

The returning Irish

The requirement for Irish legal and tax advice amongst our foreign resident Irish domiciled clients arises for a number of reasons. Some of those individuals have maintained a close Irish connection, be it through assets or business interests held in Ireland. Others have Irish resident and/or domiciled family members, who come within the charge to Irish tax.

Specifically, for those resident in the UK, the preservation of an Irish domicile has been a significant component of their UK tax planning to enable the remittance basis of taxation to apply in the UK and to provide for UK inheritance tax (**IHT**) planning options including establishing excluded property trusts. This then leads to the question as to what are the tax and legal implications of those structures, which may have been beneficial when resident in another jurisdiction, when the returning Irish decide to come home. Again, this tax position must be assessed by examining the two components of residence and domicile.

It is possible for an individual to spend up to 139 days on an annual basis in Ireland without becoming tax resident.

Where an individual is resident and domiciled they are liable to income tax and capital gains tax on worldwide income and gains. It is also notable, that the addition of domicile to tax residence can be an important factor in the attribution of income and gains of an offshore trust/company to Irish resident persons.

It is essential therefore that tax planning for the returning Irish occurs in the year prior to re-establishing tax residence in Ireland. This would include considering the earlier crystallising of capital gains. The tax effect of such planning needs of course also to be assessed in the jurisdiction where the individual is currently resident but often, there may be no exposure to tax in that jurisdiction by virtue of their domicile, as applies under the remittance basis in the UK.

A separate issue to consider before becoming tax resident is tax planning in relation to gifts and inheritances. Capital Acquisitions Tax (**CAT**) is the generic name for the tax that applies in relation to gifts and inheritances in Ireland. It applies where the disponent (person passing the benefit) is tax resident or ordinarily resident in Ireland, or the beneficiary is tax resident or ordinarily resident in Ireland or indeed where the subject matter of the benefit is an Irish situate asset.

Very often, it is the case that the proposed beneficiaries of the gifts of the returning Irish may themselves be non-resident. It therefore occurs that where both the disponent and beneficiaries are not resident or ordinarily resident, no CAT may arise, where the benefit consists of non-Irish situate property. There is a statutory relief for non-domiciliaries, such that they do not fall within the charge to CAT, immediately upon becoming tax resident.