

# Hold on *to your* INHERITANCE

Moving abroad from the UK creates a variety of tax-saving opportunities for expatriates, but understanding how to do this can be complex and time-consuming. Britsoverseas looks at how to avoid closer scrutiny by HM Revenue & Customs.

BEING AN EXPATRIATE presents many opportunities when managing your finances but it's important to understand your reporting requirements and know the basics.

Depending on your expat status, there are potential savings to be made on income tax, capital gains tax, inheritance tax, council tax and further benefits through saving, investing and banking offshore.

Many British expats come to Hong Kong for its favourable tax regime – the rate of salaries tax is relatively low, profits tax does not apply to overseas income or to capital gains and there is no estate duty – but it could be your UK tax liabilities that change your financial position for the better.

## GETTING STARTED

When you leave the UK you aren't automatically recognised as being a non-resident/not ordinarily resident by HM Revenue & Customs (HMRC).

The HMRC evaluate a number of factors to decide whether you've become UK non-resident/not ordinarily resident. These can include your reasons for leaving the UK, the number of visits you make to the UK and even the connections you retain with the UK.

HMRC guidance provides that there are essentially two ways of becoming non-resident and not ordinarily resident in the UK. The first of these is when an individual leaves the UK to work abroad under a contract of employment for at least a whole tax year – which runs from April 6 to April 5. The second is when an individual leaves the UK with the intention of living outside the UK permanently or indefinitely. It's harder to establish non-residency through the second route as HMRC need very clear evidence of a break from the UK. You should therefore complete the form P85 to help them determine your status and many tax advisers recommend doing this as soon as you leave the UK in order to establish your non-residency status.





## PRACTICAL STEPS TO BECOMING NON-RESIDENT FROM THE UK

- ✓ Leave the UK under a full-time employment contract abroad
- As practical steps to establish a distinct break from the UK:
- ✓ Sell or let homes in the UK.
  - ✓ Resign all UK directorships.
  - ✓ Not carry out business in the UK.
  - ✓ Avoid making regular visits to the UK for a specific purpose.
  - ✓ Limit, as far as possible, return visits (particularly in the first tax year and after that, stay well within the 91 day average limit and ensure that normal pattern of living in the UK is broken).
  - ✓ Days spent in the UK, in the new jurisdiction and elsewhere should be recorded and travel documents retained where possible.
  - ✓ Give up memberships of UK clubs and inform any professional bodies that they are no longer UK resident.
  - ✓ Inform the local authority that for the purposes of council tax they are no longer UK resident.
  - ✓ Ensure that the electoral register is amended to entitle them to vote from abroad.
  - ✓ Establish resident status in their new jurisdiction.

For further information from HM Revenue and Customs visit [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

Philip Munro, a UK tax lawyer at Withers, based in Hong Kong, notes that a “recent high-profile UK tax case of Robert Gaines-Cooper v HM Revenue & Customs provides a good example of non-residency planning failing to properly succeed. In this case, the Special Commissioners were asked to consider whether Mr Gaines-Cooper, a UK born international businessman who had spent considerable time in the Seychelles since 1975, had been ordinarily resident and resident in the UK in certain tax years. The Special Commissioners did not find that Mr Gaines-Cooper had become UK resident having failed the 90-day test but that he had, in fact, never broken UK residency and had remained continually resident in the UK at all times despite his presence in the Seychelles since 1975.”

## KEEPING UP APPEARANCES

Once non-resident status is established, it’s important that this is maintained. You will resume UK residency if your visits to the UK amount to either 183 days or more in any tax year or an average of 91 days or more per year over the period of absence (up to a maximum of four consecutive tax years). In practice, any significant presence in the UK can risk an individual resuming UK tax residency.

It should be noted that non-resident individuals can still have UK income tax liabilities in respect of certain types of UK source income, including rents from UK properties. Certain expenses can, however, be deducted from rents. Expenses that can be deductible include letting agent fees, ground rent and building insurance premiums. In some instances interest payments may also be brought into account – where it is interest payable on loans used to buy the property and where the interest is on UK commercial terms.

The UK applies a particular scheme for taxing landlords who are not UK residents, the Non-Resident Landlord Scheme. Normally the scheme requires that UK letting agents deduct basic rate tax from the rents they collect before it is paid to the non-resident owner. If the non-resident landlord does not appoint a UK letting agent the tenant may be required to deduct the tax. It is possible under the scheme for a non-resident landlord to apply to have rent paid gross, in which case any tax due has to be paid by the owner when such tax is due. Munro notes, "It may be more convenient for the owner to receive payments gross for cash-flow reasons if, for example, there are mortgage payments to make."

Where UK residency is going to be resumed in the future, there are some claw-back rules that should be considered. For example, although a taxpayer is not normally liable to UK capital gains tax for a tax year in which he is not resident in the UK, there are circumstances where gains realised by a person during a period of non-residency, on assets acquired while UK resident, are brought into charge and treated as if they were realised in the tax year in which they return.

## WHEN YOU'RE GONE

A common misconception among expats is that, when you leave the UK and buy property abroad, you can automatically avoid paying inheritance tax.

In reality, if you're British, the UK can still have taxable access to your estate when you die because the most important factor is what's known as your status of domicile. Your domicile has a technical meaning for UK tax purposes and if HMRC view you as a UK domiciliary, you're liable to pay inheritance tax on all of your assets worldwide.

As an expatriate living in Hong Kong, unless you can show that you intend to remain in Hong Kong permanently or indefinitely, you won't be viewed as having taken Hong Kong domicile for UK inheritance tax purposes. Simply having a background from the UK will often mean that you remain a UK domiciliary. Even if you've spent many years outside the UK or have no close family or property in the UK, HMRC could still resist the assertion that you have acquired a Hong Kong domicile particularly if you have retained connections with the UK.

With government legislation constantly changing, the most important thing to remember is that you've an obligation to understand your own personal tax status. Unfortunately ignorance isn't an excuse and, as expatriate taxation is one of the most complex areas of taxation, professional advice is often the best option.

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*This article is a summary of considerations for UK expatriates. It is not comprehensive and should not be relied upon as advice.*

## WRONG SIDE OF THE LAW

### KEN DODD

When Ken Dodd, the 82-year-old British comedian, was charged with tax evasion in 1989, his trial revealed that he had very little money in his bank account, having £336,000 in cash stashed in suitcases in his attic. When asked by the judge, "What does a hundred thousand pounds in a suitcase feel like?" Dodd replied, "The notes are very light, M'Lord."



George Carman QC, who in court famously quipped, "Some accountants are comedians, but comedians are never accountants", represented Dodd. The trial lasted three weeks and cheers broke out in the public gallery when a jury at Liverpool Crown Court acquitted him.

### LESTER PIGGOT



Lester Piggott, retired British jockey, wasn't so fortunate and was convicted in 1987 of not declaring £3.25 million income to the Inland Revenue. He was subsequently stripped of his OBE. The racing fraternity called his three-year prison sentence a terrible injustice. Even this did

not bring about leniency in a case where money was moved overseas and documents were fraudulently completed with the intention of evading tax.

Professor Paul Webley, an economic psychologist at Exeter University commented: "The Inland Revenue has done a brilliant job. By prosecuting high-profile people like Lester Piggott they've made people think they're all-knowing."

### HARRY REDKNAPP

The Tottenham Hotspur manager, Harry Redknapp, is currently facing charges of tax evasion after being charged with cheating the public revenue of about £40,000 at Bishopsgate police station.

He's described the decision of HM Revenue and Customs to bring charges against him as "farcical" and recently told BBC Radio: "It's not a major issue."

