Paula Byrne, MBA, ACCA, Lecturer Griffith College and tax consultant talks about her love affair with TAX RESIDENCY RULES and The Spice Girls, January 2019.

THE SPICE GIRLS
Those of you who have passed through my lecture halls will know about my love of the tax implications surrounding residency. What may be news to you is my love also of the Spice Girls.

The two are not unrelated. My love affair with residency began in the 1990s when I read that the Spice Girls had allegedly not paid UK income tax one year. Widely reported to result from their non-resident status during their world tour, some 'mind-blowing' figures were quoted in the press of the day, as to the supposed resultant tax saving. Needless to say, this really captured my imagination from both an accountant and Spice Girl 'super fan' perspective.

It seems from my reading of previous past examination papers that my passion of residency rules may be shared, somewhat, by the P2 Advanced Taxation examiner. However, I have no evidence that this is related to the Spice Girls!

Residency rules are many and complex. I hope the following goes some way in helping to illustrate some of the intricacies of these rules.

First, let's have a quick reminder of some of the basic terminology:

- **Domicile Status** - Your domicile is the country where you live with the intention of remaining there permanently. It may be different to your residence or nationality. Your domicile can be changed during your lifetime but you can only have one domicile at a time.

- **Residency Status** - If you are present in Ireland at least 183 days in the tax year. You can also be resident by virtue of the 'look back' rule by being present at least a combined 280 days in the current tax year and immediately preceding tax year BUT you must be resident for at least 30 days in both tax years.

- **Ordinarily Resident Status (OR)** - If you are resident for the preceding 3 tax years you are considered OR and will continue to be OR until you are non-resident for 3 consecutive tax years. In other words, it takes 3 years to gain 'OR' status and another 3 years to lose it.

Now let's look at the taxes, in particular: Income Tax; Capital Gains Tax; Capital Acquisition Tax and Stamp Duty.

INCOME TAX
The extent to which an individual's income is liable to income tax depends on their residency status, as summarised below:

Domiciled	Resident	Ordinarily Resident	Income is taxed on
Y	Y	Y	Worldwide Income
Y	N	Y	Worldwide income (but not foreign trade/employment income or foreign investment income < €3,810)
Y	Y	N	Worldwide income
N	Y	Y/N	Irish source income and remittances, (other than foreign employment income remittances), into Ireland
Y/N	N	N	Irish source income

Hopefully, you will have noticed, from the previous table, how tax efficient it is to be a non-domicile person. Non-domiciles are taxed on a remittance basis. Even being married to a non-domicile person is not without its possible tax advantages. For example, I'm thinking of buying a rental property in Italy. Because I'm Irish domicile, it's irrelevant whether I remit this Italian rental income into Ireland or not. Revenue will want "their cut" and so I will have to pay Irish Income tax on this income.

HOWEVER, if I were a non-domicile AND as long as I didn't remit the Italian income into Ireland – Revenue won't have any entitlement to taxation on this foreign income.

Assuming that I am Irish domicile but married to a non-domicile and we are thinking about buying a rental property abroad, it would be more tax efficient to have the property in my husband's name so that all the rental income is his. As long as he doesn't remit back to Ireland, it won't be taxed here.

Back to The Spice girls. They of course were subject to UK tax law. But let's say they were an Irish group and all the members were Irish domicile, the Spice Cailíní. They too would have been able to avoid Irish income taxation on their foreign singing income, (trade income let's say), simply by being non-resident

Before we move on to Capital Gains Tax, there are 3 additional income tax rules that are really well worth knowing:

Rule 1 – Remittance of capital

Where a non-Irish domicile individual has capital saved or acquired before becoming resident, this capital can be remitted without giving rise to an Irish tax liability.

If it's a mixture of capital and income, the remittance will be deemed to come firstly from income and the balance from capital.

Therefore, it's best to place in two separate bank accounts and clearly differentiate between the two before you start remitting and then of course remit from the capital account.

Rule 2 – Working in Ireland

An individual who is resident but not domiciled in Ireland is liable to income tax in full on any income from an office/employment, insofar as that income relates to the performance, in the state, of the duties of that office/employment (irrespective of where it is paid or whether or not it is remitted into Ireland or not.

Rule 3 – Directors

A director of an Irish incorporated company holds an Irish public office and so the income from this Irish public office is chargeable to Irish tax, irrespective of tax residence of director.

CAPITAL GAINS TAX (CGT)

The extent to which an individual's chargeable gains are liable to CGT depends on their residency status, as summarised below:

Domiciled	Resident	Ordinarily Resident	Taxed on chargeable gains relating to:
Y	Y	Y	Worldwide Gains
Y	N	Y	Worldwide Gains
Y	Y	N	Worldwide Gains
N	Y	Y/N	Irish source gains and remittances into Ireland
Y/N	N	N	Disposal of an Irish Specified Asset

Again, the non-domicile situation is hugely tax efficient. Remember that Italian apartment referred to earlier? Let us assume that having purchased it I later sold it. I am Irish domicile (and Irish resident and/or ordinary resident) so regardless of whether I remitted or not, Irish CGT would be due on the chargeable gain. This is not dissimilar to the income tax rules, discussed earlier.

BUT if I was non-domicile AND I didn't remit my chargeable gain back into Ireland, then Revenue wouldn't get their 33% CGT, again similar to the Income Tax rules, also discussed earlier.

Foreign Assets and CGT

As stated above, a non-domiciled individual is only liable to CGT on non-Irish assets to the extent that the proceeds of a disposal are remitted to Ireland.

Let’s consider the position of someone who is non-resident and non-ordinarily resident. (For the purposes of foreign assets, their domicile status is irrelevant). These rules are very different to the income tax rules. Under CGT rules, they are only taxed in Ireland on the disposal of SPECIFIED Irish Assets*. Under Income Tax rules, see earlier, they are taxed on all Irish source income.

***Irish Specified assets** are **mainly land and buildings in state** and mineral mining rights or unquoted shares **deriving value** from these assets.*

Did I mention earlier that I have a Spanish cousin, Pedro? He’s never set foot in Ireland. He’s non-domicile, non-resident and non-ordinarily resident. However, he owns a Jack B. Yeats painting that he stores in his friend’s house in Cork.

Is a painting an Irish specified asset? Does the painting fall into the above definition? No, is the answer to both questions. Therefore, non-resident and non-ordinarily resident Pedro can sell this painting and not incur any Irish CGT.

Similarly, as a person that is non-resident and non-ordinarily resident, if you dispose of a lot of shares, (not the specified asset type of shares – the ‘normal’ type e.g. shares in Bank of Ireland or Abbey), - there potentially will be no Irish CGT. You could then return to Ireland after the sale without an Irish CGT bill waiting for you.

However, there is an anti-avoidance measure to stop those individuals who were domicile in Ireland prior to becoming non-resident, who expect to make a gain on the disposal of ‘normal’ **shares** (similar to those mentioned above) avoiding CGT. This measure discourages individuals from becoming non-ordinarily resident for this purpose and then becoming ordinarily resident and returning to Ireland at a later stage.

The rule is that the individual will be liable on the following assets disposed of during this period of absence:

- Shares which are equal to at least 5% of the share capital of the company; or
- Shares which have a value of €500,000 or above.

The individual is someone who is non-resident but resumes residency within **5 years** of becoming non-resident.

The disposal of shares is deemed to have occurred of the last day of the last year of assessment for which he or she is taxable in Ireland, prior to becoming taxable elsewhere **on the last day of residency** at market value on that day.

*(Note that **for the purpose of paying the tax** the disposal is deemed to have occurred in the year of returning - so the individual won’t be penalised for overdue tax).*

If one of The Irish Spice Cailíní came looking for advice on when to sell her 5% holding of shares in an Irish company, I would advise her to wait until she becomes non-ordinarily resident AND not to become resident again within 5 years of departure.

Before we move on to Capital Acquisition Tax, another CGT rule that’s really well worth knowing:

Remittance Basis and Losses - there is no loss relief available in respect of assets situated outside Ireland for non-domiciled individuals who are assessed on a remittance basis, regardless of whether they remit or not.

CAPITAL AQUISITION TAX (CAT)

The extent to which an individual's inheritance or gifts are liable to CAT depends on their residency status, as summarised below:

Domiciled	Resident	Ordinarily Resident	Gifts/inheritances taxed on
Y	Y	Y	Worldwide gifts/inheritances
Y	N	Y	Worldwide gifts/inheritances
Y	Y	N	Worldwide gifts/inheritances
N	Y	Y	Receipt of foreign property in special circumstances (see below)
Y/N	N	N	Receipt of Irish property

Let us assume that my Spanish cousin Pedro gifted me an apartment in Madrid. Because I am an Irish domicile person, I pay Irish CAT. Also the bottom row in the above table is pretty much as expected – **the inheritance of a gift of Irish property is always liable to Irish CAT, regardless of my domicile status.**

In the CAT scenario, what's to be particularly noted is the receipt of foreign assets if you are a non-domicile. This is generally regarded as being highly unfair by my tax students. What do you think?

Foreign Assets and the non-domicile
Where the date of the disposition is on or after 1 December 1999; the key test in determining whether a gift/inheritance of foreign assets is a taxable gift/inheritance will be:

The **RESIDENCY** status of either

- the disponer;

<u>or</u>

- the recipient/ (donee)

In other words, foreign assets are taxable if either the <u>disponer</u> is resident or ordinarily resident **OR** if the <u>donee</u> is resident or ordinarily resident.

Let us consider the following:
Madame de Gaulle, a French Domicile has lived in Ireland for many years. Her sister gifts her an apartment in Greece. The rule is that Madame de Gaulle has to pay Irish CAT on the receipt of this asset in Greece. Why? Because she is Irish resident and ordinarily resident. My students tend to think this is fair and reasonable.

However, what about the situation where instead of Mrs De Gaulle receiving the Greek apartment – let's say she gifted it to her sister Madame Du Bek. Madame Du Bek has never been to Ireland in her life. She is French domicile, resident and ordinarily resident. In this scenario, Madame Du Bek must pay IRISH CAT on the gift of the Greek apartment.

Perhaps you're thinking I've made a mistake here!

Let me clarify. As the disponer, Madame Du Gaulle, is Irish resident and ordinarily resident, Madame du Bek must pay Irish CAT on the gift of a Greek apartment.

When I first explain this to my students some challenge me in disbelief! Like my clients, they sometimes seem to think I personally have made all the tax rules.

To alleviate this situation a little, I always quickly mention there is a further rule that:

- Where a disponer or donee is non-domiciled in Ireland, he/she will only be considered to be resident or ordinarily resident if and only if:

    - The disponer/donee has been resident for **5 consecutive years** preceding the year of assessment in which the relevant disposal occurs,' **and**

    - The individual is resident and ordinarily resident in the year of assessment of the gift.

This is different to income tax rules.

Therefore, if you were to advise the sisters, suggest the apartment is transferred before either of them is Irish resident for 5 continuous years.

Stamp Duty (SD)
SD is payable on any written document (instrument/conveyance), which is:

- Executed in the state, or
- Relates to any property situated in the state, or
- Relates to any matter or thing done in the State.

Let's say Pedro, my Spanish cousin, purchases an investment property in Co. Cork from a German citizen. Neither are tax resident in Ireland and the sale contract is executed in Spain. The sale will still be liable to Irish Stamp duty as the property is located in Ireland.

Now consider the situation where I buy an apartment in Spain from another Irish person and this time the deed of transfer is executed in Spain. A charge to Irish stamp duty will not arise because both the property and the deed of transfer is outside Ireland.

Remember that when a transaction arises abroad on foreign property, and the only link to Ireland is that the two parties are tax resident here, that's not enough to bring the document into charge here.

Finally
Just to say if anyone has a spare ticket or two for the Spice girls 2019 concert, I can be contacted at Griffith College, both Dublin and Cork campuses.

Note that the taxation that may be payable in the foreign country is outside the scope of this article. Clients should always be advised to seek local expert tax advice. However, if foreign tax is payable and it's a country that Ireland has a double taxation agreement with, the client may qualify for double taxation relief in Ireland.

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