northern Ireland. References in this guide to being UK domiciled should be read as being domiciled in any of these territories.

DOMICILE OF ORIGIN

A person will usually acquire a domicile of origin from their father, or from their mother if their mother and father are not married. For example, if someone was born in the UK to married parents but their father was French domicile then their domicile of origin would be France. The fact they were physically born in the UK doesn't necessarily mean they have a UK domicile of origin and much will depend on the circumstances.

EXAMPLE

Fred was born (prematurely) in Oxford in the UK when his mum and dad were on a short holiday attending a relative's wedding. Fred's mum and dad are married and his dad has Spanish domicile, having lived in Spain all his life. Their visit to the UK was simply a temporary short-term vacation. Fred will have a domicile of origin of Spain and the fact he was born in the UK was just a result of his premature birth when his parents were on holiday.

DOMICILE OF DEPENDENCE

A child will generally acquire the domicile of their father and only at age 16 (note this is different to the age of majority) will a child be treated separately. For example, a child will follow their father's domicile until they reach age 16. So, if a child moves to the UK with their parents, who subsequently acquire a new domicile of choice in the UK, the child will automatically acquire their father's domicile of choice. Domicile of dependence will also apply to other dependents, such as those who lack sufficient mental capacity, and here the age of majority does not apply.

EXAMPLE

Charlie was born in France to married parents who had lived there all their lives. Charlie's mum is offered a promotion in her firm, which requires her to take permanent employment in London. Charlie's mum and dad subsequently buy a house on the outskirts of London with Charlie, now aged seven, who starts attending a local school. Charlie's domicile of dependence will follow his father due to his infancy and, should his father acquire a new domicile of choice in the UK due to his actions (see Domicile of Choice section on the next page) then Charlie's domicile of dependence will also change to that of the UK.

DOMICILE OF CHOICE

This is perhaps the most complex and subjective of all the types of domicile in that a person can change their domicile of choice by their actions. Here a person's domicile of origin can be 'replaced' by a domicile of choice. HMRC will look at the **intention** of the person when considering their domicile of choice; in other words, by their actions, which country did they consider their 'home'? Certain factors will then help build a picture to show that the person has indeed changed their domicile to that of the new country. Factors that would suggest a 'tie' to a particular country include but are not limited to:

- Having a home in that country
- Raising a family in that country
- Having permanent employment in that country
- Having family connections and social networks in that country
- Making a will under the laws of that country.

It is important to understand that there is no formal clearance from HMRC in respect of domicile of choice. Furthermore, if a person creates a new domicile of choice but subsequently moves to a new country their domicile will revert to their original domicile of origin until they acquire a new domicile of choice. For people who often move countries, perhaps with their work, this can mean that their domicile can revert back to that of their domicile of origin despite having lived in the previous country for many years.

EXAMPLE

John has a UK domicile of origin but moves his family to Spain and establishes a new domicile of choice in Spain. This would be established through factors such as John moving his family to Spain and obtaining permanent work there. However, following a redundancy, John and the family subsequently move to France with the intention of permanently settling there. Here his domicile will revert to the UK unless, and until, he establishes a new domicile of choice in France.

DEEMED DOMICILE – POSITION FROM 6 APRIL 2017

From 6 April 2017 a person is deemed domiciled in the UK for **all** UK taxes if they have been UK resident for 15 out of the previous 20 tax years prior to the tax year in question. In other words they will be deemed domiciled from the 16th year. This is a considerable change from the old position prior to 6 April 2017 whereby a person could be deemed UK domiciled, for inheritance tax purposes only, if they were resident for 17 of the last 20 years. Here residency will include any split years (covered later in this guide) and any tax years prior to the individual attaining age 18.

The new rules also change the way years are counted for the purposes of this test. The new rules look at whether an individual was resident for the tax years **prior** to the tax year in question, whereas the old rules used to apply the count to the end of the tax year in question. There is also a transitional rule so that, for people leaving the UK before 6 April 2017 who do not return to become UK resident, they are not considered deemed domiciled despite being caught under the rules.

On page 12 of this guide we will cover the UK residence rules which need to be taken into account when considering deemed domicile. It is important to consider this rule as a 'catch all' provision for those who can show they have retained their overseas domicile, in many cases a person will have probably acquired a domicile of choice long before they are considered deemed domiciled.

We will see later in this guide that a person's domicile can drastically impact the UK taxes that they pay.

UWS PR 0105 | 11/22

THE REMITTANCE BASIS OF TAXATION

NON-DOMICILED AND NON-RESIDENT

A person, who is neither UK domiciled nor UK resident, will not usually pay any tax in the UK. For example, a person resident and domiciled in Spain will not (ordinarily) have any UK tax liability on income or gains, nor will they have any liability to UK Inheritance Tax (IHT) on UK situs assets.

However, there are exceptions, for example where overseas residents receive income and/or gains on disposal of UK property and where a person is only 'temporarily' an overseas resident. The latter rule is designed to close a loophole in which a person temporarily moves overseas to try and reduce their exposure to UK capital gains tax or income tax.

This guide does not cover these exceptions and instead focuses on the taxation of UK residents.

UK DOMICILED AND RESIDENT – THE ARISING BASIS AND TAXATION OF FOREIGN INCOME AND/OR GAINS

A person who is UK resident and domiciled will be taxed on their worldwide income and gains. From 6 April 2017 this includes people who are deemed domiciled as described previously on page 6 of this guide.

This is referred to in UK tax law as the **arising basis of taxation** and it is an important concept. For UK resident and domiciled individuals it makes no difference whether their foreign income and/or gains are actually remitted to the UK, as they will still be subject to tax on them in the UK through self-assessment.

In recent years there has also been lots of focus on making sure UK residents declare, where applicable, their overseas income and/or gains. Tax information exchange initiatives, such as the Common Reporting Standard (CRS), mean that HMRC are now aware of overseas financial accounts in reportable jurisdictions and will no doubt help enforce correct disclosure.

DOUBLE TAXATION RELIEF

A UK resident and domiciled individual may be able to claim double taxation relief if the income and/or gains were taxed at source overseas. This guide does not cover double taxation relief but in some cases relief can be claimed where one country has a double taxation agreement with another, such as the UK.

UK DOMICILES AND IHT

UK domiciled individuals are also subject to UK IHT on their worldwide assets. Again, it makes no difference if the assets are not actually situated in the UK. For example, a UK domiciled individual would still be potentially liable to IHT on a property that was situated outside the UK if it fell within his estate on death. It is also important to understand that the Nil Rate Band and Residence Nil Rate Band (if available[1]) can be utilised on foreign property under these circumstances.

PEOPLE ARRIVING IN THE UK – THE REMITTANCE BASIS

For non-UK domiciles who have moved to the UK, the remittance basis of taxation can be claimed. The effect of the remittance basis is to only tax that individual on foreign income and/or gains that are actually brought into (i.e. physically remitted to) the UK. Where a person wishes to use the remittance basis of taxation they must make a claim under s809H of Income Tax Act 2007 and complete the HMRC self-assessment form SA109, although remittance basis is automatically applied where unremitted foreign income and/or gains for the tax year are below £2,000.

Where a person has been UK resident for less than seven out of the last nine tax years there is no charge to claim the remittance basis.

PEOPLE STAYING IN THE UK – LONGER TERM RESIDENTS AND THE REMITTANCE BASIS CHARGE

For people who are non-domiciled who remain UK resident for longer periods there is a charge for the benefit of using the remittance basis of taxation (where unremitted overseas income and/or gains are above £2,000). This charge is known as the remittance basis charge (RBC) and for 2022/23 is as follows:

- Resident for 7 out of the last 9 years - £30,000
- Resident for 12 out of the last 14 years - £60,000.

It is important to note that the remittance basis of taxation is not available once the individual becomes deemed domiciled under the '15 out of 20 years' rule outlined previously on page 7. Once deemed domiciled the individual is liable to income tax and capital gains tax on worldwide income and gains on an arising basis. This is a significant change as the deemed domicile provisions previously only applied to UK IHT.

[1]There is a separate Technical Sales Briefing on the Residence Nil Rate Band which can be downloaded from our website **www.utmostinternational.com**

The effect of the RBC is to apply an additional tax charge for the individual in the tax year, i.e. the £30,000 and £60,000 will be added to their total tax bill. The individual then has to nominate overseas income/gains which are deemed sufficient to cover this charge. In other words, the tax that would be paid on these nominated gains must equal the RBC or HMRC will deem there was 'insufficient nomination'. If this occurs the legislation will nominate sufficient foreign income to cover the RBC in full even if such income doesn't exist – s809H ITA '07. Nominated gains will be subject to tax on an arising basis and no further tax will be due when these income/gains are remitted to the UK, however, nominated gains will be remitted after other overseas income and/or gains.

Furthermore, people who claim the remittance basis of taxation (other than where it applies automatically) do not receive a UK income tax personal allowance or capital gains tax annual exemption for the tax year in question. This often means that, where the remittance basis charge would apply if the person chose to use the remittance basis, a claim to use it will not be beneficial unless overseas income and or gains far exceed the charge itself. This is illustrated by the following example:

EXAMPLE

Simon, aged 42, is non-domiciled and works in the construction industry as a Civil Engineer. He has been considered UK resident for the last eight tax years as he leads a project working on the UK motorway network. He regularly visits his family during holiday periods in Dubai, where he used to live. Simon has UK employment income of £45,000 and UK dividends of £9,000 from a £300,000 shareholding (3% gross). Simon has not acquired a UK domicile of choice but has a rental property in Dubai which is generating annual income of £45,000 (gross no tax deducted) and wishes to understand the effect of claiming remittance basis for the tax year 2022/23. The effect is as follows:

Assume Simon doesn't claim the remittance basis for 2022/23:

	NON SAVINGS INCOME	DIVIDEND INCOME
EMPLOYMENT	£45,000	
UK DIVIDENDS		£9,000
PROPERTY (DUBAI)	£45,000	
LESS PERSONAL ALLOWANCE	(£12,570)	
TAXABLE	£77,430	£9,000
NON SAVINGS 20%	£37,700 @ 20% = £7,540	
NON SAVINGS 40%	£39,730 @ 40% = £15,892	
DIVIDEND ALLOWANCE	£2,000 @ 0 = £0	
DIVIDEND HIGHER RATE	£7,000 @ 33.75% = £2,363	
TOTAL TAX PAYABLE	£25,795	
EFFECTIVE RATE OF TAX ON ALL INCOME	£25,795 / £99,000 x 100 = **26%**	

UWS PR 0105 | 11/22

EXAMPLE (CONTINUED)

Now assume that Simon claims the remittance basis for 2022/23 and doesn't remit any property income.

	NON SAVINGS INCOME	DIVIDEND INCOME
EMPLOYMENT	£45,000	
UK DIVIDENDS		£9,000
Personal allowance cannot be claimed for 2022/23 as Simon has opted to use the remittance basis.		
TAXABLE	£45,000	£9,000
NON SAVINGS 20%	£37,700 @ 20% = £7,540	
NON SAVINGS 40%	£7,300 @ 40% = £2,920	
DIVIDEND ALLOWANCE	£2,000 @ 0 = £0	
DIVIDEND HIGHER RATE	£7,000 @ 33.75% = £2,363	
ADD RBC FOR 2021/22	£30,000 (Simon has been UK tax resident for 8 years)	
TOTAL TAX PAYABLE	£42,823	
EFFECTIVE RATE OF TAX ON ALL INCOME	£42,823 / £99,000 x 100 = **43%** Property Income in Dubai of £45,000 under remittance basis.	

As demonstrated in this example a claim of the remittance basis would not be beneficial for Simon in 2022/23. Whilst the property income is no longer assessed in 2022/23 the loss of the personal allowance and remittance basis charge of £30,000 create a greater tax charge for Simon.

REMITTANCE BASIS AND OVERSEAS LIFE ASSURANCE AND CAPITAL REDEMPTION BONDS

Where overseas life assurance and capital redemption bonds are used then any gains on the happening of a chargeable event are **always** taxed on the arising basis of taxation. This is still the case if a person claims the remittance basis for that tax year.

If a non-domicile does elect to use the remittance basis of taxation they cannot therefore shelter their chargeable event gains from UK tax; even where the remittance basis charge is paid. However, overseas life assurance bonds and capital redemption bonds are non-income producing assets and only give rise to a tax charge where a chargeable event occurs. Chargeable events include but are not limited to:

› Surrender of policies where the amount received exceeds the premium amount paid

› Partial surrenders (withdrawals) which exceed the annual 5% entitlement

› Assignment for money or money's worth

› Maturity (life assurance bonds).

The 5% tax-deferred entitlement can therefore be utilised without giving rise to a charge to tax and thus a UK resident and non-domiciled individual can receive an investment return without necessarily paying the RBC.

EXAMPLE

Now let's assume Simon (from our previous example on page 9) had instead put the money he used to buy his property in Dubai (let's assume £900,000) in an overseas capital redemption bond and withdrew an amount each year equal to the annual tax-deferred entitlement, i.e. 5% of £900,0000 = £45,000. The 5% entitlement provides a tax-deferred return of capital equal to £45,000 (the same as his Dubai property income). Here Simon doesn't need to pay the remittance basis charge despite the asset being held overseas and yet he can take and remit this 5% without creating an income tax liability in the UK. The effect on Simon's calculations for 2022/23 would be as follows:

	NON SAVINGS INCOME	DIVIDEND INCOME
EMPLOYMENT	£45,000	
UK DIVIDENDS		£9,000
LESS PERSONAL ALLOWANCE	(£12,570)	
TAXABLE	£32,430	£9,000
NON SAVINGS 20%	£32,430 @ 20% = £6,486	
DIVIDEND ALLOWANCE	£2,000 @ 0 = £0	
DIVIDEND BASIC RATE	£3,270 @ 8.75% =£286	
DIVIDEND HIGHER RATE	£3,730 @ 33.75% = £1258	
TOTAL TAX PAYABLE	£8,030	
EFFECTIVE RATE OF TAX ON ALL INCOME	£8,030 / £99,000 x 100 = **8%** Capital of £45,000 a year taken under the 5% entitlement. No need to claim remittance basis as taxed on arising basis only when chargeable event occurs – 5% withdrawal is not a chargeable event.	

Simon would of course have to pay income tax in the UK on an arising basis if a chargeable event occurred. It is also very important to note here that this example assumes the overseas money used to purchase the bond **didn't contain any unremitted chargeable income and/or gains.**

Overseas bonds can therefore be beneficial for non-domiciles who perhaps may ordinarily have to pay the remittance basis charge to remove any further liability to overseas income and or gains. **However, if the money placed in the bond contains unremitted overseas income and or gains (i.e. a so called "mixed fund") then if monies are remitted to the UK they will be taxable even if paid through the 5% entitlement.** Great care should be exercised where mixed funds are utilised to purchase a bond and the rules here are extremely complex. Specialist advice should be sought in this area.

REMITTANCE BASIS AND THE USE OF OVERSEAS BONDS FOR HIGH NET WORTH (HNW) INDIVIDUALS

A lot of tax commentary has been centred on the separation of capital and tainted assets when considering the changes, especially in relation to HNW UK resident but non-domiciled individuals. Such individuals will often have adjusted net income far in excess of £100,000 meaning their personal allowance is reduced to nil. The loss of the personal allowance is therefore irrelevant for such individuals when considering the remittance basis, although they will also lose their capital gains tax annual exemption which doesn't have any similar threshold limit.

These people will often pay the remittance base charge to avoid any tax in the UK, but the administration of this shouldn't be overlooked. One strategy is to split overseas accounts into clean capital accounts and accounts containing unremitted income or gains separately identifying nominated income/gains. Accounting for this type of arrangement can be an incredibly complex procedure sometimes requiring several overseas accounts.

Overseas bonds can simplify this and a simple strategy here is to create two bonds, one for clean capital and one containing 'tainted' funds. Whilst bond gains are taxed on the arising basis of taxation any withdrawals within the 5% tax-deferred entitlement do not give rise to a chargeable gain for a UK resident. The bond containing clean capital can be used for withdrawals that are remitted to the UK perhaps utilising the 5% entitlement to avoid any immediate tax charge. In respect to a bond containing tainted assets, providing any withdrawal within the 5% entitlement is not remitted to the UK the unremitted income or gains deemed to be part of that withdrawal will not be subject to UK, tax. Such a strategy could allow the non-domicile to use this bond to cover overseas expenses.

REMITTANCE BASIS SUMMARY

The table below provides a summary for the liability:

RESIDENT	DOMICILE	OVERSEAS INCOME AND GAINS	IHT LIABILITY
NON-UK RESIDENT	NON-UK DOMICILED	Not generally liable to tax[1].	Only on property situated in the UK.
UK RESIDENT	NON-UK DOMICILED	Liable unless remittance basis claimed. Remittance basis charge may apply for longer term residents.	Only on property situated in the UK.
UK RESIDENT	UK DOMICILED	Liable on worldwide income and gains.	Liable on worldwide assets.

[1]Liabilties can arise on gains on UK situs property and where a person is temporarily non-resident.

THE UK STATUTORY RESIDENCE TEST

The statutory residence test was first introduced in the Finance Act 2013 (FA 2013) and is a fairly complex set of rules to establish UK residence. The rules are contained in Schedule 45 of FA 2013 and are different depending on whether a person is leaving or arriving in the UK. The rules are designed so it is harder for a person to lose their UK residence status than it is to acquire a UK residence in the first place.

FIRST TEST - AUTOMATIC RESIDENCE TEST (REF SCHEDULE 45 PART 1 FA 2013)

The starting point is to ask whether a person is 'automatically an overseas resident'. A person will be 'overseas resident' where one or more of the following conditions apply:

- **They were not resident in the UK in one or more of the last three tax years** before the tax year in question **and have been resident in the current tax year for fewer than 46 days**
- **They were resident in the UK in one or more of the last three tax years** before the tax year in question **and have been resident in the current tax year for fewer than 16 days**
- **They work abroad for sufficient hours** (average of 35 per week), are resident for fewer than 91 days and, of these days, **fewer than 31 days are UK working days (work for more than three hours a day**).

If a person meets any of these conditions they are not UK tax resident for the tax year in question. If they don't, then the next point to establish is whether a person is automatically UK resident. Broadly, a person will be automatically UK resident where:

- **they spend at least 183 days** in the tax year resident in the UK
- **they have a home in the UK** and meet the conditions in respect to this home as given in s8 Schedule 45 FA 2013. These conditions broadly require them to have a home in the UK for 91 consecutive days or more, of which 30 days fall within the tax year in question and the person is present in that home for 30 days or more in that tax year. It also requires that, where a person has a home overseas, they are present in that for less than 30 days in the tax year
- **They carry out full time work in the UK** assessed over a period of 365 days and broadly require the person to work for 35 hours or more a week over this period.

If a person meets any of these conditions they are UK resident for the tax year in question. If they don't satisfy any of these rules then we need to refer to the final rule. This rule looks at the number of days spent in the UK and compares these to certain 'UK ties'.

SECOND TEST – THE 'SUFFICIENT TIES' TEST

The second test looks at how many 'ties' a person has and then applies a day counting rule against the number of ties. The more days a person has spent in the UK the fewer ties they require to be considered UK resident. Conversely, for a person leaving the UK the more ties they have the more foreign days they require to be considered non-resident.

The leaver and arriver tables are contained in s18 and 19 of Schedule 45 FA 2013. Firstly we will look at people arriving in the UK which is shown below:

People arriving in the UK

DAYS SPENT IN THE UK	NUMBER OF TIES REQUIRED
46 days or less	Non resident
46-90 days	4 ties
91-120 days	3 ties
121-182 days	2 ties
183 days	Automatically UK resident

Secondly, the table below looks at those leaving the UK:

People leaving the UK

DAYS SPENT IN THE UK	NUMBER OF TIES REQUIRED
16 days or less	Non resident
16-45 days	4 ties
46-90 days	3 ties
91-120 days	2 ties
121-182 days	1 tie
183 days	Automatically UK resident

As the tables above demonstrate, it is more difficult to lose UK tax residency than it is to be considered UK resident under the Statutory Residence Test.

UWS PR 0105 | 11/22

There are then five ties which are assessed against these day counting rules.

TIE	BRIEF DESCRIPTION
FAMILY (s32 Schedule 45 FA 2013)	Partner or children are resident in the UK.
ACCOMMODATION (s34 Schedule 45 FA 2013)	Has a permanent place to live in the UK.
WORK (s35 Schedule 45 FA 2013)	Works for 40 days or more in the UK during tax year.
90 DAY (s37 Schedule 45 FA 2013)	Was present in the UK for more than 90 days in either of the two previous tax years.
COUNTRY (LEAVERS ONLY) (s38 Schedule 45 FA 2013)	Spends more days in the UK in the tax year than any other country.

WHAT COUNTS AS A 'DAY' FOR THESE TESTS?

A day under these tests is counted if the person is present in the UK at midnight. However, there are some exceptions to this rule, such as where a person lands in an airport and his presence at midnight is purely on the basis of transit. There is also a deeming rule to stop people commuting into the UK to avoid the "at midnight" test. Here a person will be deemed to be resident for the days if they meet all the following conditions:

a) They were in the UK but not present at midnight for at least 30 days

b) They had at least three ties (as outlined on the previous page) in the tax year

c) They had been resident in at least one of the last three tax years.

SPLIT YEARS

It is possible for a person to be deemed UK resident for only part of the tax year. In these circumstances they are only liable to tax on the UK resident part of the tax year. Split year cases are given in s43-45 of Schedule 45 of FA 2013 and are broadly listed below:

Leaving

Case 1 – Starting full time work overseas

Case 2 – Accompanying a partner overseas who is starting full time work

Case 3 – Ceasing to have a home in the UK.

Arriving

Case 4 – Starting to have a home in the UK only

Case 5 - Starting full-time work in the UK

Case 6 –Ceasing full-time work abroad and coming to the UK

Case 7 – Returning to the UK with a partner who was working overseas previously

Case 8 – Starting to have a home in the UK.

EXCLUDED PROPERTY AND EXCLUDED PROPERTY TRUSTS

EXCLUDED PROPERTY

Excluded property is defined in s6 of Part 1 Inheritance Tax Act 1984 (IHTA '84). Property becomes excluded property if it meets the general condition in s6 (1) IHTA '84 in that:

› The property is situated outside the UK

› The person beneficially entitled to the property is domiciled outside the UK.

Certain types of UK property can also be excluded property if held by a non-domicile individual. For example, UK authorised unit trusts or shares in an open-ended investment company are excluded property if held by a non-domicile individual.

Decorations or awards can also be excluded property irrespective of a person's domicile status and the types of awards that qualify are listed in s6 (1BA) IHTA '84.

For these purposes the UK includes England and Wales, Scotland and Northern Ireland and this is covered in the manual RDRM20060 issued by HMRC.

Where property is situated for legal purposes is a complex matter and will depend on the nature of the property itself. There are broadly two types of property in UK law, Real Property and Personal Property. Personal Property is then further broken down into Choses in Action and Choses in Possession as outlined in the table below:

REAL PROPERTY			This will include property (bricks and mortar), i.e. freehold land.
PERSONAL PROPERTY	CHOSES IN ACTION		This is intangible property, i.e. property that cannot be seen or touched and would include the likes of debts, shares, insurance contracts etc. The person has simply a right in law but cannot physically see his/her property.
	CHOSES IN POSSESSION	CHATTELS REAL	Leasehold land and buildings.
		PERSONAL CHATTELS	Any other chose in possession and will include tangible property which can be physically seen and touched such as cars, boats, jewellery, furniture etc.

Real property will usually be situated where it is physically located, but the matter is much more complicated for other types of property. For assets such as insurance bonds (which are Choses in Action) they are usually located where the company (the debtor) is resident, although different rules may apply where overseas branches of a UK company are used. A life insurance bond issued by a company in the Isle of Man or Ireland is therefore situated in the Isle of Man or Ireland which are outside of the UK. Similarly, a bank account (which is a debt and therefore a Chose in Action) would usually be situated at the branch of the bank where the account is kept. If a non-domiciled person holds money in a bank account located outside the UK then it is excluded property, however, should the person become UK domiciled in future then the second test fails and the property fails to be excluded property.

EXAMPLE

Tilly has a Spanish domicile of origin and is currently living in Dubai. She is considering moving to the UK with her current employer who has offered her a position in Manchester. Whilst in Dubai she decided to take out a life assurance bond issued by an overseas life company. If she moved back to the UK the bond will be excluded property, as it was non-UK situs property settled by a non-domiciled individual. However, if Tilly acquires a domicile of choice, or becomes deemed domiciled, the bond would be subject to UK IHT. There is no protection should Tilly make the UK her home or decide to settle in the UK permanently.

EXCLUDED PROPERTY TRUSTS

An excluded property trust is not defined by the terms of the trust itself, but more by the nature of the property settled into the trust at outset and the domicile of the person making the settlement. **The conditions of an excluded property settlement are set out in s48(3) IHTA '84 and effectively state that where a person settles non-UK property into a trust when they were non-UK domiciled this will be an excluded property trust.**

However, the important difference with excluded property trusts is that the property will remain excluded property even if that person becomes UK domiciled in future (as per the rules described earlier in this guide). Such trusts can therefore be used by persons who are moving to the UK to mitigate their future exposure to UK IHT should they either become deemed domiciled or establish a UK domicile of choice.

In addition, the trustees do not have to be overseas to secure the IHT advantages of an excluded property trust, although this could have UK income tax and capital gains tax implications depending on the assets the trust is holding.

EXAMPLE

Tilly from our previous example on page 14 settles a life assurance bond issued outside the UK worth £1,000,000 into a discretionary trust of which she is a potential beneficiary – this would be an excluded property trust as it satisfies the conditions of s48(3) IHTA'84. If Tilly moved to the UK and became domiciled (or deemed domiciled) in the UK then the property would remain excluded property and sit outside of the UK for IHT purposes. Establishing the trust could save Tilly's estate up to £400,000 in IHT. The fact Tilly might be named as a beneficiary and able to benefit under the trust is not relevant here, as the gift with reservation rules set out in s102 Schedule 20 FA 1986 do not apply to excluded property settlements. Tilly could also select UK family members to act as trustees and this would not impact the nature of the UK IHT position although it could have implications for the bond taxation (discussed later on page 16).

EXCLUDED PROPERTY TRUST CHANGES FOR PEOPLE RETURNING TO THE UK

Changes in the Finance (No 2) Act 2017 have inserted new clauses into s48 which mean that certain persons who have been previously UK domiciled will no longer be able to benefit from the excluded property trust rules once they return to the UK; referred to as formerly domiciled and currently UK resident. Further changes were also included in Schedule A1 IHTA '84 which makes sure excluded property trust status does not extend to trusts whereby the trust holds directly (or indirectly) UK residential property. These measures effectively make sure the use of excluded property trusts is restricted to people migrating to the UK from abroad who wish to limit their exposure to UK IHT in respect of their non-UK assets only if they become long term resident. They also closed down loopholes which permitted non-domiciles to hold UK property through overseas trust structures to avoid UK IHT.

EXAMPLE

Leon was born in Manchester (UK) and had a UK domicile of origin. He moved to live in Singapore with his partner in 2017 and establishes a domicile of choice. If Leon attempts to create an excluded property trust and permanently moves back to the UK then the trust would not be an excluded property trust due to s48 (3E). This is because Leon would be considered formerly domiciled and currently UK resident and, as such, the trust will be within scope of IHT once Leon has been UK resident in one of the two previous years prior to the current tax year in question. If Leon had created a similar trust to Tilly, with himself amongst the class of potential beneficiaries this would be treated as a gift with reservation of benefit.

EXCLUDED PROPERTY TRUSTS - OVERSEAS LIFE ASSURANCE BONDS AND CAPITAL REDEMPTION BONDS FOR PEOPLE MOVING TO THE UK

Over the last few years there have been changes to the income tax and capital gains tax treatment of overseas trusts. These changes are very complex and are not covered in this guide, therefore we strongly recommend clients with these types of trust seek specialist advice.

However, the new regulations introduce certain trust 'protections' in respect of the taxation of trust income and gains. A so-called 'protected settlement' may become tainted and the trust protections lost where, for example, property is added once the settlor becomes domiciled or deemed domicile in the UK or if there are outstanding loans from the settlor to the trustees not on "at arms' length" terms.

However, somewhat simpler positions occur with the use of overseas life assurance or capital redemption bonds that are not income producing and do not give rise to capital gains tax on disposal. Excluded property trusts can be especially useful when combined with overseas life assurance or capital redemption bonds. Such bonds are not property situated in the UK so, providing the settlor is non-domiciled at the time of settlement nor formerly UK domiciled, they will satisfy the tests provided in s48(3) IHTA '84. This may be especially useful for someone looking to move to the UK who was born overseas. Furthermore, as life assurance and capital redemption bonds are non-income producing assets then this can create further tax planning opportunities for the trustees.

Chargeable event gains will fall on the settlor during their lifetime but these will only occur on the happening of a chargeable event as listed on page 8 of this guide.

The 5% tax-deferred entitlement can be useful for trustees if they wish to distribute monies to the settlor without creating an immediate charge to tax (the bond needs to have been funded with clean capital and not mixed funds). Therefore, a combination of a bond and excluded property trust can help a person looking to move to the UK in the following ways:

- The bond is a non-income producing asset so a claim for remittance basis (and potential associated remittance basis charge of £30,000 or £60,000) is avoided
- The bond is only charged to tax when a chargeable event occurs helping the trustee control when tax is payable
- The trust provides an IHT shelter should the settlor become UK domiciled in future.

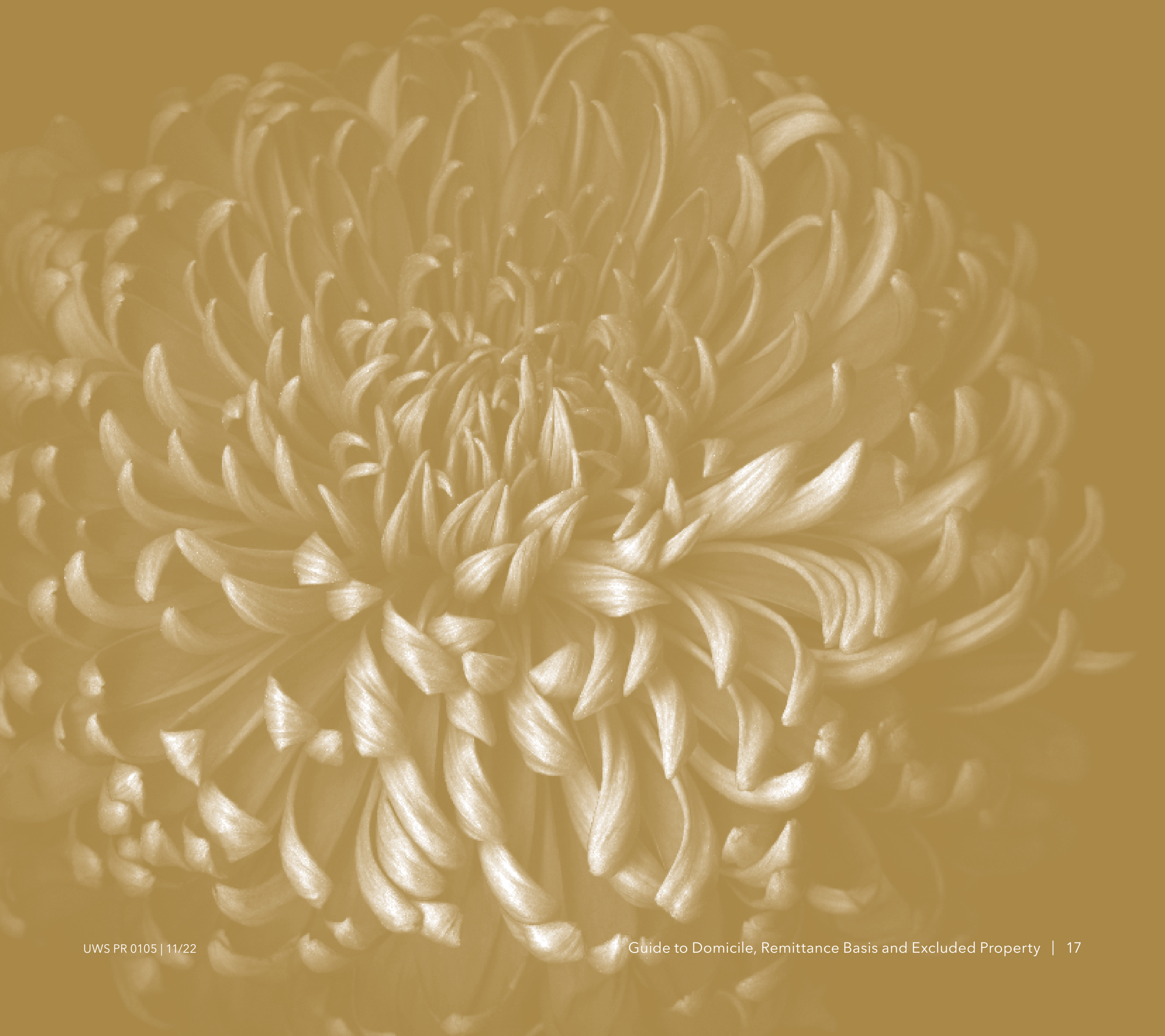
The UK tax position of an overseas bond is well established within UK tax law but should the investor return overseas then, depending upon the jurisdiction in question, the investment bond may continue to offer valuable wealth, tax and estate planning opportunities.

EXAMPLE

Tilly, following on from the previous examples on pages 14 and 15, appoints her brother and her sister (both UK residents) as trustees. As Tilly settled an overseas asset into trust, when non-UK domiciled, this will remain excluded property should she be caught as deemed UK domicile or acquire a UK domicile of choice (as Tilly had an overseas domicile of origin). The trustees may use their powers to distribute capital utilising the 5% tax-deferred entitlement. Whilst Tilly has no entitlement per se, she could write a letter of wishes to the trustees prior to the settlement requesting that her wishes be considered from time to time. Care would need to be taken that this wasn't regular in nature to avoid being regarded as 'income'. Under this arrangement, the asset can remain outside the UK for IHT purposes, Tilly can still receive a benefit under the 5% tax-deferred entitlement, and as the asset is a non-income producing asset she could remain on the arising basis of taxation and would not have to pay the remittance basis charge.

More information on the taxation of our policies can be found in **A Guide to Taxation for Financial Advisers** which is available from our website **www.utmostinternational.com**

UWS PR 0105 | 11/22



CONTACT US

For further details and information on the range of investment solutions we offer, contact us:

+44 (0)1624 643 345

customersupport@utmostwealth.com

Utmost International Isle of Man Limited
King Edward Bay House
King Edward Road
Onchan
Isle of Man
IM99 1NU
British Isles

www.utmostinternational.com

0845 602 9281

info@utmostwealthsolutions.ie

Utmost PanEurope dac
Ashford House
Tara Street
Dublin 2
D02 VX67
Ireland

Please note that emails are not secure as they can be intercepted, so think carefully before sharing personal or confidential information in this way.

Telephone calls may be recorded.

utmost™
WEALTH SOLUTIONS

A WEALTH *of* DIFFERENCE

UWS PR 0105 | 11/22