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UK Residence – new statutory test proposed from April 2012

It surprises many people arriving in the UK, or leaving to go abroad, that UK tax residence status is not currently defined by legislation, but hinges on the interpretations of various legal cases, most of which happened decades ago when life was very different.

There is also H M Revenue and Customs (HMRC) published advice which has no legal status. Indeed, HMRC has even argued against a taxpayer, who relied on their published advice, and won! According to a recent Treasury report, residence is 'vague, complicated and perceived to be subjective'. It is not the same as the definition of residence for immigration or national insurance or other parts of UK law.

Complicated

A person may be resident in another country, but this does not affect their UK residence position.

Assuming they are domiciled here, UK residents are liable to UK tax on all their worldwide income and gains, wherever they arise. Non-residents may only be liable for UK tax on UK based investment or property income. Most non-residents are not liable to capital gains tax even on UK assets although some individuals who are only temporarily non-resident for less than 5 complete tax years may be liable. There are exceptions to these general rules so it is vital that you seek individual advice to your own situation.

Considering the difference that being non-resident often makes to the amount of tax payable, this means that for an unacceptable number of people, their UK tax position can be very uncertain, despite best professional advice.

The Government plans to introduce a new statutory residence test from April 2012, which has recently been published for consultation, with a view to implementing legislation. Although the proposals are still draft they have generally been well received by the tax profession and are therefore likely to become law in a similar form, subject to only a few amendments.

Current rules

Currently you will be considered UK resident if you:

1. Spend 183 days in the UK in any tax year
2. Come to the UK with the intention of living here permanently or to work for an extended period with no end date
3. Come to the UK temporarily and spend 91 days or more in the UK on average over four tax years

4. Come to the UK for purposes such as employment which means they will remain in the UK for at least 2 years (whether or not they exceed 183 days)
5. Usually live in the UK and go abroad for short periods such as business trips or holidays.

Some words above are in italics which indicate there is no agreed or objective definition of what these terms mean.

Proposed new tax residence status test from April 2012

The proposed new rules look at days in the UK, and a number of objective factors, which link an individual to the UK, to decide a person's residence status. The test is in 3 parts. Parts A and B are designed to definitively decide the status for the majority of people whose cases are relatively straightforward. Only those with more complicated situations will need to work through part C.



Personal Planning UPDATE

Part A: Are you non-resident? An individual is definitely non-resident in the UK for a tax year if they qualify under any of the following conditions:

- They were not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 45 days in the current tax year; or
- They were resident in the UK in one or more of the previous three tax years, and they are present in the UK for fewer than 10 days in the current tax year; or
- They leave the UK to carry out full-time work abroad, provided they are present in the UK for fewer than 90 days in the tax year and no more than 20 days are spent working in the UK in the tax year.

Part B: If not, are you resident?

An individual is definitely resident in the UK for a tax year if they qualify under any of the following conditions:

- They are present in the UK for 183 days or more in a tax year; or
- They have only one home and that home is in the UK (or have two or more homes and all of these are in the UK); or
- They carry out full-time work in the UK.

If A and B both apply, the person is not resident. (This could happen in very few cases)

Part C: If neither A nor B is conclusive there are tests under part C for those arriving and leaving the UK. The tests are different for those arriving from those leaving because it is felt that it should be harder for current residents to become non-resident whereas individuals coming to the UK should not be deemed to acquire residence so easily.

For those who are resident in the UK in one or more of the previous three years (leavers) the test considers 5 relevant factors:

1. They have a UK resident family
2. They have substantive UK employment (including self-employment)

3. They have accessible accommodation in the UK
4. They spent 90 days or more in the UK in either of the previous two tax years
5. They spend more days in the UK than any other single country.

The way these factors are combined with days spent in the UK to determine residence status is as follows:

Days spent in UK	Impact of factors on residence status
Fewer than 10 days	Always non-resident
10 - 44 days	Resident if individual has 4 factors (otherwise not resident)
45-89 days	Resident if individual has 3 factors or more (otherwise not resident)
90 – 119 days	Resident if individual has 2 factors or more (otherwise not resident)
120 – 182 days	Resident if individual has 1 factor or more (otherwise not resident)
183 days or more	Always resident

For those not resident in the UK in the previous three years (arrivers) the test considers 4 relevant factors:

1. They have a UK resident family;
2. They have substantive UK employment (including self-employment);
3. They have accessible accommodation in the UK
4. They spent 90 days or more in the UK in either of the previous two tax years.

The way these factors are combined with days spent in the UK to determine residence status is as follows:

Days spent in UK	Impact of factors on residence status
Fewer than 45 days	Always non-resident
45 – 89 days	Resident if individual has 4 factors (otherwise not resident)
90 – 119 days	Resident if individual has 3 factors or more (otherwise not resident)
120 – 182 days	Resident if individual has 2 factors or more (otherwise not resident)
183 days or more	Always resident

It is proposed that, unlike the current situation, important definitions, eg 'resident family' will all be set out in the legislation. There will also be the possibility to split a tax year on arriving or leaving.

It has also been proposed that a new anti-income tax avoidance rule should be introduced that will prevent individuals from avoiding income tax by being non-UK resident for only a short period (less than five complete tax years). It is expected to work in a similar way to the existing capital gains tax anti-avoidance rule.

The current rules will continue to apply for the assessment of tax liability in tax years prior to the introduction of the statutory test, including 2011/12. It is not proposed to allow individuals to apply the new definition retrospectively to calculate tax for prior years.

Areas where we can help

Residence is a complex subject where individuals need professional guidance to ensure they arrange their affairs to avoid paying more UK tax than necessary. Those who are not UK domiciled (not covered in this leaflet) face even more complexity.

If you might be affected please contact us to discuss your specific circumstances.

