

The remittance basis of assessment as regards UK source income and gains

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1. Income Tax

In general, income chargeable to income tax under Case III of Schedule D shall **“be computed on the full amount of the profits or income arising within the year of assessment”** [section 70(2) of the Taxes Consolidation Act 1997]. This is known as the **“arising basis”** of assessment.

However, section 71(2) TCA 1997 provides an alternate computational basis of assessment in respect of income from foreign securities and possessions of persons who are not domiciled in the State.

This alternate computational basis of assessment determines [see section 71(3) TCA 1997] that the income from the foreign securities and possessions of such persons to be assessed under Case III of Schedule D shall be computed on the full amount of the actual sums received in the State. This basis of computation is more commonly known as the **“remittance basis”** of assessment.

For tax years up to and including 2009, the remittance basis of assessment also applied in respect of income from foreign securities and possessions of persons, who being Irish citizens, were not ordinarily resident in the State. By virtue of section 9 of the Finance Act 2010, the remittance basis of assessment for such persons ceased for the tax year 2010 and subsequent tax years.

Under the terms of the first Double Taxation Agreement between the State and the United Kingdom as contained in the First Schedule to the Finance Act 1926 and followed through to section 73 TCA 1997, the remittance basis of assessment did not apply in respect of UK source income. However, by virtue of section 18 of the Finance Act 2008, section 73 TCA 1997 ceased to have effect in respect of UK source income arising on or after 1 January 2008. Consequently, the remittance basis of assessment can apply in respect of UK source income arising on or after that date to persons who are not domiciled in the State.

2. Capital Gains Tax

The remittance basis of assessment also applies in respect of the foreign chargeable gains of non-domiciled individuals (the remittance basis of assessment for foreign chargeable gains never applied to Irish citizens not ordinarily resident in the State).

Under the provisions of section 29(4) TCA 1997, prior to its amendment by section 42 of the Finance (No. 2) Act 2008, the remittance basis of assessment did not apply in respect of UK source chargeable gains. Section 42 Finance (No.2) Act 2008 amended section 29(4) TCA 1997 to provide that the remittance basis of assessment applies to UK source chargeable gains arising from disposals made on or after 20 November 2008.

3. Section 18 of Finance Act 2008 & Section 42 Finance (No. 2) Act 2008

Section 18 of Finance Act 2008 and section 42 of Finance (No. 2) Act 2008 do not have retrospective effect. However, arising from matters contained in a tax appeal case, Revenue stated they were prepared to examine, on a case by case basis and subject to the statutory 4-year time limit, claims for repayment of tax where it was claimed that a repayment would be due had the remittance basis of assessment, rather than the arising basis, applied for a relevant year of assessment in respect of an individual's UK source income and/or chargeable gains.

Note 1 With effect from 1 January 2006, the income of a non-Irish sourced employment (including UK sourced employment) attributable to the performance **in the State** of the duties of that employment is chargeable to income tax under Schedule E and the remittance basis of assessment does not apply to income within the charge to income tax in the State under Schedule E.

Note 2 The UK source income and chargeable gains of an Irish resident individual relieved under Paragraph 3 above will, if remitted to the State during a future tax year, be chargeable to tax in that future tax year (assuming the individual is Irish resident for tax purposes in that tax year).

Note 3 Where a lesser figure of UK source income or gains is assessed, the credit already allowed for UK tax paid in respect of such income or gains will, of course, also have to be reduced.