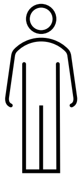
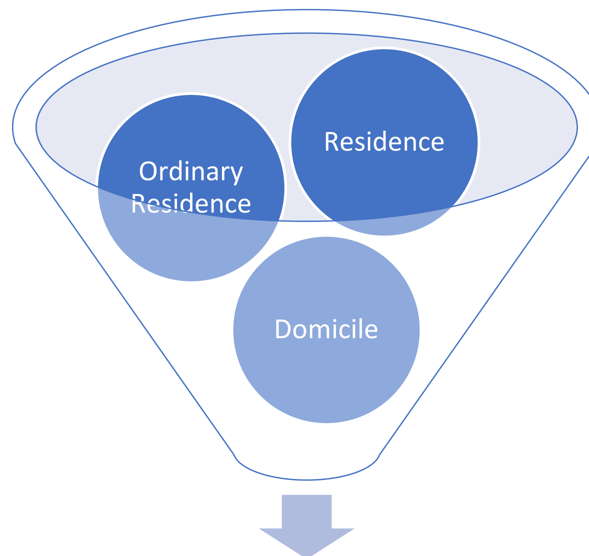
Territoriality Rules for Individuals

By: Anne Tynan on behalf of the CPA Examinations Team for Professional Level Advanced Taxation, July 2023.



Territoriality refers to the scope of a person's liability to tax in Ireland and determine the person's exposure to tax in Ireland. For example, if a person receives or earns income in Ireland and/or from other countries, how much of that income must be included in the Irish Income Tax computation (and Income Tax return). There are three key terms that are important when making decisions on the extent of the liability to tax in Ireland.



Scope of Irish Income Tax Liability

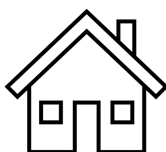
Exam questions on territoriality are usually theory with few, if any, calculations required when answering these questions. Exam questions may focus on:

(1) determining a person's status in relation to residence, ordinary residence and/or domicile, and
(2) discussing the impact of the person's status on their exposure to Irish tax, this is also referred to as the scope of a person's Irish tax liability.

While students generally understand the key terms, many lose marks because their answers lack sufficient detail. Answers should clearly explain (1) how you have reached decisions about a person's residence, ordinary residence, and/or domicile status and (2) the liability to tax in Ireland arising from that status. Exam questions usually provide information about a person and their sources of income/gains (a scenario or case study). It is important that your answer refers to and draws conclusions based on the information provided in the question.

In this article, a summary is provided for the Key Terms in section 1. Sections 2 to 4 provide an outline of the implications for Scope of Income Tax (section 2), Scope of Capital Gains Tax (section 3) and Scope of Capital Acquisitions Tax (section 4).

1. Key Terms



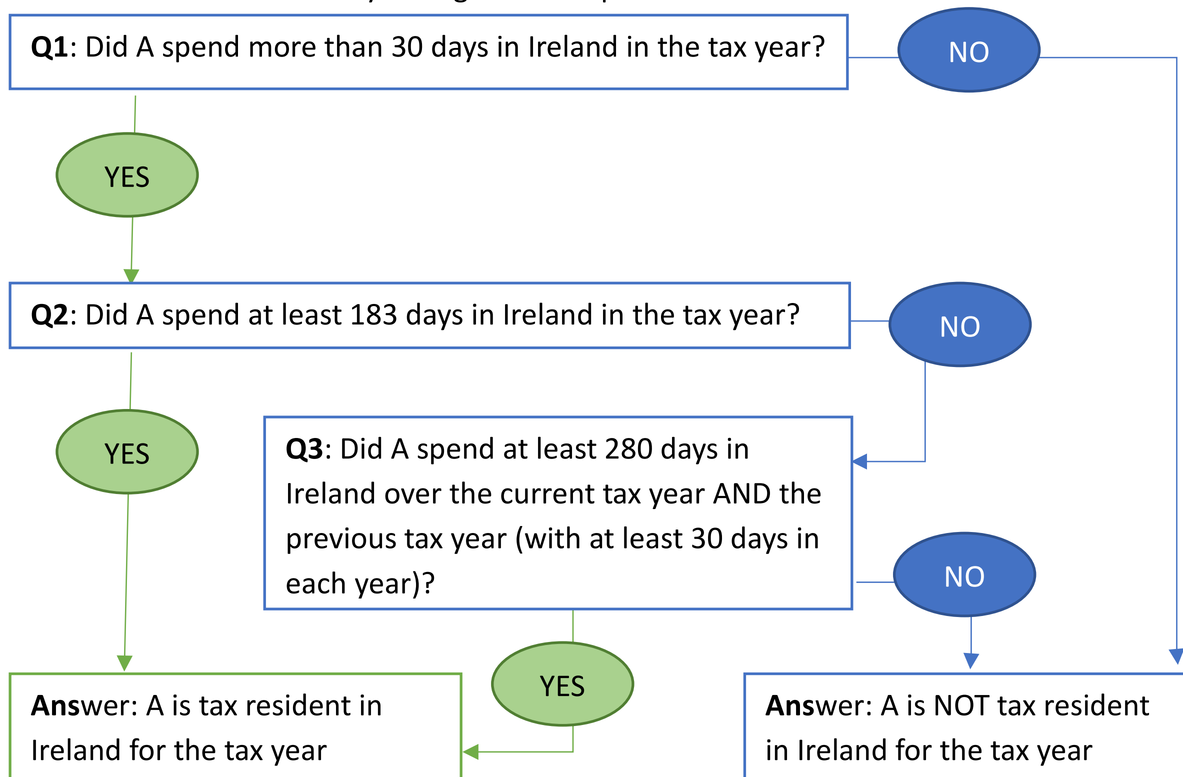
Tax Residence is legally defined in tax legislation (Taxes Consolidation Act 1997). A person's tax residence status in Ireland is determined by the number of days that are spent in Ireland during the tax year (i.e., from 1 January to 31 December each year). A day is counted if the person has been present in the Republic of Ireland for any period during a day.

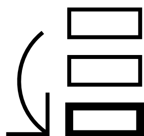
Two tests may be applied to determine a person's tax residence:

(1) 183-day rule. If a person spends 183 days or more in Ireland at any time during the tax year, the person will be Irish Tax Resident in that year.

(2) 280-day rule. This second test should be checked in all cases where a person has spent more than 30 days but less than 183 days in Ireland during a tax year. This test is a two-year rule, including the number of days that the person has spent in Ireland in the current tax year and the previous tax year. If the total number of days over the two tax years is 280 days or more, the person will be Irish tax resident for the current tax year. This rule will only apply if the individual has spent more than 30 days in Ireland in each tax year.

Here is a decision tree that you might find helpful.





Ordinary Residence is also legally defined in tax legislation (TCA 1997). It builds on the person's tax residence but it is a longer term concept of a person's tax resident status. A person is ordinarily resident when they have been tax resident consecutively for the previous three tax years. A person remains ordinarily resident until they have been non-tax resident for three consecutive tax years.

Example 1: Becoming Ordinarily Resident

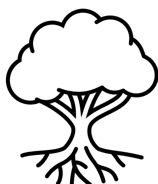
Ashley moved to Ireland for the first time on 1 November 2022. She intends to stay in Ireland until 1 September 2028. When does Ashley become ordinarily resident?

2022: Ashley has not spent more than 183 days in Ireland and is not resident. She has not previously been resident, therefore is also not ordinarily resident.
2023: resident (year 1), not ordinarily resident
2024: resident (year 2), not ordinarily resident
2025: resident (year 3), not ordinarily resident
2024: resident (**year 4**), now also becomes ordinarily resident

Example 2: Becoming Non-Ordinarily Resident

John has lived in Ireland since 1 March 1990. He leaves Ireland on 1 September 2022. John does not intend to return to Ireland until 1 January 2028. When does John become non-ordinarily resident?

2022: John has spent more than 183 days in Ireland and is resident. He has been resident consecutively since 1990, therefore is also ordinarily resident.
2023: non-resident (year 1), remains ordinarily resident
2024: non-resident (year 2), remains ordinarily resident
2025: non-resident (year 3), remains ordinarily resident
2024: non-resident (**year 4**), now also becomes non-ordinarily resident



Domicile is a legal concept but unlike residence/ordinary residence it is not actually defined in tax legislation. It is of a more permanent nature, referring to the concept of a person's permanent home. While a person will generally be liable to Income Tax in Ireland on Irish source income, a person's domicile may have an impact on the extent to which foreign (non-Irish) source income is liable to Income Tax in Ireland. A person cannot be without domicile, but it is only possible to have one domicile at a time.

Types of domicile include:

(1) Domicile of Origin – everyone has a domicile of origin, normally acquired at birth from a child's parent.

(2) Domicile of Choice – a person can choose to acquire a new domicile. To obtain a new domicile, a person must establish a physical presence in the new jurisdiction and show an intention to reside there permanently. The person must be able to actively prove that they have cut links to their previous domicile.

2. Scope of Income Tax Liability

What impact do these three key terms have on a person's liability to Income Tax in Ireland? The following table summarises the scope of a person's exposure to Irish Income Tax based on their residence, ordinary residence, and domicile status:

Table 1: Scope of Income Tax

Column 1 Person's Status	Column 2 Taxable Income
Resident and Domiciled (Ordinarily resident status irrelevant)	Worldwide income
Ordinarily resident and Domiciled (non-Resident)	Worldwide income **excluding the following:** (i) income from employment / trade / profession where carried on wholly outside of the State, and (ii) foreign income that does not exceed €3,810
Non-Domiciled and either Resident or Ordinarily resident	(i) Irish source income, and (ii) Foreign income remitted (transferred) into Ireland
Non-resident, non-ordinarily resident and non-domiciled	Irish source income only

For exam purposes, you are expected to be able to identify a person's status in column 1 based on the information provided in the question, and/or to correctly identify the taxable income from column 2.

See the following resource from the Revenue Commissioners for further explanation and examples:
[Part 34-00-01 - Provisions Relating to Residence of Individuals - Part 34 Taxes Consolidation Act 1997 (revenue.ie)]

3. Scope of Capital Gains Tax Liability

The scope of a person's liability to Capital Gains Tax (CGT) on the disposal of assets is also based on residence, ordinary residence, and domicile. The key terms have the same meaning for CGT as for Income Tax purposes. The table below summarises the implications of a person's residence, ordinary residence, and domicile status on their liability to CGT in Ireland.

Table 2: Scope of CGT

Column 1 **Person's Status**	**Column 2** **Taxable Gains**
Domiciled and Resident/Ordinarily Resident	Worldwide gains
Non-Domiciled and Resident/Ordinarily resident	(i) Gains on Irish situated assets, and (ii) Gains on assets outside of Ireland to the extent proceeds are remitted (transferred) into Ireland
Non-resident and non-ordinarily resident (irrespective of domicile)	Gains on specified assets only

Example 3: Domiciled and Resident

Shivaun is Irish domiciled and tax resident. During 2023, she disposed of shares in a US company receiving € 8,000. She received a gift of the shares from her cousin on 1 May 1990 when the shares were valued at € 200.

Is the disposal within the scope of Irish CGT? As Shivaun is Irish resident and domiciled, she is liable to CGT on worldwide gains. The calculation of the CGT liability is as follows:

	€	**€**
Proceeds		8,000
Cost (market value when gift received)	200	
Indexation factor (1990/91)	1.442	
Indexed cost		(3,000)
Taxable value		5,000
Annual exemption		(1,270)
		3,730
CGT liability @ 33%		1,231

Example 4: Non-domiciled and Resident

Toby is Australian domiciled and Irish tax resident. During 2023, he disposed of a property in Australia receiving € 75,000 (all proceeds were lodged to his Irish bank account). He purchased the property on 1 November 1998 for € 12,000.

Is the disposal within the scope of Irish CGT? As Toby is Irish resident but not domiciled, he is liable to gains on Irish situated assets and gains outside of Ireland to the extent proceeds are remitted to Ireland. The calculation of the CGT liability is as follows:

	€	€
Proceeds		75,000
Cost	12,000	
Indexation factor (1998/99)	1.212	
Indexed cost		(14,544)
Taxable value		60,456
All proceeds are remitted, therefore liable in full to Irish CGT		
Annual exemption		(1,270)
		59,186
CGT liability @ 33%		19,531

4. Scope of Capital Acquisitions Tax Liability

The scope of Capital Acquisitions Tax (CAT) is based only on residence and ordinary residence. However, the status of the disponer (person who gives the gift/inheritance) AND the donee (beneficiary/recipient) are BOTH considered when determining if a gift/inheritance will be within the charge to CAT in Ireland.

A gift/inheritance will be within the scope of CAT if:

(1) The disponer is resident or ordinarily resident in the State, *or*
(2) The donee is resident or ordinarily resident in the State, *or*
(3) The property (including shares in an Irish company) is situated in the State.

In addition, a non-domiciled person will only be considered resident or ordinarily resident in the State when they have been resident for five consecutive tax years prior to the date of the gift/inheritance.

Example 5: Resident Beneficiary

Patrick is Irish domiciled but tax resident in the UK. He made a gift of UK shares to his nephew Adrian on 10 April 2023. The shares were valued at € 100,000 on that date. Patrick had purchased the shares for € 5,000 on 1 August 2000. Adrian, who is Irish tax resident and domiciled, has received no prior gifts/inheritances.

Is the benefit within the scope of Irish CAT?

1) Disponer resident/ordinarily resident? No. Patrick is not tax resident in Ireland.
2) Beneficiary resident/ordinarily resident? YES. Adrian is Irish tax resident.
3) Irish situated property? No. UK shares.

As the answer to one of the three questions is Yes, the gift is within the scope of Irish CAT. The calculation of the Adrian's Irish CAT liability is as follows:

	€	€
Value of benefit		100,000
Group Threshold (nephew/uncle relationship)		
Group B	32,500	
Prior gifts/inheritance within group B	(0)	
Unused threshold		(32,500)
Small **gift** exemption		(3,000)
Taxable value		64,500
CAT liability @ 33%		21,285

Example 6: Non-domiciled Disponer

Sanchia is Spanish domiciled. She moved to Ireland on 1 February 2022, becoming tax resident in 2022. She is Irish tax resident in 2023. She gifted a painting valued at € 20,000 to her daughter Lucia on 21 May 2023. The painting had cost € 500 when purchased by Sanchia on 1 June 1995. The painting was stored in Sanchia's property in Spain. Lucia, who is tax resident and domiciled in Spain, has received no prior gifts/inheritances.

Is the benefit within the scope of Irish CAT?

1) Disponer resident/ordinarily resident? No. Although Sanchia is tax resident in Ireland, because she is non-domiciled and has not been resident in Ireland for five consecutive years, she is not considered resident for Irish CAT purposes in 2023.
2) Beneficiary resident/ordinarily resident? No. Lucia is not resident nor ordinarily resident in Ireland.
3) Irish situated property? No. The benefit is Spanish property.

The benefit given to her daughter in 2023 is not within the scope of CAT.

This article provides a summary for exam revision. It is important that you do not solely rely on this article for exam preparation. You should refer to additional resources and past exam paper questions to study this topic in more detail.

Suggested Further Study Resources:
Advanced Tax by Paula Byrne
Irish Taxation: Law & Practice, Irish Taxation Institute, Chapter 9 (IT), Chapter 24 (CGT), and Chapter 33 (CAT)
CA Proficiency 2 (ROI), Chartered Accountants Ireland, Chapter 2 (IT), Chapter 4 (CGT) and Chapter 15 (CAT)

Past Exam Paper Questions for Revision:
August 2021 Question 5(b)
August 2022, Question 6(a)
April 2023, Question 6(a)