

# Non-domicile tax regime in Cyprus: Essential insights for asset managers and entrepreneurs

The “non-domicile” regime has been available to Cyprus tax resident individuals since the 2016 tax year and is based on the combined operation of the Cyprus Income Tax Law (the **IT Law**), the Special Defence Contribution Law (the **SDC Law**), and the Wills and Succession Law (the **W&S Law**).

When the non-domicile regime in Cyprus is used appropriately it ensures significant tax efficiencies and benefits to those individuals making use of it, alongside the rules governing tax residency.

Asset managers and other entrepreneurs who have ‘skin in the game’ as regards their global funds, managed entities, and businesses should take note of the Cyprus non-dom regime, especially in light of moves by other countries to either abolish their own non-dom regimes (United Kingdom), or raise the bar to entry for individuals (Italy).

## Overview for non-doms

To start with, it should be noted that Cyprus levies tax on individuals *only* in respect of income and a unique type of withholding known as a ‘special defence contributions’. Importantly, there is neither capital gains tax<sup>1</sup> nor inheritance tax in the jurisdiction.

In general, and in line with global standards, individuals are only taxed in Cyprus when they are tax resident in the jurisdiction.<sup>2</sup> However, Cyprus non-doms – with the right structuring – can fall outside of the scope of taxation in respect of much/most of their earnings, despite being tax residents of Cyprus. We explore the grounds on which they may do so below.

## A note on carried interest

Considering the above context, managers should take note that the Cyprus Tax Department has over the years considered ‘carried interest’ to amount to “income”, as opposed to “capital gains” for Cyprus tax purposes. This is in contrast to the historic position in other countries, such as the UK where such earning may not be considered as such in certain circumstances. The position in Cyprus mostly derives from the fact that there is no relevant capital gains tax regime.

Non-doms aside, the IT Law does provide for certain safe-harbours from taxation in respect of carried interest as a benefit in kind for income tax purposes. This can reduce effective income tax to a flat rate of 8 per cent. However, eligibility for the safe-harbour is restricted to specific types of funds and managers meaning it may not be suitable in all circumstances. In contrast, we see the non-dom regime as a much more effective way of reducing tax liabilities for those that can benefit from it.

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<sup>1</sup> Please note, as an exception to this, capital gains tax may be levied in Cyprus in respect of gains from the disposal (sale) of immovable property (real estate) *physically located* in Cyprus. The tax residency of persons disposing of such property is irrelevant.

<sup>2</sup> In contrast, individuals who are not tax resident in Cyprus will be taxed in Cyprus only on specific types of income deriving from Cyprus sources, such as rental income from local real estate.

## Tax residency in Cyprus

In accordance with the IT Law, an individual is considered a tax resident in Cyprus if they are physically present within a tax year (ie calendar year) for at least 183 days (**183 Days Rule**).

In cases where the 183 Days Rule does not apply, an individual can *additionally* be considered tax resident in Cyprus where they are resident for only 60 days in a given tax year (**60 Days Rule**), provided all of the below conditions are met:

- The individual must be physically present in Cyprus for at least 60 days within the tax year;
- The individual cannot be considered a tax resident by any other country within the tax year;
- The individual is not physically present in any other country for 183 days or more within the tax year;
- The individual has a permanent residence in Cyprus, which is either owned or rented; *and*
- The individual exercises business in Cyprus, is employed in Cyprus or is an office-holder (such as a director) of a company established in Cyprus at any time during the tax year.<sup>3</sup>

## Concept of “domicile” in Cyprus

The concept of “domicile” in Cyprus is an old one and derives from express provisions contained in the W&S Law. Under this regime, an individual is considered as domiciled in Cyprus either through their *origin* (domicile of origin), by *choice* (domicile of choice) or by being considered as *deemed domiciled* in Cyprus in certain circumstances. The concept only applies to individuals, it does not apply to legal entities.

- **Domicile of origin**
  - An individual is domiciled in Cyprus by domicile of origin by acquiring domicile at the time of their birth. When a legitimate child is born, and the father is alive and domiciled in Cyprus, the legitimate child will automatically acquire the father’s domicile of origin.
  - When a legitimate child is born and the father is dead, or the child is not legitimate, the child will acquire its mother’s domicile of origin. In this case, if the mother is domiciled in Cyprus, the child will also be domiciled in Cyprus by domicile of origin.
  - An individual who is domiciled in Cyprus by domicile of origin will maintain its “domiciled” status in Cyprus until they acquire domicile of choice in another country.
- **Domicile of choice**
  - An individual is considered to be domiciled in Cyprus by domicile of choice by being resident in Cyprus *and* having the intention of permanent residence in Cyprus.
  - An individual will be domiciled in another country outside Cyprus by domicile of choice when they intend to indefinitely and permanently reside in the other country. This can override their domicile of origin consequently.
  - The individual will keep their domicile of choice until they acquire a new domicile of choice or regain their domicile of origin.

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<sup>3</sup> Please note, income received by virtue of this employment or office would, in its own right, be subject to income tax in Cyprus irrespective of whether the individual is domiciled in Cyprus or not.

- **Deemed domiciled**

When an individual is tax resident in Cyprus under the provisions of the IT Law for at least 17 of the last 20 years before the tax year under consideration, this individual will be considered deemed domiciled in Cyprus.

## Further savings under the SDC Law

The SDC Law provides that an individual who is considered to have their domicile of origin in Cyprus may still be treated as non-domiciled in Cyprus for the purposes of the SDC Law in the following two cases:

- The individual used to be domiciled in Cyprus by domicile of origin but has acquired domicile in another country on the basis that the individual has not been tax resident in Cyprus for at least 20 consecutive years before the tax year in which the individual became a Cyprus tax resident.
- An individual who has a domicile of origin in Cyprus but was not a Cyprus tax resident for at least 20 consecutive years before the non-domiciled provisions under the SDC Law came into force, ie the individual was not Cyprus tax resident between years 1995 and 2014 inclusive.

## Verifying non-dom status

In practice, individuals wishing to verify their non-domiciled status must obtain the relevant certificate from the Cyprus Tax Department. These individuals should proceed with the relevant application and supporting documentation to the Cyprus Tax Department. Typically, it takes around three weeks for the Cyprus Tax Department to provide an outcome for the status of the applicant.

Harneys can assist in filing such applications and obtaining the relevant approvals.

## Taxation under the IT Law (income tax)

As far as the IT Law is concerned, tax resident individuals in Cyprus (both domiciled *and* non-doms) will be exempt from:

- Income tax liability for dividends received; and
- Income tax liability for interest from loans and similar debt instruments received (note however that *carried* interest is treated differently, see above).

The logic to such wide carve-outs in Cyprus is that revenue corresponding to the above is instead collected by way of special defence contributions under the SDC Law regime, which exists in parallel to the IT Law and which we outline below.

## Taxation under the SDC Law (special defence contributions)

Under the SDC Law, an individual who is tax resident in Cyprus (ie is considered a tax resident under the provisions of the IT Law – see above) *and* domiciled in Cyprus will be subject to payment of Special Defence Contribution (**SDC**) in Cyprus on interest, dividends, and rent received.

## No SDC contributions levied on non-doms

However, under the SDC Law a tax resident individual will be *exempt* from such taxes where they are not domiciled in Cyprus. As such, they would be exempted from:

- SDC liability for dividends received;
- SDC liability for interest received from loans and similar debt instruments received; and
- SDC liability for rental income.

SDC contributions on such items can be levied at up to 17 per cent in Cyprus, so non-doms make a significant saving in this respect when compared to Cyprus domiciled individuals.

## Structuring considerations

Noting the above, income received by Cyprus non-doms which comprise:

- dividends received from equities held;
- interest received from loans and similar debt instruments; and/or
- rental income (excluding income which arises from Cyprus real estate),

will fall entirely outside of the scope of the tax regime in Cyprus. In consequence, managers and entrepreneurs can structure their affairs to ensure significant personal tax efficiencies when they become Cyprus tax resident.

It should be recalled that individuals which are in employment in Cyprus (a pre-requisite under the 60 Day Rule) will pay local tax on their employment income provided they earn more than €19,500 per year. This is essentially the personal allowance threshold in Cyprus. Where income exceeds this amount such individuals will be subject to an obligation to file tax returns, and will have clear proof that they are considered liable tax resident in Cyprus on an on-going basis. The filing of tax returns is of course critical to demonstrating Cyprus tax residency overseas.

## Final points to remember

Cyprus can be considered a very attractive tax jurisdiction for individual asset managers and other entrepreneurs who are looking for a beneficial tax regime to do business. The Cyprus non-domiciled regime is an important benefit provided.

Noting the abolishment of such regime within the UK, individual asset managers and other entrepreneurs may consider Cyprus as a jurisdiction to do their business because of the benefits they can receive from the Cyprus non-domiciled regime.

For more advice on this topic, reach out to the authors or your usual Harneys contact.



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