

Non-domiciled individuals and their Irish tax position

The second category of individuals from whom we have received recent enquiries about establishing residence in Ireland are those that have decided that Ireland may be a viable European base for them, for example Middle Eastern and Far Eastern families. Very often such families may have a son or daughter studying in Ireland. The tax analysis requires a consideration of both income and capital gains tax issues which may arise. Legal considerations include the rules in relation to succession of property. Again, as is the position for Irish domiciled but non-resident individuals returning to Ireland, it is important that legal and tax advice is sought prior to taking up residence in this jurisdiction. Such clients with a foreign domicile are in a position on taking up tax residence in Ireland, to avail of the remittance basis of taxation. This broadly means an individual may be liable only to Irish income tax and capital gains tax on Irish source income and gains on an arising basis, but they are only liable to tax on foreign income and gains, to the extent such income and gains are remitted to this jurisdiction.

Specific Irish tax advice should be sought on the provisions that determine what constitutes a remittance and further effective planning should be undertaken prior to taking up tax residence to ensure that insofar as possible, there is a clear distinction between capital remittances, income remittances and capital gains remittances. Again, orderly planning is required to establish suitably segregated bank accounts prior to the year of taking up tax residence in Ireland.

Those that fit into this category include as mentioned above Middle Eastern and Far Eastern clients. It also includes non-domiciled senior executives relocated to the Irish operations of Multinational Companies (**MNCs**), who do not benefit from the remittance basis on Irish source employment income, but this income does obtain relief through the special assignment relief programme.

Although remittances of income and gains will be subject to tax, remittances of savings in cash form held by the individual at the end of the tax year before the individual arrives in Ireland can be remitted as tax free capital.

Again, the implications of Capital Acquisitions Tax (**CAT**) need to be considered. CAT will apply where a disposer of a gift or inheritance is Irish resident or ordinarily resident; where the beneficiary is Irish resident or ordinarily resident; or where the subject matter of a gift is Irish situate property.

For non-domiciled individuals, a special statutory relief is provided in the context of CAT. It provides that although they may be tax resident in a given year for income or capital gains tax purposes, that they will only be treated as tax resident for CAT purposes where they have been tax resident for the five previous tax years, prior to the year of assessment in which the gift or inheritance arises. This effectively gives them a five year window without coming within the charge to CAT. Indeed some long term UK non-domiciliaries have looked to Ireland as a destination to ensure they are not deemed to be domiciled under the relevant UK tax legislation which can bring non-domiciliaries within the charge to UK inheritance tax (**IHT**), if they have been long-term UK tax resident.